

Using Debate to Foster Student Learning and Understanding of Construction Law

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Debate has been used in various programs to foster student learning and critical thinking, but has not been documented as being used in construction programs. Debate can be tailored to increase student learning and understanding of difficult topics by encouraging student dialog and research of the debate topics. This paper focuses on the use of debate for learning construction legal principles through mock mediations sessions.

Key Words: Debate, Critical Thinking, Mediation, Learner-centered

Introduction

Debate has been researched as a pedagogical method used to improve critical thinking skills and oral communication skills since the 1990's (West, 1994; Burton; 1996). Debate has currently been used in various programs to foster student learning and critical thinking, but has not been documented as being used in construction management programs per a literature review of industry and construction education related publications. Learner-centered education programs such as nursing and pharmacy, as well as marketing, and economics have been including various exercises to foster critical thinking development in their students including case studies and debate (Allison, 2006; Lin & Crawford, 2007; Roy & Macchiette, 2005; Vo & Morris, 2006). Debate can be tailored to increase student learning and understanding of difficult topics by encouraging student dialog and research of the debate topics. This paper focuses on the use of debate for learning construction legal principles through mock mediations sessions.

Debate

Debate can be summarized as a five step process. The debate process begins with the gathering of information about the debate topic. Step two follows with the student exploring all sides of the issues. Step three has the students forming initial opinions, followed by the students defending their positions in step four. The final step is then allowing the students to refine their opinions through the knowledge and information gained in the debate (Daley, 1998).

The debate format used for this paper was a three by three format. This format was selected so that there would be three student groups participating in the debate process. The Construction Management program course selected for debate introduction was Construction Law. Having taught the class in a previous semester, this author found that traditional lecture, and supplemental discussion and readings were not enough for

students to gain the ability to think critically with the legal principles they were being introduced to during the course. They could not always see the real industry applications beyond the example cases in the text. Thus, this course was an ideal test case to see if debate could foster the students' understanding and use of the legal principals in the construction industry. Since the course selected was Construction Law, the mock mediation format was selected which allowed for Owner, Contractor, and Mediator teams, and additionally furthered the course coverage of alternative dispute resolution techniques.

Mock Mediation Debates

The Construction Law course content was divided into roughly three learning modules using the course text book and supplementary materials. The three learning modules were the materials covered for each of the three regular tests given during the semester. For instance, the first learning module covered basic legal principles, contract law, common law, alternative dispute resolution methods, bidding principles, construction contract language and clauses, Uniform Commercial Code, and the A/E responsibilities and authority. At the end of each module, the students were tested on the materials covered. During the week following each exam, the students participated in a mock mediation debate. The debate scenario selected for that module had to exemplify one or more aspects of the learning module topics.

The mediation debate was begun with the instructor finding a suitable construction-related case that reflected the current topics covered in the course. This took as little as one day to several days of review of literature and current industry publications to find appropriate cases. Web sites such as ConstructionRisk.com and ENR's online journal site were used to find the relevant cases. The case selected was then written with a general history given to each of the three teams, and customized for the Owner and Contractor teams. The Mediators were given all the information, including confidential data shared only with either the Contractor or Owner teams exclusively.

This customization of the cases included providing confidential information to the two opposing parties that they could use in their case debate preparation, or they could choose to not disclose the additional information. This also allowed the debate to foster discussions of professional ethics and disclosure rules for different claim resolution methods. The case information needed to be distributed to the student teams sufficiently in advance of the mediation sessions to allow them to research the relevant case law, and supporting cases or legal precedents in addition to preparing their team positions and order of speaking for the mediation debate session.

The students enrolled in the course were divided randomly into the three groups prior to handing out the first mediation scenario. The students were introduced to the debate format and the mediation session procedures developed for this course. It was explained to them that this format did not follow typical industry mediation sessions, but was organized in a debate format for student learning purposes and to allow all students to participate equally. The student groups rotated between being Contractors, Owners, or

Mediators in each of the three mediation debates so that they gained knowledge of being in opposing positions and saw cases from all perspectives. The students that were in the Contractors team (1st person affirmative position in debate terms) went first in presenting their position in the debates. In debates, each person on a team can speak only once, unless addressed by the Mediators at the end of the session. The next person to speak was the 1st negative position, or for this course, the first person speaking for the Owner. Each sequential speaker could present new information, and or rebut the previous speaker's arguments. The Mediators monitored the sessions allowing only one person to speak at a time, in order, with no interruptions from either party until all parties from each side had spoken. The last person from the Owner and Contractor teams summarized their positions and arguments for the Mediators. Mediators were required to take notes and pay strict attention to the cases and arguments presented during the debates. At the conclusion of the mediation debates, the Mediators were to ask questions and interview the parties from both the Contractor and Owner teams.

The Mediators needed to be just as informed about the case law as the opposing parties. At the conclusion of the debate between the Owner and Contractor teams, the Mediators caucused to discuss their resolution of the case. They needed to address the information provided, the relevant case law, and the information that the parties may have left out of their presentations and rebuttals. The students from the Contractor and Owner teams needed to research both sides of the case in order to be prepared to make rebuttals of potential opposing team. Since each person was allowed to speak only once, the order of speakers for the opposing parties was very important, with the stronger debaters going later in the sequence to allow for counter arguments.

It was found that the students gained confidence and skill with the debate process with each debate. Multiple mediation debates were needed in order for the students to get familiar with the process. In the course that was the basis for this paper, three mediation debates were held. The student debate performances, as well as the depth, and clarity of arguments for their mediation roles improved with each session.

Grading of the mediation debate sessions occurred in two parts. The first part of each student grade was based upon the mediation debate participation, arguments or rebuttals. The second part of their grade was based upon the student research for the case. Students were required to turn in papers that documented their research and preparation for the mediation debate after each debate citing referenced materials and cases. The overall mediation and debate session point values increased from the first session to the second based upon anticipated student learning from the first session. The first mediation debate grade was worth 50 points total; 25 points each for research documentation and 25 points for debate participation. The second and third mediation debates were each worth 100 points total, again using 50% of the grade for their documented research and 50% for debate participation. The student overall semester grades were calculated based upon percentages: Tests 45%, Homework 15%, Case Reviews 10%, Mediation Debates 20%, and Attendance/Participation 10%.

According to an informal, anonymous class survey given at the end of the semester, most students (72%) found the debates enjoyable, informative, and helpful in demonstrating the importance and application of the classroom and text materials. It was observed by the instructor that the students included legal terminology in class room discussion more often, and were more able to relate the legal principles to work experiences that they had encountered or discussed in other courses, and retained more content knowledge past the end of the semester.

Summary

One of the most widely documented benefits from debate is the enhancement of critical thinking skills (Colbert, 1986). The value of small group debates has been examined by others and found to be representative of a learner-centered education; additionally, it has been confirmed that debate can foster better development of skills in interpretation of data (Burton, 1996; West, 1994). Many universities and programs are placing more emphasis on learner centered instruction, especially with the increasing number of web courses (James, 2006; Ware, 2006). The debate scenario can be used in a course to demonstrate the inclusion of learner centered activities, and it can work well with traditional class room settings or with web based courses using real-time chat sessions to foster student critical thinking and learning (Joung, 2003).

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