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Training the Transactional Business Lawyer: Using the Business Associations Course as a Platform to Teach Practical Skills

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TRAINING THE TRANSACTIONAL BUSINESS LAWYER: USING THE BUSINESS ASSOCIATIONS COURSE AS A PLATFORM TO TEACH PRACTICAL SKILLS

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INTRODUCTION

In this article, I will discuss the importance of introducing transactional lawyering skills into the law school course on business associations. I will also suggest ways in which practical skills relevant to a transactional business law practice can be incorporated into the course in Business Associations or to a transactional skills course tethered to the Business Associations course.

I will argue that teaching transactional law as part of the Business Associations course is necessary because the practice of business law is essentially transactional in nature. It is my belief that we mislead our students and give them a distorted view of business law practice when we focus almost exclusively on case law analysis in this course. By adopting this approach, we leave our students with the misimpression that business law practice is primarily about litigation. In fact, business law practice is about preventing legal disputes from arising in the first place by proactive lawyering. This is an easy trap for a teacher to fall into, since this is the approach taken by most of the commercially available casebooks on the law of Business Associations. However, with a little thought and advance planning, it is possible to incorporate aspects of transactional lawyering even while using one of the standard casebooks.

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The article will be structured as follows. Section I will explore the nature of business law practice and the types of skills that are required to be successful in this type of practice. Section II will explore the rationale for incorporating a focus on transactional law and practical skills training in the context of the Business Associations course. Section III will propose some methods for adding transactional lawyering skills to the Business Associations course or to a transactional skills course tethered to the Business Associations course. I will then conclude with some final thoughts.

I. THE NATURE OF BUSINESS LAW PRACTICE AND THE LAWYERING SKILLS NEEDED FOR SUCH PRACTICE

My viewpoint is informed by my life experience as both a lawyer and a law professor. I have been teaching law as a full-time tenured faculty member at Saint Louis University School of Law for close to twenty years, but prior to entering law teaching, I pursued a different career. I was a business lawyer. As a result, I bring a certain perspective to teaching law students based on my years in that type of practice that is different than the traditional approach, which focuses on the study of appellate cases through the use of Socratic dialogue. This so-called case method was first introduced by Dean Christopher Columbus Langdell of the Harvard Law School in the late nineteenth century and has prevailed in U.S. law schools since that time, although with some modifications.[1] As described in Section III below, this method has been widely criticized as inadequate to train lawyers in all the skills needed for legal practice and as a result, law school pedagogy is changing. Although some progress has been made to date, more changes are needed.

[1] A.B.A SEC. OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT – AN EDUCATIONAL CONTINUUM (REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP) 106 (1992) *available at* http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/2013_legal_education_and_professional_development_maccrate_report).authcheckdam.pdf. [hereinafter "MacCrate Report"].

In my own experience as a law student in an era when the case method was the sole method of instruction, I felt a certain tension between the learning process as conducted in the classroom and the realities of law practice as I observed it during my student internships. Although my student internship experiences revolved around litigation, it was still difficult for me to reconcile the almost exclusive focus on the case method in the classroom with the realization that there were many other skills that were required to succeed in law practice that were not part of my law school training. This feeling returned when after a significant number of years as a practitioner, I entered into law teaching as a full-time career. As a new law teacher, I was inclined to follow the paradigm of law teaching that I had experienced since this was the only method I was familiar with. And yet if I did so, I felt that I was doing my students a disservice and failing to teach them the skills they would need to succeed once they had passed the bar and entered the legal profession. This was a difficult line to walk. For me, this feeling of tension between the theoretical and the practical aspects of law school education persists to this day.

Although breaking with an established paradigm is difficult, I have attempted to do so by integrating some practical skills training into several of the doctrinal classes that I teach, including my course in Business Associations. In doing so, I draw on what I learned in my practice experience.

Like most lawyers of my generation, I learned practical skills only after I had graduated from law school. I did take the first year course in legal research and writing offered by my law school, as well as an upper division elective in trial advocacy, and I participated in moot court. However, there were no advanced legal writing courses or other skills courses like transactional drafting or negotiations offered in those days. The professor who taught me Business

Associations and Securities Regulation, someone who had much real world experience including serving as the chairman of the Securities and Exchange Commission, used the case method, just like my professors in other law school courses. Based on my law school experience, it appeared to me that most law practice revolved around litigation.

So it came as a surprise to me when I was assigned to the corporate department of the New York City law firm I joined upon graduation and learned that litigation was handled by a separate department. It was explained to me that the department to which I had been assigned was the primary point of contact for most of the firm's clientele. It was there that the clients came to seek advice and counsel on legal and regulatory issues that needed to be addressed in their business operations and for assistance in structuring, advising and closing their deals.

When I learned that I would be involved in these matters on a daily basis, it became clear to me that I would need to deploy a whole new skill set, different from the one I thought I would need when I was a law student. This was a whole new world for me and one that my law school education had not really prepared me for except in the most general sense of helping me to cultivate my analytical and writing skills. Some of the tasks that I was called upon to perform at this early stage of my career included:

1. Preparing memos of law to clients, including stating the relevant facts, identifying the legal issues involved, summarizing and explaining the relevant law, listing the possible courses of action that could be followed and the benefits and risks of each, and recommending the best choice from among the available options;
2. Forming limited partnerships and corporations by drafting organizational documents like limited partnership agreements, articles of incorporation and by-laws and related government filings;

3. Preparing corporate resolutions and minutes of meetings of directors and shareholders;
4. Preparing documentation for corporate, securities and bank financing transactions, including drafting contracts, engaging in pre-closing due diligence, preparing closing checklists and closing documents such as third party legal opinions and various certifications, searching corporate records to determine status and good standing, attending closings and verifying satisfaction of conditions precedent to closing;
5. Responding to questions and comments on documentation from clients and opposing counsel;
6. Negotiating contract terms;
7. Communicating with clients, partners, senior associates and opposing counsel through correspondence, by phone and in person;
8. Attending business meetings and negotiating sessions with clients, partners, senior associates and opposing counsel;
9. Drafting government filings for securities and bank financing transactions and compliance matters and arranging for such filings; and
10. Reviewing and commenting on financing documents and other types of contracts.

Fortunately, the legal profession was structured in such a way at that time that I was able to receive on the job training. I was assigned to work with a senior partner in the corporate department who supervised my work and taught me the tools of the trade. Although I was required to present a completed work product for each assignment I was given, the partner in charge would supply comments and I would then revise the memo or document along the lines suggested. I was also given the opportunity to attend business meetings and negotiations and to

participate in conference calls with clients and opposing counsel during which details of transactions were discussed, legal and regulatory questions were analyzed and deal structuring and negotiation was conducted. I was sometimes assigned to work with other senior partners in the corporate and tax departments who also paid close attention to my development as a lawyer. In this way, I accumulated the tool kit needed to successfully practice business law. I would liken this process to a type of apprenticeship program in which I was eventually promoted to senior associate and allowed to exercise the skills I had learned in order to represent clients but without constant supervision. This apprenticeship training served me in good stead when after several years of law firm practice, I was recruited as in-house legal counsel to a multinational financial institution where I was able to utilize my legal skills with greater independence and was also able to train and supervise junior lawyers.

Looking back on my experience, I can say that I learned by doing, but also by observing what other lawyers were doing and by receiving feedback on my own work. The skills that I learned in law school were critical to being able to perform the work that I was assigned. Being able to read and interpret cases, statutes and regulations accurately, spotting issues and identifying relevant law and regulation, writing clearly and structuring a coherent argument were abilities that I acquired as a law student. But transactional business law practice required me to learn new skills. These included interviewing clients to determine their goals and to gather relevant facts; analyzing clients' legal and regulatory problems and generating alternative solutions to address them; counseling clients on the benefits and risks of various approaches and guiding them in choosing the best available strategy; communicating orally and in writing with friendly, adverse and neutral parties; drafting contracts, correspondence and government filings; reviewing contracts and government filings drafted by others and providing comments;

negotiating legal terms in contracts; discussing government filings with regulators; closing transactions; and using time effectively to achieve client goals. As I learned in practice, the skills required for transactional business lawyering are many and varied and are developed over an entire career, yet such training can and should be started in law school.

How is my practice background in business law relevant to my class in Business Associations? I try to incorporate some of my own experience so that my students will understand the difference between the roles played by transactional lawyers and litigators. When I teach Business Associations, I find that all my students have heard of litigation but fewer are familiar with transactional lawyering. As a result, I think it is helpful to start with a definition and a description of what business lawyers do on a day to day basis. A business lawyer is one who represents clients in the for profit sector by advising them on legal and regulatory matters arising in their operations and transactions. Business lawyers strive to further their clients' goals within the constraints of the law by counseling them on the use of different forms of business organization for conducting their operations and legal issues that arise in such operations, structuring, documenting, negotiating and closing their business transactions and complying with related government regulations.

Business lawyers are problems solvers and planners. They are forward looking and engaged in preventative lawyering. They add value to transactions by advising their clients on the best ways to achieve their objectives as expeditiously as possible, at the lowest cost and without undertaking undue risk.[2] Their goal is to maximize private ordering and to minimize government involvement in the form of litigation or investigations.

[2] Professor Ronald Gilson has described the proper role of business lawyers as "transaction cost engineers" whose involvement creates value if the transaction net of legal fees is worth more as a result of the lawyer's participation. Ronald J. Gilson, *Value Creation by Business Lawyers: Legal Skills and Asset Pricing*, 94 YALE L. J. 239, 243 (1984)

This is in contrast to the work of litigators, whose job is to help their clients resolve disputes by representing them in court proceedings or in alternative dispute resolution proceedings like arbitration and mediation. Litigation involves looking backward and reexamining and reconstructing what has already happened and gone wrong and is not concerned with trying to anticipate and plan for what will happen in the future.

Business lawyers are routinely involved in a wide variety of transactions on behalf of their clients. These might include buying or selling a business; buying, selling or leasing a particular asset, such as a piece of real estate or equipment; setting up new businesses; raising capital for new or existing businesses through issuing debt or equity or by borrowing money from a financial institution; combining existing businesses; engaging in mergers and acquisitions with other business owners; dissolving businesses; taking steps to protect intellectual property owned by the business and handling employment matters such as the hiring and compensation of executives.

Business lawyers need to know the substantive law that affects their clients' operations and transactions so that they can give competent advice. This is in contrast to the work of litigators who focus on procedure and need to know less about the law governing their clients' business operations than do the business lawyers who are planners. Increasingly, business lawyers are becoming specialists and it may be necessary for them to consult with other lawyers on matters that go beyond their own areas of expertise. This is especially true when complex tax, intellectual property or employment law matters arise. The same can be said of business lawyers who handle general business matters and who must be attuned to the need for specialized legal advice.

Businesses operate in a complex legal and regulatory environment and the role of business lawyers is to assist their clients in maneuvering in this environment in a way that respects the law and avoid disputes. If law students are only educated on how lawsuits involving businesses arise and are resolved, they will fail to appreciate the important function that business lawyers fulfill. In effect, we are presenting students with a backwards approach that focuses on failures rather than on successes that can be achieved by planning and preventative lawyering, the function fulfilled by business lawyers. In Section IV below, I will present some suggestions for reversing this approach.

II. THE RATIONALE FOR TEACHING TRANSACTIONAL LAWYERING SKILLS IN THE BUSINESS ASSOCIATIONS COURSE

In this Section, I will explore the rationale for incorporating transactional lawyering skills in the Business Associations course. The optimal framework for law school education is a topic that is currently being hotly debated by both legal academics and members of the practicing bar. One of the results is that law schools are in the process of changing their curricula to include a greater focus on professionalism and professional skills. The standard course in Business Associations is one place in the law school curriculum where such elements should be added because of the transactional nature of business law practice. Such elements could easily be added with a little thought and effort on the part of law school instructors. Some of the points that I will touch on in this section include the changing nature of pedagogy in legal education, the criticisms of law schools for providing inadequate professional training, the calls by members of the bar to produce practice ready lawyers, and changes in the legal profession that have pushed the job of teaching professional skills into the law schools.

The teaching methods and curricula of U.S. law schools have changed since I graduated from law school. My law school training was based almost exclusively on the Langdellian model

of appellate court decision analysis, the so-called case method.[3] At the time such method was introduced, the teaching of law within the university structure was relatively new and the case method was considered an innovation.[4] Prior to that time, most lawyers were trained using the apprenticeship model of supervised legal practice and were not required to attend law school.[5] This model, under which aspiring lawyers paid members of the bar to train them in the practice of law, was criticized as being inadequate since it provided very little in the way of actual legal instruction and no theoretical grounding in legal principles.[6] In contrast to this practical approach, Langdell's case method required students to read and analyze leading appellate case opinions before class in order to distill fundamental legal principles from them and then to explore the underlying judicial reasoning in class through a Socratic dialogue with the professor.[7] In so doing, Langdell positioned legal education as a type of scientific training that was consistent with the focus on science and technical training taking hold in universities in that era. Not only did Langdell's approach elevate law to the status of an academic discipline of equal stature to other fields of study in the university, but it also served the function of raising the standards of the practicing bar by providing rigorous training for lawyers.[8] While the case method significantly improved U.S. legal education, it has come under attack in the past two decades, along with other aspects of traditional legal education in this country.[9]

The most recent movement towards changes in law school pedagogy can be traced to the McCrate Report, a project of a task force of the American Bar Association, Section on Legal

[3] MacCrate Report supra note 1, at 106.
[4] Id.
[5] Id. at 103. Attendance at law school was not required for admission to the bar until the late nineteenth century. Id. at 108.
[6] Id. at 104.
[7] Id. at 106.
[8] Id.
[9] Appendix A contains a list of some of the most significant studies of legal education and the need for reform, which include critiques of the case method and the lack of adequate preparation in law schools for the legal profession.

Education and Admissions to the Bar, which was released in 1992. [10] The MacCrate Report is widely acknowledged as having made major contributions to law school curriculum reform efforts.[11] One of its most important insights was to suggest that the professional development of lawyers is the responsibility not only of law school educators but also the practicing bar. The Report rejects the image of legal education as being separated from the practicing bar by a "gap" that needs to be filled.[12] Rather, the Report suggests that legal educators and practicing lawyers must recognize that they are part of the same profession and engaged in a common enterprise, which is the education and professional development of lawyers, and that there is a continuum to such enterprise that begins in law schools but extends into legal practice.[13] Both law professors and practicing lawyers have professional responsibilities to assist students and lawyers to develop the professional skills and values required to complete the journey towards professional competency.[14]

Another important aspect of the MacCrate Report was its emphasis on enhanced practice-oriented training for law students. The Report included a detailed taxonomy of ten fundamental skills that are required for legal practice, namely problem solving, legal analysis and reasoning, legal research, factual investigation, communication, counseling, negotiation, litigation and alternative dispute resolution, organization and management of legal work, and recognizing and resolving ethical dilemmas.[15] The MacCrate Report noted that relatively few law students are

[10] MacCrate Report, supra note 1.
[11] WILLIAM M. SULLIVAN, ANNE COLBY, JUDITH WELCH WEGNER, LLOYD BOND & LEE S. SHULMAN, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW, THE CARNEGIE FOUNDATION FOR THE ADVANCEMENT OF TEACHING, PREPARATION FOR THE PROFESSIONS (Jossey-Bass 2007) 93 [hereinafter "Carnegie Report"].
[12] MacCrate Report, supra note 1, at 8.
[13] Id.
[14] Id., Introduction, at 3-8.
[15] Id. at 138-140. In addition, the Report listed the following four fundamental values that are also necessary for lawyers: provision of competent representation, striving to promote justice, fairness and morality, striving to improve the profession and professional self-development. Id. at 140-141.

exposed to the full range of these competencies in their education.[16] While law schools excel at teaching students to think like lawyers by developing their critical reasoning and analytical skills and teaching substantive law, they fall short when it comes to training them in other skills required for legal practice, such as solving real world problems.[17]

Since the issuance of the MacCrate Report, there have been several additional reports published on legal education that have fueled the reform movement. These include two reports that appeared in 2007: *Educating Lawyers: Preparation for the Profession of Law*, produced by the Carnegie Foundation for the Advancement of Teaching ("Carnegie Report"), and *Best Practices for Legal Education: A Vision and a Road Map*, published by the Clinical Legal Association ("Best Practices").[18] The Carnegie Report, which was one of a series of reports on education in five professional fields, studied a select group of U.S. and Canadian law schools in order to understand the achievements and shortcomings of legal education and to recommend improvements.[19] Like other professional fields such as medicine, there are two sides of knowledge in law: formal knowledge and practical knowledge. The Carnegie Report concluded that the signature pedagogy of the case method was overused and urged the legal academy to combine the two aspects of legal knowledge in a single framework by integrating legal analysis with practical skill and professional identity.[20] Best Practices built upon the dialogue engendered by the MacCrate Report to develop principles of best practices that "provide a vision of what legal education might become if legal educators step back and consider how they can most

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[16]Id. at 240.
[17] New York City Bar Association, Developing Legal Careers and Delivering Justice in the 21st Century: A Report by the New York City Bar Association Task Force on New Lawyers in a Changing Profession (Fall 2013) 40 [hereinafter "NYC Bar Report"]
[18] Carnegie Report, supra note 11. ROY STUCKEY AND OTHERS, BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP (Clinical Legal Educ. Ass'n., 2007)), *available at* http://www.cleaweb.org/Resources/Documents/best_practices-full.pdf. [hereinafter "Best Practices"]
[19] Carnegie Report, supra note 11, at 15-17.
[20] Id. at 194-197.

effectively prepare students for practice".[21] It developed a detailed set of guidelines for use by law schools in their review of their curricula and by individual instructors in improving course design.[22] Among other things, Best Practices recommends reducing reliance on the use of Socratic dialogue and the case method and diversifying teaching methods to include free group discussion, brainstorming exercises, group tutorials and buzz groups in order to better engage students and train them in problem solving and prepare them for practice.[23] The Carnegie Report and Best Practices, both released in 2007, along with the 1992 MacCrate Report, have helped to shape the current teaching methods and curricula used in U.S. law schools.

As a result of these three groundbreaking studies – the MacCrate Report, the Carnegie Report and Best Practices, law professors in the United States no longer rely exclusively on the case method. Some of the techniques that are used in law teaching to supplement the Langdellian case method approach include the problem method, simulations, experiential learning, collaborative learning, clinical experiences and externships, and advanced legal writing and skills courses.[24]

For teachers of doctrinal courses, the problem method has become popular.[25] Rather than relying exclusively on a study of appellate cases and learning how to derive principles of law from such cases, the problem method requires students to go further and to apply the principles they have learned to hypothetical fact patterns. This is a good way to reinforce the learning of legal principles and to test whether students in fact understand the rules they have derived from the cases. But it goes further in requiring students to be able to stretch application of the rule to a new set of facts and to learn the difficulties that may arise in applying a rule outside of the set of

[21] Best Practices, supra note 18, at 1.
[22] Id., Introduction, at 1-5.
[23] Id. at 132-141.
[24] Id. at 132-157.
[25] Id. at 146-148.

facts in which it was first developed. In addition, law school instructors are now using other pedagogical techniques in the doctrinal classroom like simulations and role-playing, experiential learning and collaborative learning.[26] Best Practices contains recommendations on use of these alternative methods of instruction.[27]

Other innovations in legal education include expanded clinical experiences and externships. The number of such opportunities is increasing in all areas of practice but of particular interest for business lawyers is the introduction of a significant number of economic development/business clinical opportunities within the past decade.[28] One of my colleagues at Saint Louis University School of Law has been offering a Community and Economic Development Clinic for the past several years in which students learn to develop transactional lawyering skills for businesses and nonprofits, such as structuring and formation, operational issues, contract drafting and review, loan document review, regulatory compliance issues, and real estate matters, and there are plans to expand this type of transactional clinical offering in the future.[29] There has also been an upswing in the past decade in the number of externships with corporate counsel offices offered by law schools.[30] Another colleague at Saint Louis University School of Law supervises a well-established corporate counsel practicum in which upper class students are placed with the general counsel's offices of Saint Louis area companies for a semester and receive individualized training in practice skills, problem solving, and professional responsibility issues and are socialized into the culture of corporate practice.[31]

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[26] See, Gerald F. Hess and Steven Friedland, Techniques for Teaching Law (Carolina Academic Press 1999), chapters 5, 6 & 8; Best Practices, supra note 18, chapter 5.
[27] Best Practices, supra note 18, at 165-188.
[28] A.B.A., A SURVEY OF LAW SCHOOL CURRICULA: 2002-2010 (2012) at 76 [hereinafter "2012 ABA Survey"].
[29] http://www.slu.edu/school-of-law-home/academics/legal-clinics/civil-advocacy-clinics
[30] 2012 ABA Survey, supra note 28, at 77.
[31] http://www.slu.edu/school-of-law-home/academics/professional-skills/corporate-counsel-practicum#axzz39jGez7QY

In addition to these innovations, most law schools now offer a wide variety of professional skills courses, including advanced legal research and writing courses where students can learn how to draft litigation papers or transactional documents, courses in trial advocacy and appellate advocacy, and skills training courses in interviewing and counseling, negotiation and alternative dispute resolution techniques, including mediation and arbitration.[32] At Saint Louis University School of Law, courses on civil and criminal advocacy, trial practice, pre-trial practice, client counseling, negotiation, applied mediation, and transactional drafting are offered on a regular basis.[33]

The focus of this article is on teaching Business Associations, so I will turn to that topic now. There is a growing body of literature on innovative methods of teaching business law. In connection with writing this article, I collected examples of such literature and assembled a bibliography, which is attached as Appendix B, with the thought that it might be helpful to teachers of Business Associations, especially those just entering law school teaching. The bibliography also includes some of the literature that is emerging on teaching transactional law more generally. A wide variety of pedagogical techniques are proposed in the literature listed in Appendix B, including some that are not discussed in this article.

In the articles on teaching business law, there appear to be at least two strands of thought. One thread proposes incorporating transactional skills that lawyers use in practice. These include primarily contract drafting, but also client interviewing, counseling and negotiation. This can be accomplished through planning and drafting exercises in doctrinal classes such as Business Associations or Corporate Finance, as well as through simulations, experiential learning

[32] 2012 A.B.A. SURVEY, supra note 28, at 75, 78.
[33] http://www.slu.edu/school-of-law-home/academics/professional-skills#axzz39jXGKJHc

experiences or clinical experiences.[34] The deepest form of integration of skills training involves partnerships between business schools and law schools in which law students represent entrepreneurial start-ups in the for-profit and not-for-profit sector through collaboration with business school instructors and students.[35]

A second thread focuses on adapting techniques used in business schools. So for example, some law professors propose using deal deconstructions in which students expand their analytical skills, drafting skills and substantive knowledge by reviewing documents from completed deals to understand deal structure and the applicable law and theory that shape transactions and to learn how to improve upon such deals.[36] In some law schools, practitioners are invited to participate in "deals" courses in which they discuss the strategies they used in deals that they worked on.[37] Another technique that borrows from the business school model is the use of case studies based on actual transactions, in which students put themselves in the position of deal lawyers and learn to develop facts, deal with uncertainties, calculate risk and reward, make decisions and solve problems.[38] The use of case simulations, which are based on hypothetical cases, is a variant which can be used to engage students in active participation through role playing, counseling, negotiations and the like.[39]

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[34] Examples of such literature include Eric J. Gouvin, *Teaching Business Lawyering in Law Schools: A Candid Assessment of the Challenges and Some Suggestions for Moving Ahead*, 78 UMKC L. REV. 429 (2009) and Joan MacLeod Heminway et al., *Innovative Transactional Pedagogies*, 12 TRANSACTIONS: TENN. J. BUS. L. 243 (2011).
[35] Anthony J. Luppino, *Minding More than Our Own Business: Educating Entrepreneurial Lawyers through Law School-Business School Collaborations*, 30 W. NEW ENG. L. REV. 151 (2007).
[36] Michelle M. Harner and Robert J. Rhee, Deal Deconstructions, Case Studies and Case Simulations: Toward Practice Readiness with Pedagogies in Teaching Business and Transactional Law, 3 Am.U. Bus. L. Rev. 81, 85-91(2014).
[37] Victor Fleischer, *Deals: Bringing Corporate Transactions into the Law School Classroom*, 2002 COLUM. BUS. L. REV. 475 (2002)(describing the deals course offered at Columbia Law School).
[38] Harner and Rhee, supra note 36, at 92-93.
[39] Id.

I believe that all of these innovations are wonderful additions that have vastly improved the teaching of business law in U.S law schools. We are moving in the right direction although more work still needs to be done.

In spite of the fact that the legal academy has reformed itself in the past two decades and greatly improved the quality of education offered to students, one hears attacks leveled at U.S. law schools with increasing frequency these days. Much of the recent criticism has focused on the spiraling costs of law school education, the massive amounts of debt that law students take on to finance this education and the difficulties that recent graduates have experienced in obtaining full time employment that requires a J.D. degree.[40] The end result is that some recent law school graduates are unable to repay the debt that they incurred to enable them to attend law school in the first place and they are regretting their decision to pursue a legal education.[41]

These problems can be attributed in part to changes in the marketplace for lawyers and the structure of the legal profession, matters that are not within the control of law schools. The marketplace for lawyers is changing as a direct result of the financial crisis of 2007-2008 and the recession that followed.[42] The economic downturn led to a decrease in the number of associate positions available for graduating law students at high-end corporate law firms. [43] In addition, corporate clients are becoming increasingly cost conscious and are unwilling to pay for associates to be trained on the job, making law firms reluctant to hire new law graduates without

[40] See, Brian Tamanaha, FAILING LAW SCHOOLS (University of Chicago Press, 2012); David Segal, *For Law Schools, A Price to Pay the A.B.A. Way*, NY Times, December 17, 2011.
[41]David Segal, *Is Law School a Losing Game*, NY Times, January 8, 2011.
[42]David Segal, *Law School Economics: Ka-Ching!*, NY Times, July 16, 2011.
[43]Id.

well-developed legal skills.[44] As a result, one often hears members of the bar calling for law schools to produce "practice ready" lawyers.[45]

There are still jobs available for new law school graduates, but they are not primarily Big Law jobs.[46] Studies of the structure of the legal profession have shown that the majority of lawyers in the United States are engaged in private practice and most of these are either solo practitioners or practice in small or medium-sized law firms.[47] This trend has accelerated since the recent financial crisis, with the number of new lawyers practicing in very small firms or solo having doubled since 2007 just as hiring by the largest law firms has dropped precipitously.[48]

While law schools may not have created the changes in the marketplace for lawyers, they have a professional responsibility to respond to such changes and the problems that recent law school graduates are experiencing. One suggestion has been to reduce the cost of law school by eliminating the third year. A few law professors and even President Obama have come out in favor of this proposal. [49] However, the suggestion that is heard more frequently is that law schools should revise the third year curriculum to make it more skills and practice oriented. One concrete set of proposals that is worthy of note is set forth in a report by the New York City Bar Association Task Force on New Lawyers in a Changing Profession ("NYC Bar Task Force") entitled "Developing Legal Careers and Delivering Justice in the 21st Century". [50] The NYC Bar

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[44] Id.
[45] David Segal, *What They Don't Teach Law Students: Lawyering*, NY Times, November 19, 2011
[46] Jennifer Smith, *Big Law Firms Resume Hiring*, Wall Street Journal, June 23, 2014
[47] American Bar Association, Lawyer Demographics, 2013, available at http://www.americanbar.org/content/dam/aba/administrative/market_research/lawyer_demographics_2013.authcheckdam.pdf
[48] New York City Bar Association, Developing Legal Careers and Delivering Justice in the 21st Century: A Report by the New York City Bar Association Task Force on New Lawyers in a Changing Profession (Fall 2013) 6 [hereinafter "NYC Bar Report"]
[49]Peter Lattman, Obama Says Law School Should Be Two, Not Three, Years, NY Times Dealbook, August 23, 2013; Daniel B. Rodriguez and Samuel Estreicher, Make Law Schools Earn a Third Year, NY Times, January 17, 2013
[50] NYC Bar Report, supra note 48.

Task Force takes the position that it is inconsistent to criticize law schools for not doing enough to educate lawyers while at the same time calling for the elimination of the third year.[51] Instead of supporting the call for the elimination of the third year, the NYC Bar Task Force suggests using the third year to include more skills training, practical experience and the development of important ethical values.[52] The Task Force suggests that the third year curriculum should not be based solely on traditional casebook courses or teaching substantive law tested on the bar and rarely used later. Instead, law schools should use the third year curriculum to experiment and innovate in order to make graduates practice ready in the modern legal environment.[53] In fact, several law schools, including Washington and Lee Law School, have overhauled their third year curriculum in this fashion.[54]

Returning to the teaching of Business Associations now, it is apparent from the preceding discussion that there is a need to incorporate more professional skills training and a focus on professionalism at all levels of legal education, not just in the third year. Business Associations is taught as a second year elective in my law school and it presents a good opportunity to familiarize students with some aspects of the transactional practice of law, an area that they are unlikely to have been exposed to in their first year curriculum. It is important to approach the subject matter this way since business law is fundamentally transactional in nature. While it is not possible to train a practice ready transactional lawyer by the end of the course in Business Associations or even by the end of law school, it is helpful to remember and to reflect on one

[51]NYC Bar Report, supra note 48, at 52.
[52]Id. at 52-53.
[53]Id.
[54]Id. at 121. According to the NYC Bar Task Force, Washington and Lee Law School revised its third year curriculum to include skills immersion in both litigation and transactional practice, practice based simulations, real client experiences, problem based elective courses, law-related service and explorations into legal ethics and professionalism.

aspect of the MacCrate Report, which characterized legal education as a continuum beginning in law school and continuing into law practice.[55] It is not too early to start training second year law students in some important aspects of transactional lawyering, although such training must continue once they have passed the bar and become practicing lawyers.

Incorporating some transactional lawyering skills is particularly important in view of the changing nature of legal practice. Business law is an important practice area in the United States and it is likely that a large number of new law graduates students will spend at least part of their careers practicing in this area, either as solo practitioners, in small or medium-sized general practice law firms, in large corporate law firms or in corporate legal departments. Given the growth in the number of practitioners in the solo to small and medium sized firm categories,[56] one can conclude that many recent law graduates will have to jump into the practice of law without the benefit of the type of intensive apprenticeship training that I benefited from when I was a young lawyer just entering the profession. Transactional skills training in business law starting in the Business Associations course would be very useful in helping those law graduates to achieve professional competency more quickly once they enter practice.

III. METHODS FOR ADDING TRANSACTIONAL LAWYERING SKILLS TO THE BUSINESS ASSOCIATIONS COURSE

In this Section, I will suggest some ways to incorporate transactional lawyering skills in the Business Associations course. I will also mention some of the drawbacks in teaching transactional skills in a large class and suggest an alternative approach, namely a stand-alone course devoted to an intensive study of transactional skills that is tethered to the Business Associations course.

[55]Supra note 13.
[56]Supra note 48.

In addition to the approach I will discuss in this Section, I note that there are several other ways that skills needed by business lawyers might be introduced into the law school curriculum. Other routes include introducing such skills in a stand-alone practical skills course such as transactional drafting or negotiations, in other foundational business law courses such as a Corporations course or a course in Unincorporated Business Associations, in a more advanced doctrinal course such as Corporate Finance, or in an experiential learning environment, such as a transactional law clinic or an externship opportunity in a corporate counsel office or in a law firm with a transactional practice. Recent studies of legal education indicate that some law schools have begun to utilize such pathways to incorporate business transactional skills in their curricula.[57] As mentioned in Section III, there is now a growing literature on these approaches, some of which stems from recent law school symposia on teaching transactional law or teaching business law.[58] Relatively few of these contributions to the literature, however, have focused on teaching transactional skills in the context of the Business Associations course.

According to a recent survey of law school curricula published by the ABA Section on Legal Education and Admissions to the Bar, the course in Business Associations is either required or strongly recommended in most U.S. law schools.[59] This makes it the ideal platform for introducing business transactional skills because so many students take this course. In

[57] American Bar Association, Section of Legal Education and Admissions to the Bar, A Survey of Law School Curricula: 2002-2010 (Catherine L. Carpenter, editor) (2012) at 75-78 (Figure 61 indicates the large and growing numbers of law schools offering professional skills courses such as transactional skills and business negotiations; Figure 62 indicates that clinical opportunities in areas such as economic development/business and transactional are still relatively small but growing; Figure 63 indicates that externship opportunities where transactional skills might be emphasized such as in corporate counsel offices and law firms are fewer than externships that emphasize litigation, but the number of such externship opportunities is growing; Figure 64 indicates that a very large number of law schools now offer upper division transactional and contract drafting courses, while a smaller but still substantial number offer business organization drafting courses).

[58] See Appendix B to this article.

[59] American Bar Association, Section of Legal Education and Admissions to the Bar, A Survey of Law School Curricula: 2002-2010 (Catherine L. Carpenter, editor) (2012) at 33, 68 (stating that out of 166 law school respondents to a 2010 survey of the 199 ABA accredited law schools in the United States, 41 required the Business Associations course and another 91 highly recommended it).

contrast to some of the other pathways to teaching business transactional skills mentioned above, such as clinics, externships and specialized practical skills offerings, it is possible to reach a larger audience in a very cost effective way. Clinics and practical skills offerings can only be offered to a limited number of students and they involve a heavy time commitment on the part of faculty. Expanding the number of such offerings would require law schools to commit additional resources for this purpose, since new faculty would have to be hired or reassigned away from other course offerings that might also be important for law students. In contrast, since it appears that a very large number of law schools either require or highly recommend the course in Business Associations, it can be assumed that a large number of law students will be enrolled in these courses. If a transactional skills approach is incorporated in such course, then, a fairly large group of students will benefit. In addition, as pointed out in Section II of this article, that same group of students will have a more realistic view of the practice of business law rather than assuming, as I did in law school, that most of such practice revolves around litigation.

One of the things I tell my students at the beginning of the course is that not all lawyers are litigators and that a substantial number of them practice business transactional law. Most law students are generally familiar with the litigation process from their first year courses, but fewer students understand what transactional practice entails. I therefore find it useful to explain what transactional lawyers do and how their approach to legal issues may differ from that of litigators.

I emphasize that we will be reading appellate cases from the casebook to extract principles of law that we can apply in other contexts and that we will be using the problem method to facilitate this skill. However, I also tell the students that we will be using the cases for other purposes as well. For example, it is possible to use cases to learn a great deal about how business transactions are done and the legal and business issues that arise in doing deals. Another

purpose in reading cases is to analyze the source of the problem that led to the litigation and to reverse engineer it. So, for example, we often can learn lessons about what went wrong at the planning, drafting or negotiating phase of the deal or the stage of organizing the business enterprise. Based on this information, we will have a foundation for understanding how to do things better when our own clients are involved. This forward-looking approach is very useful for transactional lawyers to learn. We can also learn lessons about understanding the objectives of our client through asking the right questions, listening carefully to their responses and framing the issues correctly based on what we learn.

I am not attempting to turn a doctrinal course into a practical skills course, but rather to introduce students to transactional law and to reverse the backwards approach to business law that is often the result of following the traditional approach to law teaching. In point of fact, I believe that the most important skill that law school professors can teach in their doctrinal courses is legal analysis and critical thinking, namely the ability to think like a lawyer. Legal analysis and reasoning is identified as one of the critical skills in the MacCrate Report.[60] It is also the skill that practitioners have told me is most important for new law graduates to have mastered, along with an ability to think creatively when faced with the factual and legal ambiguities at play in the real world of law practice. So, this is the main focus of my teaching in the Business Associations course. I spend a majority of class time on extracting black letter law from cases, analyzing the judges' reasoning and discussing the legal and policy implications of the decisions. However, I also ask my students to assume the roles of the litigants and to reconstruct the arguments made by the various parties in the cases and to critique their strategies. This type of exercise is important in training students to think like lawyers, not judges, which is

[60] See MacCrate report, supra note 1, and note 15 *supra*, along with related discussion.

where an exclusive focus on the case method would lead them. If statutes are in play, we also talk about techniques of statutory construction, how to parse the meaning of the words, mandatory versus default provisions and the interplay with contract terms, as well as the policy purposes behind the legislation. However, there are several other skills that I know from personal experience are needed in transactional practice and also identified in the MacCrate Report that are useful additions to the course content.[61]

Set forth below is a sampling of some of the techniques I have used in my Business Associations courses to fulfill my goal of introducing transactional lawyering into the doctrinal classroom. I do not use all of these techniques in every class, but I try to include a fair number each time I teach Business Associations.

A. Review Problems

The problem method is now widely used in U.S. law schools and there are many commercial casebooks on Business Associations that include problems. I have developed my own problems which I use to review the doctrine covered in class. This is useful for all students in the class since Business Associations is tested on the bar exam in almost every jurisdiction and one of the goals of my course is to familiarize students with the fundamentals that will help them prepare for that section of the bar exam.[62] Problems are also useful because they test students' understanding of legal doctrine and challenge them to apply such doctrine to a novel set of facts, which are legal skills that are essential in all types of law practice. Reviewing problems in class also prepares students for writing exam essays. I have found that students who have spent significant time working on problems and writing out answers under timed conditions often perform very well on the final exam.

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[61] *Id.*

[62] ABA Section of Legal Education and Admissions to the Bar, A Survey of Law School Curricula: 2002-2012 (2014) at 37.

In addition, a problem based approach can also be used to highlight the importance of deploying transactional skills such as identifying issues in a complex fact pattern that may have gaping holes, generating alternative solutions in the face of ambiguity, assessing risks and benefits of the various alternatives and choosing the best possible option among alternatives, even though none may be optimal. All of the problems that I use can be adopted for such purpose but some are better than others. I find that problems involving agency issues are especially useful for this purpose. For example, one of the first review problems that I give the class involves the specter of corporate liability for unauthorized contracts entered into by an agent. The main purpose of the problem is to review the rules on creation of agency and theories of authority that can bind a principal to an agent's actions even though the agent has acted beyond the scope of her authority. But this discussion can lead into a conversation about the need for risk mitigation by the principal. Students can brainstorm about steps the corporation could take to better train its employees or otherwise exercise more control over their actions to reduce the risk of their running amok.

The beauty of carefully crafted problems is that they introduce the students to the idea of ambiguity in legal decision-making and the need to identify the best available alternative among a range of options, even though the alternative chosen may not be perfect. The ability to operate effectively and give advice in gray areas is a necessary quality for transactional lawyers. The worst type of problem to offer students is one where the answer is too obvious and one dimensional, and can be easily solved, like an algebra problem. Although some students may prefer the certainty and security of such problems, legal practice eludes such simple solutions.

B. *Deal Structure and Flow*

I also use a close examination of the facts of certain cases to teach the legal structure and flow of various kinds of transactions. This presents the opportunity to introduce deal concepts that would otherwise be difficult to tie into the course content. This can work successfully even if the main point of discussing the case may be on an unrelated point. For example, *Smith v. Van Gorkom* is read in connection with a study of the duty of care.[63] However, it also represents a perfect opportunity to review the procedures for mergers and voting rules for directors and shareholders under the Delaware General Corporation Law. This can be accomplished by reviewing the statutory provisions and a sample closing checklist for a merger transaction. *Santa Fe Industries, Inc. v. Green* is often read to illustrate the principle that deception is a required element of a securities fraud cause of action under Section 10(b) of the Securities Exchange Act of 1934, but it can also be used as a vehicle for discussing the statutory requirements and procedure for effecting a short-form merger under the Delaware law.[64]

C. *Distinguishing Legal Decisions and Business Decisions in Transactions*

I like to point out to my students that there is a distinction in business transactions between decisions that lawyers are competent to make and those that the client must make. Taking *Smith v. Van Gorkom* as an example, the controversy involved an allegedly unfair price to be paid by the acquirer for the shares of the target in a cash out merger, which was accepted by the board of the target company but later challenged by shareholders of the target.[65] While the determination of an acceptable price involves a business decision to be taken in the first instance by the target's board of directors, the lawyer for the target has an important role to play in counseling the board about its fiduciary duties to shareholders in the context of a merger, including the proper procedure to be followed in determining such price, as well as the proper

[63] 488 A. 2d 858 (DelSupCt. 1985)
[64] 430 U.S. 462 (1977)
[65] 488 A. 2d 858, 863 (DelSupCt. 1985)

procedure to be followed in satisfying the steps needed to obtain board and shareholder approval of the transaction While the board may reject such advice, it is the lawyer's professional obligation to offer it and to outline the risks that might flow from failing to follow such recommendations. One of the many questions that might be asked about *Smith v. Van Gorkom* is where were the lawyers in all of this? This case provides a good opportunity to talk about the important role played by transactional lawyers, professional competence in the transactional context, and duties to clients.

D. Lawyer As Planner Exercises

I often speak to my students about how a bad result in a case can be used as a learning experience. I call this the lawyer as planner approach. I ask my students to speculate about the cause of the breakdown in the relationship between the parties that led to the litigation. Was it due to poor drafting of the contract that could have been avoided if the lawyer had done a better job? Was the failure due to lack of identification of legal issues that should have been addressed? Was the problem caused by poor communication among the parties or with their lawyers? I ask my students to identify ways in which better communication, counseling or drafting could have avoided the litigation altogether or at least mitigated the risk that litigation would occur. If a contract clause is involved, I may request that they redraft the provision to correct the ambiguity or mistake that led to litigation. I also ask them to think about how they would plan to approach similar situations that might arise in their future practice in ways that would avoid litigation.

There are many bad cases out there that are available for this sort of analysis in the classroom. One of my favorites is *A. Gay Jenson Farms Co. v. Cargill, Inc*,[66] which involved a

[66] 309 N.W. 2d 285 (Minn. 1981).

suit by a small group of farmers in Minnesota against the multinational grain dealer Cargill to recover amounts due them from a local grain elevator operator to whom the farmers had delivered grain on credit and who became bankrupt before the farmers were paid.[67] Cargill was found liable on the theory that the grain elevator owner, to whom Cargill had extended a large amount of credit and who was also a supplier of grain to Cargill, was acting as an agent for Cargill.[68] This is a great case to highlight the fine line that creditors must walk in seeking to control their debtors in the hope that will help maximize their chance of repayment while at the same time avoiding behavior that would cause them to be characterized as principals subject to contractual liability. The issue of how and why Cargill became liable for debts of a third party based on an agency theory leads into interesting questions of how to structure and maintain business relationships in the real world. I especially like this case because it illustrates the difficulties of eliminating risk altogether, leading students to understand that they must often counsel clients to accept a second best alternative.

Another favorite of mine is *PacSaver Corporation v. Vasso Corporation,*[69] a case that involves a contract that is so poorly drafted by one of the party's lawyers and a judge who is so seriously confused about partnership law that one despairs for the future of the legal profession in that jurisdiction.[70] The issue involves the right of a partner seeking to dissolve a partnership to have the valuable intellectual property he developed and contributed to the partnership returned to him or alternatively, the value of such property paid to him.[71] Both the lawyer who bungled the drafting and the judge who mangled the law are to blame for the bad result in this case, but I

[67]Id. at 287-288.
[68]Id. at 290-291.
[69] 493 N.E.2d 423 (1986).
[70] Id.
[71] Id. at 426-427.

focus on the terms of the contract and ask students to do a redraft that would allow the inventor to receive his due.

IV. Formation of Business Associations

A task that many business lawyers will be called upon to perform in their careers is to advise their clients on an appropriate vehicle for their business enterprise. Once a choice has been made, the lawyer will then be tasked with forming a business association on behalf of her clients. I believe it is important for law students to become familiar with the steps required to organize business entities under state law and the type of documentation that must be prepared. In addition, students should be aware of ongoing steps that must be taken to retain the corporate franchise or other form of business association and to dissolve or terminate the business. As a result, I include several exercises of this type in my course.

I often use an exercise involving formation of a partnership in which students are given a hypothetical fact pattern about a group of individuals who want to start a business along with a standard form of partnership agreement. They are then asked to determine whether the form document adequately expresses the wishes of the owners and what provisions need to be changed to fulfill their objectives. An additional layer of complexity is added by asking students to identify the default provisions of the Uniform Partnership Act that would govern the relationship between the parties in the absence of a contractual provision that varies such provision. Students must determine whether the provisions of the form agreement or the default provisions of the statute better reflect the agreement between the prospective partners. I find this discussion to be useful because it introduces the topic of form documents and highlights the importance of exercising caution when working with them. It also raises the issue of drafting business formation documents to fulfill the objectives of clients. The exercise can be used to sensitize

students to professional responsibility issues that may arise when forming a business on behalf of clients such as determining who the client is – the business entity or the various owners whose interests may sometimes be in conflict. Finally, this exercise is a good way to illustrate the distinction between mandatory and default provisions of a statute and the problems that may arise if the contract fails to vary the terms of the default provisions.

Another exercise that I use requires students to examine form documents for formation of a corporation, namely articles of incorporation and by-laws. Students are asked to determine if the form documents conform to the requirements of the statute. We also walk through the steps needed to form a corporation under state law using the statute as a guide. In a later exercise, the class must decide how such documents should be redrafted to fulfill client objectives set forth in a hypothetical fact pattern. I have had former students tell me that both the partnership and the corporation exercises were useful to them since they had a general familiarity with formation of business entities when they started law practice.

F. Guest Speakers

I often invite Saint Louis attorneys to speak to my Business Associations class in order to introduce a practitioners' perspective and to address specialized issues that go beyond the scope of the substantive content of the course. Being in a metropolitan area with many businesses from a wide spectrum of industries that are represented by a large and sophisticated legal community means that guest speakers are easy to identify and are always interesting for students to meet. Many of my guest speakers are graduates of the Saint Louis University School of Law and they enliven the class by introducing a real world perspective.

I try to invite at least one or two business lawyers each semester to discuss transactional practice. It is especially helpful if the practitioner is prepared to discuss topics like contract

drafting and interactions with clients and some have even developed their own exercise for use with the class. I usually invite a litigator who is involved in a case of local interest involving a business in the region. In addition to learning some substantive law from such speakers, students also learn about professionalism and the differences between a transactional and litigation practice. I also like to invite specialists to address legal issues relevant to business transactions that I want my students to be familiar with and to illustrate the point that business lawyers may need to consult other attorneys when matters arise that are outside their own areas of expertise. For example, I have invited a tax lawyer to discuss choice of business entity, a specialist in Missouri professional responsibility rules to address ethical issues arising in business law such as conflicts in representing multiple owners of a business and the business itself or involving representation of multiple entities, and an intellectual property lawyer to discuss steps necessary to protect intellectual property owned by a business or its owners.

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I have taught Business Associations for my entire law school teaching career and have experimented with many of the teaching techniques I have just described. In general, I believe that these techniques provide good learning experiences for students. However, there are some drawbacks to incorporating transactional skills into the Business Associations course. One shortcoming is that an essential element of effective skills training is missing, namely individualized feedback from the instructor on student work product.

The American Bar Association, in its Standards and Rules of Procedure for Approval of Law Schools, sets forth the curricular requirements for U.S. law schools in Chapter 3, which is entitled "Program of Legal Education".[72] Standard 3.02 entitled "Curriculum" requires law

[72] American Bar Association, Standards and Rules of Procedure for Approval of Law Schools 2013-2014.

schools to provide certain types of "substantial" instruction, including training in professional skills.[73] Substantial training in professional skills is defined in an Interpretation as "instruction … that must engage each student in skills performances that are assessed by the instructor."[74] While this Standard is not required to be met by my course in Business Associations since it is not a professional skills course, the interpretation of the Standard highlights the need for individualized feedback if transactional skills training is to be truly effective for students.

As discussed above, a very large number of law students will take the Business Associations course because it is required or highly recommended and because it is tested on the bar exam in almost all states in the United States. Some law schools, such Saint Louis University School of Law, have chosen to schedule Business Associations as a large section course and the result is that my course enrollments are very large, averaging between 80 and 120 students in recent years. For that reason, it is not possible to provide individualized feedback on student assignments. Would it be possible to structure a Business Associations course where transactional skills training could be taught and individualized feedback could be provided? The answer is yes if small sections could be offered. An alternative would be to offer to a subset of my Business Associations students an additional stand-alone transactional skills class tethered to the Business Associations course in which students would receive intensive instruction in drafting and other transactional skills such as interviewing, counseling and planning strategies. In that way, students would be able to receive individualized feedback and better skills training.

This is an alternative that I am starting to experiment with. In this course, students could learn the fundamentals of organizing various types of business associations, including limited liability companies, corporations and partnerships, as well as steps needed to maintain such

[73] Id. Section 302(a)(4).
[74] Id. Interpretation 302-3.

organizations (e.g. corporate resolutions, certificates of doing business as a foreign corporation) and to dissolve them (e.g. certificates of corporate dissolution), preparation of client correspondence and memos, preparation of closing checklists for transactions such as mergers, drafting of corporate merger documents or documents for the sale of a business or a specific asset of a business and preparation of legal opinions. Each of these involves tasks that transactional business lawyers will need to master in order to achieve professional competence. Some of the work to be done in this stand-alone course will be similar to the type of skills training that I incorporate in my Business Associations course but it will involve more intensive training, more drafting and more group work. The course is also distinguishable from the transactional drafting classes offered in many law schools, which typically focus on principles of good drafting using contracts commonly encountered in a general law practice. My course will focus more specifically on formation of business entities and drafting of business contracts plus other skills needed by business lawyers. It will be an expansion of the professional skills training currently offered by my law school.

CONCLUSION

There are many challenges facing legal education and the process of reforming law school curricula and teaching methods will continue for many years to come. There is no "one size fits all" solution to the challenges of training new lawyers that currently face the legal profession and law schools in particular. One important take away message from the many studies and commentaries on this topic that have been published in recent years is that change is needed but that change must come in a form that is flexible and tailored to the specific circumstances of each law school.[75] Curricular innovations must be result of experimentation on

[75] MacCrate Report, supra note 1, at 259-260.

the part of individual faculty, rather than being the result of externally imposed requirements that stifle experimentation.[76] Such innovations must take into account the resources available and the characteristics of effective skills instruction.[77] My own home-grown solution to reforming my course in Business Associations has been described in this article and reflects the results of my own experimentation in the classroom. I hope it represents a contribution to the literature on improving legal education in the area of business law.

[76] *Id.*
[77] *Id.*

APPENDIX A

SELECTED LITERATURE ON LEGAL EDUCATION STUDIES AND REFORM PROPOSALS

1. A.B.A., A SURVEY OF LAW SCHOOL CURRICULA 1992-2002, (2004), *available at* http://www.americanbar.org/content/dam/aba/migrated/2011_build/legal_education/curriculcu_survey.authcheckdam.pdf.

2. A.B.A., A SURVEY OF LAW SCHOOL CURRICULA: 2002-2010 (2012).

3. A.B.A., *Report and Recommendations: Task Force on the Future of Legal Education* 1 (Aug. 2013), http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/taskforcecomments/aba_task_force_working_paper_august_2013.authcheckdam.pdf.

4. A.B.A SEC. OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT – AN EDUCATIONAL CONTINUUM (REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP) (1992) *available at* http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/2013_legal_education_and_professional_development_maccrate_report).authcheckdam.pdf.

5. *Admissions Task Force Final Report*, OR. STATE BAR (2008), *available at* http://www.osbar.org/_docs/resources/08AdmissionsTaskForce.pdf.

6. *Developing Legal Careers and Delivering Justice in the 21st Century*, N.Y. CITY BAR ASS'N (2013), *available at* http://www2.nycbar.org/pdf/developing-legal-careers-and-delivering-justice-in-the-21st-century.pdf.

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8. *Report and Recommendations of the Law, Youth, and Citizenship Committee on Civic Education*, N.Y. STATE BAR ASS'N (2013), *available at* http://www.nysba.org/LYCcivicsReport2014/.

9. *Report of the Task Force on Law, the Economy, and Underemployment*, MASS. BAR ASS'N (2012), *available at http://www.massbar.org/media/1246788/beginning%20the%20conversation.pdf*.

10. *Report of the Task Force on Legal Education Reform*, OHIO STATE BAR ASS'N, (2009), *available at* https://www.ohiobar.org/General%20Resources/pubs/OSBA_Legal_Education_Task_Force_Report.pdf.

11. ROY STUCKEY AND OTHERS, BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP (Clinical Legal Educ. Ass'n., 2007)), *available at* http://www.cleaweb.org/Resources/Documents/best_practices-full.pdf.

12. *Task Force On Admissions Regulation Reform: Phase I Final Report,* STATE BAR OF CAL. (2013), *available at* http://www.calbar.ca.gov/Portals/0/documents/bog/bot_ExecDir/ADA%20Version_State_Ba B_Task_Force_Report_(Final_as_Approved_6_11_13)_062413.pdf.

13. Todd D. Rakoff & Martha Minow, *A Case for Another Case Method,* 60 VAND. L. REV. 597 (2007).

14. *Twenty Years After the MacCrate Report: A Review of the Current State of the Legal Education Continuum and the Challenges Facing the Academy, Bar, and Judiciary,* ABA COMM. ON THE PROF. EDUC. CONTINUUM, SEC. ON LEGAL EDUC. AND ADMISSIONS TO THE BAR (2013), *available at* http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissiona_to_the_bar/council_reports_and_resolutions/june2013councilmeeting/2013_open_session_e_report_prof_educ_continuum_committee.authcheckdam.pdf.

15. WILLIAM M. SULLIVAN, ANNE COLBY, JUDITH WELCH WEGNER, LLOYD BOND & LEE S. SHULMAN, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW, THE CARNEGIE FOUNDATION FOR THE ADVANCEMENT OF TEACHING, PREPARATION FOR THE PROFESSIONS (Jossey-Bass 2007).

APPENDIX B

SELECTED LITERATURE ON TEACHING BUSINESS LAW COURSES AND TEACHING TRANSACTIONAL SKILLS

Teaching Business Law Courses

1. Afra Afsharipour, *Incorporating "Business" in Business Law Classes*, 8 U.C. DAVIS BUS. L.J. 1 (2007).

2. Afra Afsharipour, *Integrating the Financial Crisis in the Business Associations Course: Benefits and Pitfalls*, 5 J. BUS. & TECH. L. 5 (2010).

3. Richard A. Booth, *A Minimalist Approach to Corporation Law*, 34 GA. L. REV. 431 (2000).

4. William J. Carney, *Teaching Problems in Corporate Law: Making it Real*, 34 GA. L. REV. 823 (2000).

5. Kamille Wolff Dean, *Teaching Business Law in the New Economy; Strategies for Success*, 8 J. BUS. & TECH. L. 223 (2013).

6. Walter A. Effross, *Zen and the Art of Corporate Governance*, 1 BUS. L. BRIEF (AM. U.) 25 (2004).

7. Victor Fleischer, *Deals: Bringing Corporate Transactions into the Law School Classroom*, 2002 COLUM. BUS. L. REV. 475 (2002).

8. Ronald J. Gilson, *Value Creation by Business Lawyers: Legal Skills and Asset Pricing*, 94 YALE L. J. 239 (1984).

9. Eric J. Gouvin, *Teaching Business Lawyering in Law Schools: A Candid Assessment of the Challenges and Some Suggestions for Moving Ahead*, 78 UMKC L. REV. 429 (2009).

10. Michael D. Guttentag, *Teaching Citizens United v. FEC in the Introductory Business Associations Course*, 8 J. BUS. & TECH. L. 163 (2013).

11. Michelle M. Harner, *Teaching Business Law Through and Entrepreneurial Lens*, 8 J. BUS. & TECH. L. 171 (2013).

12. Joan MacLeod Heminway, *Teaching Business Associations Law in the Evolving New Market Economy*, 8 J. BUS. & TECH. L. 175 (2013).

13. Peter H. Huang, *Teaching Corporate Law from an Option Prospective*, 34 GA. L. REV. 571 (2000).

14. Thomas R. Hurst, *Teaching Limited Liability Companies in the Basic Business Associations Course*, 34 GA. L. REV. 773 (2000).

15. Kimberly D. Krawiec, *Building the Basic Course Around Intra-Firm Relations*, 34 GA. L. REV. 785 (2000).

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