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Double Dutch: Teaching Business Associations in Two Semesters

IF YOU LOOK UP “DOUBLE DUTCH” IN THE DICTIONARY it can mean gibberish or unintelligible talk.¹ It can also mean a challenging version of jump rope with players that jump over two ropes swung in a criss-crossing manner.² I am relatively new to teaching in legal academia, having practiced in securities and corporate law for over ten years.³ I have taught business associations for three semesters in a row, all single semester content. This coming school year, for the first time, I will teach business associations in two semesters, the second semester building off of the first. My plan is to take advantage of teaching the two semesters of business associations as a clever game of jump rope, inter-weaving foundational learning with practical skills derived from potential legal issues and skills relevant in today’s economy. This is all with the intention, and nod at humor, to avoid elements of the unintelligible and gibberish.

In the new economy, the skills that students develop in their law school experience are becoming increasingly important.⁴ Yet it remains essential to

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1. MERRIAM-WEBSTER COLLEGIATE DICTIONARY 347 (10th ed. 2002).

2. *Id.*

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4. See WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 44–45 (2007) (noting how law schools prepare their students to fill a variety of roles in society); David Segal, *What They Don’t Teach Law Students: Lawyering*, N.Y. TIMES, Nov. 20, 2011, at A1, available at <http://www.nytimes.com/2011/11/20/business/after-law-school-associates-learn-to-be-lawyers.html>; Rachel M. Zahorsky, *ABA Urges Law Schools to Adopt More Practical Training for Students*, ABA J. (Aug. 11, 2009, 9:59 AM), http://www.abajournal.com/news/article/aba_urgesLaw_schools_to_adopt_more_practical_

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continue to provide foundational doctrine for educational purposes and for those who take a course, like business associations, to improve bar passage rate. Offering courses in business associations over the course of two semesters, where the second semester builds off the first, provides a useful template upon which to foster multi-faceted learning and an opportunity for students to achieve their varied goals.

Teaching business associations in two semesters (individually referred to as “Business Associations I” and “Business Associations II”) can be divided in several ways. For instance, among the many approaches, one approach teaches law of agency and partnerships in Business Associations I and the law of corporations in Business Associations II.⁵ Another method of division provides the basic business associations’ syllabus in Business Associations I, covering, in varying degrees of depth, the law of agency, partnerships, LLCs, corporations (closely-held and public), securities, hostile takeovers and mergers and acquisitions. In Business Associations II, the students study each of these categories more in depth.

Yet another method, the method I plan to adopt and adapt, provides students with study in closely held business entities in Business Associations I, starting with agency law and covering the law of partnerships,⁶ LLCs, and corporations.⁷ Business Associations II addresses public entities, focusing substantially on the public corporation.⁸ For the student who attends business associations with the intention to improve their chances to pass the bar, Business Associations I is an appropriate course to take.⁹ Business Associations I is also important for those students wishing to practice in business law. For them, this course will be an introduction to business law and offer them the opportunity to build foundational doctrine and a few skills related to the choice, formation, financing and operation of closely held business associations. Students are asked to engage in drafting articles of incorporation for a specific client fact pattern and advise a client about choice of entity for another fact pattern. The general topics in the course include the law of agency, the law of partnerships (including general and limited partnerships), joint ventures, LLCs and corporations.

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5. Discussion with Joan Heminway, Distinguished Professor of Law at the University of Tennessee-Knoxville, College of Law (Feb. 23, 2012) (notes on file with author).

6. Including general partnerships, limited partnerships, limited liability partnerships and limited liability limited partnerships.

7. See, e.g., *Law Courses Catalog: Business Associations I*, LEWIS & CLARK LAW SCHOOL, http://law.lclark.edu/courses/catalog/law_113.php (last visited Sept. 24, 2012); *Course Catalog: Business Organizations I*, UNIVERSITY OF WISCONSIN LAW SCHOOL, <http://dev.law.wisc.edu/courseInfo/courseOverview.php?iCatNBR=817> (last visited Sept. 24, 2012).

8. See, e.g., *Law Courses Catalog: Business Associations II*, LEWIS & CLARK LAW SCHOOL, http://law.lclark.edu/courses/catalog/law_213.php (last visited Sept. 24, 2012); *Course Catalog: Business Organizations II*, UNIVERSITY OF WISCONSIN LAW SCHOOL, <http://dev.law.wisc.edu/courseInfo/courseOverview.php?iCatNBR=741> (last visited Sept. 24, 2012).

9. Discussion with D. Gordon Smith, Associate Dean & Glen L. Farr Professor of Law at Brigham Young University Law School (July 13, 2012) (notes on file with author).

For the students who wish to practice in business law, Business Associations II offers the opportunity to learn additional foundational law and build practical skills through exercises that allow the students, individually and in teams, to apply the law to specific real life or life-like situations requiring drafting, planning, and advising. While continuing to build traditional foundational skills, the course will be premised on the students encountering issues as if they served as counsel to the companies or stakeholders. Over the course of the semester, the students will be asked to address issues related to corporate governance, proxy regulation, securities regulation, hostile takeovers, and mergers and acquisitions. The current and recent U.S. business news will provide examples of legal topics covered, including corporate successes and failures (examples: IPOs, lawsuits and bankruptcies) and white collar crime. Students will be asked to consider recent legislation such as the Sarbanes-Oxley Act of 2002,¹⁰ Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010,¹¹ and the Jumpstart Our Business Startups (JOBS) Act,¹² the legal and professional implications and context for the Acts development. For instance, students will be asked to consider the effect of the terms of Sarbanes-Oxley on legal representation of corporations.¹³ Part of the query will be for the students to consider the professional and policy concerns related to the attorney reporting requirements.¹⁴ In addition, after considering the effect of Sarbanes-Oxley on corporate committees and determining adviser independence, the students will also need to consider how the Dodd-Frank Act may have influenced these corporate governance concerns and make a recommendation to a director of a public company who wonders if he might be sued. A further example of an opportunity for students to problem solve involves a client asking the students to consider the effect the JOBS Act has on her start-up company wishing to engage in a general solicitation and possible second round of financing from a venture capitalist.

The second semester of business associations will also provide an opportunity to introduce basic corporate finance (such as valuation), more in-depth exploration of corporate governance and stakeholder issues, corporate social responsibility, and

10. Pub. L. No. 107–204, 116 Stat. 745 (2002) (codified in scattered sections of parts 11, 15, 18, 28, and 29 of the U.S.C.); *see also* Securities Offering Reform, 70 Fed. Reg. 44,722, 44,722 (Aug. 3, 2005) (regulatory reforms implementing the Sarbanes-Oxley Act in 2005 and codified in scattered sections of Title 17 of the C.F.R.).

11. Pub. L. No. 111–203, 124 Stat. 1376 (2010) (codified in scattered sections of the U.S.C.).

12. Pub. L. No. 112–106, 126 Stat. 306 (2012) (codified in scattered sections of part 15 of the U.S.C.); *see also* Stop Trading on Congressional Knowledge Act of 2012 (STOCK Act), Pub. L. No. 112–105, 126 Stat. 291 (2012).

13. *See generally*, Lewis D. Lowenfels et al., *Attorneys As Gatekeepers: SEC Actions Against Lawyers in the Age of Sarbanes-Oxley*, 37 U. TOL. L. REV. 877 (2006).

14. *See, e.g.*, Jess M. Krannich et al., *Beyond “Thinking Like a Lawyer” and the Traditional Legal Paradigm: Toward a Comprehensive View of Legal Education*, 86 DENV. U. L. REV. 381, 403 (2009).

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corporate white collar crime. The current news will be an excellent source for demonstrative learning.

Two semesters of business associations provide greater flexibility and opportunity to teach specific legal issues related to the new economy and develop corresponding skills. While this approach emphasizes the current issues and skill development in the second semester, the first semester does include reference to current events and recent developments in the law as a result of the new economy and skill development to improve understanding of the foundational doctrine. Through this approach, I intend to improve students' access to legal knowledge and skills needed for varied purposes post-graduation.