Teaching Business Law in the New Economy; Strategies for Success

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Teaching Business Law in the New Economy: Strategies for Success

Transaction lawyers are needed, en masse, to aid in an epic reinvention of our economic system because the world’s economic and ecological meltdowns demand that we now redesign our livelihoods, our enterprises, our communities, our organizations, our food system, our housing, and much more.

I. Introduction

The term “business law” is inclusive of a number of practice areas and courses including corporate law, commercial law, banking law, bankruptcy, securities regulation, and tax law, to name a few. The field encompasses a range of transactional subjects both domestically and abroad. Business law concepts converge upon a wide array of civil issues ranging from aviation law to zoning. As a result, business law is at the center of several diverse fields of practice. This centrality warrants adequate attention to business law concepts.

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* Associate Professor of Law, Thurgood Marshall School of Law, Texas Southern University. Thanks to Lisa Fairfax for the invitation to present a version of this paper at the 2012 SEALS Annual Conference as part of the Business Law in the New Economy panel. I also thank my co-panelists who provided the inspiration for this writing. I appreciate the staff of the Journal of Business & Technology Law for the careful editorial review of this essay. As always, I am grateful for the continued support of my family and colleagues.

1. Janelle Orsi, Practicing Law in the Sharing Economy: Helping People Build Cooperatives, Social Enterprise, and Local Sustainable Economies 1 (2012). This new sharing economy facilitates community ownership, localized production, sharing, cooperation, small scale enterprise, and the regeneration of economic and natural abundance, making the exploding numbers of social enterprises, cooperatives, urban farms, cohousing communities, time banks, local currencies, and the vast array of unique organizations arising from the sharing economy possible and legal. See generally id.


The changing landscape of the business law arena requires that scholars and practitioners address today’s evolving economic trends. Comprehensive reform and sweeping regulation have radically transformed the business law field. Accordingly, the law school transactional curriculum should be updated to respond to the emerging new economy that graduates and practitioners now face during the global financial crisis. This essay provides the groundwork for building an academic foundation to adapt to a harsh financial environment in the wake of the recent Great Recession.

Course design techniques and practical skills development are discussed to provide a mechanism for undergraduate and graduate business professors to integrate the new economy framework into their classrooms. An assessment of the current state of affairs in higher education curricular reform is undertaken to promote understanding across faculty and administrative lines. The results of such movement are addressed with particular emphasis on transactional and transnational legal coursework in a corporate context. This essay promotes teaching innovation in business as a novel way to meet the demands of the new economy that thrives on efficiency. The business of law and the economy of law schools are analyzed as justification for the relevant curricular changes that should ensue to better serve the academy and legal profession.


5. See Umair Haque, The New Economics of Business (Or, the Case for Going Great-to-Good), HARV. BUS. REV. (Feb. 9, 2010, 3:17 PM), http://blogs.hbr.org/haque/2010/02/its_like_a_neon_sign.html (“Hypercompetition — and hypercollaboration — is accelerating. The people formerly known as consumers are now your peers. Regulators have a keener eye and a longer arm. Stakeholders went from being hippie pacifists to shark-toothed activists. In this world, mere innovation and ‘strategy’ are commodities.”); Building Businesses in the New Economy, HARV. BUS. SCH., http://www.exed.hbs.edu/assets/interviews/Pages/building-businesses.aspx (last visited Jan. 19, 2013).


8. See Gillian K. Hadfield, Legal Infrastructure and the New Economy, 8 ISJLP 1, 8 (2012) (“Fast-paced, global, niche-driven, and increasingly networked rather than firm-based, the economy today is poorly served by legal markets and institutions developed to meet the demands generated by an economy based on standardized mass-market manufacturing, predominantly domestic markets, and production organized within, rather than across, firm boundaries.”).
The Great Recession brought a wave of new federal legislation and regulation as the country struggled to stabilize a volatile economy. As a result, drastic changes ensued in the financial industry. The products and services offered by the financial sector are now subject to increased supervision and oversight. Two additional federal agencies, the Financial Stability Oversight Council (FSOC) and the Consumer Financial Protection Bureau (CFPB), were created under the sweeping Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) to address the issues of the financial crisis. Upheaval in the financial markets and the adverse effect of the global financial meltdown resulted in the establishment of a new economy — one that depends on accountability and transparency in the corporate business context. Accordingly, transactional law is undergoing a transformation to facilitate compliance with the recently implemented rules and regulations that challenge the concept of “too big to fail” in our evolving economy.

An overview of the ensuing credit crunch as it relates to housing and even employment are provided to give context to the governmental response to the recent financial crisis spurred by the bursting of the housing bubble inflated in part

9. See generally David B. Grusky et al., The Consequences of the Great Recession, in THE GREAT RECESSION 3–5 (David B. Grusky et al. eds., 2011) [hereinafter GREAT RECESSION] (explaining that the Great Recession generally spanned from 2007 to 2009, lasting approximately 18 months as one of the longest recessions in United States history, although we continue to experience a sluggish economy); see also Marilyn Geewax, Did the Great Recession Bring Back the 1930s?, NPR (July 11, 2012), http://www.npr.org/2012/07/11/155991307/did-the-great-recession-bring-back-the-1930s (comparing the Great Recession to the Great Depression).

10. Grusky et al., supra note 9, at 4–5 (summarizing the “multipronged government response elicited by both the initial crisis and the recession it engendered”).


by mortgage backed securities. Accordingly, asset backed securities are now subject to regulation. Current issues with wealth depletion and asset management direct attention to the social costs of the recession as unemployment rose, housing prices crashed, and retirement holdings dissipated. Innovative investment vehicles and strategies have morphed in response to the Great Recession. The middle-class has contracted and small businesses are in a state of flux. Consumer spending waivers as consumption fluctuates and incomes compress in a perilous market. The financial indicators relied upon prior to the recession including credit ratings, and


even the gross domestic product, may no longer be credible indices of economic sustainability and growth.23 A general lack of investor confidence may stifle innovation in the financial markets24 and constrict controversial investments such as hedge funds.25

A. Business Law Today

Emerging business models must now take into account new rules and regulations that continue to unfold under the contentious Dodd-Frank Act,26 including the Volcker Rule, which addresses private equity and proprietary trading.27 The Dodd-Frank Act sheds light on previously unregulated entities including nonbanks such as payday lenders, mortgage brokers, title loan originators, and credit bureaus.28

27. Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, § 619, 124 Stat. 1376, 1620 (2010) (proposed by and named after former Chairman of the Federal Reserve, Paul A. Volcker, scheduled to become effective 15 months after the enactment of the Dodd-Frank Act on July 21, 2010); id. tit. 4. See generally Overview, SIFMA, http://www.sifma.org/issues/regulatory-reform/volcker-rule/overview/ (last visited Feb. 19, 2013) (“The final Volcker Rule included in the Dodd-Frank Act prohibits banks from proprietary trading and restricted investment in hedge funds and private equity by commercial banks and their affiliates. Further, the Act directed the Federal Reserve to impose enhanced prudential requirements on systemically identified non-bank institutions engaged in such activities. Congress did exempt certain permitted activities of banks, their affiliates, and non-bank institutions identified as systemically important, such as market making, hedging, securitization, and risk management. The Rule also capped bank ownership in hedge funds and private equity funds at three percent. Institutions have a seven year timeframe to become compliant with the final regulations.”).
28. See, e.g., Press Release, Consumer Fin. Prot. Bureau, Consumer Financial Protection Bureau Proposes Procedural Rule on Supervising Nonbanks that Pose Risks to Consumers (May 24, 2012), available at http://www.consumerfinance.gov/pressreleases/consumer-financial-protection-bureau-proposes-procedural-rule-on-supervising-nonbanks-that-pose-risks-to-consumers/. Under the Dodd-Frank Act, the CFPB has authority to supervise any nonbank that it has reasonable cause to determine is posing a risk to consumers based on complaints or other information it receives. This is in addition to overseeing nonbanks, regardless of
Teaching Business Law

Dodd-Frank Act also tightens the reign on executive compensation, corporate governance, credit default swaps, over the counter trades, investor protection, and securities regulation, along with addressing payment, clearance, and settlement activities. Capital requirements for financial institutions has increased to stem systemic risk, and orderly liquidation plans or “living wills” are now required of large financial institutions in an effort to end the concept of “too big to fail,” pursuant to the Dodd-Frank Act.

Compliance with these additional regulatory standards requires professionals to stay up to date with the latest congressional action taken and executive orders issued to avoid the consequences of non-compliance. Legal counsel must now consider a vast spectrum of issues when advising clients on business matters, including an increased emphasis on ethical concerns, consumer rights, disclosure laws, and record-keeping requirements. Further, the transactional lawyer must be well-versed in current events, as political views and public sentiment affect the rollout and enforcement of recently enacted legislation that broadly applies to financial entities and transactions.


Legislation such as the Credit CARD Act, Check 21 Act, and revisions or amendments to the Uniform Commercial Code and Bankruptcy Code serve as a basis for curricular reform in how business law courses are taught and administered. Class discussion in regards to banking and finance may now include consideration of the Troubled Assets Relief Program (TARP), as well as the American Recovery and Reinvestment Act, when analyzing the federal government bailout of the financial system and the stimulus package that resulted from the recent economic downturn. The collective response to the present financial crisis prompts the study of law and economics concepts, as monetary and economic policy affect everything from interest rates to job creation. The restructuring of financial markets and institutions serves as a foundation for reform of the business law curriculum. Even international business and finance courses are subject to...
adjustment as a result of the inter-related nature of the global economic crisis. Such dynamic topics may be of particular concern to a broader law school demographic that is increasingly comprised of students who are interested in business education. This demographic includes the international student pursuing a master of laws program in the financial sector, the student enrolled in a joint JD/MBA program with the university’s business school, and the student who is pursuing a concentrated area of study in business law through a certificate program or otherwise.

B. Modernizing Business Law Courses

With the emergence of increasing bank fees and the disappearance of failed financial institutions, consideration of the fringe banking market for the


unbanked and underbanked is critical as the wealth gap in this country widens. The Dodd-Frank Act, in part, addresses predatory lending, financial literacy, and access to banks for low-income individuals. Such concepts may be adapted for study in a variety of subjects. Courses in economic justice, banking, and even poverty law could be offered and explored during these changing economic times. Tax law courses may be revised to discuss the tax cuts and credits that were established or sustained through the recession. Courses regarding insurance law may also be adjusted considering the governmental response to the American International Group, Inc. (AIG) bailout. Discussion of federal and state subsidies economy—payday lenders, pawnshops, rent-to-own stores, and the like—we might expect them to turn to financial distress to justify regulation. Concerns about financial distress are particularly salient in the fringe economy because consumers of fringe credit are, by very definition, on the financial fringe. They are either poor or lack good credit, and they are unable or unwilling to use mainstream banking services. (citations omitted)); Ebonya Washington, The Impact of Banking and Fringe Banking Regulation on the Number of Unbanked Americans, 41 J. HUM. RESOURCES 106 (2006).

47. See id. at 4 (2012), available at http://www.fdic.gov/householdsurvey/2012_unbankedreport.pdf (“Unbanked households are those that lack any kind of deposit account at an insured depository institution.”).

48. See id. at 4 (“Underbanked households hold a bank account, but also rely on alternative financial services (AFS) providers.” (citation omitted)).

49. See id. at 4 (“More than one in four households (28.3 percent) are either unbanked or underbanked, conducting some or all of their financial transactions outside of the mainstream banking system.”; see also James M. Perez, Blacklisted: The Unwarranted Divestment of Access to Bank Accounts, 80 N.Y.U. L. REV. 1586, 1595–96 (2005). See generally CASKEY, supra note 46.

50. Dodd-Frank Wall Street Reform and Consumer Protection Act §§ 1204, 1402–03, 1441–43 (expanding access to mainstream financial institutions, prohibiting the use of predatory lending practices, and establishing the Office of Housing Counseling).


as a result of the economic downturn could be infused into administrative law courses. Advanced bankruptcy courses may include information on the Orderly Liquidation Authority mandated by Title II of the Dodd-Frank Act.

Emphasis on the public policy reasons behind the legislative and administrative changes to the business law sector may serve as a basis for further reform. For instance, students may be directed to supplemental resources in gaining insight on the socio-economic and moral hazard issues related to the Occupy Wall Street and Bank Transfer Day movements. The practical application of how proposed rules and regulations impact consumers and corporate entities serve to better prepare our students for an evolving world economy.

The tension between practice and theory continues as law schools seek to prepare students for the workforce. Challenges, including the contraction of the

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Kamille Wolff Dean

legal market, place pressure upon law schools to produce practice-ready graduates. Law firms are increasingly less likely to formally train entry-level associates through an apprenticeship experience during the first years of practice. Instead, recent law school graduates are now expected to perform at a profitable level from the start of their careers. Such expectation places greater responsibility upon the academy to engage students in a number of clinical experiences to gain competency and successfully resolve the issues likely to be encountered by prospective clients.

Law schools across the United States are prompted to enhance the marketability and employment prospects of their graduates, especially for positions at large corporate law firms. Career placement is an area that is currently reviewed with greater scrutiny as law schools compete for U.S. News and World Report rankings.

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58. See, e.g., J. Bryan Boyd, Campbell Law School: Creating Practice-Ready Lawyers in Transactional Law, N. C. BAR ASS’N NEWSLETTER, June 28 2011, available at http://businesslaw.ncbar.org/newsletters/nbijune2011/campbell (outlining a curriculum to enhance the opportunities of graduates in business law to assist clients from “boardrooms to courtrooms” in requiring two semesters of the Uniform Commercial Code along with an elective in either Business Planning, Contract Planning, or Estate Planning); see Segal, supra note 57 (“The nature of legal work itself is evolving, and the days when corporations buy billable hours, instead of results, are numbered. To succeed in this environment, graduates will need entrepreneurial skills, management ability and some expertise in landing clients.”).


63. See Karen Sloan, Major Shakeups in the Middle Ranks of ‘U.S. News’ Law School List, NAT’L L.J. (Mar. 12, 2013), http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202591734021&Major_shakeups_in_the_middle_ranks_of_US_News_law_school_list (“In the past, U.S. News counted graduates in any type of job equally. This year, the magazine gave greater weight to graduates in permanent, full-time jobs that require bar passage or in which a J.D. is an advantage. . . . The change was possible because the American Bar Association last year began requiring law schools to report far more detailed graduate employment information.”); Steven J. Harper, Pop Goes the Law, CHRON. HIGHER EDUC., Mar. 15, 2013, at B6 (“Law-school deans are supposed to be the
Aggrieved former students are now seeking legal recourse in holding law schools accountable for justifying their reported employment statistics, particularly in regards to high-paying private practice placements.\textsuperscript{64} Enhancing the business law curriculum may provide students with a competitive edge in the job market, and thereby quell discontentment. In the meantime, legal employers and graduates continue to seek a more balanced approach to legal education in considering the economic outlook of the profession.\textsuperscript{65}

### III. The Law School Economy

Student expectations and the law school dynamic may be incompatible with the accreditation and membership standards articulated by the American Bar Association and the Association of American Law Schools.\textsuperscript{66} The transition to
modernize the traditional standards of the ivory tower may shift the emphasis from faculty scholarship and tenure to student assessment and practitioner development. Consequently, lifetime academics may eventually represent a smaller percentage of the law school faculty than full-time practitioners who are now relegated, for the most part, to teaching seminar and elective courses as adjuncts. The idea that practitioner instructors who are immersed in the day-to-day operations of specialized areas of the law may more precisely prepare students for


68. See Gouvin, supra note 67, at 457–38 (discussing the “second-class” status of clinical law professors to traditional lecturers in some settings); Segal, supra note 57 (explaining that practitioners are more likely to teach clinics); G.M. Filisko, Ask Us Anything: Lawyers Answer Your Toughest Questions, STUDENT LAW., May 2012, at 16 (responding that transactional business courses are important and useful for the practice of law); Samantha Stainburn, Strategy Faculty, N.Y. TIMES, Jan. 3, 2010, at ED6 (noting that adjuncts and other part-time faculty are now more common than tenured faculty); Katherine Mangan, As They Ponder Reforms, Law Deans Find Schools Remarkably Resistant to Change, CHRON. HIGHER EDUC. (Feb. 27, 2011), http://chronicle.com/article/As-They-Ponder-Reforms-Law/126536/ (suggesting that hiring practitioners to teach law school courses would reduce costs and inefficiencies); McEntee, supra note 67, at 228 (“Law schools are businesses with millions in annual revenue and expenses. Creating or modifying a legal education model of this size thus requires considering a wide array of issues.”). But see Larry Catá Backer, Internationalizing the American Law School Curriculum (in Light of the Principles in the Carnegie Foundation’s Educating Lawyers), in The Internationalization of Law and Legal Education (IUS GENTIUM COMPARATIVE PERSPECTIVES ON LAW AND JUSTICE) 49, 64–65 (J. Klabbers & M. Sellers eds., 2008) (“A principal effect of the move to a university norm set has been to denigrate the practice experience of applicants for teaching positions. In many cases, too much experience is deemed to poison the candidate for an academic career. The idea, seems to be that people too long in practice have too deeply imbued the values and norms of the bar and will not be able to successfully transition to the norm structure of the university, which requires a focus on doctrine and writing.”); Steven M. Davidoff, The Economics of Law School, N.Y. TIMES, Sept. 25, 2012, at F8 (stating a difference in quality when moving from academics to practitioners in legal education).
Teaching Business Law

the real world of practice is an area of contested debate. This debate prompts the legal academy to take action in shaping the law school experience to balance theory and practice to enhance student learning outcomes while improving faculty development to stimulate educational reform.

The reconceptualization of legal education from theory to practice is not a new concept. A highly-regarded study conducted by the Carnegie Foundation for the Advancement of Teaching recommends that law schools improve the traditional Socratic Method model of legal analysis to a more comprehensive approach that seeks to develop practical skills. A number of law schools are moving to improve the dissemination of legal education by adopting innovative approaches to student learning and engagement. Other law schools are providing students with the option to exchange the traditional third-year curriculum for externships and study abroad programs that emphasize practical skills. Bar examiners are also

69. See Segal, supra note 57 (describing the debate perspectives); see also Mangan, supra note 65. See generally Spencer, supra note 67, at 2048–54 (2012) (explaining that law schools traditionally hire full-time academics, but that those law schools wanting to make their curriculum more practice-oriented need to seriously consider hiring more practitioners).

70. See Harry T. Edwards, The Growing Disjunction Between Legal Education and the Legal Profession, 91 Mich. L. Rev. 34, 61–62 (1992) (making the case for changes in how law schools prepare students for the legal profession); Carole Silver et al., Unpacking the Apprenticeship of Professional Identity and Purpose: Insights from the Law School Survey of Student Engagement, 17 Legal Writing: J. Legal Writing Inst. 373, 375 (2011) ("While law schools do an excellent job of teaching students legal analysis and have made strides in teaching the skills necessary for practice, they have not developed well-focused efforts towards teaching the elements comprising professional identity and purpose."); Spencer, supra note 67, at 2043–44 (2012) (explaining that proper assessment must be focused on measuring performance against clear learning objectives).

71. See William M. Sullivan et al., Educating Lawyers: Preparation for the Profession of Law 56–57 (2007) (calling for law schools to provide more attention to practical skills and ethics); see also Am. Bar Ass’n, Legal Education and Professional Development: An Educational Continuum (1992) (a task force study led by Robert MacCrate, otherwise known as the "MacCrate Report").


administering more in-depth testing of practice-ready skills by adopting the Multistate Performance Test (MPT) and increasing the number of business law essay questions on bar exams. Law schools are poised to change the course of legal education in light of the changing needs of our new economy. With the proliferation of accredited and unaccredited law schools, coupled with the exportation of legal work overseas, law schools are facing economic pressure to rework the traditional model of legal education. Law schools that are proactive in addressing the concerns of the new economy are positioned to retain a viable stake in the legal education market.

Law schools may provide added value to the law degree by embedding more electives and programs geared towards business law specialization in the course catalog. Supplemental business law school courses that developed as a result of the financial crisis cover topics such as the regulation of speculators, hedge funds and private equity, and banking law reform. These courses include relevant material

(2012); Daniel B. Rodríguez & Samuel Estreicher, Make Law Schools Earn a Third Year, N.Y. TIMES, Jan. 18, 2013, at A27 (reporting on the proposal to permit second year law students to take the New York Bar Exam for earlier entry into the legal profession).


78. See ORSI, supra note 1, at 30–35.

Teaching Business Law

that is suited toward the business legal practitioner of today. Including instruction on topics such as venture capital and investment strategies may prove useful for joint law and business degree students.

Traditional law school courses such as Professional Responsibility, Corporate Law, Securities Regulation, and Commercial Law should also be enhanced to include specialized material on the enhanced regulation of financial products and services.

There is a movement by leading law schools to reduce the number of required courses to permit students to cultivate their own learning paths geared towards individual areas of interest.

80. See generally Corp. Exec. Bd., Corporate Legal: Get Ready for Five Changes, BLOOMBERG BUSINESSWEEK, Sept. 15, 2011, http://www.businessweek.com/management/cacebfivesforces0920-five-forces-that-will-change-legal-departments-09152011.html ("By 2015, a number of legal and economic developments will change how companies assess and manage legal risks. For years, these developments have been slowly (and sometimes invisibly) gaining momentum, but the weak economy has caused them to accelerate. Now, general counsel have a choice: Sit back and watch change unfold or act now on changes already underway.");


82. See DAVID I. C. THOMSON, LAW SCHOOL 2.0 19 (2009) ("In response to all this criticism a number of schools have implemented or announced various significant curricular changes. Washington & Lee School of Law eliminated its third year of classes, replacing it with an entirely clinical year. Harvard Law School changed its 1L curriculum significantly to pay more attention to the rise of the administrative state in legal practice. Indiana University Law School announced that all 1L students would be taking a new course in 'the economics and values of the profession.'"); But see Charles E. Rounds, Jr., State Common Law Aspects of the Global Unwindings of the Madoff Ponzi Scheme and the Sub-Prime Mortgage Securitization Debacle: Buttressing the Thesis that is suited toward the business legal practitioner of today. Including instruction on topics such as venture capital and investment strategies may prove useful for joint law and business degree students.
areas of electronic commerce and mobile banking.\textsuperscript{87} As trustees of the future of legal education, the academy should strive to align teaching with technology in ensuring access to the most advanced resources for cutting-edge business practice areas.\textsuperscript{84}

In the pursuit of business competency in the legal education context, several conflicts may arise between student needs and teacher satisfaction, course requirements and credit hours, class size and course configuration, along with the use of electronic versus hard copy resources.\textsuperscript{85} With the proliferation of new technology, various assessment tools such as clickers may be utilized to more frequently ascertain student learning outcomes in the law school classroom.\textsuperscript{86} The law school curriculum should also carefully balance the array of courses offered in the transactional law versus litigation categories in addressing the needs of students and faculty.\textsuperscript{87} The traditional over-emphasis on litigation in the law school curriculum may give way to a more well-rounded, business model approach to


\textsuperscript{84.} See, e.g., Paul L. Caron, Teaching with Technology in the 21\textsuperscript{st} Century Law School Classroom, in \textit{The Future of Law Libraries} 10, 17 (Thomson-West 2006) (“In my own classes, I often draw from material recently posted on TaxProf Blog to illustrate the relevance and currency of the material we have been studying. This helps tax law to come alive for the students, who realize that our studies have real-life implications for people today.”). See generally \textit{Thomson, supra} note 82, at 20 (noting that the curricular changes at law schools for the most part do not "leverage technology"); Barbara L. Bernier & F. Dennis Green, \textit{Law School Reset-Pedagogy, Andragogy & Second Life, in Educating the Digital Lawyer} 11-2 (Oliver Goodenough & Marc Lauritsen eds., 2012) (“Therefore reforming legal education is pivotal to afford American law students the opportunity to be creative and collaborative in their work as ultimate legal knowledge managers.”).


\textsuperscript{86.} Classroom response systems or audience response systems are systems which use devices, commonly referred to as “clickers,” to poll attendees in real time. These devices can be used to quiz or otherwise engage students. See Paul L. Caron & Rafael Gely, Taking Back the Law School Classroom: Using Technology to Foster Active Student Learning, 54 J. LEGAL EDUC. 551 (2004). See generally Winnie Hu, Students Click, and a Quiz Becomes a Game, N.Y. TIMES, Jan. 28, 2008, at B1; Kathleen Brown, Dang You Trickled Me into Learning: Chaos, Current Events, Clickers and Competition in the Legal Research Classroom (May 7, 2010), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1602102.

\textsuperscript{87.} See generally Gouvin, \textit{supra} note 67 (arguing that current law school curricula overemphasize litigation).
include considerations such as mediation and arbitration as part of alternative dispute resolution. Likewise, litigation-based courses may be enhanced to include transactional aspects of law such as contract drafting and negotiation. The integration of business law techniques within the broader law school curriculum may equip students with a variety of tools to resolve complex legal issues. Adding an international dimension to the law school curriculum may also serve to globalize legal education in preparing students for the practice of law without borders.

Doctrinal courses may be redesigned to include practical skills training by assigning student exercises with an emphasis on the collaborative production of attorney work product. Interactive activities that promote student understanding of theoretical business concepts may engage students, making them more accountable for their own learning.

Students in my transactional courses work in law firm groups where students report to me and to one another for class.
assignments. Each member of the in-class law firm is accountable for his or her own work product, and students must report their activity in terms of billable hours, generating detailed billing statements for submission to the senior partner (i.e., professor) for credit. This practice begins to expose students to the economics of a law practice as a way to explore efficiency and value in marketing legal services.

IV. BEST TEACHING PRACTICES IN BUSINESS LAW

Peer mentoring techniques may be utilized in the law school classroom as a method to facilitate the informal exchange of ideas. Students engaged in peer mentoring are able to share best practices in a low-risk environment as they work through legal controversies individually and in small groups. In addition, business law practice simulations expose students to on-the-job training necessary to “hit the ground running” when they enter their summer associate or internship positions in pursuit
of a legal career.” The law firm exercises that I design for my business law courses build analytical skills and leadership ability through teamwork and role playing. Students engage in advocacy and policy development through a variety of activities including reflection papers, current event reports, student presentations, field trips, and even the creation of computer applications. The interactive nature of the business law courses that I develop promotes student interests as they become personally invested in these courses, even if they decide not to pursue a career in the business sector.

The relevant simulations and role playing exercises that I conduct in areas of study such as bank failure and system risk are based on real controversies involving recent news stories to focus on the present economic problems that we are

99. See Fleischer, supra note 62 (“Law graduates are expected to arrive knowing more than just how to ‘think like a lawyer.’ The tricky part for law schools is trying to figure out what, exactly, they need to know.”). See generally Am. Bar Ass’n, supra note 42 (listing bar exam subjects); Susannah Moran & Joe Palazzolo, Odd Electives Spur Doubt—Optional Law Classes Often Delve Into Quirky Territory, but Deans Defend Them, WALL ST. J., Dec. 17, 2012, at B5 (“Amid weak demand for legal services and an oversupply of lawyers, law schools are emphasizing courses and clinics designed to give their graduates a chance to do hands-on lawyering before they enter the job market.”); News Release, N.Y. State Bar Ass’n, New York State Bar Resolution Calls for “Practice Ready Lawyers,” https://www.nysba.org/AM/PrinterTemplate.cfm?Section=News_Center&ContentID=53626&template=CM/ContentDisplay.cfm (last visited Jan. 19, 2013) (advocating for the evolution of legal education to include more skills and practical experience in a resolution approved by the American Bar Association); Transactional Law Education Conference Emphasizes Practice-Ready Lawyers, EMORY UNIV. SCH. L. (Nov. 16, 2012, 12:15 PM), http://www.law.emory.edu/about-emory-law/news-article/article/transactional-law-education-conference-emphasizes-practice-ready-lawyers.html (reviewing the conference entitled, “Preparing the Transactional Lawyer: From Doctrine to Practice” sponsored by Emory Law’s Center for Transactional Law and Practice).


102. See generally Rosato, supra note 98 (discussing the importance of fostering motivation in teaching law students).
experiencing in today’s society. Thereby, students are able to establish a blueprint for success in exploring various solutions to vexing business, banking, and finance problems that may constitute legal cases of first impression for further exploration in writing student notes and comments for scholarly publication. Students in my business law courses follow simulated cases based on actual lawsuits from start to finish to gain experience on how the legal system operates throughout the duration of the course. This practice promotes continuity and understanding to permit students to grasp complex legal concepts by reworking the case method in legal education. Students emerge from these courses more confident in their abilities, and articulate a greater understanding of business law once they explore for themselves how the legal process works.


105. See generally Todd D. Rakoff & Martha Minow, A Case for Another Case Method, 60 VAND. L. REV. 597, 597 (2007) (“After three years in law school, students usually leave not only with knowledge of specific legal materials, but also with the sharp analytical skills and ability to work in existing legal institutions that people expect from lawyers. But our society is full of new problems demanding new solutions. . . . Much of the action is moving to graduates trained in other disciplines and professions, such as economics, political science, and business. In our view, the stodginess of American legal education is partly to blame.”); Sally Kane, Education Innovation, STUDENT LAW., Sept. 2008, at 19.


108. Cf. Sparrow, supra note 92, at 1171–72 (discussing the importance of feedback in promoting student collaborative skills). See generally Spencer, supra note 67, at 2040 (“[L]aw school courses should have multiple
law courses, to an extent, to promote proofreading and editing skills as students assist each other in polishing their written submissions for non-graded assignments. Participation points are allotted in these courses for activities that promote constructive critique and the sharing of best practices among students from different employment and academic backgrounds. Drills are performed to keep students thinking on their feet and outside of the box to promote innovation in the classroom and build transferable skills for legal employment. Teamwork assignments within practice groups also provide students with the opportunity to network within a business context. An environment of trust is cultivated so that students feel comfortable in suggesting new ways to solve reoccurring legal problems. In building a relationship of trust, students develop the confidence to be leaders in their chosen field. Despite the ranges of ability among the student body, peer-to-peer review has proven to be a useful tool in course management.

When introducing new concepts, I found it helpful to provide the business foundation behind these concepts, such as basic principles of economics. Accordingly, my assignments focus on a variety of business concepts with an emphasis on finance, accounting, management, and marketing. Students come to

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109. See, e.g., Elizabeth L. Inglehart et al., From Cooperative Learning to Collaborative Writing in the Legal Writing Classroom, 9 LEGAL WRITING: J. LEGAL WRITING INST. 185 (2003). See generally Hill, supra note 95 (advocating peer editing among law students, especially in legal writing courses).

110. See generally Sparrow, supra note 92, at 1171–72.


112. See, e.g., Chato Hazelbaker, Leading in the New Landscape: Three Keys for Employment Success, ST. THOMAS L. (Feb. 15, 2013), http://www.stthomas.edu/news/2013/02/15/leading-in-the-new-landscape-three-keys-for-employment-success/. See generally Spencer, supra note 67, at 2025–26 ("Finally, students must have more opportunities to collaborate in team settings and to work on solving problems that blend legal and other issues in a single setting." (citation omitted)).

113. See generally Patton & Harper, supra note 94, at 68 ("Mentoring is a cornerstone in the success of graduate education and depends highly on student-faculty relationships propelled by trust, integrity, opportunity, and understanding.").


115. See generally Hill, supra note 95; Sparrow, supra note 92 (discussing collaboration in the context of practical legal education).

116. See Tilley, supra note 70 (reporting on a law school’s implementation of a first year required course in financial literacy); Fleischer, supra note 62. See generally Laurie Morin & Susan Waysdorf, The Service-Learning Model in the Law School Curriculum, 56 N.Y.L. SCH. L. REV. 561, 577, 583 (2011/12) (Millennials, those born in the 1980s and 1990s who make up the majority of entering law school classes, have a general affinity towards big business).

law school with varying degrees of financial literacy, thereby obstructing their study of business law and limiting their potential employment prospects.\textsuperscript{118} Prerequisite transactional law courses may adequately address this concern, but there may still be gaps in student comprehension of complex business functions.\textsuperscript{119} Even students with a business background may encounter challenges in navigating investment tools and exploring entrepreneurial endeavors in the study and practice of business law.\textsuperscript{120} As teachers, we serve as coaches in explaining and clarifying business concepts to help students expand their career options, improve upon their overall course performance, and eventually pass the bar exam.\textsuperscript{121} We can better prepare students for careers in business law by effectively integrating doctrinal courses with business practical skills.\textsuperscript{122}

\begin{itemize}
\item law, real estate, tax, business litigation, many areas of government regulation, and aspects of nonprofit representation – need to acquire skills in three areas: basic analytics (accounting, finance, economics), an appreciation of transactions, and relevant fields of law.
\item \textsuperscript{118} \textit{Id.} See generally Victor Fleischer, \textit{Deals: Bringing Corporate Transactions into the Law School Classroom, 2002 COLUM. BUS. L. REV. 475} (2002); Luppino, supra note 55, at 152 ("Some of the key characteristics [business lawyers] share, in addition to thorough knowledge of the letter and theory of the law in their practice areas, as well as the highest ethical standards, are: familiarity with business concepts and related jargon that allow them to ask important questions about the business deal; appreciation of the businessperson’s perspectives; and an exceptional ability to explain complex laws in terms understandable to nonlawyers.").
\item \textsuperscript{120} \textit{Id.} See generally Luppino, supra note 55 (discussing the integration of practical entrepreneurial skill development into a traditional law school course).
\item \textsuperscript{121} \textit{Id.} See generally Barbara Glesner Fines, \textit{The Impact of Expectations on Teaching and Learning, 38 GONZ. L. REV. 89} (2002–2003); Judith Welch Wegner, \textit{The Carnegie Foundation’s Educating Lawyers: Four Questions for Bar Examiners, BAR EXAMINER, June 2011, at 11, available at http://law.ubalt.edu/academics/pdfs/Carnegie%20Report%20article_final.pdf; Fleischer, supra note 62 (noting that law school graduates may be compelled to compete for jobs in the financial sector due to a decline in law firm hiring).}
\end{itemize}
A. Bar Exam Preparation in the Business Law Area

State licensure to practice law often involves a mastery of business law and business ethics.\textsuperscript{123} Law school graduates must attain a level of business competency in order to practice law.\textsuperscript{124} Overall, stakeholders are placing greater emphasis on bar passage.\textsuperscript{125} Law schools are increasingly gearing courses towards bar passage.\textsuperscript{126} The issue of bar passage is a pressing one that deserves consideration in preparing our students for the future.\textsuperscript{127} I am able to blend bar passage techniques into my course syllabi by articulating specific student learning outcomes that are directly aligned to the subjects tested.\textsuperscript{128}

Bar-tested areas are highlighted throughout my business law courses, and students are made aware of any state distinctions to the model codes and common law that we study in preparation for the bar exam.\textsuperscript{129} I categorize my business law courses to provide a general overview of the subject at issue while providing an in-depth view of the expectations for exam performance. I administer practice tests modeled after released bar exam questions, disseminate grading checklists


\textsuperscript{126} See generally Linda Jellum & Emmeline Paulette Reeves, Cool Data on a Hot Issue: Empirical Evidence That a Law School Bar Support Program Enhances Bar Performance, 5 Nev. L.J., 646, 647 (2005) (noting that law schools have become increasingly concerned about the bar passage rates of their graduates); Richard A. White, AALS Survey of Law Schools on Programs and Courses Designed to Enhance Bar Examination Performance, 52 J. LEGAL EDUC. 453 (2002).

\textsuperscript{127} See Backer, supra note 68, at 59 ("The bar examination may be external to the law school as an academic institution, but it is hardly external to the law school in its role as part of the community of the bar. The bar examination, in that sense, is no more external to the law school, than an examination in any course offered within the institutional framework of the university."); Denise Riebe, A Bar Review for Law Schools: Getting Students on Board to Pass Their Bar Exams, 45 BRANDeIS L.J. 269 (2007).


\textsuperscript{129} See, e.g., N.C. BAR ASS’N, DRAFTING A BAR EXAM ESSAY ANSWER 3 (2009), http://younglawyers.nchar.org/media/300925/09draftingexamanswer.pdf ("While these 12 subjects are tested, they are in some cases larger umbrellas of smaller, more discrete topics that cannot be ignored: for example, Contracts includes Sales; Secured Transactions includes Article 9 of the UCC, mortgages, suretyship, and liens; and Business Associations or Torts may include concepts of Agency.").
containing a rubric to reflect bar exam scoring, and distribute model answers to provide students with hands-on practice in exam essay writing.\textsuperscript{130}

The same test-taking techniques that are used for my course midterms and final exams are transferable skills that may be utilized for successful completion of the bar exam.\textsuperscript{131} The legal writing skills that students learned during their first year in law school are also re-examined in my courses as students refine the IRAC and CRAC methodology, with an emphasis on business analysis.\textsuperscript{132} Further, strategies for success in law school and in practice are discussed to enhance student performance and employment prospects, including time management and deductive reasoning.\textsuperscript{133}

Issue spotting, rule explanation, and legal analysis serve as the core of an enhanced teaching methodology to instill in students the need for precision and conciseness in practicing business law.\textsuperscript{134} Attention to detail, including proofreading, formatting, and organization are built into my business law courses to help students polish their research and writing skills for the transactional practice of law.\textsuperscript{135} These requisite skills for competency in business law may also be used to sharpen student performance in other courses.\textsuperscript{136} For instance, I instruct students on how to develop more effective study tools, including flow charts and diagrams, to


\textsuperscript{132} See generally Soma R. Kedia, Redirecting the Scope of First-Year Writing Courses: Toward a New Paradigm of Teaching Legal Writing, 87 U. Det. Mercy L. Rev. 147, 150 (2009) (explaining the IRAC method as a way to organize student writing by articulating the issue, rule, analysis, and conclusion); Denise Riebe, Readers’ Expectations, Discourse Communities, and Effective Bar Exam Answers, 41 Gonz. L. Rev. 481, 490–91 (2005) (explaining the CRAC method of writing organization by conclusion, rule, application, and again conclusion); Debra R. Cohen, Competent Legal Writing—A Lawyer’s Professional Responsibility, 67 U. Ctn. L. Rev. 491 (1999).


\textsuperscript{134} See generally Don Rainey, The Making of a CEO: Issue Spotting, Inc., Apr. 18, 2012, http://www.inc.com/don-rainey/the-making-of-a-ceo-issue-spotting.html (“In law school, students spend a lot of time on ‘issue spotting.’ This exercise helps them pull out the critical issues in a conflict. In business, this ability is equally important.”).


Teaching Business Law
dissect complex legal issues and concepts. Such tools address the needs of visual learners while also addressing the needs of those who learn while doing. Auditory learners gain a solid business law perspective during lectures, workshops, and roundtable discussions, as I vary the method of instruction to reach a diverse group of students.

Writing exercises that serve as exam preparation tools may also be developed into writing samples or even commentary that may be submitted as editorials, responses to calls for papers, and replies to notices for public commentary. Subsequently, students are encouraged to use course assignments and materials to develop independent research projects and law review notes on business law topics. Students may also benefit from using course materials to engage in the heightened public policy debate on business law concerns such as the future of financial regulation.

138. See generally Boyle, supra note 93; Hess, supra note 92, at 100–101; Madison, supra note 137.
139. See generally Boyle, supra note 93; Gerald F. Hess, Listening to Our Students: Obstructing and Enhancing Learning in Law School, 31 U.S.F. L. REV. 941 (1997); Madison, supra note 137.
141. See generally Andrew Yaphe, Taking Note of Notes: Student Legal Scholarship in Theory and Practice, 62 J. LEGAL EDUC. 259, 283 (2012) (“Given the number of law students who pursue corporate law for a career, the relative paucity of [student law review] notes in that area is perhaps surprising.”); Id. at 283–284 (noting that the areas of business and administrative law are underrepresented in student law review notes, and explaining that this may be due to the fact that students’ selection of topics “are not strongly influenced by considerations of the work they intend to do in their legal careers”); COLUMBIA L. REV., 2012 – 2013 PUBLISHABLE NOTES MANUAL 11–12 (2013), available at http://www.columbialawreview.org/wp-content/uploads/2012/07/2012-2013-Publishable-Notes-Manual.pdf (explaining that law school seminar papers may also serve as student notes for publication).
engage in class discussions on the new economy to enhance course development. With the explosion of social media and other technological advances, students now have an accessible platform to advocate for business law reform as an extension of the educational experience.

V. The Future of Legal Education in the Transactional Context

Law professors may be compelled to update their teaching methods and implement innovative educational techniques to appeal to the “new school” of student enrollment. The millennial student body may demand changes as to how legal education is administered to expand opportunities for distance learning.


schools may also be prompted to engage in enhanced teaching development in the move towards an assessment-based model of acquiring practical skills in today’s legal education environment.147

We are now in a position to effectuate positive change for the future of legal education.148 It is up to the legal academy, in part through its faculty members, to embrace sound pedagogical changes to keep pace with the realities of the new legal education economy.149 Law schools, both public and private, are subject to inquiries regarding educational effectiveness and financial stability.150 Accordingly, for-profit and non-profit ABA-accredited law schools are increasingly based on financial models of sustainability to ensure instruction in an efficient manner that promotes the legal employment of students.151 Consequently, the legal academy may serve its interests by satisfying student needs and faculty requests for a quality law school experience through business innovation.152 Using the for-profit corporate sector as a


148. See generally Deborah Maranville, Infusing Passion and Context into the Traditional Law Curriculum Through Experimental Learning, 51 J. LEGAL EDUC. 51 (2001); TAMANAH, supra note 62.


152. See, e.g., Charlotte S. Alexander, Learning to Be Lawyers: Professional Identity and the Law School Curriculum, 70 MICH. L. REV. 465 (2011) (analyzing the Fundamentals of Law Practice course at Georgia State University College of Law that includes field placements with attorneys in a number of practice areas including business and transactional law); Law Without Walls, UNIV. MIAMI SCH. L., http://www.law.miami.edu/academics/law-without-walls.php (last visited Jan. 19, 2013) (LawWithoutWalls is a part-virtual, educational collaboration created by Michele DeStefano and Michael Bosson at the University of Miami School of Law);
model, even law schools can operate as sustainable businesses. Business law theories may be used to develop a social enterprise model to support law schools in meeting the financial and educational needs of students in the new economy.

VI. Conclusion

With law school applications down, partly due to the Great Recession and the unrelenting media scrutiny as to the economic benefit of attending law school, the cost-benefit analysis of pursuing a legal degree must be examined to address mounting student loan debt. Lower salaries and the narrowing occupational outlook for lawyers are the harsh economic circumstances now encountered by the legal community. The financial and legal concerns of corporate entities and large law firms in the new economy may not fully appear on a profit and loss statement.

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153. See Tamar Frankel, What Makes a Great Law School? 14 (Boston Univ. Sch. of Law Working Paper No. 01-13, 2001), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=288435 (“There is a rich literature in the corporate area that explores the strategy of successful corporations both in terms of choice of their business and in terms of their relationship with their employees. Law schools that desire to be great and innovate may learn much from this literature.”). See generally SHEILA SLAUGHTER & GARY RHOADES, ACADEMIC CAPITALISM AND THE NEW ECONOMY: MARKETS, STATE, AND HIGHER EDUCATION 1-2 (2004) (“Student consumers choose (frequently private) colleges and universities that they calculate are likely to bring a return on educational investment and increasingly choose majors linked to the new economy, such as business . . . .”); David Segal, Law School Economics: Ka-Ching!, N.Y. TIMES, July 17, 2011, at BU1.

154. See generally Deborah L. Cohen, Growing Justice: Law Schools Hop on the Incubator Trend, ABA J., Oct. 2012, at 30 (describing a movement by law schools to provide graduates with an opportunity to work in-house within law firms that focus on pro-bono community services while training lawyers to enter the profession as solo practitioners); see also Ethan Bronner, To Place Graduates, Law Schools Are Opening Firms, N.Y. TIMES, Mar. 8, 2013, at A14; Latonia Haney Keith, Above and Beyond: Justice Through Entrepreneurship, CHI. LAW. (Mar. 1, 2013), http://chicagolawyermagazine.com/Articles/2013/03/01/Above-Beyond-Latonia-Haney-Keith.aspx.


156. See Davidoff, supra note 68; Ameet Sachdev, Joblessness, Debt Mount for Recent Law School Grads, Chi. TRIB., June 22, 2012, at C1.

Therefore, law students and recent law graduates who are directly faced with the challenges of the new economy should become well-versed in business law concepts to remain marketable for employment.158

Classroom innovation and curricular reform are important components to the law school economics discussion.159 Accordingly, I look forward to the continued collaboration of the administration, faculty, alumni, and the general public in reworking the antiquated paradigm of the traditional law school curriculum, especially in the development of business law courses.160 Such educational reform is necessary in the new economy to create sustainable opportunities for the next generation of lawyers.161

Faculties may place more emphasis on the law and economics of legal education to benefit students and graduates pursuant to the recent economic crisis.162 The time is now for law schools to evolve as ethical and transparent enterprises.163 Accordingly, law schools should embrace technology and innovation to maximize
efficiency and accountability in a fiscally-sound manner.\textsuperscript{164} Law schools have the resources to bring this goal into fruition by embracing the nuances of business law teaching in the twenty-first century.\textsuperscript{165}


\textsuperscript{165} See generally Alexander, supra note 152, at 466; Henderson & Zahorsky, supra note 164; Sturm & Guinier, supra note 87, at 515 ("Many reformers agree that the prevailing law school model developed in the nineteenth century does not adequately prepare students to become effective twenty-first century lawyers." (citation omitted)); Steven J. Harper, Law Schools as Profit Centers, AM L. DAILY (Sept. 7, 2012), http://www.americanlawyer.com/PubArticleALD.jsp?id=1202570519533&Law_Schools_as_Profit_Centers&slreturn=20130021135202.