

APPENDICES

Introductory Comments

The article set out in *Appendix 1* was written during a period of educational leave and completed in 1996. It is considerably out of date and was never submitted for publication. This means that it has never been academically reviewed and so with that caution I offer it to stimulate thinking about not only what is taught to business students about law but also how that learning process should take place. As part of this project I developed what I call the Yates Cases. These are an attempt, unlike the judicially decided cases we normally use, to develop more open-ended business case studies where both business and legal issues are introduced leading to several different methods of approaching the problem. These cases are now included as *Appendix 2*.

I have also included commentary on the individual cases in *Appendix 3*.

Appendix 1

Recommendations for Teaching Business Law in Canada

“.....business law faculty need to keep in mind that the goal of business law courses is to teach the law to business students, not law students. Business students should not be trained to be mini-lawyers, but to be informed and aware business managers, capable of providing direction to the attorneys they hire and to understand and evaluate the legal advice they receive.”¹

This paper has two objectives. The first is to determine what should be included in a general business law course taught at the college or university level in Canada, and the second, to examine how such material should be presented to provide a better education for students and a better integration of the study of law into the business school curriculum. Most of the research has been conducted from sources in the United States since they have a vital, organized body of professionals teaching the subject and a considerable body of literature available. This stands in stark contrast to Canada and other jurisdictions where publications on legal education are largely directed to the teaching of lawyers as opposed to teaching business people about the law.

Part 1

In the last 35 years a great change has taken place in the way business law is taught in American business schools. Prior to 1959 business law was taught using a structure similar to what is used in much of Canada today. Those traditional courses concentrated on contract law and a more cursory examination of other topics such as torts, agency, employment and methods of carrying on business. The great change involved a shift away from these traditional topics to a concentration on the legal environment in which business functions and an examination on government regulation of modern businesses both directly and indirectly. In “regulatory environment” courses, topics such as contracts and agency are dealt with incidentally and only to the extent necessary to understand how the legal environment works.

To understand these developments in the United States it is necessary first to appreciate the impact of two reports published in late 1959.² Both of them criticized the narrow rule-based approach to management legal education that prevailed in the United States at the time. Pierson recommended that the more traditional business law topics such as contracts, agency and employment be dealt with only “.... to the extent necessary to show some of the ways the living law enters into specific business situations.”³ A considerable amount of debate followed.

¹ The Use of Simulated Hearings in Business Law Courses, Lawton and Oswald, **The Journal of Legal Studies Education**, Volume 11/1, Winter/Spring 1993, p. 103 at p. 104

² Gordon and Howell, **Higher Education for Business** {1959} and Pierson, **The Education of American Businessmen**{1959}

³ Pierson, *supra*, note 1, at 212 taken from Moore & Gillen, Managerial Competence in Law and the Business Law Curriculum: The Corporate Counsel Perspective. **American Business Law Journal**, Vol. 23/3, Fall 1985, p. 352

Appendix 1: Recommendations for Teaching Business Law in Canada

The American Assembly of Collegiate Schools of Business (AACSB) is an accrediting body for American business schools and in 1969 that body added to the debate by responding to these two reports. In that year the AACSB changed its requirement that there be at least one course in business law to the requirement that business students be exposed to a “background of the economic and legal environment of business enterprise along with consideration of the social and political influence on business.” Later amended to... “a background of the economic and legal environment as it pertains to profit and/or non profit organizations along with ethical considerations and social and political influences as they affect such organizations.”⁴ The AACSB effectively determines the curriculum of accredited business schools and so this change and resulting new standard has had a great impact. As a result many schools abandoned the traditional approach altogether, some doing completely away with subjects such as contracts, agency and employment and opting instead for a more open ended “liberal arts” approach to the examination of legal concepts.

Over the years the debate between those advocating a more traditional approach on the one hand, and those supporting a more liberal approach on the other has continued with most schools trying to settle on some middle ground. The middle ground that has emerged was the “environmental” business law courses that are prevalent in most American business schools today. These courses examine the legal/regulatory environment within which modern business must function concentrating on business relationships with government or its relationship with others as controlled or affected by government. This forces a focus on government regulatory bodies and the statutes and regulations passed by government controlling business, but it also requires at least a limited examination of the traditional common law topics as the source of the body of rules that helped to form that legal environment. The debate today centers on how much of the traditional business law course topics such as contracts, agency, and employment can be retained in such an “environmental” approach to the study of business law. Some schools solve this problem by requiring two courses, the first usually being the more traditional business law course with a concentration on subjects such as contracts, and the second concentrating on the government regulation of business. Many schools find that having two business law courses does not fit their overall business curriculum requirements and so are left with the dilemma of what to include in the single, required business law course, usually resulting in the compromise discussed above. This begs the question of what we should do in Canada. Should we follow the American example and move to a legal environment of business type course with more of a concentration on government regulation or should we stay with the more traditional common law centered approach that is now in place.

We must be careful not to be seduced by the American debate and assume that the basic premise is correct or that it automatically applies to us. It is clear that American business law instructors have responded, first to the Pierson and the Gordon and Howell reports, and to a much greater extent to the introduction of the AACSB standard requiring that an environmental approach to business law be adopted. In the United States, the debate seems to have been reduced to an examination of how to implement the new standard while preserving as much of what they can of the traditional approach to business law. What we must ask is whether the “environmental” approach to business law is a valid direction for us to go and if so how much of the traditional approach to business law which now predominates in Canadian business schools do we wish to sacrifice.

Although we don’t experience the same pressure that forced American business law teachers to change their direction so dramatically, the standards established by the AACSB and the change of direction that resulted deserve to be acknowledged and require examination in terms of our current practices.

⁴ AACSB Accreditation Council Policies, Procedures, and Standards, 1982-83 at p. 27

In the United States a considerable amount of research has been done to determine what the customers think should be included in business law courses. Gary A. Moore and Stephen E Gillen⁵ surveyed corporate legal counsel thinking that it would be valuable to determine their opinion of what the managers with whom they work should be taught. Two of their conclusions are helpful to us. First they found that the respondent lawyers had little respect for the legal knowledge of the managers and executives for whom they worked⁶ and secondly they found that corporate counsel wanted to include topics that would move the courses more to a “legal environment of business” characterization. Of course, when asked, they wanted their people to know about all of the topics listed, but when forced to rank these topics, seven of the top ten were what would be characterized as regulatory or environmental topics, such as antitrust (in Canada, competition law), labour, and consumer protection. Based on these findings, the authors set out a model business law course⁷ consisting of 25% introductory materials, 25% private law matters and 50% the regulatory environment of business. They concluded that the trend in the United States was toward the environmentalization of business law courses⁸ and that the legal counsels surveyed wanted that trend to continue⁹ In their introductory remarks the authors referred to other surveys which had found that business people when asked about the types of problems they encounter in their business, rank highest in importance topics of the “environmental/regulatory” type.¹⁰ They also noted in passing, however, that business law students themselves found the traditional topics more interesting¹¹

Klayman and Nesser¹² conducted two surveys that support this conclusion. They surveyed business school graduates of Ohio State University and looked at what other business schools were teaching in their courses. They too concluded that more emphasis should be placed on the environmental/regulatory topics and less on some of the more traditional ones. They also set out a model course that corresponds generally to one set out by Moore and Gillen.

These articles are typical and illustrate the general conclusions reached in the 1980's that business schools should adopt the legal environment approach to business law and move away from the more traditional topics. This is what the accrediting bodies wanted. This was what the business people wanted, and this was what the business schools were doing. Note that these conclusions applied to graduate as well as undergraduate courses in business law.¹³

This general approach has now become set in the American system. The only question is how much of the traditional subject matter should be retained. Subsequent surveys and articles while supporting a concentration on environmental/regulatory subject matter have argued for a step

⁵ Managerial Competence in Law and the Business Law Curriculum: The Corporate Counsel Perspective, Gary A. Moore and Stephen E Gillen, **The American Business Law Journal**, Vol. 23/3, 1985 p. 351

⁶ Ibid. p. 362

⁷ Ibid. p. 386

⁸ Ibid. p. 354

⁹ Ibid. p. 389

¹⁰ Ibid. pp. 354-55

¹¹ Ibid. p. 355

¹² Eliminating the Disparity Between the Business Person's Needs and What is Taught in the Basic Business Law Course, E. Klayman and K. Nesser, **American Business Law Journal**, vol. 22/1 Spring/1984 p. 42

¹³ The Business Law Curriculum: Recent Change and Current Status, Dunfee, Brennan & Decker, **American Business Law Journal**, vol. 18/1, Spring 1980, p. 59

Appendix 1: Recommendations for Teaching Business Law in Canada

backward towards the inclusion of more of the traditional material such as agency, contracts, and corporations. The problem of how much attention to devote to contracts seems to be at the center of the present debate. In the fall 1990 volume of The Journal of Legal Studies Education, Reed¹⁴ concluded that contract law ought to be de-emphasized from its traditional standing where it dominates the content of the business law course to a role of much less significance. That same volume records a panel discussion considering the role of contracts in an introductory business law course.¹⁵ While the panelists took various positions, most agreed that contract law was important and should be included in such a course but only as one of many other important topics. Contracts could even be looked at in some depth to illustrate how the law works but not at the expense of other important topics of the environmental/regulatory type. Certainly contract law should not receive the concentrated attention it has in the past.

Other articles argue for at least some retention of the study of contract law in business law courses. Yeargain and Tanner¹⁶ on the basis of a survey done on South Eastern Louisiana University alumni found that the respondents considered contracts an important element of the business law course and concluded that it ought to be retained as a subject. And Little and Daugherty¹⁷ observed that the business executives they surveyed reported that a basic understanding of contract and corporate law was vital and the most important topic listed. Natural environment concerns ranked second. They also pointed out that many of the newer textbooks that have been designed for “legal environment” courses have taken a step back and included at least one chapter on contract law.¹⁸

This look at contract law is important since many of the changes that occurred in the movement towards what we have characterized as “legal environment” type courses involved the de-emphasis and in many cases the complete abandonment of contracts and other similar topics. While the retention of some examination of contract law is important, its de-emphasis can also be supported on the basis that contract law itself has become of lessened importance in the commercial world. K.A. Strasser stated that “the courts are no longer the primary molders of commercial policy, and perhaps not even an important factor in the making of that policy.”¹⁹ He observed that because businesses have moved away from the courts and adopted other methods of resolving conflicts between them, most contract disputes are no longer dealt with in court and are often resolved, without reference to contract law at all.

For our purposes these articles show that in the United States, the role of contracts as the dominant part of the introductory business law course can no longer be supported, but that contracts still should have a place as one of the important topics covered in such a course. The consensus that has developed seems to be a settling somewhere between the initial reaction to the Gordon and Howell, and Pierson reports as well as the adoptions of the AACSB standards

¹⁴ King Contract Wears no Cloths, O. Lee Reed, **The Journal of Legal Studies Education** vol. 9 No. 1, fall 1990, pp. 31

¹⁵ The Role of Contracts in the Introductory and only Law Course that most Business Students Will Ever Take, **The Journal of Legal Studies Education** vol. 9 No. 1, fall 1990, pp. 1

¹⁶ Alumni Perspectives on the Business Law curriculum, Yeargain and Tanner, *Ibid.* p. 37

¹⁷ Survey of Virginia Corporate Executives on the role of Law in the Business Curricula, Little and Daugherty, **The Journal of Legal Studies Education** , Vol. 13/1, Winter/Spring 95 p. 147

¹⁸ *Ibid.* p. 49

¹⁹ Teaching Contracts-Present Criticism and a Modest Proposal for Reform, K.A. Strasser, **Journal of Legal Education** vol. 31, (1981) p 63.

where the traditional subject matter of business law was abandoned in favor of an environmental/regulatory issues approach, to an approach where a balance has been struck between these basic traditional topics and an examination of the environmental/regulatory issues. This compromise seems to be supported by a survey done of chief executive officers of Fortune 500 companies. The author²⁰ concluded as a result of his survey that “- an ideal curriculum would be composed of a judicious combination of the two approaches.”²¹

To further confuse this discussion I must point out that in 1991 the AACSB accrediting body has again changed their standards or guidelines.²² The new guidelines generally encourage course offerings “that reflect the visions, goals and objectives determined in view of the business constituents that a particular school serves.” And as far as business law is concerned the schools should teach “the influence of political, social, legal and regulatory environmental and technological issues.”²³ This seems to be an acknowledgment that the compromise between the “environmental/regulatory” approach and the more traditional approach reached by most business schools is appropriate. But it also allows for more flexibility in what the various business schools offer in the area of business law and so it is likely that there will be a move away from the standardization of the legal environment of business courses we have witnessed over the last decade.

For my purposes I am attracted to the approach advocated by McGuire²⁴ where he suggests that the subject matter covered in a business law course should be based on a framework of logic rather than reaction to outside influences. He refers to Donnell's observation²⁵ that there are four basic sources we can turn to in determining what should be taught: what business people think ought to be included; what other business instructors want included; what students would like to see included; and what other schools already teach. To this I would add a fifth source, the standards or guidelines set by the AACSB accrediting body. It is clear in the United States that all of these factors had an influence in moving the American business law educators towards the “Legal Environment of Business” type of courses that have been discussed above. While these influences have value as a check or test against which we can evaluate, they cannot be relied on as the source of what we should teach in business law. To rely on them as such would be to abrogate our responsibility in designing the law course. No one is in a better position to determine what should go into a business law course than the business law instructors themselves. They are the ones with the training and experience. Donnell said “I would argue that the law instructors in business schools are the experts in curriculum design in our field.”²⁶ Curriculum must be determined not by the design of others but by the law faculty itself. Feedback from business people who are graduates may be skewed by their own experience and may only show a preference for what they know and have taken in the past. The students themselves don't know what they need to know, and if we respond only to what other business faculty want we will be

²⁰ Corporate Perspectives on Business Law Curricula: an Empirical Study, S. Massin, **The Journal of Legal Studies Education**, Vol. 8 No. 1/2 1990 p. 71

²¹ *Ibid.* p. 90

²² Survey of Virginia Corporate Executives on the Role of Law in Business Curricula, Little and Daugherty, Jr. **The Journal of Legal Studies Education**, Vol. 13 No. 1, Winter/Spring 1995 p. 147

²³ *Ibid.* p. 148

²⁴ Logic and the Law Curriculum: A Proposed Conceptual Framework for "The Legal Environment of Business", C. McGuire **American Business Law Journal**, Vol. 23 No. 4, Winter 1986 p. 479

²⁵ *Ibid.* p. 479

²⁶ *Ibid.* p. 486

Appendix 1: Recommendations for Teaching Business Law in Canada

forever in a service mode. As far as copying other schools is concerned we run the danger of simply perpetuating their mistakes.

The development of curriculum is a logical and a conceptual process²⁷ and McGuire suggests an approach be developed based on a conceptual framework. He also suggests that the idea of the legal environment of business is an appropriate framework to work from. This seems to require a concentration on the function of the business person working within the firm or business. The legal environment of that firm can be looked on as a series of relationships between: the firm and customers; the firm and creditors; the firm and employees; the firm and government; the firm and the public; the firm and investors; and the firm and suppliers. When we use this structure as a framework the topics logically follow.

Using McGuire's approach the following structure and content would be required in an introductory business law course for use in Canada. The legal system itself must be introduced and so history, constitutional law, the charter, the court system, the legal structure and procedure should all be included. Traditional topics such as contracts, torts, agency, corporations and real property should also be included as the source of the duties and obligations found in such relationships, as should "legal/regulatory" subjects such as human rights, management relations, consumer protection, competition law, environmental law and employment standards. The traditional as well as the "legal/regulatory" topics could all be taught within the structure of those listed relationships with the firm but I think a better approach would be to divide the course into three parts. The first part would be an introduction to the legal system, the second a summary of some basic principles of law (the traditional topics of contracts, corporations, agency etc.) and the third an examination of the "legal environment of business" topics which would be dealt with by concentrating on those eight legal relationships listed. Of course there would be considerable overlap and all of the "traditional topics" would apply to these relationships as well, but I think that there would be an advantage to laying down some fundamentals first. If this three-division recommendation were adopted, the students would have the advantage of already having a basic foundation of legal principles when these relationships were discussed.

Using this three-part approach then, the firm/customer relationship could be the basis for studying acts regulating the sale of goods, product liability, advertising regulations, credit regulations, consumer protection act, trade practices act, secured transactions and human rights legislation. The firm/creditor relationship—sale of goods, secured transactions, bankruptcy, security regulations, and corporate bail-outs. The firm/suppliers relationship—sale of goods, secured transactions, bankruptcy, competition law, etc. Note that these first three relationships could be looked at together as private outside relationships. The firm employee/relationship would be the basis for looking at labour codes, employment standards, unemployment insurance, human rights and workers compensation. The firm/investor relationship—partnerships, corporations societies, and securities regulation. The firm/competitor relationship—competitor torts, competition laws, and intellectual property. The firm/government relationship—taxation, close regulations of some industries such as broadcasting, banks, public utilities, transportation and administrative law. Finally the relationship between the firm and the public—tort liability, environmental protection, product liability, the breakdown of the rules of privity, human rights law and this generally will lead to a discussion of social responsibility and business ethics.

The following is presented as a model Canadian business law course to be taught at the college or university level. It would be divided into three parts, an introduction, common law principles or fundamentals, and the legal environment of business. Assuming 3 hours per week

²⁷ Ibid. p. 492

for 14 weeks, such a 42-hour course would be divided as follows. The first ten hours would be devoted to an introduction to the legal system, the next twelve hours to fundamentals and the remaining time to the legal environment of business which would be structured around an examination of the eight business relationships discussed above and so it would seem logical that some common law areas be dealt with in this final section as well (such as methods of carrying on business and to some extent tort law).

Part 2

Thus far I have looked at “what” we should be teaching in the general business law course. The next question and the subject matter of part two of this paper relates to “how” that content ought to be taught. This question is to be answered within the context of a desire to better integrate the study of business law into the business curriculum. There is little debate today that business law is a very important subject to be dealt with in business schools. Certainly business executives rank the subject of business law as very important²⁸ and, if anything, teaching this subject as part of the modern business curriculum has become more important as we become a more litigious society.

“A decade of growth in the scope nature and complexity of government regulation has catapulted attorneys into the daily business operations of corporations to an unprecedented degree. The equally rapid rise in consumer shareholder employee and competitor litigation has forced prudent managers to include legal advice as an essential element of business planning and decision making.”²⁹

John R. Allison pointed out the danger of business people not having a basic understanding of legal concepts. “Without a working knowledge of both fundamental legal concepts and the legal principles pertinent to their particular enterprise, business people run the risk of making mistakes that may have grave consequences for their personal careers and for individuals and firms that depend on their judgment.”³⁰ He also said, “Of the various external constraints on business decision-making, law is the most pervasive. Every business entity must operate constantly within a domestic and international legal framework. Few business decisions of any consequence are without legal implications. Law is thus a vital component of professional business education, whether at the undergraduate or MBA level.”³¹

The importance of a course in business law is generally acknowledged, but business law instructors often find themselves cut off from the rest of the business school. One reason for this may be that most business law instructors have little or no formal business training, the appropriate degree for a law instructor being a LL.B. or LL.M rather than a graduate business degree. Also, the approach used in business law usually does not follow the common model of

²⁸ See generally The role of Law in a business School Curriculum, J. Allison, **The Journal of Legal Studies Education**, Vol. 9,1991 p. 239. An executive appraisal of the importance of business law, G. Siefel III, H. Hildebrandt, E. Miller, **American Business law Journal**, vol. 22/2 summer/84 p. 249, Survey of Virginia Corporate Executives on the role of Law in the Business Curriculum Little and Daugherty, **The Journal of Legal Studies Education**, Vol. 13/1, Winter/Spring 95 p. 147

²⁹ Managing Your Lawyers, Chayes, Greenwald, and Wing, **Harvard Business Review**, Jan.-Feb. 1983 p. 84.

³⁰ The Role of law in the business School Curriculum, John R. Allison, **The Journal of Legal Studies Education**, Vol. 9/2, Spring 91 p. 239 at p. 242

³¹ *Ibid.* p. 239

Appendix 1: Recommendations for Teaching Business Law in Canada

other business courses. Even the way cases are used in law courses is foreign to the case study method as developed for the business schools as will be discussed below. Our business colleagues generally seem content to let us go about our business so long as it does not interfere with theirs. In short business law instructors often find themselves in a world of their own with their business school colleagues not concerned with, or particularly appreciating what they do.

Under these circumstances it is not surprising that when pressures come for downsizing, or otherwise accommodating program changes, business law is particularly vulnerable. The object then is to not only improve the teaching methodology in the course itself but in the process tie business law closer to the rest of the business curriculum; to integrate it. Siedel stated,

“In a classic essay that has been reprinted in a recent catalogs describing the anniversary of the University of Chicago MBA program, Professor James Lorie argued that a University has its greatest comparative advantage in teaching basic disciplines such as ‘Mathematics, statistics, accounting, economics, law, psychology and sociology; it has least competence in teaching the current practice, techniques and language of business.’ Consequently he concluded, business school faculty representing these disciplines ‘are mathematicians, statisticians, economists, psychologists, lawyers and sociologists.’ Law is undoubtedly, as Lorie asserts a discipline that should to be taught in business schools.... The problem is that despite its centrality to American culture and business, law is too often perceived in business schools as a stand-alone discipline that has few links with other disciplines and functions. This perception is clearly wrong. ... But the question remains: How can the traditional business law image be changed? The answer ...Is to link law teaching more explicitly to other areas within the business school.”³²

In looking at the American sources, one thing that seems generally agreed upon is that the too common rule-oriented approach to teaching business law is inappropriate. Rather than simply conveying rules, facts and other information the key to a successful business law course is to deal conceptually with the ideas and principles behind those rules. Peter C. Ward³³ laments how often we encourage students to amass trivia, spoon-feeding information to them and neglecting to teach concepts and principles. “The result is that too much of the teaching of business law has deviated from the business of education to the force-feeding of objective information. Those students who receive high marks emulate trivial pursuit winners rather than the recipients of an educational experience that has encouraged the development of understanding.” That is not to say that the students should not be exposed to such rules and information at all. Donnell states³⁴ that the course he would design would not be rule-oriented although there would be considerable examination of the rules “because the students need them to hold onto...” But the emphasis would be on the underlying principles and concepts. Quite often we fall into the trap of having to give the students masses of information because we have to “get through the material,” in fact we do them a disservice by submerging them in vast bodies of rules and information drowning them in the process. And they are so concerned with staying afloat that they miss the objective of the process that is to understand the concepts and principles that form the structure behind that vast body of rules and information. Donnell also pointed out that we have to be careful not to do too much.

³² Interdisciplinary Approaches to Alternative Dispute Resolution, G. Siedel **The Journal of Legal Studies Education** , Vol. 10, No. 2, Summer/Fall 1992, p. 163

³³ Two Legal Environment Writing Exercises Following the Perry Scheme of Cognitive Development, Peter C. Ward, **The Journal of Legal Studies Education** Vol. 10, No. 1, Winter/Spring 1992, p. 87

³⁴ Redesigning the Undergraduate Business Law Course, J. Donnell, **The Journal of Legal Studies Education** , Vol. 2 Spring 1984 p. 1

There is a fine line between creating a challenging course and inundating students with information that will be useless to them in the long run. "...the notion that less is more should be kept firmly in mind. ...Aim to build a solid foundation, and let the student build the superstructure in additional courses or on his or her own."³⁵

The methods used to teach business law, vary between institutions. Some only use large lectures, and some just small seminars. The more common approach is to use intermediate size classes of 25–50 students or to use a combination where students are brought together in large groups for lectures and then they are split into much smaller groups for seminars. A strong argument can be made for the abandonment of the lecture format, where the instructor talks and the students write, in favor of smaller class sizes where more student involvement can take place. Unfortunately in this time of constraint and cutback, it is very unlikely that such an expensive reform would be adopted. Still the lecture format does have some advantages if a degree of flexibility is adopted.

In determining whether the lecture format should be used, we must first look at what we are teaching. If the objective is to convey information, even principles and concepts, then the lecture method, with some modification, may be used effectively. If a skill is to be taught, then a participatory method such as the case study method, simulations, presentations or other types of student involvement where the student takes the initiative in the learning process would be much better and smaller classes are required.³⁶ In business law what we are being asked to do falls somewhere in between. There is a considerable amount of information that we are expected to convey to our students. We expect them at the end of a business law course to know to some extent what the rules are that govern their conduct in the business world and hopefully to understand some of the whys and wherefores behind those rules. But we also like to think that we are helping our students to gain the skill of being able to grapple and deal with or to manage legal problems. We usually say that we want our students to at least gain an insight into how lawyers think, and why they think the way they do. We strive to equip our students to identify issues and problems and to learn how to work with those problems and some would argue to find solutions³⁷ for them.

We are in the business of conveying skills and techniques to our students, but we are also in the business of teaching a considerable amount of information in the form of rules, concepts and principles. It may be that the retention of the lecture format can be justified even if it is not the ideal, but there is no question that we should do all we can to make these lectures a better experience for the students. Emerson in commenting on lecturing to large classes said. "Classroom presentations require the professor to reach the students in ways far beyond simple lecturing—that is, the class should be about much more than simply "covering" a body of material. Classes can sparkle, with audio and visual tools, as the instructor puts a human face on as many rules, doctrines, and principles as possible"³⁸

³⁵ Ibid. p. 17

³⁶ **Introduction to Case Method Teaching, a Guide to the Galaxy**, Selma Wassermann, Teachers College Press, New York, 1994 p. 13

³⁷ Survey of Virginia Corporate Executives on the role of Law in the Business Curriculum, Little and Daugherty, **The Journal of Legal Studies Education** , Vol. 13/1, Winter/Spring 95 p. 147

³⁸ The Professor as Performer: Teaching Legal Studies Megasections, R. Emerson **The Journal of Legal Studies Education** Vol. 12, No. 2, Summer/Fall 1994, p. 261

Appendix 1: Recommendations for Teaching Business Law in Canada

Solberg, said “Dullness in teaching should be looked at for what it is and for its effect before it is defended. There is something awful, sinful in the extreme, in inflicting one’s dull self upon another for an extended period of time from which the other has little chance to escape... No ordinary citizen is permitted to hold another in bondage for even 50 minutes a day, subjecting such person to physical assault and extracting a fee for the privilege.”³⁹ If we are going to lecture we must make sure that we do a good job of it. We must not bore our students. Solberg’s article is intended to encourage lecturers to spice up their lectures with newspaper accounts, humor and the like and to tie the materials being taught to practical situations to which the students can relate. There are many ways that we can make these lectures more interesting for the students and more effective as a teaching tool. Problems or case studies, even war stories can be used as the basis of the lecture discussion. Flowcharting of legal relationships has been suggested as a method of making the presentation of those relationships clearer and more interesting and this too can be used to spice up a lecture format.⁴⁰

MacDonald⁴¹ discusses the use of the Socratic method commonly used in law lectures. When the case study method was introduced and captivated legal studies in North America, the Socratic method (as adopted for those law schools) was thought to be a necessary adjunct to that case study method and became inseparably associated with it. Together they made large lectures possible and made law schools economically viable. The adoption of the Socratic method was justified because for law students it was necessary that, “The student judge all material for himself, scrutinize instances closely, accept no other man’s judgment until he had judged its logic for himself...”⁴² This follows a process of inductive reasoning whereby through a series of pre-planned questions the student is lead, to a conclusion, from the particular to the general. Although this involves student participation it can still be used in large classes. But this involves singling students out, requiring observations and conclusions from the student and then often demolishing the student’s contribution. This can be a very intimidating process.

The “Socratic” method of dialogue is found extensively not only in law schools but in business law courses as well. Those of us who have been trained in law have likely been exposed to the “Socratic” method in first year law and many of us have adopted this as a teaching style. Even the proponents and defenders of the Socratic method have to admit some drawbacks “That the Socratic method can be forceful, scathing, and aggressive is obvious.”⁴³ “Lawteach”⁴⁴ is a British development of the Socratic method that involves a modification of the legal case study method. The students after being given common source materials are, through a series of pre-planned questions, taken to ever increasing levels of conceptual sophistication by being forced to deal with hypotheticals based on those initial readings. The object here is to help the students deal with the concepts and principles behind the rules rather than rote memorization.

³⁹ The Use of Newspaper Articles to Enhance the Legal Environment Lecture, J.Solberg **The Journal of Legal Studies Education** Vol. 11/2 summer/fall, 1993 p. 273

⁴⁰ Flow charting, an alternative approach to business law, T. Fogarty, **The Journal of Legal Studies Education**, Volume 4 Spring 1986, p. 64

⁴¹ The Socratic Method and the Teaching of Law and Virtue, J. MacDonald, **The Journal of Legal Studies Education**, Vol. 7 No. 1/2, Fall 1988/Spring 1989. p. 19

⁴² Landell as quoted in Stone’s Legal Education on the Couch, **Harvard Law Review**, Vol. 85 1971 p. 392 at p. 406 .

⁴³ Ibid. p. 408 .

⁴⁴ Lawteach: A British Approach to the Case Method D.Tribe, A. Tribe, **The Journal of Legal Studies Education**, Vol. 7 No. 1/2, Fall 1988/Spring 1989. p. 19

The object is to educate rather than simply convey information. Even the introduction of the case study method in law schools was intended to overcome the limitations of the traditional lecture format and involve the student more in the problem identification and solving process rather than being “passive recipients of teacher made solutions.”⁴⁵ Such a structured interchange of question and answer with the students even in a large lecture can be electrifying, and it should be possible to accomplish this without the negative aspects of intimidation and aggression associated with the Socratic method.

Smaller classes or seminars are ideal to develop the skill development objectives of business law courses. The key to getting the most out of these seminars is to have the students teach themselves. This involves student participation in the educational process, not passivity. In these circumstances the more successful instructor would be the one least heard from in the classes. This does not mean that the instructor abrogates his/her responsibility for directing and controlling the class, rather he/she functions more like a shepherd, a much more difficult and demanding role to do successfully.

There are several different ways that student participation can be structured into the business law course. Student involvement through simulation can be achieved by students role-playing as clients or other parties in the process of a law suit and through mock trials, moot appeals, and games. Arthur Schaefer recommended a modified “mock trial” approach as an alternative to the lecture or case study approaches normally used in business law courses. “The mock trial is an attempt to provide the students with an opportunity to apply their newly acquired skills in a “real life” situation requiring the preparation of legal papers and presentation of arguments before a group of legal experts.” He goes on to caution that because of the time constraints on business students and their limited exposure to legal concepts “... the undergraduate mock trial will normally not be as sophisticated and will not attempt to fully mirror an actual trial.”⁴⁶

In an article advocating the transformation of the business law curriculum, Elaine Ingulli⁴⁷ advocates role playing as an effective method of making students and faculty alike more sensitive to minority and gender issues. She suggests that the participant can be asked to role-play an interview situation where the other parties usually playing dominant roles are asked to behave in a harassing or discriminatory way or they might be asked to role play testifying before a parliamentary committee or in a royal commission or inquiry.

Lawton and Oswald⁴⁸ give several examples and comment on the value of simulations “... a well-constructed simulation can illustrate to the student the interrelationships of legal rules and practical constraints imposed upon lawyers in resolving business disputes far better than any lecture or textbook reading can do.” They go on to give this caution which applies not only to the use of simulations but should be a guide for all we try to do in a business law class. “In using trial-type hearings however, business law faculty need to keep in mind that the goal of business law courses is to teach the law to business students, not law students. Business students should not be

⁴⁵ The Socratic Method and the Teaching of Law and Virtue, J. MacDonald, **The Journal of Legal Studies Education**, Vol. 7 No. 1/2, Fall 1988/Spring 1989. p. 37

⁴⁶ Mock trials: A Valuable Teaching Tool, A. Schaefer, **The Journal of Legal Studies Education**, Vol. 8 No. 1/2, Fall 1989/Spring 1990 p. 199

⁴⁷ Transforming the Curriculum: What does the Pedagogy of Inclusion Mean for Business Law?, E. Ingulli **The American Business Law Journal**, Val. 28/4, Winter 1991, p. 605

⁴⁸ The Use of Simulated Hearings in Business Law Courses, A. Lawton and L. Oswald **The Journal of Legal Studies Education**, Volume 11/1, Winter/Spring 1993, p. 103

Appendix 1: Recommendations for Teaching Business Law in Canada

trained to be mini-lawyers, but to be informed and aware business managers, capable of providing direction to the attorneys they hire and to understand and evaluate the legal advice they receive.”⁴⁹

Instead of trials and hearings, Shrage advocates the use of simulations that involve students in the parts of the process of a law suit that they as managers would most likely be exposed to—the beginning stages, concentrating on the discovery. He said, “Evidence indicates that students understand and retain more when they have an opportunity to investigate facts, ask questions and then apply principles to those facts. A recent study conducted by the Harvard Graduate School of Education and Kennedy School of Government found that college students do their best when some of their study is done in small groups and where courses include frequent opportunities for regular assignments. [*R. Light, The Harvard Assessment Seminars (1990).*] If business law faculty can supplement traditional teaching methodology with a simulation that provides students with an opportunity to take a more active role in the learning process, business law courses will be more successful and more useful, and will provide an opportunity to achieve the broader objective of improving students basic oral, written and analytical skills.”⁵⁰

Another method of generating student involvement is through the assignment of team reports or group projects which require the students to work together. The students may be given a fact pattern or problem where they are required to write a short paper supporting one side or the other, or the students could be assigned opposing sides of an important issue or controversial proposition, give an oral presentation and defend their positions before the other students who will be invited to criticize and ask questions. After the oral presentation an informal debate could take place. This approach has the advantage of requiring the students to work together as a participant in the group, generating a group mark but also retains an element of competition where that group must present and defend their position. Often such group activity generates passionate involvement on the part of the students and creates an exciting learning environment.⁵¹

Brenda Knowles⁵² assigned a research paper to her senior students requiring them to “... look at a particular industry, usually one that the student had some experience with, describe that industry; show past and present governmental regulation activities; and forecast based on past trends whether governmental regulatory efforts would be accelerated or curtailed in the future.” Even in such an individual effort as a research paper, the teacher had the students involved as a “resource persons” for their industry, reporting to the class on ongoing developments as reported in various media sources, giving updates as appropriate. As an alternative, a student could be required to “teach” the class the subject matter of the assignment. Students usually put considerable effort into such presentations and in the process gain an insight that otherwise might be missed. As a final part of the assignment the students were required to create their own three page case study which “...used the actual factual setting based on the students’ chosen industry as a mechanism for integrating as many antitrust and government regulation issues as possible into the respective situations.”⁵³

⁴⁹ Ibid. p. 104.

⁵⁰ A Business Law Simulation: Principles, Process and Basic Skills, H. M. Shrage, **The Journal of Legal Studies Education**. Vol. 9, No. 3, Fall 1991, p. 413 at p. 415.

⁵¹ The Use of Student Projects in Business Law Courses. P. Ward, **The Journal of Legal Studies Education**. Vol. 10, No. 1, Winter/Spring 1992, pp. 71 at p. 72.

⁵² Research Assignments and Case Studies as Teaching/Learning Devices in a Governmental regulation course, B. Knowles, **The Journal of Legal Studies Education**, Vol. 4, Spring 1986, p. 78

⁵³ Ibid. p. 83

Such case studies have proven to be an extremely effective method of involving students in the learning process in business schools and other subject areas and are very flexible in their usefulness. "A case may be used to supplement class instruction or as an independent study problem covering areas of law that receive little or no classroom treatment. Cases may be the basis of class discussions, small group discussions, written projects, or team presentations."⁵⁴

I feel that the adoption of the case study method would have a great positive impact on the business law curriculum and if adopted this single modification would go a long way to improve how business law courses are taught. This idea is not new. The former dean of the Harvard Law School, Griswald, recommended that the Harvard Business School developed case study method be adopted by the law school in 1956. He thought that by so doing the law students would then be exposed to the important non-legal factors (physiological, human relations skills, etc.) that have such an important role to play in dealing with legal problems,⁵⁵ Although his recommendation was not acted upon by the law schools, it does have great merit especially for the business law curriculum where the object is not to teach lawyers but to develop the skills of management.

The case study method as recommended here must be carefully distinguished from the cases as used in law school and in business law courses in business faculties. Legal case studies have been a tradition in law schools since this method of teaching law was introduced at the turn of the century. Probably because of the legal training of those teaching business law, the same general approach has been and is now used in the teaching of business law at most Canadian and American business schools.

A somewhat similar case study method has become the standard used in most business faculties at the university and college level in both Canada and the US. There are, however, important differences in how the two methods of studying cases are used.

In the law schools the cases used are the actual reported decisions of judges which are published and made available to the legal community primarily to determine the law. Students are encouraged to learn the law by analyzing these cases. The process involves reviewing the judge's summary of the facts, identifying the issue or legal problem the judge has to decide, noting the decision and analyzing the judge's reasons for that decision. All factors not necessary for the judge to reach a decision in law are considered irrelevant and if they have not been eliminated in the judge's summary, must be eliminated by the student as they summarize the relevant facts of the case. In effect, what the student is given is a sanitized version of what happened with only those elements remaining that are important from a legal point of view to the lawyers and judges who are trying the case. There is only one right answer, that of the judge, and the purpose of studying the case is to learn the legal principle involved by examining what the judge decided and why. In the law schools the students may go on to criticize the decision itself in light of other cases but the focus is on understanding the legal principles involved. "Law cases focus on a particular problem and the legal principles involved in the dispute. These cases provide the outcome and rules used to reach a particular holding. Students are asked to analyze the rules used and to explain why these rules were applied in the situation."⁵⁶

⁵⁴ Turning War Stories into Case Studies, Diane B. MacDonald, **The Journal of Legal Studies Education**, Vol. 9, No. 3, Fall 1991, p. 437 at p. 439

⁵⁵ Law schools and Human Relations referred to in Stone's Legal Education on the Couch **Harvard Law Review**. 1985 p. 392 at p. 428

⁵⁶ The Application of Case Method teaching to Graduate Business Law Courses D. Dobray and D. Steinman, **The Journal of Legal Studies Education**, Vol. 11, No. 1, Sinter/Spring 1993, p. 81

Appendix 1: Recommendations for Teaching Business Law in Canada

The business school approach to the case study method, however, involves important differences. In business schools cases are used to create problem solving simulations. The student applies information and principles learned in the program and in the process gains hand-on experience and decision making skills in a lifelike business situation. The cases used are usually, although not necessarily, based on some actual occurrence or experience of the author. “Business cases...do not have guidelines controlling the outcomes of the cases. The business case is usually open ended, allowing for a different type of student analysis and problem solving... Business cases enlist students as decision makers, not decision followers.”⁵⁷

Serious limitations to the use of the legal case study method have been identified even as used in the law schools. “First, there is no well defined or elaborated technique for case review. Analysis proceeds through repetitions of case briefs (facts, issues, ratio decidendi, reasons for judgment, holding and, possibly critiques) or on the basis of more or less idiosyncratically directed teacher-led discussions. Students must await the instructor’s lead without knowing how to prepare for it. Further, cases are often narrow reconstructions of actual happenings, denuded of the realities of their backgrounds in fact and the processes and events which gave rise to the court’s judgment. Case study is limited to inquiries based on the court’s selection of relevant information and its processing.”⁵⁸

It may well be that the law students who read these actual judges decisions are effectively introduced to the workings of the law and legal system. But in business law we are teaching potential managers and entrepreneurs about the law who must look at the law as only one of the factors to be considered in any decision making situation. When we use the legal case study approach in our classes, we do our students a disservice in two ways. First we don’t teach them how to deal with legal problems in a business like way where the legal implications must be factored into the process along with economic, political, ethical and other factors. Secondly, the cases we assign have all of these nonlegal factors eliminated from the deliberation and if they haven’t, we take pains to teach the student how to eliminate these extraneous or irrelevant factors. Our students are training to be managers and must take into consideration the business variables that they will face in dealing with all such legal problems.

Case teaching has become the leading method of teaching in graduate business schools because it helps students acquire cognitive skills, enhances managerial abilities, and gives students practice in decision making by simulating managerial predicaments. The case method is generally praised as being able to simulate learning more than teaching through lectures. It is designed to develop competence in identifying opportunities, defining problems, gathering and interpreting relevant data, formulating strategies, and making and implementing decisions. Case study requires students to learn by discovery through the interpretation of information and interchange. Students sharpen their analytical abilities through skillful probing and incisive thinking practiced extensively and continually over several semesters. Thus, they develop a broader conceptualization of problems by comparing and contrasting different situations and approaches. Students must define the problem(s) considering the relevant information, identify alternatives, and implement a plan for effectuating the best alternative, always remaining cognizant of the ramifications that necessarily flow from this decision tree. In such a way, the case study method approach to learning attempts to prepare students for tough “real world” decision making in a macro environment.⁵⁹

⁵⁷ Ibid. p. 82

⁵⁸ Problem Based Learning: an Alternative Approach to Legal Education S. Kurtz et al. **Dalhousie Law Journal**, Vol 13, 1990, p.797, at p. 802

⁵⁹ Ibid. p. 84

We would do better to adapt the business school approach to case studies for use in business law courses. Students would approach the cases with the idea that the legal component is only one of the factors to be considered in the problem solving process. The emphasis would be on developing problem solving skills when faced with legal problems in the business place. "A case study approach remedies what may be called the context problem: putting law into perspective in the business world context. Such a case law approach involves not the traditional court case of law school but the type of problem solving case study used in other business disciplines... Structuring a law class using a case study framework forces students to take a broader and more complete approach to incorporating legal issues into the decision making process."⁶⁰ This shift in approach also provides a better vehicle for teaching risk avoidance strategies where a considerable amount of discussion could be directed to an examination of just what steps should have been taken to avoid the problem arising in the first place. "The best cases are those where the "right answer" is not a single answer but one of several acceptable alternatives. Discussion should focus on the consequences that flow from each choice including the legal and business risks and how those risks may be minimized, if not eliminated"⁶¹

Another advantage of adopting the case method would be to retain a cohesiveness with the rest of the business school. "In order to maintain pedagogical uniformity in business schools, it is important for business law professors to understand the case method of teaching and how it can be applied to business law. If cases were at least partially employed to teach business law, faculty colleagues in business schools would understand the required instruction in this field more clearly, and also would accept the significance, legitimacy, and utility of a business law course."⁶²

In all of these situations whether group projects and presentations, simulations, mock trials or cases are involved, the students are in a collaborative or cooperative learning situation.⁶³ They are teaching each other as they work together in teams, as they give their presentations, as they debate with each other, as they ask and answer questions and as they criticize. The role the instructor once the assignments have been made is to prod or judiciously encourage; to subtly direct and control the flow.

Whatever the specific technique adopted, it is clear that such student centered learning is the most effective way to develop the skills desired; to develop in the student the technique of identifying and solving problems and otherwise generally managing the legal disputes they will encounter in business.

One of the great advantages of adopting the case study method as recommended is that it allows a shift away from a concentration on the legal rules and concepts themselves to an emphasis on the examination of those legal concepts as part of a larger management process. This contributes to the

⁶⁰ Turning War Stories into Case Studies, Diane B. MacDonald, **The Journal of Legal Studies Education**, Vol. 9, No. 3, Fall 1991, p. 437 at p. 439

⁶¹ *Ibid.* p. 440

⁶² *Ibid.* p. 81

⁶³ Student learning may be individualistic, competitive or cooperative. "students in cooperative classrooms discuss, teach and encourage each other; teachers typically monitor their progress and teach collaborative skills" The role of the teacher determines whether the activity is collaborative learning or cooperative learning. "In cooperative learning the teacher works from within the student group as one of its members"whereas ".....in collaborative learning the teacher sets the task and then stands aside allowing the students to teach each other, intervening only as necessary." Collaborative Learning and the Study of the Legal Environment, G. Spiro, **The Journal of Legal Studies Education**, Vol. 10 no. 1, Winter/spring 1992 p. 56

Appendix 1: Recommendations for Teaching Business Law in Canada

very important purpose of rationalizing and integrating the study of law into the general curriculum of the business school. Just as the students are required to know the political, social and economic factors that may affect a business decision, they would also be required to know and consider the legal factors that may affect that decision. And so the general goal of the business law course to teach legal principles in a broader management context is realized. The choice and design of the case assigned will help determine how much emphasis is placed on the law. But it will be up to the instructor to create an atmosphere where gaining managerial skills is emphasized and the learning of the legal principles is but a part of this broader objective.

As discussed above, a major problem experienced in most business schools is the general isolation of the business law course and law instructors.⁶⁴ Consideration then, must be given to better integrating law into the business school curriculum. The use of case studies as advocated above will go some distance in accomplishing this goal, but there are other factors that can also be considered. In the business law course, we have a tendency to concentrate on failures where the parties have failed to resolve their conflict and the matter has gone to court. Perhaps we would do better to use examples of how to create a successful contract or simulate successful negotiations leading to a satisfactory resolution of a matter in dispute.

Most think of the legal problems as an exercise in confrontation. In fact it has been estimated that “fewer than 10% of all docketed cases are concluded by judicial decision.”⁶⁵ In fact these disputes are typically settled through a process of negotiation between the parties often with the assistance of lawyers. As our society becomes more litigious, managers spend more of their time dealing with conflict and in negotiations. “Studies show that managers spend 20% to 25% of their time managing conflict.”⁶⁶ One of the things we can do in business law courses is to concentrate more on dispute resolution and negotiation. Specifically we could give more emphasis to alternate dispute resolution (ADR) and look at mediation and arbitration in more depth.

Since a great deal of the management function is dealing with conflict, negotiating, entering into new deals or supervising proper performance of existing arrangements both internally and externally, the revamped business law course as set out above could be treated more like another capstone business course, where all of the skills learned in the business curriculum could be brought to bear. For this to work, however, we must relate the specific legal topics we cover clearly to other business school disciplines. For convenience we set out our course based on legal topics such as offer and acceptance or negotiable instruments. These don't relate to other business subjects that the students have been exposed to. We hope that the students will be able to relate what they learn from us to their business activities on their own. When we look at offer and acceptance as a topic in contract law we might do better to look at an order form, a tender for bids, a letter of intent or the interim agreement in a real estate transaction and structure an examination of the rules and concepts associated with the creation of a contract around an examination of those documents. When we teach remedies for breach of contract we might do better to tie it in with economics looking at concepts of value. An examination of a contract of employment might serve well as a vehicle for a discussion of illegal terms, misrepresentation, mistake and the like. When we look at professional liability we can use accounting examples. Our examination of the Trade Practices Act and the Consumer Protection Act should be tied closely to marketing.

⁶⁴ Interdisciplinary approaches to Alternative Dispute Resolution, G. Siedel, **The Journal of Legal Studies Education**, Vol. 10, No. 2, Summer/Fall 1992, p. 163.

⁶⁵ Negotiation: an Idea Whose time Has Come, Rominger, **The Journal of Legal Studies Education**, Vol. 13 No. 1, Winter/Spring 1995 p. 101 at p. 102

⁶⁶ *Ibid.* p. 102

Where possible we should give more consideration to those we are teaching. The business law course could be taught more successfully by tying it to the majors of the students. Where possible students could be assigned to sections on the basis of their majors. Thus marketing students would be given a business law course slanted towards marketing. Accounting students would receive a course designed to fulfill their specific needs. Where this is not possible cases should be assigned that relate to the area of specialization or writing and project assignments should be made where the students are required to choose from topics relating to their major area.

In business law now, at best, we concentrate on teaching legal rules, concepts and principles so that we can predict what will happen if the matter goes to court. We would do better to look at "dispute prevention, dispute resolution and dispute management."⁶⁷ Predicting judge's decisions is only one small aspect of this much broader approach to business law. In doing this, however, we have to be careful to remember that the subject is business law and that we are not teaching the business policy course which is better left to others more skilled in that area. But we must at least show students "...how various legal concepts are needed for the furthering of various business strategies, the resolution of business problems and the making of business decisions in ways calculated to minimize legal and regulatory exposure."⁶⁸

A great area of contribution for the lawyers may be outside of the traditional business law course. The relationship between law and economics has long been appreciated in both disciplines and there are several journals devoted to the topic.⁶⁹ The input of lawyers may be valuable in institutions where economic issues courses are taught. The involvement of a lawyer where these issues overlap into the legal area could be very productive. Capstone courses where many business subjects are brought together in an interdisciplinary way are another area where the involvement of a lawyer may be helpful. In some areas where a full blown business law course could not be justified, the model of the economics issues courses could be followed and a legal issues course created concentrating on legal issues related to the program discipline. This could be done in not only business areas, but other disciplines such as computers, forestry, mining, nursing, electronics and engineering.

Discussion

There are many different opinions as to what a legal environment of business course should look like but most agree that a balance must be struck between an introduction to the legal system, common law subjects and statute/regulatory topics. In most Canadian business law courses, this requires more of an emphasis on competition law, intellectual property, secured transactions, bankruptcy and regulated industries. Also in the field of torts, more emphasis should be put on product liability and professional malpractice. It is strongly recommended that this statute/regulatory section of the course be structured around an examination of the relationships between the firm and the various parties the firm deals with as outlined above.

A more significant recommendation would be the move away from a rule-oriented information type of course to an emphasis more on principles and concepts. Where lectures are used, it is recommended that all effort should be expended to liven up these lectures as much as

⁶⁷ Interdisciplinary Approaches to Alternate Dispute Resolution, G. Siedel, **The Journal of Legal Studies Education**, Vol. 10, No. 2, Summer/Fall 1992, p.141 at p. 144

⁶⁸ Putting Business into Business Law: The Integration of Law and Business Strategy, R. Petty and R. Mandel, **The Journal of Legal Studies Education**, Vol. 10, No. 2, Summer/Fall, 1992, p. 205, at p. 206

⁶⁹ Economic Analysis of Legal disputes and their Resolution, Cooter & Rubinfeld, Vol. 27, **Journal of Economic Literature**, 1987 p. 1067

possible. In all classes, however, the recommendation is for a movement toward more student participation in classes where the students themselves are responsible for their own learning. This may be done through mock trials, simulations, group writing assignments or other projects involving presentations, but it is strongly recommended that the business case method be adopted in these seminars. In addition to greater student participation, this approach could be used to place an emphasis on the business management aspect of dealing with legal problems. One of the key recommendations of this paper is to integrate business law courses more with the general business curriculum. The approach to business case studies as recommended above serves this purpose, providing students with the skills to manage the legal problems faced by their businesses. Finally it is recommended that the lawyers become more involved with the non-legal aspects of business education. The legal faculty should find themselves joining with their colleagues teaching human relations, economics, finance etc. as those instructors deal with topics having legal implications. They should also make themselves available to play a more significant role in dealing with the legal issues that arise in the capstone business policy course.

There follows a series of appendices where materials are presented that have been collected that may be helpful in attaining these goals. Note as well that many of the footnoted articles referred to in this article are not repeated below and they too can be of great assistance to business law instructors

From The Journal of Legal Studies Education

The following are presented as resource materials for use in a business law course. They are divided into categories with an explanation of their use. While they are designed for American schools, most can be easily modified for use in a Canadian business law course.

Cases

1. The Accountant Liability Seminar: A Joint Venture, A. Massa and G. Seaquist, **The Journal of Legal Studies Education**, Vol. 7, 1/2, Fall 1988/Spring 1989, p. 85.

The authors distributed a survey to determine the students understanding of several hypothetical situations dealings with the liability of accountants. The results showed how much the students didn't know and this was used to stimulate the students need for, and commitment to the course.

2. The Application of Case Method Teaching to Graduate Business Law courses, D. Dobray and D. Steinman. **The Journal of Legal Studies Education**, Vol. 11, 1/2, Winter/Spring 1993, p. 81.

The authors advocate the adoption of the business case study method to the teaching of business law courses. Several sample cases are provided in the Appendix.

3. In Defense of the Legal Case Method and the Use of Integrative Multi-Issue Cases in Graduate Business Law Courses. J. Leibman, **The Journal of Legal Studies Education**, Vol. 12, 2, Summer/Fall 1994, p. 171

The author argues against the adoption of the business case method in business courses and instead argues in favor of the use of the traditional legal case approach. The Appendix provides samples of how such cases can be effectively used.

4. Turning War Stories into Case Studies, D. MacDonald, **The Journal of Legal Studies Education**, Vol. 9, 3, Fall 1991, p. 80

The author advocates the use of the business case study method and advocates that law instructors create such cases based on their own experiences. A sample case is presented in the Appendix.

Mock Trials

5. Mock Trials: A Valuable Teaching Tool. H. Schaefer, **The Journal of Legal Studies Education**, Vol. 8, 1/2, Fall 1989/Spring 1990, p. 199

The author advocates the use of simulations in the form of mock trials as an effective teaching tool. Materials are included to do such a mock trial

6. Mock Jury Trial: A Model for Business Law 1 Courses. C. Miller. **The Journal of Legal Studies Education**, Vol. 6, 1, Fall 1987, p. 91

This is an example of a successful mock trial simulation used by the author in her classes. Needed materials are included.

Simulations

7. Morrow v. Johnson: Fact or Fiction, S. Vance, **The Journal of Legal Studies Education**, Vol. 2, Spring 1984, p. 57

A trial simulation was established by the author based on an actual case. The students didn't know the outcome. The materials given to the students are included.

8. Bridging the Gap: Using Contract Simulations as an experiential Teaching Method. L. Jones, **The Journal of Legal Studies Education**, Vol. 6, 1, Fall 1987, p. 71

The author advocates learning by experience and has created a simulation that involves the students in contract making situations. Information and materials needed are reproduced in the article.

9. The Use of Simulated Hearings in Business Law Courses., A. Lawton and L. Oswald, **The Journal of Legal Studies Education**, Vol. 11, 1, Winter/Spring 1993, p. 103

The authors advocate a modified hearing simulation rather than the simulations of a real trial for the students. The materials and instructions for holding such a simulation are provided.

Groups

10. Comparative Learning groups in Undergraduate and Graduate Contexts, R. Adler and E. Neal, **The Journal of Legal Studies Education**, Vol. 9, 3, fall 1991, p. 427

The authors advocate promoting student involvement through cooperative learning group exercises as an alternative method of classroom interaction in business law courses. Several problems used as the basis for such exercises are presented as examples in the Appendix.

Appendix 1: Recommendations for Teaching Business Law in Canada

11. Utilizing the Team Report in a Business Law Curriculum. F. Powell, **The Journal of Legal Studies Education**, Vol. 11, 1, Winter/Spring 1993, p. 127

The author advocates the use of team cooperative learning by creating student teams and assigning them problems requiring a report to be presented to the class by the team. Several problems are reproduced in the Appendix that were used in the class.

12. Integrating Contract and Property fundamentals with Negotiations Skills: a Teaching Methodology. M. Barken. **The Journal of Legal Studies Education**, Vol. 9, 1, Fall 1991, p. 73

The author provided students with an assignment to be done out of class requiring them to work together and negotiate a purchase agreement for residential real estate. In the appendix materials to be given to the students are reproduced. This includes information about the assignment to be given to both sides, then separate information is given to the seller and the buyer.

13. Collaborative Learning and the Study of the Legal Environment. G. Spiro, **The Journal of Legal Studies Education**, Vol. 10, 1, Winter/Spring 1992, p. 54.

The author discusses the advantages of collaborative and cooperative learning environments in our business law courses advocating that structured team learning situations be created in the classroom. Materials are provided in the appendices to support this process.

Assignments

14. The Use of Student Projects in Business Law Courses, F. Franke **The Journal of Legal Studies Education**, Vol. 10, 1, Winter/Spring 1992, p. 71.

As a method to generate student involvement based on their experience, projects involving Materials used in the process are reproduced, including the propositions used in the debates in the body of the article and project suggestions used in the undergraduate course in the appendix.

15. The Jungle: Insights into the Origins and Objectives of Regulatory Process. J. Dyer, **The Journal of Legal Studies Education**, Vol. 9, 3, Fall 1991, p. 461.

The author assigns the Upton Sinclair Novel, *The Jungle* as a method of generating a more positive attitude towards government regulation on the part of students. The specific assignment given is set out in the appendix and requires a book report from the students.

16. Research Assignments and Case Studies as Teaching/Learning Devices in a Governmental Regulation course. B. Knowles, **The Journal of Legal Studies Education**, Vol. 4, Spring 1986, p. 78

The decision making and critical reasoning skills of the students are enhanced by the authors assignment of creating their own case studies. The specific assignment is reproduced in the appendix.

17. Practical Understanding of Legal Concepts, C. Miller, **The Journal of Legal Studies Education**, Vol. 1, Spring 1983, p. 50

The author has developed specific outside research assignments that are designed to promote a “practical understanding of our legal process and how legal concepts interrelate.” This was done through the assignment of individual fact situations for student response. The specific assignments are set out in the body of the article.

18. Interdisciplinary approaches to Alternate Dispute Resolution, G. Siedel, **The Journal of Legal Studies Education**, Vol. 10, 2, Summer/Fall 1992, p. 141.

The author advocates the promotion of more interdisciplinary work between the lawyers and other business faculty. Specific methods for doing this in the field of Alternate Dispute Resolution are provided in the form of student assignments in the appendices.

19. Two legal environment Writing Exercises Following the Perry Scheme of Cognitive Development, P. Ward, **The Journal of Legal Studies Education**, Vol. 10, 1, Winter/Spring 1992, p. 87.

The author advocates the need to develop students' cognitive abilities. This should be done through writing assignments that conform to Perry's Scheme and concentrate on the development of the thought processes. The specific assignments given are reproduced in the appendices

Other

20. An Alternative to the Traditional Objective and Essay Examination Formats in Business Law. G. Cameron III and C. Schipani, **The Journal of Legal Studies Education**, Vol. 9, 1, Fall 1990, p. 106.

The author recommends the use of open ended short answer essay exam questions requiring very specific responses that are relatively easy to mark. Examples of such questions are reproduced in the body of the article and the appendix.

21. Putting Business into the Business Law: the integration of Law and Business Strategy, K. Petty and R. Mandel. **The Journal of Legal Studies Education**, Vol. 10, 2, Winter/Spring 1992, p. 205.

The author advocates the better integration of the business law course into the business curriculum through organizing the course around business topics and transactions and the use of business readings and cases. A sample syllabus as well as a number of business cases involving legal issues from the Harvard case series are listed the appendices.

22. Post-Examination Review: Competition that creates concentration! C. Stowe, **The Journal of Legal Studies Education**, Vol. 2, Spring 1984, p. 47.

Before returning exams, the author advocates a better post examination review by having students, redo the exam in groups, offering rewards for the best group results.

23. The Contractor's Contract: A Tool for Developing Critical Thinking Skills. M. Nixon and E. Brayton. **The Journal of Legal Studies Education**, Vol. 12, 2, Summer/Fall 1994, p. 219.

The author advocates the development of a students higher level thinking skills through the use of a problem situation involving contract law where the students are asked to apply what they have learned to a real life situation of the building of a house. The appendices reproduce specific material used in the writing assignment.

24. The Professor as Performer: Teaching Legal Studies Mega Sections. E. Emerson **The Journal of Legal Studies Education**, Vol. 12, 2, Summer/Fall 1994, p. 261,

The author makes several suggestions on how to liven up and enhance the quality of teaching where large classes are involved. Some specific tools are set out in the appendices.

Other Resource Materials

Note that Appendix 4 of Solving the Mystery of Legal Research: A Legal Research Exercise, by C. Haselden found in **The Journal of Legal Studies Education**, Vol. 9, 3, Fall 1991, p. 452 at p. 460 lists the following resource materials related to games, their use and their creation.

The Educational Effectiveness of Simulation Games: A Synthesis of Findings. M. E. Bredemeir and C. S. Greenblat, 12 *Simulation and Games* pp 307-332 (1981)

Building Instructional games. D. E. Hitchcock, 25 *Training* pp. 33-39 (March 1988)

The Holmesian Paradigm of Problem Solving. R. L. Kellog, 1. *Lifelong Learning* PP. 4-7 (March 1978)

Playful Gaming. A. Makedon, 15 *Simulation and Games*, PP. 25-64 (1984)

Writing for Fun: Creating a Mystery Game. L. Melin. *Writer's Digest* PP. 37-39

Human Communication Handbook: Simulations and Games. Vol. 2 (1978) B. D. Ruben

Human Communication Handbook: Simulations and Games. Vol. 1 (1975) B. D. Ruben and R. W. Budd.

The following articles are from *the Journal of Legal Education* although this publication is intended for instruction at law schools many of the ideas and suggestions are directly applicable to the teaching of law to business students.

Developing Legal Problem-Solving Skills, S. Nathanson, **Journal of Legal Education**, vol. 43, 1993, p.215,

In this article the author gives a methodology to teach law students problem solving skills. Since this is also vital in business law, many of the recommendations given are directly applicable to business law classes

All I Ever Needed to Know About Teaching Law School I Learned in Teaching Kindergarten: Introducing Games Techniques into the Law Classroom, J. Rosato, **Journal of Legal Education** vol. 45, 1995, p.568.

The author's recommendations here on the use of games to teach law are just as applicable to a business law course as law school courses.

Joining Hands and Smarts: Teaching Manual Legal Research Through Collaborative Learning Groups, T. M. McDonnell, **Journal of Legal Education** vol. 40, 1990, p.363

The author discusses his positive experience using collaborative learning groups.

The Role of Legal Problem Solving in Legal Education. S. Nathanson, **Journal of Legal Education** vol. 39, 1989, p.167.

The author adapts the problem solving approach so successful in other disciplines to the study of law.

Fun and Games in the First Year Contracts by Role-play, K. Hegland, **Journal of Legal Education** vol. 31, 1981, p.534.

In this article the author advocates that the students role-play a conflict in a contractual relationship (dispute) from the point of view of the participants (among others).

Skills Training in the Torts Course, J.W. Little, **Journal of Legal Education** vol. 31, 1981, p. 614.

The author advocates the use of role playing and simulation techniques to teach a torts course. This can be easily adapted for use in an undergraduate business law course. Simulation materials are provided in appendices

Research on American Law Teaching: Is There a Case Against the Case System, P.F. Teich, **Journal of Legal Education** vol. 36, 1986, p.167.

Although directed to the use of the case study method as used in law schools, this examination is also applicable to the use of legal case studies as used in business law courses. The author examines the value of the case study method, looks at alternatives, and suggests more research has to be done.

An Analysis of Legal Education and Business Education Within the Context of a J.D./MBA Program, J.W. Kindt, **Journal of Legal Education** vol. 31, 1981, p 512.

This is a good discussion of the role of law in business education generally and worth reading.

Symposium on Simulations. **Journal of Legal Education** vol. 45, (1995) In this volume of the Journal of Legal Education a number of articles are presented on the value and use of simulations in law classes. All of the following articles have value and contain ideas that can be adapted to business law, but L. Dallas article has the most direct application.

Simulations: An Introduction, J. Feinman, p.469

Use of Simulations in a First-Year Civil Procedure Class, R. Vaughn, p.480

Limited-Time Simulations in Business Law Classes, L. Dallas, p.487

Appendix 1: Recommendations for Teaching Business Law in Canada

Learning and Learning To Learn by Doing: Simulating Corporate Practice in Law School,
K. Okamoto, p.498

Teaching Students How to Practice Law: a Simulation Course in Pretrial Practice, L. Snyder,
p.513

In **Journal of Legal Education** 40 (1990) pp. 1-250, is reported a symposium on the pedagogy of narrative. There are 14 articles on the use of story telling in legal education and they are as useful to those teaching business law as to those teaching in law schools.

Note the book, *The Quiet (R)evolution: Improving Student Learning in Law*, Sydney, Australia: Law Book Company 1994, by M. Lebrun and R. Johnstone. Although written for Australia this text provides many suggestions on how to improve the teaching of law that will be helpful to those teaching business law (reviewed by A. Zariski, in **Journal of Legal Education** vol. 45, 1995, p. 309).