

# LESSONS FROM CONTRACTUAL CHAOS: A LEGAL KNOWLEDGE, BUSINESS JUDGMENT, AND SKILL DEVELOPMENT EXERCISE FOR THE LEGAL ENVIRONMENT CLASS

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## I. INTRODUCTION

Accreditation by the Association to Advance Collegiate Schools of Business (“AACSB”) is one of the most valuable designations held by college and university business schools.<sup>12</sup> It has played a major role in shaping business school curricula, including the place of legal education within it and the focus of its content.<sup>3</sup> To achieve and maintain accreditation, a business school must develop, monitor, evaluate, and, as necessary, revise both the substance and delivery of its curricula as well as assess its impact on learning. In Standard 8, schools are challenged to develop “systematic processes that support assurance of learning and produce a portfolio of evidence demonstrating achievement of learning goals.”<sup>4</sup> It exhorts schools and their faculty to continually look to improve curricula and course content and delivery.<sup>5</sup> In Standard 9, the AACSB identifies ethical understanding and reasoning, interpersonal

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<sup>1</sup> AACSB is a nonprofit organization which has as its mission to provide standards for, and actively evaluate higher education business and accounting programs for accreditation and membership. Its standards “challenge post-secondary educators to pursue excellence and continuous improvement throughout their business programs leading to bachelor, master and doctoral degrees.” The AACSB, which began offering accreditation almost a century ago (1919), represents that such accreditation is “known, worldwide, as the longest standing, most recognized form of specialized/professional accreditation an institution and its business programs can earn.” Assoc. to Advance Collegiate Schools of Business, Accreditation Standards, available at <http://www.aacsb.edu/-/media/aacsb/docs/accreditation/standards/business-accreditation-2017-update.ashx?la=en> (last updated Sept. 22, 2017).

<sup>2</sup> David Glew, Tracey Meyer, Becky Sawyer, Pete Schulmann & Barry Wray, *Evaluating and Improving the Assessment of Undergraduate Student Writing in a School of Business in a Large Regional University*, 11 J. EFFECTIVE TEACHING 2, 55 (2011).

<sup>3</sup> Carol J. Miller and Susan J. Crain, *Legal Environment v. Business Law Courses: A Distinction Without a Difference?* 28 J. LEGAL STUD. EDUC. 2, 149, 154-162 (2011) [hereinafter Miller & Crain, *Legal Environment*].

<sup>4</sup> AACSB, *supra* note 1, at 32, Standard 8.

<sup>5</sup> *Id.* at 32-34, Standard 8.

relationship skills (including teamwork), analytical and reflective thinking, as well as communication as critical areas of learning for undergraduate business students.<sup>6</sup>

Charged with imparting knowledge *and* developing skills in our students to meet these objectives, legal studies instructors may find they have a particularly onerous job. Most will be responsible for teaching an introductory survey-style course designed to introduce the legal and ethical environment of business (“Legal Environment”), a class that is required in over two-thirds of AACSB-accredited universities.<sup>7</sup> Ordinarily, an instructor for this class is expected to survey the field, (i.e., introduce the sources of law and structure of the U.S. and international legal systems as well as the substance of that law) --everything from soup to nuts-- including, but not limited to the U.S. Constitution, torts, contracts, intellectual, personal and real property, crime, commercial paper, corporate formation and governance. Because assessment has become a major driver, instructors will also need to demonstrate that their approaches to delivering these topics are effective.<sup>8</sup> Given the sheer volume and breadth of content they may be expected to deliver, particularly if the course is limited to a single semester three credit class, it is difficult to present any substantive or procedural aspect of the law in depth without jettisoning other important topics. For instructors, the challenge is to find a way to use class time efficiently and effectively.

Further, with budgets tight, the value of law and ethics classes is being debated in business schools and defended by those who teach it. Instructors likely will be expected to accomplish more with less as institutions shift resources away from these classes, offer fewer classes, increase class sizes and find difficulty maintaining programs.<sup>9</sup> For those who teach the Legal Environment class, the challenge grows. How do we communicate substantive knowledge of the law and help students develop relevant practical skills designed to serve them well in their professional lives? In response to this question, a growing number of scholars who teach law in business

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<sup>6</sup> *Id.* at 34-35, Standard 9.

<sup>7</sup> Miller & Crain, *Legal Environment*, *supra* note 3, at 166, 174. This study of AACSB-accredited business schools reports that 87 percent of the schools studied designated the Legal Environment class as the *only* one required. Thus, for most it may be the only class they will take on law-related issues they are likely to face in the business world.

<sup>8</sup> AACSB, *supra* note 1, at 33, Standard 8.

<sup>9</sup> Thomas Letter, ALSB Newsletter (Fall 2013); Carol J. Miller and Susan J. Crain, *Law-Based Degree Programs in Business & Their Departments: What’s in a Name?* 24 J. LEGAL STUD. EDUC. 2, 235, 278 (2007) [hereinafter Miller & Crain, *Law-Based Degree Programs*].

schools are calling for new approaches<sup>10</sup> and revised curricula that teach theory, application and skill-building in tandem.<sup>11</sup>

This article begins with a review of the literature on law-related curricula aligned with Standard 9, with an emphasis on classroom exercises related to the study of contracts. To extend the literature, this article then introduces a one-day in-class contracts exercise during which students become acquainted with and practice these skills. First, it identifies the associated learning objectives of the exercise relevant to business judgment and skill development, as well as the substance of contract law. Second, it provides directions on how to run the exercise. Third, to demonstrate assurance of learning, the article shares feedback on the exercise both from a peer-review of the exercise in action as well from student participants. It also provides data analysis from a survey administered before and after the exercise designed to gauge student familiarity with contractual principles fairly attributable to participation in the exercise. Finally, the article concludes with a discussion of the exercise's fit with emerging business school curricula and identifies questions for further research and development.

## II. LITERATURE REVIEW

One essential subject introduced in the Legal Environment class as well as the more traditional business law class is contracts.<sup>12</sup> Because, in practice, contract negotiation is highly interactive, it lends itself to an active learning approach. Schlesinger and Spiro challenge the business law community to think not only about what we teach, but how, encouraging a movement away from “receive retain, reiterate” and the more dominant (and still prevalent) passive learning style which has lecturing at its core.<sup>13</sup> They suggest that a more active learning environment with an aim to develop mature thinking better serves the student and society, especially given that the rule of law is constantly changing and evolving. This model, which has grown in favor over the thirty years since their article first appeared, encourages a move away from teaching the rules of law and more toward thinking about business law in context as it

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<sup>10</sup> W. E. Joyce, *Research and Teaching Department Business Law In Higher Education A Plea For Reform*, 6 AMER. BUS. L.J. 2, 573, 574 (1968); Edward J. Conry & Donald R. Nelson, *Business Law and Moral Growth*, 27 AMER. BUS. L.J. 1, 1, 39 (1989).

<sup>11</sup> John R. Allison, *The Role of Law in the Business School Curriculum*, 9 J. LEGAL STUD. EDUC. 2, 239, 246-7 (1991).

<sup>12</sup> O. Lee Reed, *King Contract Wears No Clothes: The Volume Of Judicial Decisions, Scholarly Legal Literature, And Business Trade Publications As Suggesting The Importance Of Various Business Law Subjects*, 9 J. LEGAL STUD. EDUC. 31-36 (1990); Regina M. Robson, *An Entrepreneurial Strand in the Business Law Course: The Ice Cream Project*, 26 J. LEGAL STUD. EDUC. 2, 433 (2009).

<sup>13</sup> Robson, *supra* note 12, at 416.

is shaped by political, economic, sociological, and psychological forces.<sup>14</sup> Building on Bloom's Taxonomy,<sup>15</sup> this approach encourages curricula development that has mature thinking as the objective (i.e., one that moves us beyond memorization to understand, analyze, evaluate, apply and question).<sup>16</sup>

DiMatteo and Anenson illustrate how business law education has embraced the path Schlesinger and Spiro encouraged educators to follow. After reviewing the literature on "active learning," and theories on learning articulated by Bloom and Kolb, they conclude that, "through doing, students actually learn more."<sup>17</sup> The idea is that when information is acquired in tandem with skill development, it is more likely to be comprehended and retained by the student. By employing an active learning approach for teaching contracts, DiMatteo and Anenson can guide students to understand not only the preparation and practice that make for good contract construction, but also for good business decision making.<sup>18</sup>

Nation and Melone concur, suggesting that a "goal of business law study is to develop students who are effective and efficient managers of legal issues affecting business."<sup>19</sup> They emphasize that, for business students, knowing the law found in statutes and cases is not nearly as important as: 1) being able to understand the fundamental principles of business law (such as good faith, reasonableness, and intent); 2) spot legal issues; 3) understand the legal environment; and 4) to know when to seek legal advice as part of the effective management of any business and its associated risks.<sup>20</sup> Others surely would add an appreciation of ethical issues to the list.<sup>21</sup> These

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<sup>14</sup> Larry A. DiMatteo & T. Leigh Anenson, *Teaching Law and Theory through Context: Contract Clauses in Legal Studies Education*, 24 J. LEGAL STUD. EDUC. 1, 19-20 (2007).

<sup>15</sup> M.D. ENGELHART, E.J. FURST, W.H. HILL, D.R. KRATHWOHL, *TAXONOMY OF EDUCATIONAL OBJECTIVES, HANDBOOK I: THE COGNITIVE DOMAIN* (Benjamin S. Bloom, ed., David McKay Co. Inc. 1956).

<sup>16</sup> Schlesinger & Spiro, *supra* note 15, at 414.

<sup>17</sup> DiMatteo & Anenson, *supra* note 14, at 24.

<sup>18</sup> That some question the effectiveness of these newer methods in comparison to traditional lecture-oriented methods and the evidence does not appear to strongly support one over the other. See LeVon E. Wilson & Stephanie R. Sipe, *A Comparison of Active Learning and Traditional Pedagogical Styles in a Business Law Classroom*, 31 J. LEGAL STUD. EDUC. 1, 89, 104-5 (2014).

<sup>19</sup> George A. Nation & Matthew Melone, *For the Introductory Business Law Course Consider an In-Depth Study of Contract Law in an Integrated Business Context*, 17 J. LEGAL STUD. EDUC. 1-2, 283, 285 (1999).

<sup>20</sup> *Id.* at 286-287.

<sup>21</sup> Thomas W. Dunfee, *On the Synergistic, Interdependent Relationship of Business Ethics and Law*, 34 AMER. BUS. L.J. 2, 317 (1996). William G. Elliott & Arthur Wolfe, *The Need For Legal Education By Persons In Business*, 19 AMER. BUS. L.J. 2, 153 (1981). Conry & Nelson, *supra* note 10.

aspirations are particularly germane for the Legal Environment class because it is likely the only law class students will ever take.<sup>22</sup> Rather than attempt to show how students might be led to develop these critical skills in the Legal Environment class however, Nation and Melone propose it be replaced with an in-depth contextual class on one area of the law and outline how this could be done using the law of contracts.<sup>23</sup> Because classes devoted to a single legal topic are a luxury for many programs, this proposed approach is unlikely to gain traction.<sup>24</sup>

Chomsky and Landsman maintain that introducing drafting and negotiation into the contracts classroom enhances student learning in addition to the traditional and still popular case method approach.<sup>25</sup> The exercise they introduce, however, is designed for a law school class on contracts. As such, it requires a significant commitment of time, general knowledge of the law and presumes a more sophisticated student than may be found in the typical undergraduate Legal Environment class. They supply students with a “public” fact scenario and “private” facts available only to each side of the negotiation. Students are instructed to negotiate and draft a non-compete clause for the contract. In addition, students are provided the form of a contract illustrating how agreements on other issues were memorialized as well as relevant case law which should be considered to draft appropriate language.

If one is willing to invest significant course time in them, exercises such as Robson’s Ice Cream Project are well-suited for use in the Legal Environment class designed as a capstone project.<sup>26</sup> However, the Ice Cream Project and others like it requires students to undertake a significant amount of work outside of the classroom.<sup>27</sup> While the project work takes place over five weeks, information is “seeded” throughout the entirety of class. Students working in groups or as an individual are asked to consider the priorities of a small business and plan for its operation. Next, they draft a complete contract for the procurement of supplies for that business and are encouraged to consider the influence of the UCC on the contract. Through the exercise, Robson

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<sup>22</sup> See Reed, *supra* note 12, at 31; Miller and Crain, *Legal Environment*, *supra* note 3, at 166.

<sup>23</sup> Nation & Melone, *supra* note 19, at 303.

<sup>24</sup> See Miller & Crain, *Law-Based Degree Programs*, *supra* note 9.

<sup>25</sup> Carol Chomsky & Maury Landsman, *Introducing Negotiation and Drafting Into The Contracts Classroom*, 44 ST. LOUIS U. L.J., 1545-1560 (2010).

<sup>26</sup> Robson, *supra* note 12.

<sup>27</sup> See Susan J. Marsnik and Dale B. Thompson, *Using Contract Negotiation Exercises to Develop Higher Order Thinking and Strategic Business Skills*, 30 J. LEGAL STUD. EDUC. 2, 201, 204, n. 10 (2013), for a comprehensive list of contract-related exercises for use in the Legal Environment class. Upon review of the exercises enumerated there, all are similar to Robson’s in terms of the significant commitment of student time outside of class and/or involve multiple class periods with many positioned as the final or key class assignment.

aspires for students to “act like an entrepreneur” by learning to “think like a lawyer.”<sup>28</sup> She highlights the importance of *active* learning and how learning is enhanced when theory is linked to activity. This, she argues, is particularly true in the area of contracts which require not only knowledge of legal concepts, but the process of negotiation. When surveyed, business executives note that the study of contracts is one of the most important areas studied in business school sponsored law classes.<sup>29</sup> Given that virtually everyone has been or will become party to numerous contracts throughout his or her work and personal life, this should come as no surprise.

Few would argue that negotiation is a critical component of real world contract preparation. Thus, McClendon, Burke and Wiley argue that similarly negotiation should be included as a critical component in teaching contracts. They introduce an exercise in which students negotiate a contract and memorialize its terms in writing. Their exercise, based on a fact intensive case study, also asks for a significant time commitment both in and out of class for preparation and deployment.<sup>30</sup> It reviews techniques which can be taught to help students appreciate the components for a successful contract negotiation.<sup>31</sup> First, through a simulated negotiation, students become aware of the roles of relationship and emotion in the negotiating process, recognizing patterns and the importance of following the rules. Second, they introduce the idea that listening with “four ears” is critical, including listening to: 1) what is being said; 2) what is *not* being said; 3) what the other person really wants to say, but doesn’t; and 4) what you are saying to yourself.<sup>32</sup> Third, McClendon et al. maintain that one should approach contract negotiations with a strategy in hand and with tactics anticipated.<sup>33</sup> Fourth, the authors advocate for educators to use and be alert to signals, be ready to persuade, and know how to affirm values and progress toward stated goals.<sup>34</sup>

As the above examples demonstrate, the literature is rich with sophisticated exercises suitable for law school or business school classes able and willing to devote substantial time to the study of contracts as a stand-alone topic. What if a class is able to devote only a precious week (if lucky, maybe two) to the study of contracts? A review of the literature reveals only a dozen or so contracts exercise suitable for the Legal Environment class.<sup>35</sup> With the exception of an exercise by Marsnik and

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<sup>28</sup> *Id.* at 439.

<sup>29</sup> *Id.* at 436.

<sup>30</sup> Bill McClendon, Debra D. Burke, & Lorrie Willey, *The Art of Negotiation: What the Twenty-First Century Business Student Should Know*, 27 J. LEGAL STUD. EDUC. 2, 277, 315 (2010).

<sup>31</sup> *Id.* At 279.

<sup>32</sup> *Id.* at 287-293.

<sup>33</sup> *Id.* at 293-296.

<sup>34</sup> *Id.* at 302-308.

<sup>35</sup> Marsnik & Thompson, *supra* note 27.

Thompson in which students are cast as the buyers and sellers of digital music players, all involve significant outside preparation for students as well as class time to introduce, execute and debrief the exercise.<sup>36</sup> Teaching contracts as part of a subject-crowded class is challenging, especially when class time is precious and students are reported to be spending fewer and fewer hours in preparation for sessions. In fact, the New York Times reports that data from the National Survey of Student Engagement reveals that one in five college students report they “frequently came to class without completing readings or assignments.”<sup>37</sup>

Recognizing that class time is a precious commodity in the Legal Environment class course, it is disappointing not to find a suitable exercise for engaging students in the law and business of making contracts; preferably one that can be conducted in-class using one or two sessions only. Thus, this paper details a fast moving, highly engaging, content rich and interactive exercise designed to introduce and allow students to practice Standard 9 skills. The next section (III.) introduces the learning objectives of the exercise. The instructions follow in section (IV.)

### III. EXERCISE LEARNING OBJECTIVES

This active learning exercise acquaints students with general legal principles for drafting enforceable contracts. It generally acquaints students with contractual vocabulary, process and principles. It also introduces students to business judgment issues and negotiation skills related to contracting for business needs. The overall goal is to teach issue awareness, identification and process; not the precise rule of law.

#### A. LEGAL CONTENT LEARNING OBJECTIVES

The exercise introduces students to the following seven legal elements associated with contract formation.

**Intent:** The exercise asks students to think about what he or she would like to see in the contract under negotiation. All students are given the same general parameters for an agreement. The final result - generally a mix of agreements - demonstrates the critical nature of intent upon an agreement; that what one intends to include in the agreement is critical.

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<sup>36</sup> *Id.* at 208, 212-220.

<sup>37</sup> Jacques Steinberg, *What High School Seniors Might Learn From a Survey of 360,000 College Students*, N. Y. TIMES, November 9, 2009, available at [http://thechoice.blogs.nytimes.com/2009/11/09/nsse/?\\_r=1](http://thechoice.blogs.nytimes.com/2009/11/09/nsse/?_r=1) (last visited January 24, 2018).

**Capacity:** Students practice issue identification and learn that the law may not consider all parties to a contract to be on equal footing. For example, minors to a contract or those suffering from an impairment such as intoxication that interferes with the ability to give full consent may be able to enforce its terms, while those that contract with them may not.

**Agency:** Students come to recognize and learn how agents bind principals to contracts and obligate them to perform. The exercise helps them understand how to discern when individuals are acting on their own behalf and when they are acting on another's behalf. This includes related ethical issues, such as conflicts of interest and taking advantage of those whose capacity to represent their interest in the contract is impaired.

**Language Specificity:** When students present their contracts, we identify missing and ambiguous terms through questioning which probes whether the agreement embodies their intent. Students learn how important it can be to choose their words carefully.

**Context:** By examining the different scenarios as a context for drafting, students come to understand how the applicable law will influence the enforceability of contracts. For example, students learn that contracts which are missing terms (such as price, assortment, delivery or time) may have such terms implied by the Uniform Commercial Code (“UCC”), if applicable. In that instance, even a contract with a missing term may be enforceable. By contrast, they learn that contracts with the very same missing term may not be enforceable because the UCC does not apply.

**Drafting:** The exercise highlights the value of a written agreement. Students choosing not to write the terms of the agreement when questioned about the contract, often reveal that there is no “meeting of the minds” on key terms or that even over short periods of time, memory may fail.

**Formalities:** Students who do not sign the agreement may learn that it is (or is not) enforceable depending on the context in which it was drafted. Likewise, students who do not reduce their agreements to writing learn whether their oral contract is enforceable depending upon the application of the statute of frauds.

## **B. PROCESS, BUSINESS JUDGMENT AND SKILL DEVELOPMENT OBJECTIVES**

Because most students in an introductory business law class will be principals or agents who negotiate contracts as part of their professional careers, it is important that they learn about the preparation, process, negotiation and business judgment fundamentals associated with contracting.

**Preparation:** Students learn how preparation can be essential to the resulting contract. Generally, prepared students who come to class having read the assigned material on

contract formation, capacity, legality and the statute of frauds, fare better than those that do not. Students who are active listeners and modify their contracts based on what they learn from the negotiating teams that present before them, also learn by example.

**Negotiation:** By observing the many different contracts that result from the same scenario, students learn that knowledge, effort and skill all affect the value of the contract obtained by each party. They learn that persistence matters in securing a desired outcome.

**Ethics:** Students learn to identify potentials for conflict and the importance of disclosure and/or candor in communication.

**Expertise:** By learning how important knowledge of the law can be to the negotiation of a quality enforceable contract, students begin to understand how the engagement of counsel can be a necessary and valuable investment of resources, particularly when the stakes are high.

#### IV. EXERCISE DIRECTIONS

This section sets forth the directions for running this exercise which introduces skills and provides students with an opportunity to practice them and observe as others do likewise. While an instructor could choose to modify the exercise to serve as a means for grading or assessing individual student skill development or comprehension, as set forth here, that is not an objective.

**Student Preparation:** Prior to the exercise, the instructor may assign reading about contracts from a business law or legal environment text, including those chapters dealing with contracts generally and those which cover related issues in more depth, including those on consideration, promissory estoppel, capacity, legality, assent and undue influence. However, this is not a necessary prerequisite because even students who come unprepared learn from the exercise including, perhaps most importantly, the value of preparation as discussed below. In classes where this exercise was used, some students did the assigned readings; others did not. The exercise works in either case, but appears to work best when there are different levels of student preparation. Students come to recognize that their peers who are better prepared for class because they have read the assigned materials, are in a position to negotiate and prepare contracts that are generally more complete and effective for their stated purpose.

**Contracting Teams:** Ask students to choose a partner for the exercise, preferably a student he or she has not worked with previously. The focus should be on the exercise and not an existing student relationship. Inform students that they will be preparing contracts involving a fictitious company and vendors from which it will be seeking or

for which it will be supplying goods or services. In the example below, the contracts are for World Wide Widgets (“WWW”), a company that the class works with throughout the semester. This exercise has been used with as many as seventeen pairs of students in a seventy-minute period and a dozen pairs in a fifty-minute period.

**Assign Scenarios:** Before revealing the scenario details, assign each student pair a scenario, e.g. “Got Weed?”<sup>38</sup> and specify the jurisdiction in which the contract will be prepared and performed. The example uses two different jurisdictions (Pennsylvania and New Jersey) chosen to illustrate the concept that the enforceability of contracts may differ depending on the law of the state in which it is drafted and/or performed, e.g., “Got Weed” or not, e.g., “Got Donuts.” This builds on other work we do in class throughout the semester, as well as on general knowledge about our geographic location.<sup>39</sup> In our geographic location, most students are aware that the sale of marijuana for medicinal purposes is legal in New Jersey, but not in Pennsylvania.<sup>40</sup> Likewise, most know that the sale of beer and the sale of wine are regulated differently in those states as well. However, the exercise can work without this prior knowledge, provided the instructor can share the relevant law during the debriefing. The contracting teams are assigned the scenarios and jurisdictions randomly. The scenarios are assigned before they are revealed. Students react by becoming curious and even excited as to what “Got Donuts?” “Got Weed?” “Got Booze?” and “Got Widgets?” could possibly be about.

**In Class Instructions to Students:** By design, we suggest the instructions be vague. After assigning the scenarios, simply direct students to prepare contracts consistent with the scenario they are assigned. Ask students to decide who will be the offeror and who will be the offeree. During the debriefing, the first few pairs will be asked to explain those terms. Students often mistakenly equate them with the buyer or seller and do not understand that the terms could apply to either depending upon who initiates the negotiation by making an offer and who has the power to accept and bind the

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<sup>38</sup> See the four scenarios detailed in Table 1 *infra* page 7.

<sup>39</sup> When this exercise was presented at the 2015 American Legal Society in Business (“ALSB”) conference in Philadelphia, scholars in attendance shared quickly how it could be translated for their geographic area. For example, an audience member from the West Coast imagined including a scenario involving prostitution services in California and Nevada.

<sup>40</sup> On April 20, 2016, Pennsylvania Governor Thomas Wolfe signed legislation into law which legalizes marijuana use for certain medical purposes in the Keystone state, just as this article was being finalized. *Pennsylvania Finally Has a Medical Marijuana Law*, PITTSBURGH CITY PAPER, available at <http://www.pghcitypaper.com/Blog/archives/2016/04/20/pennsylvania-finally-has-a-medical-marijuana-law> (last visited January 24, 2018). Thus, when this exercise is run again in the future, it will be necessary to use a different pair of states other than Pennsylvania and New Jersey to preserve the dichotomy on this particular issue since both now permit the use of marijuana for medical purposes. This serves as a reminder that it is necessary for the instructor to be up to date on relevant legal developments in order to contrast the impact on contracts in different states based on legality.

contract. Each pair will negotiate over a purchase of goods and/or services. Students should decide who will play the part of the buyer and who will play the part of the seller. Advise students that they may reference their text as they are preparing their agreements, if they so choose. If asked at the outset whether they should make notes or write down their agreement, simply respond, “That is up to you.”

**Reveal the Scenarios:** Using a projector, display four different contracting scenarios so that students can view all scenarios at once. Read them aloud or ask for volunteers to do so.

### **Table 1: The Scenarios**

#### **Got Donuts?**

On the last Friday of each month, WWW hosts a breakfast bash for its employees. Each month ten dozen donuts are needed. Donuts cost between \$5-8 dollars/dozen. Negotiate and prepare a contract to procure the purchase and delivery of donuts for six months. You feel lucky that the company trusts you with this responsibility. Not every high school dropout lands such a good job at 17 years old.

#### **Got Weed?**

Concerned for the welfare of its growing number of employees, WWW now operates a health clinic on-site. To ease the pain of employees and members of the community who are cancer patients, it desires to procure marijuana for distribution. Marijuana sells for \$300-\$400 per oz. You’ll need to buy two pounds to have an adequate supply for distribution. Negotiate and prepare a contract for the supply of the marijuana.

#### **Got Widgets?**

Business is booming. WWW has been approached by a company with an interest in purchasing 1 million widgets. Widgets generally sell for between \$.05 and \$.10 (cents) per unit. Negotiate and prepare a contract for the sale of the widgets.

#### **Got Booze?**

WWW is about to celebrate its first anniversary in business and is throwing a big party for its employees, customers, and suppliers. It will need ten cases of beer and ten cases of wine for the party. Beer sells for \$10-\$15 per case and wine for \$50-\$100 a case. Negotiate and prepare a contract to procure beer and wine for the party. In fact, you love to party and are still feeling the effects of last night’s pub-crawl. At these prices, include a side deal to buy a case or more for yourself.

(Standard 9, Communication: reading the scenario for comprehension; listening for process instructions; questioning for clarification.)

**The Negotiations:** Students have up to fifteen minutes in which to negotiate and prepare their contracts. Respond to student questions during this session with the answer “you decide.” Generally, students begin to finish preparing their contracts in ten minutes.

(Standard 9, Analytic Thinking: assessing need, issue spotting, context; Communication: speaking, listening negotiation; Ethical Understanding and Reasoning: issue identification.)

**Presentation:** Invite students (one pair at a time) to present their contracts to the class. The instructor may make notes about the material terms of the contract on the board so that the student audience remembers what they are and then poses the questions: “Is it enforceable?” “Are there problems or issues with this contract, i.e., does it achieve its purpose? “ Why or why not?”

(Standard 9, Communication: public presentation; Reflective Thinking: responding to questions seeking information and clarification as well as those that challenge).

**Feedback:** Using the learning goals outlined above as guidance, the instructor then probes the student pair about the contract to illustrate possible problems with that contract’s interpretation, performance or enforceability and should invite the class to do the same. The instructor moves from pair to pair highlighting the different issues the particular contract presents. With a large class, limit the discussion point to one or two per contract to keep the exercise moving forward at a good pace and to minimize duplication so that each contract examination reveals some new issue.

(Standard 9: Communication: listening and speaking responsively; Analytic Thinking: differentiating application of law in context; Reflective Thinking: adequacy of one’s own preparation and effort; continuous review of student-negotiated contract based on new input; Ethical Reasoning: consideration of conflicts of interest differences in negotiating power.)

In the six examples below, we illustrate common scenarios encountered in the exercise and feedback that an instructor might offer in response to facilitate learning.

Example 1. Signature: Often an initial pair of students negotiating over donuts will not write a contract or sign it. After asking to see signatures and finding none or one, ask if the contract is enforceable. In most cases, students respond “no” offering that the agreement is not signed or in writing. The instructor may point out that oral contracts can indeed be enforceable and because this one involves a limited time period and a low dollar amount it is not subject to the Statute of Frauds and does not need to be in writing.

Example 2. Oral Contract: By contrast, students who negotiate a contract for widgets with a contract amount in excess of \$5,000, and who did so using an oral agreement, could be told the contract is not enforceable pursuant to the Statute of Frauds found in the Uniform Commercial Code (“UCC”).

Example 3. **Business Purpose:** Students who negotiate a contract for donuts to be served at a business breakfast might be probed for failure to specify the time and place of delivery, i.e., that they may have negotiated an enforceable contract, but one that does not serve their business purpose.

Example 4. **Legal Capacity:** After the presentation of a contract for the purchase of beer and wine, the instructor might point out that there will not be an enforceable contract if the alcohol impaired individual is still intoxicated such that he or she does not have legal capacity. In another presentation of this contract, the legality and ethical implications of the side contract can be discussed.

Example 5. **Illegal Object:** After students present a contract for the purchase of marijuana in Pennsylvania, the instructor could note that it will fail because it has an illegal object. By contrast, the same contract in New Jersey may be enforceable, provided appropriate licenses have been procured.

Example 6. **Risk of Loss:** As the exercise moves along, other potential problems may be introduced such as those which introduce the concept of risk of loss under the common law and UCC as well as the provision of insurance. The instructor might share that fire destroys the WWW warehouse after the contract is agreed upon and the purchasers' widgets set aside. Who bears the loss? Does the contract tell us? What law might help us answer the question of who bears the loss?

**Student Interaction:** Based on experience with this exercise in multiple sections over several years, students appear to listen attentively and are revising their contracts busily in whispers as they learn what may be missing from or defective about their own contract from the student-pairs who present contracts before them. This is highly encouraged because the goal of the exercise is not to “grade” the resulting contracts, but to illustrate and sensitize students to issues of contract formation, as well as the preparation and work needed to achieve its associated business purposes. The result is an organized chaos that can be ‘cleaned-up’ through subsequent instruction, including lecturing, on the various topics. Not surprisingly, the contracts improve as the exercise moves ahead. Students who present early continue to engage with the exercise because they are eager to apply what they have learned to find fault with other contracts. As the exercise continues, student participation increasingly displaces instructor feedback.

**Class Follow-up:** At the conclusion of the exercise (this can be done in a subsequent class) through lecture or facilitated discussion, the instructor may want to clarify and expound on the various legal and business concepts introduced.

## V. EVALUATING THE EFFECTIVENESS OF THE EXERCISE

Challenged by AACSB Standard 8 to produce “evidence demonstrating achievement of learning goals” and to continually look to improve curricula and course content and delivery,<sup>41</sup> we assessed the exercise and its implementation in three ways: through participant observation; before and after testing; and student surveys. We report the results in this section.

**Classroom Observation:** In an effort to assess the effectiveness and value of this particular exercise, a longstanding business school professor who is a master teacher and a recipient of the university’s award for excellence in teaching observed the exercise in action. Her contemporary assessment concludes,

Overall, I was impressed with the way precision was pulled out of an exercise that by design was a bit chaotic. I thought the exercise was imaginative, well-managed and effective.<sup>42</sup>

**Student Response to the Exercise:** We asked students for feedback on their experience with the exercise by survey. On a scale from “1 to 10” with “1” representing a low educational impact and engagement and “10” representing high educational impact and engagement we asked students to assess the exercise for engagement and educational impact. Students assigned the exercise values in the range of 6 to 10 with a mean of 8.38. 9 was the modal response. In addition, students also provided narrative feedback on the exercise. One student shared the following, noting both business and legal lessons learned.

Contractual Chaos was both highly enriching and engaging. Several lessons about business and law stood out. First, with respect to business lessons, I learned about the complexity of completing a negotiation. When [Student] and I first started negotiating, we were thinking solely about the price and quantity of widgets involved in the deal. It was only as we proceeded through the exercise that we realized that a multitude of other factors must be accounted for, including delivery terms, liabilities, and consequences of either party failing to uphold their side of the bargain. Also, with respect to legal lessons, I

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<sup>41</sup> AACSB, *supra* note 1, at 33-34, Standard 8.

<sup>42</sup> Teaching Evaluation Memorandum from Marianne Gauss to James Smither, Department Chair, LaSalle University (March 13, 2013). Two years after the initial observation, and because she had observed it in action and could help the creator describe the exercise for use by others, Professor Gauss was invited to and agreed to be a co-author of this paper.

learned about the supreme importance of being cognizant of the laws specific to the jurisdiction in which you are conducting business. The very same contract that can stand in New Jersey might be deemed invalid in Pennsylvania (like the marijuana contracts for example). Beyond being informative, the activity was also highly engaging; I would rate it as an eight on a scale of one to ten. I enjoyed the actual negotiation stage, in which my partner and I engaged in a spirited back-and-forth to come to an agreement on terms.<sup>43</sup>

Another commented on how much was learned with little preparation.

It was a very interesting exercise for everyone because we did not come in prepared for it at all; we had no idea what we were going to be doing in our pairs. I think that everyone realized that contracts are very detailed and that if certain provisions are missing from a contract, it can be either void or voidable. That is why there are so many problems in the legal world in relation to contracts and the different interpretations of contractual agreements... There are so many parts of a contract which one can miss when drafting it and if there are multiple interpretations of one section, at least one of the parties will be disappointed with the outcome. This exercise really taught us a lot about the Uniform Commercial Code and outlined the different rules that are found within the code. The UCC is extremely significant within the law system because it may possibly save someone who has entered into a contract that he or she did not think that he or she was entering into or agreeing to. The only thing that I wish that was different within this exercise is that I wish that we had a little more time to draft our contracts. Overall, though, it was a very entertaining and educational exercise...because not only were we engaged in our partner-work, but we also were engaged as a class because we commented on all of our classmates' contracts.<sup>44</sup>

Another lamented his lack of preparation, something we want students to understand is important.

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<sup>43</sup> Student J, Legal Environment of Business, LaSalle University, Comment via Canvas Classroom Management System Fall (November 7, 2015).

<sup>44</sup> Student A, Legal Environment of Business, LaSalle University Comment via Canvas Classroom Management System (November 8, 2015).

For myself, I regret not finishing the reading prior to the assignment. I feel as though I would have understood more of the concepts being discussed.<sup>45</sup>

Another student commented on and was impressed by the variety of contracts that were produced based on the same factual scenario.

Overall, I learned a lot including some business lessons. Interestingly, none of the contracts were the same even though many had the same guidelines. This shows that a business needs to know whom they are doing business with before entering into a contract. They also need to understand the industry they are in before negotiating, so they know what is fair and reasonable. Some may want to call a lawyer if they do not have someone who is specifically designated to going over contracts, as there are a lot of laws and regulations businesses must follow. Ultimately, creating and signing contracts is important and research should be done before negotiations.<sup>46</sup>

Students often think that the law is very cut and dry. That the same facts could lead to such a diverse set of contracts helped them to think about how carefully a contract must be drafted and negotiated as well as the circumstances under which businesses achieve very different results. This also helped them see that “calling a lawyer” will only deliver a good contract to them if they are already pretty clear on what they actually want negotiated.

After generally describing lessons learned, one student commented on the nature of the exercise making a comparison of sorts with other instructional delivery modes.

Our Contractual Chaos in-class exercise proved an enjoyable and informative activity for the class. Through being asked to create an enforceable contract, I learned many things about contract law that I hadn’t known prior to the activity. For example, I learned that a contract does not have to include specifics such as time and

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<sup>45</sup> Student R, Legal Environment of Business, LaSalle University, Comment via Canvas Classroom Management System (November 11, 2015).

<sup>46</sup> Student T, Legal Environment of Business, LaSalle University, Comment via Canvas Classroom Management System (November 13, 2015).

date of transaction in order to be enforceable. In fact, a contract does not even have to be formally documented, as even verbal contracts can be enforceable. Through the exercise I was also made aware of the basic elements of any enforceable contract: an agreement, consideration, contractual capacity, and a lawful object.

Had the same lesson been taught without the use of an engaging activity, a number of students would have felt less inclined to participate and some may have mentally checked out and missed the lesson. It's very important that students be offered opportunities to learn in environments such as this, and too many professors miss the boat on including these integral exercises in their lesson plans. Interaction with my peers in such a light setting made the lesson much more engaging than usual lecture. The entire class was involved in the lesson by creating contracts and assessing whether others' contracts were enforceable or not. The subjects for which we were asked to create contracts were hilarious and made the experience all the more enjoyable.<sup>47</sup>

The exercise provides a context for students so that they are better able to appreciate this further instruction.

Students also suggested ways in which the exercise could be improved which included: providing more time in class time for the drafting of contracts; having larger contracting teams so that more ideas could be generated and implemented; introducing through announcements other facts that may significantly alter ongoing negotiations to simulate changing conditions that may be encountered as negotiations are underway; giving the contract preparation as an advanced homework assignment; using additional scenarios for more variety; giving a formal presentation of the contract in the front of the room; and assigning a written contract that incorporated lessons learned from the exercise for homework or extra-credit. While we have not yet incorporated these suggestions, they provide food for thought. The last suggestion of incorporating an extra-credit assignment is particularly appealing. Having generated interest and enthusiasm through the exercise, why not put the eager student to work?

Many undergraduates place themselves in a box, prior to taking a new class (e.g., "I am not going to be an accountant, I'll never really need this accounting class.").

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<sup>47</sup> Student S, Legal Environment of Business, LaSalle University, Comment via Canvas Classroom Management System (November 9, 2015).

This exercise, because the construct is about accessible things, makes the point that they are likely to be involved in negotiating contracts as part of a career, regardless of their major. This addresses a frequent misconception that such negotiations are the exclusive domain of lawyers.

**Pre and Post-Test to Assess Assurance of Learning:** In an effort to measure its effectiveness, during one administration of this exercise, students completed a pre- and post-test designed to gauge their overall awareness of issues in contracting and components of a contract. Before and after the exercise, students made a list of component parts of a contract and all issues relevant to the making of a contract. They were given five minutes to do so. To score the test, the number of relevant issues and /or parts they identified are counted in both the before and after tests and then a differential score calculated. In awarding a score, we look for issue or component identification and *not* whether the law was precisely or even correctly stated.

As an illustration, a few scored sample student responses follows. The parentheticals show an element for which the response received a score.

**Table 2. Sample Student Before and After Responses**

Before	After	Differential Score
2 parties (1) enter into a contract with their consent (2) offerree and offeror (3).  The offeror must offer something (4) that the offerree accepts (5).	In order for a contract to be negotiable* there must be an agreement (1) between two parties (2). The two parties are the offeror and the offerree (3). If one of the parties is selling something such as alcohol or weed, they should have a license (4). In addition, a minor cannot make an enforceable contract because they have no legal capacity.(5) If the total amount of the money on the contract is under \$5,000 (6) then no signature is required and vice versa (7).	2
I do not know. I did not read.	Agreement(1); Legal authority(2); Consideration(3); Signed & dated(4); Over \$500 = needs to be written to be enforceable(5); laws apply to different states(6); need proper distribution or sales license(7); can't be signed completed by someone under 18(8).	8
There are 4	-Agreement (1) -lawful object (2)	5

- 1) Agreement (1) -something traded for either good or service (3)
- 2) [Left blank]
- 3) Legal form/object (2) -it must be signed and dated by both parties (4)
- 4) [Left blank] -parties must be of legal age (5)  
-parties must have mental capacity (6)  
-if required there should be appropriate license (7)

The data (n=40) were analyzed using matched-pairs pooled variance t-test; this showed a statistically significant increase in component parts/issues identified with a t value of 12.425 and p value < .001 suggesting that there is only a very small chance that the difference can be attributed to chance.<sup>48</sup>

## VI. SUMMARY AND CONCLUSION

When one reviews the law-related pedagogical literature on classroom exercises designed to advance the goals of AACSB Standard 9, it is surprising to find no single session exercises appropriate for delivery in the Legal Environment class that is required of most business students. This article addresses that gap in the literature by sharing an in-class contracts exercise in which students may practice Standard 9 skills while learning about the law of contracts in the Legal Environment class. It does so without sacrificing precious time in a course which may need to cover an important and wide array of legal and ethical issues pertinent to business, in addition to introducing students to legal systems.

The exercise satisfies the requirements of AACSB Standard 9 in a variety of ways. Relative to communication, students must listen attentively to the assignment instructions in order to optimize their success in this exercise. They must conscientiously read the scenario, listen to their teammate and carefully frame their expectations and messages. In reading the scenario, they must be as analytical as possible, reasoning the exposure of their position (be it buyer or seller) in the negotiation. As they later listen to other teams detailing their contracts, students can reflect on the parallels and gaps in their own negotiation, and then both reflect and reason their way to a superior product for their own team. Lastly, in reference to Standard 9, the professor helps to direct the students in creating ethically-framed content. There are even opportunities to discuss the ethical responsibility of showing

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<sup>48</sup> While a larger sample size would permit even more confidence in the results, a sample size of 40 is generally considered to be of sufficient size from which reliable conclusions about statistical significance may be drawn.

up to a negotiation completely prepared, particularly when acting as an agent for a company or another individual.

To address the requirements of AACSB Standard 8, participant observation, student feedback and data analysis using a matched-pairs technique demonstrate the effectiveness of the exercise designed to introduce key legal concepts while affording students the opportunity to practice communication and negotiation skills. The data evidences the effectiveness of the exercise. Should an instructor want to assess individual student learning, we suggest employing the pre and post assessment model described above. Other possibilities include assigning students to complete and submit a post-exercise written contract as a graded assignment or for extra credit. This would also address the student perception of “not enough time.” Another option is a future examination question that requires the student to reflect on both their preparation for and performance during the negotiation as well as legal terminology introduced.

Many of the challenges of teaching undergraduates are addressed in the design of this exercise. Asking students to work in pairs helps avoid the social loafing that can undermine team projects. As there is only one “offeree” or an “offeror,” both people must step up and engage the material. The penalty for not doing so will be quickly and clearly highlighted.

During this exercise, students see the need for clearly stated goals and clear communication of these goals. Students must both speak clearly, but also listen with comprehension. What works so seamlessly is the way in which students took notice of criticism directed to another team and quickly adjusted to eliminate that issue or gap in the content of their own contract. It also helps students to close their personal gaps between “book learning” and experience. The exercise will appear simple and easy to them, but the experience will help to show them the need for thoughtful preparation, clear goal setting, and precise language.

The instructor’s role is essential throughout the exercise to keep it moving, to sustain a high energy level, and to draw out the legal, ethical, and business lessons; but equally important is the use of “you decide” in the contract preparation phase to help students see the dynamism of the actor, his or her influence and the application of the law. Perhaps the same vocabulary and information could have been imparted more quickly in a lecture, but the exercise will be memorable and a student who made a particular mistake is very unlikely to repeat it. This exercise makes a dynamic and “fun” memory for students who previously may have considered the law “dry.” It may encourage students to consider law or other careers that involve negotiation or contract preparations as a future profession. The dynamic nature of the law can further be illustrated by writing new scenarios as particular issues arise. The scenarios can be updated to reflect recent changes in the law or new stories in the media.

Given apparent trends in legal education in business schools that necessitate that instructors do more with less, it is important for the Legal Environment instructor to think about how to impart substantive legal knowledge as well as help students build related skills. The development and sharing of short, engaging, in-class exercises, such as the one we introduce here, should help instructors meet these objectives.