Discipline based instruction in business law

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ABSTRACT

Undergraduate business law courses typically utilize traditional textbooks organized by topic. Individual chapters address the usual topics including contracts, torts, the court system and ethics. An innovative approach to facilitating a business law course involves segregating sections of the course into common business disciplines. Rather than the abstract teaching of legal concepts, substantive material is presented in well defined sections including management, finance, accounting, real estate, marketing, and human resource management. Each section is defined by excerpts of published cases in private law, public law, preventative law and ethics. Individual disciplines are highlighted by instructive and provocative discussion questions following actual court opinions. Team teaching is an essential ingredient in discipline based instruction. Faculty members from specific disciplines are invited to participate and contribute to the course. The curriculum is presented in an applied format and relevant to the study and practice of business administration. Students are asked to apply legal concepts and issues to the individual disciplines they are studying in a business school format.

Keywords: business law, discipline-based learning, team-teaching, module, curriculum, pedagogy

INTRODUCTION

Topics organized by subject matter in a business law textbook address the needs of a practicing attorney in conducting legal research. A discipline based approach is more suitable for future business owners and managers. For students, the topical approach may lack an appreciable nexus between law and business. The experience of the authors by facilitating undergraduate business law courses emphasizes that organization by discipline reinforces the overall business school curriculum. Discipline based instruction addresses the need for the development of critical thinking skills. In short, context is important, and thus a supplemental text could be developed and divided into management, finance, accounting, real estate, marketing, and human resource management modules.

THE STATUS QUO

The customary model used in undergraduate business law courses involves grouping topics by legal subject. A typical business law course might include an introduction to the legal system, torts, common law contracts, the Uniform Commercial Code and ethics. The course might also include additional topics such as alternative dispute resolution, property, agency and business organizations. Many undergraduate business students have had minimal exposure to the law prior to enrolling in a business law course. Consider the perspective of a student with limited knowledge of legal concepts when faced with a variety of topics organized by subject. Students encounter unfamiliar terminology and a wide range of material making learning business law difficult for some. Instructors in business law courses are tempted to revert to their law school experience with the result that many students fail to see relevancy or application to business disciplines. Ninety percent of the faculty members who teach business law possess a Juris Doctorate (JD) degree. (Hill 5). A case study approach has been adopted in introductory business law courses (Charters 47). Students are asked to reflect on abstract concepts of law without the ability to recognize a nexus with the disciplines in their major. Instead of only attempting to bring the classroom a "mini law school" approach consisting of presenting private and public laws to those planning to embark on a career in business, discipline faculty members can provide another dimension necessary to the education of those not training to become lawyers (Morgan 288). A new paradigm of teaching business law assumes the preparation of students as future managers as opposed to law students (Lampe 2). The study of business law at the undergraduate level should not be merely a preparation for law school. It is clear that facilitating a business law course based on the Socratic Method is ineffective at an undergraduate level.

When a business law student is first exposed to a concept such as defamation, the instructor may start by distinguishing libel from slander. As the course moves past definitions and introduces the elements of defamation, many students are able to successfully recite the elements. However, a mastery of the concept demands that students be able to readily apply law to fact.

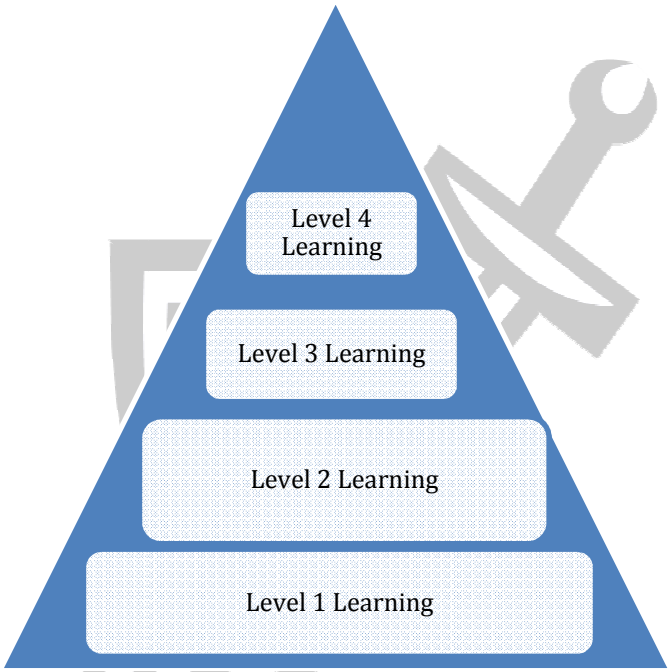
A DISCIPLINE BASED APPROACH

A supplemental text should be developed and divided into management, finance, accounting, real estate, marketing, and human resource management modules. Subsections in

each discipline should include a public law case, a private law case and a law case specifically dealing with legal and business ethics. Students study court opinions and answer specific questions immediately following each case. Additionally, supplemental texts to traditional business law textbooks could be developed to provide maximum instructor flexibility.

A student could also use this approach in a 1-credit hour format consistent with a chosen discipline, highlighting the most relevant legal topics for that discipline. For example, a management module would include contract, agency and employment law issues in a seamless manner consistent with a practical approach preferred by business professionals.

THE LEARNING PYRAMID



The learning pyramid is a novel approach developed by the authors that illustrates the progressive stages of learning. The levels of pyramid are best seen as a guide as learning progresses from merely reciting definitions to a more complex response to a business problem.

Four distinct stages of learning relating to business law have been identified. First, a student masters the basic definitions of a legal concept. For example, a student could recite the definition of false imprisonment as "the confinement of a person without right or privilege to a bounded area." This first stage of development is rudimentary at best and has limited enduring value to a business student.

The second level of learning is characterized by the ability to apply a single legal concept to a simple and static fact pattern. For example, when exposed to a hypothetical where a customer is detained by an employee in a retail store without any reasonable suspicion of shoplifting or other illegality, the student would be comfortable identifying and discussing the legal concept of false imprisonment.

The third distinct level of learning involves a more complex fact pattern with multiple issues and legal concepts. For example, when exposed to the same situation where a customer is

detained, the student can both identify and discuss civil liability for false imprisonment along with potential civil liability under the doctrine of respondeat superior and the doctrine of joint and several liability.

The fourth and highest level of discipline based learning empowers the student to respond beyond the recitation of legal definitions. Students demonstrate competency by practically applying concepts to static problems, multi-facet problems and relevant business disciplines. For example, the student would be able to respond to a prompt when asked to conduct a risk-benefit analysis in the context of creating a corporate policy regarding shoplifting as follows:

The manager in a retail setting is faced with an epidemic of losses, presumably due to shoplifting. As part of a loss prevention policy discussion, a decision must be made whether to allow regular employees to detain customers when they have a reasonable suspicion of shoplifting. Although this policy may be supported by a state "shopkeeper's privilege," risk benefit analysis demands that the manager consider the legal and other ramifications of allowing an employee to detain shoplifters. The manager concludes that the business entity should not assume the risk of legal liability for false imprisonment. An employee may lack the necessary training to assume the responsibility to detain customers reasonably suspected of shoplifting. Employees enjoy the role of stakeholders of the business and should not be exposed to the risk of injury and the possibility of liability for false imprisonment. The student might also consider the negative impact of a false imprisonment claim as detrimental to the business's reputation and goodwill. There is a clear nexus between the legal concept of false imprisonment and management.

Students in one class answered questions as illustrated in Addendum A. As illustrated in Addendum B, students demonstrated an increasingly difficult time mastering higher levels of discipline based learning.

The ultimate measurement of student success in studying business law is determined by the level of learning accomplished at the completion of the course. A simplistic analysis of a student's final grade might suggest that success at level four represents excellent work or the equivalent of an A. Level three learning might represent the equivalent of good work or the grade of B.

In order to fully integrate discipline based learning in business law it is necessary to draw upon experts from the various disciplines. Faculty in specific disciplines will participate in at least one business law class period with a reasonable stipend. For example, accounting faculty would participate in the development of the accounting discipline module, and perhaps co-teach one class during a semester-long module.

There are certain challenges to implementing successful team teaching results. Currently, there are relatively few undergraduate programs that attempt to fully integrate curricula across functional areas (Cannon 94). Therefore, carefully planning must balance the extra commitment needed to successfully deliver results on this platform with incentives and mechanisms to ensure sustainability in the institutional context.

TEAM TEACHING USING DISCIPLINED BASED LEARNING

Discipline Based Learning is best implemented using a team teaching model. There are three general formats for team teaching (Helms 30). The most robust form of team teaching is Interactive Team Teaching, where two professors present simultaneously. The Participant Observer Approach, where one professor presents while the other watches, and the Rotational

Approach, where professors rotate teaching individual class periods, do not have the same richness in content delivery and student experience.

In addition to being mindful of the personalities, commitment to team teaching, and willingness to cede classroom control to another professional, team teaching requires a significant amount of deliberate and careful preparation (Shibley 274), as to certain mundane tasks including, but not limited to finding a single, appropriate textbook (Helms 31), can be accomplished through collaboration. Team teaching should be supported by extensive instructor coordination, with particular thought to engineering experiential activities for students (Kerridge 94), supported by a robust evaluation and feedback mechanism to help faculty make adjustments to the particular nature of a class (Klein 62).

Of particular import is the recognition that team teaching is resource intensive. The benefits of team teaching should be balanced against resource constraints in a particular educational environment (Kerridge 101). Benefits to team teaching weigh in favor of having business school leadership allocate resources towards team teaching to reflect the reality that a more robust student experience comes with cost.

BENEFITS TO STUDENT LEARNING AND INCREASED FACULTY SATISFACTION

Ultimately, the costs imposed by using a team teaching approach should be focused on achieving increased robustness in the student experience. Three important key benefits (among others) including the value of having differing perspectives, enhancement of small group work during the teaching session and development of student cognitive skills (Kerridge, 93). In addition to student benefits, various institutional and faculty benefits stem from a commitment to a team teaching approach. Team teaching should be used to provide the following enhancements to the educational process described below: increased critical thinking derived from encountering different faculty perspective and relevance to the business environment, acquisition of collaboration skills and ethical training in dynamic cross-discipline discussions, and increased faculty collegiality and responsiveness to student objectives.

Increased Critical Thinking Derived from Encountering Different Faculty Perspectives and Relevance to the Business Environment

It is clear that working on actual case studies across disciplines effectively advances intuitive thinking (Helms 29). Indeed, business problems rarely present themselves in industry as a single discipline opportunity. The actual needs of the business environment presuppose that students are able to approach business challenges with a cross-discipline sophistication. Cross-discipline team teaching provides this level of insight for addressing business needs (Helms 29, quoting Geary and Rooney 1993). The presence of two instructors can help student understanding of alternative responses to the same business problem (Ayadi 4).

There are five basic solutions provided by interdisciplinary study. They are: (1) learning to respect the view held by others (2) selecting the appropriate model for asking questions, (3) acquiring critical thinking skills since there is new material from multiple perspectives, (4) acquiring integration and collaboration skills and (5) assuming roles in the learning process (Leavitt, 2006 quoted in Gaytan 85). Indeed, it is difficult for students to see the interrelationship among the several courses (Ayadi 2).

From a course content perspective, instructors indicate that adult education learners pick up course content more quickly in a team-taught environment, (Hatcher 6) this then allows for more time to introduce new material while also eliminating redundancy of topic covered (Helms 30). Additionally, increased relevant feedback from team-taught courses allowed for a broader collection of backgrounds, knowledge and wisdom from instructors (Hatcher 4), and put the students in a better vantage point to observe how real people manage a business and appreciate the interdependencies of business courses (Ayadi 4).

Business enterprises themselves have de-emphasized functional structures (Cannon 93, quoting various), with the implication that business schools should adapt their structure, curricula and teaching methods to support the student's transition into business. The cross functional team now is required to match business functionality with related data (Cannon 95), necessitating a cross-functional approach.

Even the AACSB supports the team teaching approach, recognizing that many business problems are "cross-disciplinary, complex and even "messy." (Boom in Entrepreneurial Studies 1996, quoted in Helms 30). In the graduate student context, team teaching can blend functional courses to help flesh out how different disciplines interact. (Do you Speak MBA 1996, quoted in Helms 29). The AACSB provides further clarity by stating that business schools should "blur boundaries between educational disciplines" (AACSB, 2002, p.2 quoted by Gaytan 82).

Acquisition of Collaboration Skills and Ethical Training in Dynamic Cross-Discipline Discussions

Importantly, students are able to witness faculty modeling the presentation of arguments and points-of-view in a respectful and effective manner (Kerridge 94). Especially in legal disputes, the ability to articulate multiple positions, and to be able to argue those positions without the audience being able to determine your actual position on this issue is an important collaborative skill to develop.

The role of interpersonal relationships can build collaboration. (Kerridge 101). The ease with which two teachers are able to criticize each other can also help the class relax and is accretive to enhancing student participation. (Shibley 272) Students are able to view on a first-hand basis the reality that criticism is not personal, and is even desired to enhance understanding of a particular philosophical stance (Shibley 272). Students also gain a more rounded view of ethical issues through alternative teacher perspectives (Kerridge 98).

The classroom environment is energized because team teaching necessarily requires interruption of faculty to present necessary ideas and views, and when properly managed, this debate can encourage student proffering of opinions on a regular basis (Helms 31). In addition to classroom interaction, student evaluation and grading is enhanced, particularly in the case analysis environment, by the involvement of multiple graders and different perspectives of the two instructors.

By increasing lively exchange and interaction in the classroom, participant satisfaction and engagement is increased, with higher levels of student satisfaction (Helms 33). This exchange and interaction replicates business process and remains practical for students to be trained to become more self- directed (Hatcher 5) and effective in the team decision making context (Helms 33).

Increased Faculty Collegiality and Responsiveness to Student Objectives

Team teaching, like collaborative instruction and research, fits within the culture of the academic profession and the discipline of adult education (Hatcher 7). Team-teaching gives faculty the opportunity to work together in the preparation and execution of a classroom experience. While collaboration increases planning time, it generates better instructional delivery results (Hatcher 7). Importantly, it can lead to the creation of a more collegial relationship (Helms 31).

Instructors can also work together to evaluate class participation and student contributions, as each instructor can view participation points (Helms 31), and obtain additional feedback from different perspectives (Wadkins 2006 quoted in Gaytan 83), allowing for a more complete evaluation of student performance based on agreed selected standards (Ayadi 3).

By having faculty work together, there is also the opportunity for faculty to discover and develop cross-disciplinary research and enhanced publication opportunities (Helms 31).

A SAMPLE DISCIPLINED BASED MANAGEMENT MODULE

Private law case:
JANET KLEEMAN, APPELLANT, v. PAUL D. RHEINGOLD, ET AL., RESPONDENTS.
81 N.Y.2d 270, 614 N.E.2d 712, 598 N.Y.S.2d 149 (1993).
May 4, 1993
1 No. 80 [1993 N.Y. Int. 97]
Decided May 4, 1993

TITONE, J.:

In a prior action brought to recover damages for alleged medical malpractice, plaintiff was nonsuited for failure properly to serve the defendant doctor before the Statute of Limitations on her claim expired. The threshold issue in this second malpractice action, which was brought by plaintiff against the lawyers she retained to prosecute the first, is whether an attorney may be held vicariously liable to his or her client for the negligence of a process server whom the attorney has hired on behalf of that client.

According to the allegations in the present complaint, plaintiff, a victim of alleged medical malpractice, had originally retained defendant and his law firm to pursue her claim against Dr. Niels Lauerson. With only five days remaining before the Statute of Limitations on the claim would expire, defendant promptly prepared a summons and complaint. On November 5, 1978, two days before the Statute of Limitations was to run, defendant delivered the prepared documents to Fischer's Service Bureau, a process service agency regularly used by defendant's law firm, with the instruction that process was to be served "immediately." It is undisputed that Fischer's, not defendant, selected the licensed process server who would actually deliver the papers and that Fischer's and the process server, rather than defendant, determined the precise manner of effecting service.

Although the process server used by Fischer's apparently delivered the papers on time, plaintiff's medical malpractice claim was ultimately dismissed when a traverse hearing revealed that the process server had given the papers to Dr. Lauerson's secretary rather than Dr. Lauerson himself. By the time the traverse hearing was held, the Statute of Limitations had expired and plaintiff had no further legal recourse against the allegedly negligent doctor. Defendants then

attempted to recover on plaintiff's behalf by "alleging various and different theories of liability against certain other parties." These claims, however, were all resolved against plaintiff in January of 1987.

Plaintiff subsequently commenced the present legal malpractice action against defendant and his law firm, claiming that they should be held liable for the negligence of the process server who had been retained to serve Dr. Lauerson on plaintiff's behalf.

[T]he court concluded that a process server is an "independent contractor" rather than an agent of the employing attorney, since "[t]he attorney does not have control over the manner in which the task is performed." Accordingly, the court held, the relationship between the process server and the attorney here did not provide a cognizable basis for holding the latter vicariously liable for the acts of the former. On reargument, the court also rejected plaintiff's claims regarding defendants' failure to supervise the process server, holding that defendants' duty was satisfied when they took the necessary steps to commence the action by retaining the services of a licensed process server.

The general rule is that a party who retains an independent contractor, as distinguished from a mere employee or servant, is not liable for the independent contractor's negligent acts. *** the most commonly accepted rationale is based on the premise that one who employs an independent contractor has no right to control the manner in which the work is to be done and, thus, the risk of loss is more sensibly placed on the contractor

Despite the courts' frequent recitation of the general rule against vicarious liability, the common law has produced a wide variety of so-called "exceptions"

The exception that concerns us here -- the exception for non-delegable duties -- has been defined as one that "requires the person upon whom it is imposed to answer for it that care is exercised by anyone, even though he be an independent contractor, to whom the performance of the duty is entrusted (Restatement, op. cit., Introductory Note, at 394, quoted in Feliberty v Damon, supra, pp 118- 119). The exception is often invoked where the particular duty in question is one that is imposed by regulation or statute (e.g., Gravelle v Norman, supra; Allen v Cloutier Constr. Corp., 44 NY2d 290, 300). However, the class of duties considered "non-delegable" is not limited to statutorily imposed duties. To the contrary, examples of non-delegable common-law duties abound (e.g., Storrs v City of Utica, 17 NY 104; see generally, Prosser & Keeton, supra, pp 511-512 & nn 26- 41).

There are no clearly defined criteria for identifying duties that are non-delegable. Indeed, whether a particular duty is properly categorized as "non-delegable" necessarily entails a sui generis inquiry, since the conclusion ultimately rests on policy considerations (Feliberty v Damon, supra, p 119).

The most often cited formulation is that a duty will be deemed non-delegable when "'the responsibility is so important to the community that the employer should not be permitted to transfer it to another'" (id., quoting, Prosser & Keeton, supra, p 512). This flexible formula recognizes that "the privilege to farm out [work] has its limits" and that those limits are best defined by reference to the gravity of the public policies that are implicated (5 Harper & James, The Law of Torts [2d ed] § 26.11, p 73; see also, id., pp 76-77).

Viewed in the light of these principles, the duty at issue here -- that owed by an attorney to his or her client to exercise care in the service of process -- fits squarely and neatly within the category of obligations that the law regards as "non-delegable." Manifestly, when an individual retains an attorney to commence an action, timely and accurate service of process is an integral part of the task that the attorney undertakes (see, 5 Harper & James, op. cit., pp 76-77; cf.,

Feliberty v Damon, supra, p 120). Furthermore, proper service of process is a particularly critical component of a lawyer's overall responsibility for commencing a client's lawsuit, since a mistake or oversight in this area can deprive the client of his or her day in court regardless of how meritorious the client's claim may be. Given the central importance of this duty, our State's attorneys cannot be allowed to evade responsibility for its careful performance by the simple expedient of "farming out" the task to independent contractors.

The existence of an extensive and comprehensive Code of Professional Responsibility that governs the obligations of attorneys to their clients reinforces our conclusion. *** Our conclusion is also supported by the perceptions of the lay public and the average client, who may reasonably assume that all of the tasks associated with the commencement of an action, including its formal initiation through service of process, will be performed either by the attorney or someone acting under the attorney's direction. While it may be a common practice among attorneys to retain outside agencies like Fischer's to assist them in effecting service, that custom is not necessarily one of which the general public is aware.

Finally, we conclude that permitting lawyers to transfer their duty of care to process servers would be contrary to sound public policy.

Before closing, we note that, contrary to the concurrer's suggestion that our ruling has a far broader application, the non-delegable duty of care that we have recognized in this case is limited to the discrete and unique function of commencing an action through service of process. Furthermore, the duty extends only to clients who have retained an attorney for the purpose of commencing a lawsuit.

We hold only that an attorney has a non-delegable duty to his or her clients to exercise due care in the service of process and that, accordingly, an attorney may be held liable to the client for negligent service of process, even though the task may have been "farmed out" to an independent contractor.

In view of this conclusion, it is evident that the courts below erred in granting defendants' motion for summary judgment dismissing the complaint. If there was negligence in the effort to effect service of process in plaintiff's failed action against Dr. Lauerson, plaintiff is entitled to hold defendant vicariously liable, and she may recover in damages if she can demonstrate that this negligence was the proximate cause of any pecuniary injury she sustained.

Discussion questions

How does the court opinion improve decision making process for management or leadership?

1. Discuss the distinction between employees and independent contractors. What possible company liability exists for a worker who is misclassified as an independent contractor? How can the risk of misclassification be reduced?

2. Should an employment or independent contractor relationship be preferred by a company, given that either an employee or an independent contractors may sometimes be negligent?

3. Discuss why the law firm and Fischer's Service Bureau ("FSB") may have direct liability for their own actions in selecting the contractor, and vicarious liability for the actual negligence of the party they hired.

4. Under what circumstances should a duty of an employee be non-delegable, as opposed to delegable?

5. Explain why a civil procedure related issue, like service of process or the statute of limitations is fair and ethical when it can foreclose the ability of a harmed party from being entitled to restitution – and shift liability to previously uninvolved parties.

Public law case

Heart of Atlanta Motel, Inc. v. United States, 379 U.S. 241 (1964)
APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA

MR. JUSTICE CLARK delivered the opinion of the Court.

The case comes here on admissions and stipulated facts. Appellant owns and operates the Heart of Atlanta Motel which has 216 rooms available to transient guests. The motel is located on Courtland Street, two blocks from downtown Peachtree Street. It is readily accessible to interstate highways 75 and 85 and state highways 23 and 41. Appellant solicits patronage from outside the State of Georgia through various national advertising media, including magazines of national circulation; it maintains over 50 billboards and highway signs within the State, soliciting patronage for the motel; it accepts convention trade from outside Georgia and approximately 75% of its registered guests are from out of State. Prior to passage of the Civil Rights Act the motel had followed a practice of refusing to rent rooms to Negroes, and it alleged that it intended to continue to do so. In an effort to perpetuate that policy this suit was filed.

The appellant contends that Congress in passing this Act exceeded its power to regulate commerce under Art. I, 8, cl. 3, of the Constitution of the United States; that the Act violates the Fifth Amendment because appellant is deprived of the right to choose its customers and operate its business as it wishes, resulting in a taking of its liberty and property without due process of law and a taking of its property without just compensation; and, finally, that by requiring appellant to rent available rooms to Negroes against its will, Congress is subjecting it to involuntary servitude in contravention of the Thirteenth Amendment.

The applies counter that the unavailability to Negroes of adequate accommodations interferes significantly with interstate travel, and that Congress, under the Commerce Clause, has power to remove such obstructions and restraints; that the Fifth Amendment does not forbid reasonable regulation and that consequential damage does not constitute a "taking" within the meaning of that amendment; that the Thirteenth Amendment claim fails because it is entirely frivolous to say that an amendment directed to the abolition of human bondage and the removal of widespread disabilities associated with slavery places discrimination in public accommodations beyond the reach of both federal and state law....

In short, the determinative test of the exercise of power by the Congress under the Commerce Clause is simply whether the activity sought to be regulated is "commerce which concerns more States than one" and has a real and substantial relation to the national interest. Let us now turn to this facet of the problem.

That the "intercourse" of which the Chief Justice spoke included the movement of persons through more States than one was settled as early as 1849, in the Passenger Cases, 7 How. 283, where Mr. Justice McLean stated: "That the transportation of passengers is a part of commerce is not now an open question...."

Nor does it make any difference whether the transportation is commercial in character....

In framing Title II of this Act Congress was dealing with what it considered a moral problem. But that fact does not detract from the overwhelming evidence of the disruptive effect that racial discrimination has had on commercial intercourse. It was this burden which empowered Congress to enact appropriate legislation, and, given this basis for the exercise of its power, Congress was not restricted by the fact that the particular obstruction to interstate commerce with which it was dealing was also deemed a moral and social wrong.

It is said that the operation of the motel here is of a purely local character. But, assuming this to be true, "[i]f it is interstate commerce that feels the pinch, it does not matter how local the operation which applies the squeeze...."

Thus the power of Congress to promote interstate commerce also includes the power to regulate the local incidents thereof, including local activities in both the States of origin and destination, which might have a substantial and harmful effect upon that commerce. One need only examine the evidence which we have discussed above to see that Congress may - as it has - prohibit racial discrimination by motels serving travelers, however "local" their operations may appear.

We, therefore, conclude that the action of the Congress in the adoption of the Act as applied here to a motel which concededly serves interstate travelers is within the power granted it by the Commerce Clause of the Constitution, as interpreted by this Court for 140 years. It may be argued that Congress could have pursued other methods to eliminate the obstructions it found in interstate commerce caused by racial discrimination. But this is a matter of policy that rests entirely with the Congress not with the courts. How obstructions in commerce may be removed - what means are to be employed - is within the sound and exclusive discretion of the Congress. It is subject only to one caveat - that the means chosen by it must be reasonably adapted to the end permitted by the Constitution. We cannot say that its choice here was not so adapted. The Constitution requires no more. Affirmed.

Discussion questions

1. The interpretation of the Commerce Clause spans several decades and can be traced by the United Supreme Court's interpretation of this important constitutional provision. Locate and summarize the Supreme Court cases including Wickard v. Filburn, 317 U.S. 111 (1942), United States v. Morrison, 529 U.S. 598 (2000) and United States v. Alfonso Lopez, Jr., 514 U.S. 549 (1995).
2. The Supreme Court has broadly defined interstate commerce. Can you identify any economic activities that would not be considered interstate commerce.
3. Imagine you were a drafter of the United States Constitution. Prepare a summary of your comments to the current interpretation of the Commerce Clause.
4. The farmer in Wickard was restricted from growing more than his allotment of wheat on his farm. The Affordable Health Care Act recently signed into law by President Obama requires that all Americans purchase health care or suffer a penalty. While Wickard restricted activity, the Affordable Health Care Plan mandates activity. Do you believe that the requirement to purchase health insurance is consistent with the modern interpretation of the Commerce Clause? See: National Federation of Independent Business v. Sebelius, 567 U.S. ____ (2012)
5. Identify the distinction between interstate and intrastate commerce. Identify the origin and parameters of state regulation of intrastate and interstate commerce.

Discipline specific case in business and legal ethics

Shlensky v. Wrigley,95 Ill.App. 268, 237 N.E.2d 776 (Ill.App. 1 Dist. 1968)

MR. JUSTICE SULLIVAN delivered the opinion of the court.

This is an appeal from a dismissal of plaintiff's amended complaint on motion of the defendants. The action was a stockholders' derivative suit against the directors for negligence and mismanagement. The corporation was also made a defendant. Plaintiff sought damages and an order that defendants cause the installation of lights in Wrigley Field and the scheduling of night baseball games.

Plaintiff is a minority stockholder of defendant corporation, Chicago National League Ball Club (Inc.), a Delaware corporation with its principal place of business in Chicago, Illinois. Defendant corporation owns and operates the major league professional baseball team known as the Chicago Cubs. The corporation also engages in the operation of Wrigley Field, the Cubs' home park, the concessionaire sales during Cubs' home games, television and radio broadcasts of Cubs' home games, the leasing of the field for football games and other events and receives its share, as visiting team, of admission moneys from games played in other National League stadia. The individual defendants are directors of the Cubs and have served for varying periods of years. Defendant Philip K. Wrigley is also president of the corporation and owner of approximately 80% of the stock therein.

Plaintiff alleges that since night baseball was first played in 1935 nineteen of the twenty major league teams have scheduled night games. In 1966, out of a total of 1,620 games in the major leagues, 932 were played at night. Plaintiff alleges that every member of the major leagues, other than the Cubs, scheduled substantially all of its home games in 1966 at night, exclusive of opening days, Saturdays, Sundays, holidays and days prohibited by league rules. Allegedly this has been done for the specific purpose of maximizing attendance and thereby maximizing revenue and income.

The Cubs, in the years 1961-65, sustained operating losses from its direct baseball operations. Plaintiff attributes those losses to inadequate attendance at Cubs' home games. He concludes that if the directors continue to refuse to install lights at Wrigley Field and schedule night baseball games, the Cubs will continue to sustain comparable losses and its financial condition will continue to deteriorate.

Plaintiff alleges that, except for the year 1963, attendance at Cubs' home games has been substantially below that at their road games, many of which were played at night.

Plaintiff compares attendance at Clubs' games with that of the Chicago White Sox, an American League club, whose weekday games were generally played at night. The weekend attendance figures for the two teams were similar; however, the White Sox week-night games drew many more patrons than did the Cubs' weekday games.

Plaintiff alleges that the funds for the installation of lights can be readily obtained through financing and the cost of installation would be far more than offset and recaptured by increased revenues and incomes resulting from the increased attendance.

Plaintiff further alleges that defendant Wrigley has refused to install lights, not because of interest in the welfare of the corporation but because of his personal opinions "that baseball is a `daytime sport' and that the installation of lights and night baseball games will have a deteriorating effect upon the surrounding neighborhood." It is alleged that he has admitted that he is not interested in whether the Cubs would benefit financially from such action because of his

concern for the neighborhood, and that he would be willing for the team to play night games if a new stadium were built in Chicago.

Plaintiff alleges that the other defendant directors, with full knowledge of the foregoing matters, have acquiesced in the policy laid down by Wrigley and have permitted him to dominate the board of directors in matters involving the installation of lights and scheduling of night games, even though they knew he was not motivated by a good faith concern as to the best interests of defendant corporation, but solely by his personal views set forth above. It is charged that the directors are acting for a reason or reasons contrary and wholly unrelated to the business interests of the corporation; that such arbitrary and capricious acts constitute mismanagement and waste of corporate assets, and that the directors have been negligent in failing to exercise reasonable care and prudence in the management of the corporate affairs.

The question on appeal is whether plaintiff's amended complaint states a cause of action. It is plaintiff's position that fraud, illegality and conflict of interest are not the only bases for a stockholder's derivative action against the directors. Contrariwise, defendants argue that the courts will not step in and interfere with honest business judgment of the directors unless there is a showing of fraud, illegality or conflict of interest.

From the authority relied upon in that case it is clear that the court felt that there must be fraud or a breach of that good faith which directors are bound to exercise toward the stockholders in order to justify the courts entering into the internal affairs of corporations. This is made clear when the court refused to interfere with the directors' decision to expand the business.

Plaintiff in the instant case argues that the directors are acting for reasons unrelated to the financial interest and welfare of the Cubs. However, we are not satisfied that the motives assigned to Philip K. Wrigley, and through him to the other directors, are contrary to the best interests of the corporation and the stockholders. For example, it appears to us that the effect on the surrounding neighborhood might well be considered by a director who was considering the patrons who would or would not attend the games if the park were in a poor neighborhood. Furthermore, the long run interest of the corporation in its property value at Wrigley Field might demand all efforts to keep the neighborhood from deteriorating. By these thoughts we do not mean to say that we have decided that the decision of the directors was a correct one. That is beyond our jurisdiction and ability. We are merely saying that the decision is one properly before directors and the motives alleged in the amended complaint showed no fraud, illegality or conflict of interest in their making of that decision.

While all the courts do not insist that one or more of the three elements must be present for a stockholder's derivative action to lie, nevertheless we feel that unless the conduct of the defendants at least borders on one of the elements, the courts should not interfere. The trial court in the instant case acted properly in dismissing plaintiff's amended complaint.

There is no allegation that the night games played by the other nineteen teams enhanced their financial position or that the profits, if any, of those teams were directly related to the number of night games scheduled. There is an allegation that the installation of lights and scheduling of night games in Wrigley Field would have resulted in large amounts of additional revenues and incomes from increased attendance and related sources of income. Further, the cost of installation of lights, funds for which are allegedly readily available by financing, would be more than offset and recaptured by increased revenues. However, no allegation is made that there will be a net benefit to the corporation from such action, considering all increased costs.

Plaintiff claims that the losses of defendant corporation are due to poor attendance at home games. However, it appears from the amended complaint, taken as a whole, that factors

other than attendance affect the net earnings or losses. For example, in 1962, attendance at home and road games decreased appreciably as compared with 1961, and yet the loss from direct baseball operation and of the whole corporation was considerably less.

The record shows that plaintiff did not feel he could allege that the increased revenues would be sufficient to cure the corporate deficit. The only cost plaintiff was at all concerned with was that of installation of lights. No mention was made of operation and maintenance of the lights or other possible increases in operating costs of night games and we cannot speculate as to what other factors might influence the increase or decrease of profits if the Cubs were to play night home games.

Similarly, in the instant case, plaintiff's allegation that the minority stockholders and the corporation have been seriously and irreparably damaged by the wrongful conduct of the defendant directors is a mere conclusion and not based on well pleaded facts in the amended complaint.

Finally, we do not agree with plaintiff's contention that failure to follow the example of the other major league clubs in scheduling night games constituted negligence. Plaintiff made no allegation that these teams' night schedules were profitable or that the purpose for which night baseball had been undertaken was fulfilled. Furthermore, it cannot be said that directors, even those of corporations that are losing money, must follow the lead of the other corporations in the field. Directors are elected for their business capabilities and judgment and the courts cannot require them to forego their judgment because of the decisions of directors of other companies. Courts may not decide these questions in the absence of a clear showing of dereliction of duty on the part of the specific directors and mere failure to "follow the crowd" is not such a dereliction.

For the foregoing reasons the order of dismissal entered by the trial court is affirmed.

Discussion questions

1. Discuss the definition and importance of the Business Judgment Rule.
2. Identify the various stakeholders and their respective interests involved in Shlensky. How should management deal with the competing interests of various stakeholders?
3. How difficult is it for a plaintiff to overcome the Business Judgment Rule?
4. What would be necessary to establish an ordinary claim of negligence against a director of a corporation?
5. Discuss the legal concepts of Duty of Care and Duty of Loyalty.
6. Under what circumstances, if any, would it be proper to sacrifice corporate profit in order to benefit the public interest?[i]
7. Evaluate the following statement:

"courts of equity will not interfere in the management of the directors unless it is clearly made to appear that they are guilty of fraud or misappropriation of the corporate funds, or refuse to declare a dividend when the corporation has a surplus of net profits which it can, without detriment to its business, divide among its stockholders, and when a refusal to do so would amount to such an abuse of discretion as would constitute a fraud, or breach of that good faith which they are bound to exercise towards the stockholders." Dodge v. Ford Motor Company, 204 Mich. 459, 170 N.W. 668. (1919)

CONCLUSION

The traditional model of organizing and delivering material in a business law course is flawed. The knowledge of legal concepts in the abstract is of little value to undergraduate business students. Too many students fail to appreciate the linkage between legal concepts and the various business disciplines. The ultimate goal of a Discipline Base Approach is to prepare students to successfully apply legal concepts to issues that arise in management, finance, accounting, real estate, marketing, and human resource management. Using this approach allows students to achieve a lifelong appreciation of the application of law in the business environment, preparing them to create future policies and business solutions.

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