

**A MEETING OF THE BOARD OF DIRECTORS: INTEGRATING BUSINESS LAW
INTO UNDERGRADUATE BUSINESS EDUCATION**

BY

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Introduction

Law and business decision-making are intimately related.¹ Business law courses should provide undergraduate business students with opportunities to apply their knowledge of our legal system within the context of business. Analyzing business cases that include legal issues as influential factors that must be considered in selecting from among different business decision alternatives provide business students with such an opportunity.² To this end, we have developed an integrative teamwork project, known as the Board of Directors project in Legal Aspects of Business, a law course required of all undergraduate juniors as a part of the new curriculum at the Undergraduate College of the Stern School of Business, New York University. Part I of this paper describes the philosophy underlying Stern's new undergraduate business curriculum and how business law fits in as a core curricular component. In Part II, the core undergraduate law course, Legal Aspect of Business, is explained in detail. The substance and objectives of the Board of Directors project are delineated in Part III. We also discuss the assignment's advantages and disadvantages in this section. In Part IV we highlight student outcomes in response to the project. Finally, in Part V, we offer recommendations to business school faculty as to how they can use the Board of Directors problem.

I. New Undergraduate Business Curriculum

In 1997, the faculty of the Undergraduate College of the Stern School of Business, New York University, unanimously approved a revised undergraduate business curriculum (implemented beginning with the class of 2002) that would better prepare its students to meet the challenges they will face in the 21st century and enable the college to remain on the cutting edge of business education. The new curriculum's mission statement reflects input from management, futurists, business consultants, the needs of employers, faculty, students and the literature: "The Stern Undergraduate College of Business offers a fully integrated four-year program combining the critical thinking and humanistic focus of a liberal arts education with state of the art training in business administration.

The program emphasizes communication skills, both written and oral, interpersonal and leadership skills, a global perspective, integrative thinking, and a thorough grounding in the principles, functions, responsibilities, and techniques of

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business.”³ A major innovation in Stern’s new undergraduate curriculum was to dispense with its former layer cake educational model⁴ and adopt instead a fully integrated four-year program that combines the study of liberal arts with comprehensive technical training in business during a four-year college experience. Another fundamental curricular change was the development of a target skill set for Stern undergraduates: communication and interpersonal skills; creative thinking and professional skills; travel abroad to study first-hand the global dimensions of business; leadership, teamwork and professional responsibility (ethics); state-of-the-art training in the functional areas of business; cross-functional integrative business projects and experiences.⁵

Stern’s new curriculum innovations have been implemented through close teaching/academic collaborations with the faculty in the College of Arts & Sciences and the Stern faculty; creation of new Stern undergraduate courses designed to meet the target skill set, corporate visitations abroad and integration of the core business areas across departmental lines. In summary, Stern’s new curriculum stresses the overall development of business professionals who are fully prepared to excel in any of the functional areas of business.

It is significant that business law, under Stern’s new curriculum model, has been elevated from an elective to a required core course. This is in recognition that an understanding of basic legal principles is an essential aspect of undergraduate business education. The successful business manager must learn how to identify possible legal risks and opportunities in relationship to the environment of business.⁶

Many characteristics of a legal environment of business course can be tailored to meet the target skill set of Stern’s new curriculum. For example, communication skills are an integral part of any business law course since the process of legal reasoning inherently requires students to frame legal arguments, both written and oral, to support their conclusions of law.⁷ The practice of law involves verbal debate (most commonly seen in the courtroom) and legal agreements are generally memorialized in written documents; therefore, the importance of accurately expressing one’s wishes in clear unambiguous words and writings cannot be too strongly emphasized. Similarly, professional responsibility and ethical considerations also have traditionally provided the framework for the practice of law and judicial decision-making.⁸ Fiduciary duties of trust, loyalty and good faith underlie major areas of law.⁹ Most business law textbooks¹⁰ emphasize professional responsibility and ethics as an important aspect of business law courses as evidenced by their inclusion of specific ethics based questions, case problems and readings. The professional responsibility of accountants, lawyers and other professionals constitutes an area of study in many business law courses.¹¹

The study of business law naturally lends itself to the use of cross-functional integrative projects since law and business are frequently interconnected. For instance, contract law is fundamental to all business and commercial transactions.¹² Legal issues involving contract formation and enforcement are basic to all business relationships and could be readily applied to an integrative business project.¹³ The Board of Directors case described in Part III of this paper is the type of integrative business project envisioned by

Stern's new curriculum.¹⁴ It poses a realistic predicament that requires students working in groups to resolve in a written team report and oral presentation by applying their legal, managerial and business knowledge. Similar to the case method of teaching prevalent in graduate business programs, this capstone educational exercise prepares students for 'real world' decision-making and incorporates concepts spanning the functional areas of business.¹⁵

II. Legal Aspects of Business Course

Legal Aspects of Business is a new legal environment of business course required for all Stern juniors as a part of the undergraduate business core program. As noted above, it is very significant that the crafters of the new undergraduate curriculum recognized the importance of business law in undergraduate business education by including it as a part of the required business core.

The course description is as follows:

To succeed, business managers and entrepreneurs must know how to operate in the legal environment of business. In this course, students will examine how key areas of business law, including contracts, torts, and business organizations, influence the structure of business relationships. The relationship between law and business will be illustrated in class lectures and discussions, selected readings on case law and statutory law and individual and group projects. Students will actively participate in legal studies designed to enhance business skills such as analytical thinking, written communication, oral presentation, conflict resolution, and team work problem-solving. The objective of the course is to expose students to a broad range of legal issues that they can expect to encounter in business and to enhance the judgment that students will bring to their responsibilities as entrepreneurs, managers of private and public companies, consultants, advisors, etc.

Legal Aspects of Business may be the only business law course that most students take during their college career. Therefore, the content of the course is key to preparing students with the tools necessary for a lifetime of learning about the law, especially within the context of business.¹⁶ Many business law classes are survey courses that touch upon a number of topics (sometimes up to fifteen topics) over a short period of time. The coverage of these legal topics is superficial and the professor rarely goes beyond presenting a brief statement of the legal rules associated with each subject area. In contrast, a more in depth study of fewer areas in the law allows students to develop a deeper understanding of legal principles, processes and reasoning and gives the professor more opportunities to utilize interactive learning.¹⁷

Therefore, when designing the substantive course content for Legal Aspects of Business, the business law faculty chose to concentrate on fewer areas of the law in greater depth and to select those areas that are fundamental to business and commercial transactions. The areas of the law that receive in depth coverage in Legal Aspects of Business include: contracts and sales; torts and product liability; business organizations (agency, partnerships, corporations, limited liability companies, securities regulation);

debtor/creditor's rights and bankruptcy; employment law; and, cyber-law.¹⁸ In this manner, students taking Legal Aspects of Business receive a comprehensive exposure to the functional areas of law most important in business relationships.¹⁹

III. Board of Directors Project

The final capstone integrative exercise for the Legal Aspects of Business course is the Board of Directors project.²⁰ The goal of the assignment is to make students aware of the legal ramifications inherent in business decision-making and promote effective problem solving within a group-work setting. This exercise requires that students "... define the problem(s) considering the relevant information, identify alternatives, and implement a plan for effectuating the best alternative, always remaining cognizant of the ramifications that necessarily flow from this decision tree."²¹ This assignment utilizes a cooperative learning approach whereby students work in small groups, the performance of the group determines each student's reward and the central role usually played by the professor is de-emphasized.²²

In the Board of Directors project, students are placed in groups of four to eight students (depending on the total size of the class with class sizes ranging from 60 to 180 students per section). We have used the web-based teaching software package known as Blackboard²³ to assist us in the creation of the groups on a "random" basis. In order to assure that there is a cultural mix of ideas expressed among group members, however, we do not allow groups to be homogeneous in terms of race, ethnicity or gender. Thus the formation of teamwork groups has not been completely random.

Each group is given the same relatively complex factual problem that is to be presented to the company's Board of Directors. In the past year, the factual problems have involved potential tender offers, buyout and merger opportunities, going public or private transactions, and bankruptcy and related creditor issues. The students are told that the Board is composed of a particular number of inside (management) and outside directors. They must decide who will be the inside directors versus who will be the outside directors. If they are inside directors, they must decide which management positions they hold and if they are outside directors, they must decide with which organizations they are affiliated and what are their job titles.

The students' task as a group is to discuss, evaluate and ultimately reach a decision regarding the company's current situation based on their business expertise and knowledge of the corresponding legal and regulatory environment. Thus they are being asked to consider law as one of the factors, not the exclusive factor, of their business decision-making.

However, before they tackle the problem, they must provide a general background about the legal workings of the Board. Although a copy of the company's bylaws is not required to be submitted, the procedural requirements that the Board must follow in order to reach a valid decision must be presented. For example, how often is the Board required to meet, in what situation is it required to hold a special meeting, what are its quorum and voting requirements, are there Board committees and, if so, how do those

committees function, do Board members/ management own shares, etc. Students must discuss how these points will impact on the Board's actions.

Each group must submit a written paper, as well as make a ten-minute oral presentation to the professor, about how the group has decided to handle the problem. Students are instructed to be as creative as they like. There is no prescribed format or formula for the presentation. However, all group members are required to attend and to actively participate in the oral presentation. After the ten-minute presentation, the professor asks questions and/or makes comments for five minutes. The sessions often have been taped. Two sample Board of Director problems that have been used recently are provided at Appendix A.

A major factor in building an effective teamwork group is promoting physical proximity between the team members.²⁴ Cognizant of the fact that it is difficult for group members to physically meet with each other (especially at Stern where many of the students commute to school and work outside of the school area) we have devised mechanisms for promoting group communication and interaction. We set up Blackboard to permit "group chat" within each group. The Blackboard group chat allows group members to communicate with one another and with the professor (including sending and receiving documents). However, it does not allow communication between the various other groups. Another method of ensuring that the groups physically meet is to schedule additional class meeting times, usually during the lunch time hour, when the groups are required to meet. The professor remains in the classroom during these additional sessions to offer advice to the groups, supply feedback and answer student questions.

In order to ensure that all group members play a worthwhile role and that certain members not be able to shirk their responsibilities, each student in the group is required to submit an evaluation form (see Appendix B) which rates each group member's contribution in terms of two parameters: time and effort and quality of input. A numerical scale of 1-5 is used as the rating system. Students are instructed that the evaluations of each group member will be averaged across all group members for each of the two parameters in order to arrive at "individual contribution" scores. Students also are required to explain which parts of the assignment each of the group members handled. Again, this is to try to prevent one or two students in a group from avoiding responsibility. Rewarding group success promotes group cohesiveness and team development.²⁵ The feedback contained in the evaluation forms coupled with the fact that the group papers and oral presentations are graded creates an incentive for higher levels of group performance.

As the groups analyze the case, they are required to apply such skills taught in business schools as accounting, finance, economics, statistics, marketing and management. Obviously, these are to be considered along side of the legal issues. Thus, students learn how to integrate the different subjects that they study in business school. For example, directors who are considering whether the company should declare bankruptcy or whether to accept a tender offer for the company's shares must analyze,

among other things, the accounting and financial aspects of the situation. Marketing and management issues impact on the company's prospects for the future.

Obviously, this project also requires students to practice their communication skills – both written and oral – all in a group setting. In this manner their analytical coordination and negotiation skills are honed as well.

Unfortunately, we are aware of some negative aspects of this project. Sometimes having too many students in a group prevents each student from truly applying himself to its greatest potential. Furthermore, coordination becomes especially more difficult in a group of eight students rather than in a smaller group. The random nature of the selection also is problematic. Some groups have members who are better writers, oral presenters and/or more creative. Some groups have more of the brighter students as members. But all of these factors exist in any group project – whether in school or in the workplace.

IV. Student Papers and Presentations

The quality of the written papers produced by the students consistently has been very high. Their legal analyses of the case have been well reasoned and thorough. The content of each group's paper typically includes: profiles of their company's inside and outside directors; the procedural requirements for their Board of Directors; and, the bulk of the paper, drawing upon the group's knowledge of legal principles and business concepts, analyzes how the Board of Directors can most successfully resolve this legal/business predicament.

In terms of the directors' profiles, as inside directors, students, as one would expect, take positions such as chief executive officer, chief financial officer, chief operating officer, chief technology officer, chief production officer, general counsel, etc. Their creativity is better demonstrated in their choice of roles as outside directors. They often profile themselves as current or retired executives of companies in related industries, retired government officials – often from regulatory agencies that regulate their company, academics with expertise related to the company's business (such as geology, environmental science, labor relations, economics, etc.) investment bankers, venture capitalists, securities analysts, management consultants and other types of consultants.

As to the Board's procedural requirements, each group must determine the requirements for serving as a director, how to fill a vacancy on the Board, whether directors can or must own company stock and related issues. The group must decide on their rules regarding regular and special meetings of the Board (notice, place, time, quorum and voting requirements, etc.).

The legal analytical section of the paper demonstrates each group's understanding of the legal issues. For example, if the Board is considering whether it should recommend that shareholders accept a tender offer for the company's stock, the Board

must analyze the issues within the framework of the Board's fiduciary duty to the company and its shareholders.

First the group must realize that it is imperative that the Board obtains its own legal and financial advisors in order to evaluate the transaction independently from the influence of the company's chief executive officer and other members of management. Second, the Board must decide whether it wants to pursue the transaction. For example, the Board may be under no obligation to engage in a merger; however, it needs a justifiable reason for refusing it (e.g., strategic internal long term growth of the company is in the better interests of the shareholders rather than short term gains).

Finally, if the Board decides that the transaction is not in the best interest of the company, it must decide what defensive measures to take. Should it adopt, for example, a poison pill, a stock buy back or find a white knight? The Board needs to be particularly careful because if the transaction is deemed to represent a change of control then the Board had the obligation to conduct an auction to guarantee that it is getting the highest price. In the absence of an auction, the Board must have other strong evidence that it has culled the market and is certain that it is getting the best price for the company's shares. If there is no change of control, then the Board is free to negotiate the transaction in the best interests of the shareholders. It is this type of analysis that we look for from each group, although their form for presenting their analysis varies considerably.

The typical (and less creative) oral presentations involve the group discussing the problem at a special Board meeting with the aid of tools such as power point to show financial statements and other quantitative materials. Some of the more creative versions have included the staging of television news and talk shows like The Oprah Winfrey show or Nightline Special Edition. Other groups have experimented by holding hypothetical press conferences or meetings with their legal department. Several groups have produced full-length videotapes (ten to fifteen minutes long) that reflect the group's creative method of conveying its message to the class through the use of costumes, scenery, props and acting. The presentation possibilities are endless and vary considerably depending upon the level of creativity and effort expended by each group.

V. Recommendations to Business Faculty for Implementing the Board of Directors Problem

The Board of Directors problem can easily be adapted to be used in an interdisciplinary course such as one featuring management, finance, accounting, etc. Instead of emphasizing the legal aspects of the problem, as we do in our business law course, the financial, accounting or managerial elements could be stressed instead. Or each area could receive equal treatment. Presumably, this would partly depend upon the background and orientation of the faculty member who teaches the course and whether one faculty member teaches it or whether it is team-taught.

We believe that the Board of Directors group project is an excellent tool to teach law in a manner that integrates many of the other subjects that are taught at business schools and does so in a fashion that requires students to learn cooperatively. The

problem could be used as a capstone senior year project that requires the students to integrate their knowledge of the different areas of business that they have learned throughout their undergraduate career.

Appendix A

Board of Directors Problem #1

Barry Jones, the CEO of X Corp, an oil equipment maker, had been testing the market for opportunities to strategically expand his business into oil production and refinement. After several meetings with his investment bankers, Mr. Jones concluded that oil company Y would be the best match for his company's desired expansion. There was very little overlap between the two businesses and, therefore, any transaction could be accomplished with very little disruption to either the company or their existing workforces. Moreover, Y Corp. had just completed a successful exploration of a new oil field and would need a massive infusion of new equipment to successfully maximize the field's potential reserves. According to a Y Corp. press release and its filings with the SEC, the expected cash flows from the project were astronomical. Despite this news, however, the financial markets continued to pound Y Corp.'s stock, potentially making any deal a bargain for X Corp.

Armed with this information Mr. Jones had his investment bankers arrange a meeting between himself and Thomas Smith, the CEO of Y Corp. At this meeting, Mr. Jones proposed to acquire Y Corp. in a cash and stock deal at a substantial premium over Y Corp.'s current stock trading price. He stressed that the stock markets were greatly undervaluing Y Corp. and that a strategic merger would unlock this hidden value and be an immediate boon to Y Corp.'s stockholders. In addition, Mr. Jones emphasized the long-term value of the deal to both companies and their stockholders. Mr. Jones conveyed his strong belief that there would be enormous synergy gains from combining such complimentary businesses and that the combined entity would be a considerable market force well into the future.

Mr. Smith, however, did not like the idea of his company being a target in a corporate acquisition. Nevertheless, he said that he would think about the proposal and get back to Mr. Jones in a few days. Before leaving, both parties agreed to keep the matter completely confidential, only discussing the potential transaction with those people necessary to evaluate the merits of the deal.

After meeting with his CFO and his own investment bankers, Mr. Smith concluded that a merger with X Corp. was not in the best interests of his company and shareholders. Although the stock market had been undervaluing Y Corp., Mr. Smith believed that the company would be able to rebound through internal expansion of its core business. In particular, he strongly believed that the company's plans for exploiting its new oil field would be most successful: the markets would reward the company accordingly. Having so decided, Mr. Smith called Mr. Jones to decline his offer. Mr.

Jones expressed disappointment and alerted Mr. Smith that his company might decide to go directly to Y Corp.'s stockholders with its offer.

Rebuffed, but not dissuaded, Mr. Jones met with his board of directors to contemplate the possibility of making a hostile tender offer for Y Corp. Although the board preferred to do a friendly deal, it was of the opinion that Y Corp. was such a valuable opportunity for X Corp. that the risks of a hostile deal were worth incurring. Before initiating a hostile tender offer, however, the board suggested exerting a little more pressure on Mr. Smith to see if he might be persuaded into negotiating a friendly deal. Mr. Jones agreed with this strategy and the next day telefaxed to Mr. Smith a "bear hug" letter.

In this letter Mr. Jones reiterated his desire to engage in a strategic transaction with Y Corp. He noted that the interests of both companies would be better served if the two sides could negotiate an agreement, but that a merger of the two companies was such a beneficial transaction for both companies and their constituents that if Mr. Smith refused he would notify Y Corp.'s board of X Corp.'s offer and its intent to proceed with a hostile tender offer.

Upon receiving this letter Mr. Smith called an emergency meeting of Y Corp.'s board. At this meeting he informed the board of Mr. Jones' offer. He told the board that he did not believe a merger with X Corp. was in the best interests of Y Corp. and its shareholders. Although the offer did represent a substantial premium over the company's current stock price, he believed that the company could generate greater shareholder wealth over the next few years by executing its own independent business strategy. Nevertheless, Mr. Smith realized that the ultimate decision rested with the board, and although he vehemently opposed any merger, he would support its decision.

The board of Y Corp. is composed of four inside (including Mr. Smith) and four outside directors. (If there are seven members in your group, then the board is composed of four inside directors and three outside directors.) All members of the board are familiar with the company's financial condition. They have recently reviewed the company's five-year forecast, as well as a comprehensive 18-month study that was prepared for Y Corp. by a well-known consulting firm.

You and your group members are directors on Y Corp.'s board. You must decide who are the inside directors versus outside directors. If you are an inside director, you must decide which management position you hold. If you are an outside director, you must decide what is your outside job title and with which organization.

Your task as a group is to discuss, evaluate and reach a decision regarding Y Corp.'s current situation based on your business expertise and your knowledge of the corresponding legal and regulatory environment. However, before you tackle the problem, you must provide me with a general background about the workings of the Y Corp.'s Board of Directors. Although I do not want you to submit a copy of the company's bylaws, I do want you to set out the procedural requirements that the board

must follow in order to reach a valid decision. For example, how often is the board required to meet, in what situation is it required to hold a special meeting, what are its quorum and voting requirements, are there board committees and, if so, how do those committees function? Do board members/management own shares? How will these points impact on what the board does and how it will do it?

Your group will make a ten-minute presentation to me about how your group has decided to handle this potential buyout situation. You can be as creative as you like. There is no prescribed format or formula for your presentations. However, all group members are required to attend and actively participate in the presentation. After your ten-minute presentation, I will ask questions and/or make comments for 5 minutes. The session may be taped.

In terms of a written submission, I am only requiring that you submit something on the board's workings, as explained above. If you want to submit anything else in writing, that is completely up to you.

You must complete an Evaluation Form - for your reactions to your group members' input. This is the same type of form as you used for the Business Organization group project. It should be handed in separately from any group written submission. It is intended to be confidential.

Board of Directors Problem #2

Instructions:

Your job is to evaluate, discuss, and reach a decision regarding the following problem based on your business expertise and your knowledge of the corresponding legal and regulatory environment. There are two components of this assignment: a written paper consisting of 8 to 12 pages and an oral group presentation.

In the following group case you are a member of the Board of Directors of HealthyTone.Com, Inc. There are four to five board members. You must decide whether all of the directors are inside directors, outside directors, or a combination of both. If you are an inside director you must decide which management position you hold (are you an officer) and if you are an outside director you must decide what is your job title and with which outside organization you are affiliated or work. Before you tackle the problem set forth below, you are required to give me a general background about the workings of your Board of Directors. Although I do not want you to submit a copy of the company's By Laws, I do want you to set out the procedural requirements that the Board must follow in order to reach a valid decision. For example, how often is the Board required to meet, in what situation is it required to hold a special meeting, what are its quorum and voting requirements, are there Board committees and, if so, how do those committees function? Who owns HealthyTone. Com- that is, do Board members/management own shares?

Board of Directors Problem: HealthyTone.Com

HealthyTone.Com, Inc., is a web-based health products company based in San Francisco and recently established in 1995. The goal of its founding Board of Directors is to locate and develop health care products to meet the needs of aging Baby Boomers as well as the rising Generation X. Its Board of Directors has strong business instincts that such products represent a profitable area of future growth within the health care industry. During the past three years, HealthyTone began concentrating its efforts on products that minimize the wrinkling process. Although such research is very expensive, HealthyTone's revenues have doubled in the last year from the sale of its popular weight loss products over the Internet. However, HealthyTone is still reporting an operating loss since it has incurred substantial debts in order to start the business and fund business operations. If its dot.com business remains stable, HealthyTone expects to make a large profit this year.

Smarty, who is employed as one of HealthyTone's leading research scientists, has discovered a new secret formula called Wrinkles Be Gone (WBG) that she believes will dramatically stop the wrinkling process. Smarty has convinced the HealthyTone Board of Directors that this product will be what it takes to put the company over the top and make it one of the world's leading health care firms on the Internet.

In 1998, the Board, based upon Smarty's recommendation to rapidly develop WBG, votes to fund further research of WBG even though BeautyLink's cash reserves are running low and the scientific evidence is not yet conclusive. Smarty requests \$2 million to fund the WBG project. HealthyTone borrows \$1 million from People's Bank. WBG enters into a written loan agreement with People's at an interest rate of 6.85% payable over 15 years. HealthyTone signs a security agreement giving People's a security interest in all of its present and after acquired assets. People's files a Financing Statement with the secretary of state. People's is unaware that one month earlier HealthyTone had borrowed an additional \$1 million from Chase Bank pursuant to a written security agreement also granting Chase a security interest in HealthyTone's present and after acquired assets; although Chase had not yet filed a Financing Statement.

In 1999, HealthyTone, which is awaiting FDA approval, begins selling WBG through the Internet. HealthyTone's website boldly markets WBG as a product that is: "Guaranteed to erase all of your wrinkles as well as prevent future wrinkles from appearing!" and further states "HealthyTone guarantees that there will be no adverse side effects"

Public interest and demand for HealthyTone's new product is overwhelming -WBG is already shaping up to be one of the most anticipated health inventions in recent history. After one and a half years of selling WBG a crisis has emerged. With absolute panic and shock, Smarty reads a report published by the American Medical Association (AMA) that TPA 225, one of WBG's active ingredients, has now been established as a known carcinogenic. Smarty had known that the AMA was studying TPA 225 for its carcinogenic properties. However, Smarty had been betting that the AMA's study would

not become public knowledge for at least 10 years. By that time Smarty would be long gone having taken her millions of profits with her.

Jordan, a 50-year-old baby boomer who lives in New York City and has been drinking and smoking for the past 20 years, has been using WBG for one year. Recently, Jordan's face has become even more wrinkled and he has developed lung cancer. He had ordered WBG from HealthyTone's website but failed to read the following Consumer Warning that was in small print at the bottom of HealthyTone's web site: "Wrinkles Be Gone should not be used by individuals over 40 years old who have a history of alcohol consumption or cigarette smoking," Jordan sues HealthyTone and its Board of Directors in New York City alleging various theories of legal liability.

After the AMA study becomes public knowledge and the FDA bans all sales of WBG, HealthyTone agrees to immediately halt all WBG production. The situation is a total disaster. The stock market price of HealthyTone's stock plummets from \$55 per share to \$5 per share after the news is released about the AMA study and the FDA ban. Luckily, before this news became public (AMA study & FDA ban of WBG) HealthyTone's President avoided a huge loss by selling her 10,000 shares of HealthyTone stock @ \$50 per share. Sales of all HealthyTone products are down since the consumers have lost confidence in the company. The once profitable company is now suddenly operating at a huge net loss.

Healthy Tone eventually defaults on all of its outstanding debt, including \$50,000 in 1999 federal taxes. HealthyTone has assets with a fair market value of \$1 million and cash on hand of \$500,000. People's and Chase want to take possession of HealthyTone's assets. HealthyTone employees have not been paid for several weeks and HealthyTone owes them back wages in the amount of \$6,000 per employee. HealthyTone's employees refuse to come to work unless they are paid. HealthyTone's Board of Directors calls an emergency meeting to determine whether the company must file for bankruptcy and if so, then what type of bankruptcy would be best.

Questions

1. What are People's and Chase's rights to HealthyTone's assets?
2. Can HealthyTone do anything to prevent repossession by People's and/or Chase?
3. What are Jordan's rights? Can he sue HealthyTone in New York City?
4. What is Smarty's potential legal liability?
5. Which type of bankruptcy should HealthyTone file and why?
6. Has HealthyTone's President done anything wrong?

Appendix B

EVALUATION FORM*

***This evaluation is confidential**

Please complete the following evaluation form to indicate each member's contribution. Rate yourself and each of your team members on the following:

1. Time and effort spent on the project.
2. Quality of input.

Use the following 5-point scale for this purpose. Enter the number from this scale that you believe most appropriately describes each group member's contribution (including yourself) on the two parameters.

5 4 3 2 1
Excellent ----- Poor

The evaluations of each member will be averaged across all group members for each of the two parameters in order to arrive at "individual contribution" scores.

Time and Effort
(1 – 5 rating)

Quality of Input
(1 – 5 rating)

- a. Your name
- b. Member #1
- c. Member #2
- d. Member #3

Footnotes

¹ John R. Allison, *The Role of Law in the Business Curriculum*, 9 J. LEGAL STUD. ED. 239 (1991)

² John Collins, *Learning to Make Business Decisions in the Shadow of the Law*, 17 J. LEGAL STUD. ED. 117, 131 (1999)

³ Stern Undergraduate College Proposed Curricular Initiatives (report revised – 9/22/97).

⁴ Under this model students spend their first two years taking liberal arts courses followed by a two-year program devoted to business courses, an approach utilized by most public universities.

⁵ Shirley Strum Kenny, REINVENTING UNDERGRADUATE EDUCATION: A BLUEPRINT FOR AMERICA'S RESEARCH UNIVERSITIES, The Carnegie Foundation (1998). Stern's revised curricular initiatives were timely in light of the conclusions of a recent report from the Carnegie Foundation for the Advancement of Teaching ("The Carnegie Report") that there has been a failure in undergraduate education. The Carnegie Report ascribes these shortcomings to a boring curriculum that fails to promote an integrated educational approach, an active teaching model, communication skills (both oral and written) and an emphasis on teaching excellence, as well as research productivity.

⁶ George A. Nation III & 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. ED. 283, 285-287 (1999).

⁷ Kenny, *supra* note 5, at 5. The Carnegie Report also advocated integrating communication skills throughout undergraduate education since the ability to convey information in both oral and written form is essential to any profession.

⁸ *Special Issue on Ethics*, 34/2 Am. Bus. L.J. (Winter 1996). This issue contains twelve scholarly articles exploring the relationship between law and business ethics.

⁹ For example the concept of fiduciary duty provides the foundation in such areas of agency, partnerships, corporations, contracts and securities regulation.

¹⁰ KENNETH W. CLARKSON, ET AL. WEST'S BUSINESS LAW, (8th Ed. 2001). This textbook contains a special chapter called "Ethics and Business Decision Making". CONSTANCE E. BAGLEY, MANAGERS AND THE LEGAL ENVIRONMENT, (3rd ed. 1999). The ethical components in this textbook include Ethical Considerations and The Responsible Manager sections discussing selected ethical/legal/business issues and an entire chapter devoted to ethics and the law. BEATTY SAMUELSON, BUSINESS LAW FOR A NEW CENTURY, (2nd ed. 2001). This textbook draws the student's attention to ethical-legal dilemmas.

¹¹ CLARKSON, *supra* note 10; SAMUELSON, *supra* note 10. These textbooks have chapters devoted to the professional liability of accountants and other professionals.

¹² Nation, *supra* note 6, at 300.

¹³ Mary Ann F. Nixon & Edward M. Brayton, *The Contractor's Contract: A Tool for Developing Critical Thinking Skills*, 12 J. LEGAL STUD. ED. 219, 220 (1994). For example, this can be achieved in a practical exercise where students draft the contract documents needed for the construction of a house.

¹⁴ Kenny, *supra* note 5, at 17. The Carnegie Report also suggests instituting capstone integrative projects in the junior and senior year of the undergraduate program.

¹⁵ Debra Dobray & David Steinman, *The Application of Case Method Teaching to Graduate Business Law Courses*, 11 J. LEGAL STUD. EDUC. 81 (1993).

¹⁶ Nation, *supra* note 6, at 292, 300.

¹⁷ Nation, *supra* note 6, at 297 – 98.

¹⁸ Legal issues relating to cyber-law are highlighted throughout the course.

¹⁹ Antoni Brack, *The Paradigm of Managerial Law*, 15 J. LEGAL STUD. EDUC. 237, 243 (1997). If one looks at these legal topics from a managerial perspective the following relationships can be found: human resources/employment law; production/contracts and product liability; managerial marketing/sales contracts; financial management/securities regulation, creditor's rights and bankruptcy; strategic management/business organizations.

²⁰ The Board of Directors case represents the culmination of several earlier assignments including; individual analytical papers concerning substantive legal topics such as contracts, torts, agency and product liability and a group projects focusing on choosing the appropriate form of business organization for a group of investors, as well as drafting the necessary legal documents to form and operate such business organization.

²¹ Dobray, *supra* note 15, at 82.

²² Frona Powell, *Utilizing the Team Report in a Business Law Curriculum*, 11 J. LEGAL STUD. EDUC. 127 (1993).

²³ Blackboard is currently in use by a number of Stern faculty members.

²⁴ Larry K. Michaelsen, Robert H. Black & L. Dee Fink, *Problems With Learning Groups: An Ounce Of Prevention*, 17 J. LEGAL STUD. ED. 91, 94 (1999).

²⁵ *Id.* at 96.