

by

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America is a nation of entrepreneurs.¹ Whether engaged in a start-up operation, managing a family business, or as part of an entrepreneurial venture within a larger entity, American entrepreneurs have provided the vision and energy that have powered the United States economy for the last century.

Educating entrepreneurs presents special challenges, particularly in the context of legal studies class. Entrepreneurs thrive in an active environment which uses experience to integrate theory and application. One commentator suggests that for entrepreneurial education, the operative question is not, “What am I going to teach my students today?” but rather “What am I going to have my students doing today?”² The Ice Cream Project answers this question by asking students to “act like an entrepreneur” by learning to “think like a lawyer.”

The Ice Cream Project integrates the operational concerns of an entrepreneurial venture with the legal concepts presented in class in the context of a procurement contract for a small business.³ By simultaneously utilizing and developing attitudes critical to entrepreneurial success, the Ice Cream Project prompts students to shift their view of contracts from a bundle of abstract concepts to an indispensable tool for achieving specific business goals. By “making it real,” the Ice Cream Project makes the study of contracts relevant.

I. Legal Studies, Entrepreneurial Drive and Active Learning: Natural Complements

The traditional approach to teaching business law is based upon the generally unacknowledged, but nonetheless critical assumption, that the purpose of the course is to create “an awareness of the legal and regulatory environment....”⁴ The implication is that ultimate “resolution” of issues will be left to the expertise of attorneys or other specialists.⁵ Yet, in many start-ups and small enterprises, entrepreneurs must not only be aware of legal issues, they must resolve them as well.⁶ Consequently, it is critical that the legal studies course engage entrepreneurial attitudes in support of a transformational understanding of the unique role of the law in achieving business objectives.

Researchers have identified a number of behaviors which appear to be key contributors to entrepreneurial success – frequently called “entrepreneurial drive.”⁷

Common to these attitudes is a predilection toward initiative and implementation rather than unfettered theory and abstraction.⁸ Active learning exercises which engage these attitudes result not only in mastery of substantive topics, but also in the development of entrepreneurial attitudes themselves.⁹ Such attitudes benefit not only the “committed” entrepreneur, but every student who enters an increasingly competitive marketplace.

Active learning has been defined as exercises which link theory and the real world.¹⁰ The most effective forms of active learning have two characteristics in common: (i) they develop transferable skills by focusing on a specific practice area;¹¹ and (ii) they make students proactive participants in their own learning.¹² Such exercises also expand opportunities for students with diverse learning styles.¹³ When properly implemented, active learning exercises promote higher order learning and integration of knowledge.¹⁴

Contract law has been a fertile area for active learning exercises.¹⁵ Contract analysis can be adapted for use in large classes or tailored to be incorporated into a single class lecture.¹⁶ Consideration of the competing interests to be accommodated in a contract naturally segues into negotiation exercises and opportunities for constructive collaboration.¹⁷ Drafting contracts offers a particular benefit by demonstrating the direct link between concrete problems and appropriate legal responses.¹⁸ The Ice Cream Project builds on this heritage of active learning by engaging entrepreneurial behaviors in the service of a transformational understanding of the value of contract law in promoting business goals.

II. Implementing the Exercise

A. Project Objectives

The overall objective of the Ice Cream Project is to encourage students to integrate their understanding of the legal concepts introduced during the legal studies course with the operational needs of a small business. It accomplishes this objective by having students draft a comprehensive contract in a procurement context, an area where an entrepreneurial venture might engage in “do it yourself” lawyering.¹⁹

Drafting a complete contract, rather than focusing on a single provision, expands opportunities for creativity and innovation, reinforces the role of contracts in managing diverse risks, and highlights the interrelationship of discrete

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provisions.²⁰ There is no single “correct” solution or format.²¹ In this way, the Ice Cream Project encourages the innovation and constructive non-conformity identified as attitudinal components of entrepreneurial drive.²² By requiring students to gather facts, identify risks, and use their knowledge of legal concepts to eliminate or minimize those risks, the Ice Cream Project also encourages and focuses the “proactive disposition” characteristic of an entrepreneurial attitude.²³ Moreover, the Ice Cream Project, with its focus on identification of business and legal issues and its application of law in a specific context, provides a good opportunity for students to enhance cognition at all six levels of learning identified in Bloom’s hierarchy of learning.²⁴

B. Project Structure

The Ice Cream Project²⁵ consists of two parts: Part I: drafting a contract for the purchase of a perishable commodity – ice cream – from the point of view of the operator of a small ice cream cafe (the “Buyer’s Contract”); and Part II: commenting on the Terms of Sale²⁶ and responding to specific questions concerning the impact of the UCC²⁷ (the “Memo to Harry”).

At the commencement of the Ice Cream Project, students are provided with Instructions and Background Information²⁸ concerning their business, Coffee & Cream, LLP, (“C&C”), a small operator of an ice cream cafe. Use of ice cream, a familiar product, helps to allay the fears of students who might feel intimidated dealing with a highly technical product.

The Background Information accurately describes customary practices in this industry and provides a paradigm of a supplier relationship in its description of the arrangement with the Buyer’s former supplier. Students must consider how closely they should replicate this supplier model, while taking into account the fact that the new supplier is untested. The end-product of Part I is the Buyer’s Contract which addresses key business and legal issues and resolves those issues in a manner most favorable to the Buyer.²⁹

After submitting the Buyer’s Contract, the students receive the Terms of Sale³⁰ and a directive (“Memo from Harry Baer”)³¹ instructing them to evaluate the Terms of Sale and to respond to specific inquiries about the impact of the UCC on the transaction. Part II is designed to build capability to understand and evaluate “legalese,” and to increase the appreciation of the risks of uncritical reliance on the UCC as a substitute for a custom drafted contract.³² The end product of Part II of the Project is the Memo to Harry which answers the specific questions posed in his directive and makes a recommendation about how to proceed.

C. Teaching Strategies

Although grounded primarily in contract law,³³ the Ice Cream Project provides an overarching structure for integrating a number of legal topics.³⁴ “Seeding” the Ice Cream Project throughout the course with brief, but frequent, discussions of the relevant legal topics, encourages transformational understanding of the material; legal topics are no longer separate, unrelated modules, but part of an integrated system with concrete application. For example, because it utilizes trade names, as well as the proper names of business entities, the Ice Cream Project can provide a logical segue from an exposition of business organizations to a discussion of the proper description of a contracting party. Lectures on product liability might utilize the example of adulterated ice cream and the protection afforded by indemnification clauses. Discussions of alternative dispute resolution mechanisms can be logically linked to specific contract provisions. Even the impact of agency regulations can be explored by considering risk shifting provisions that require product to conform to food safety and labelling standards promulgated by various agencies.³⁵

In addition to threading the Ice Cream Project throughout various modules, the instructor should allow for periodic reflection on the learning gleaned from the Ice Cream Project and the implications on business operations.³⁶

D. Student Preparation

The Buyer’s Contract and the Memo to Harry require the students to perform three interrelated activities: (i) a factual analysis; (ii) a legal analysis and application; and (iii) drafting.

Students are encouraged to identify the business priorities of C&C during each step of the transaction, from order entry, delivery and inspection, through payment and potential damages. The Instructor can facilitate the process through in-class discussions and “brainstorming.”³⁷

Having determined the key operational issues, students must determine how to utilize the law to address the issues in a way that provides contractual protection for C&C’s key concerns. Students are required to draft a “signature ready” contract – i.e. one which treats all important aspects of the transaction. Although most students are able to address all pertinent issues in a contract of three to five pages, page length may vary significantly.³⁸

E. Reflection and Evaluation

Literature considering the efficacy of active learning exercises suggests that the opportunity to reflect on the exercise is critical to its success in promoting mastery of the material.³⁹ Such reflection “cements” the experience of the exercise, and

facilitates transitioning from the specific experience of the exercise to more general concepts and insights.⁴⁰ The end result is internationalization of learning and enhancement of higher order cognition. Reflective consideration also contributes to self-efficacy⁴¹ and achievement satisfaction, two key components of entrepreneurial drive.⁴²

The Ice Cream Project encourages the reflective function in two ways: (i) by its structure; and (ii) by targeted classroom discussion at completion of each stage of the project.

The two parts of the Ice Cream Project – the Buyer’s Contract and the Memo to Harry – engage different learning mechanisms. In Part I, the students construct a contract “from the bottom up,” proceeding from the specific operational objectives of C&C to a document which translates those objectives into a legally enforceable contract. In Part II, students view the process from the other direction, effectively “deconstructing” the Terms of Sale and evaluating the impact of such terms on their business. Engagement in these two processes requires students to shift their viewing point, resulting in new insights. For example, students who may have failed to address indemnification in the Buyer’s Contract are confronted with the issue – and presumably reflect on their own contract – when they review the indemnification provision contained in the Terms of Sale.

Targeted classroom discussion also provides significant opportunities for reflection. At the conclusion of the Ice Cream Project, students should be encouraged to share operational and legal insights and to consider the interrelationship of the Buyer’s Contract and the Memo to Harry. Among the many insights emerging from class discussions was the recognition that “contract problems” were really “business problems” which were solved by a comprehensive integration of legal and business learning. Of equal importance for enhancement of entrepreneurial self-efficacy was the validation of different, but equally effective, approaches to meeting C&C’s objectives and “demystifying” the boilerplate contained in the “Terms of Sale.”

III. Conclusion

The Ice Cream Project provides a tangible strand connecting the innovative, proactive character of entrepreneurial problem solving with the legal concepts introduced in the business studies course. Students themselves appear to appreciate the connection between the Ice Cream Project and entrepreneurial applications. One student noted: “The exercise was tough but fun. ...I am seriously considering opening an ice cream store and [the Ice Cream Project] made me understand what might be involved.”⁴³ Other students found it to be the most valuable assignment in the course.⁴⁴ By permitting students to “discover” how the law provides tangible solutions to business problems, the Ice Cream Project helps to concretize the importance of contract law to entrepreneurial enterprises. If education really is that which is “left behind after learning is forgotten,”⁴⁵ then the Ice Cream Project, by challenging and engaging entrepreneurial drive, has a valuable role to play, not just in “learning,” but in “education.”

APPENDIX A

THE ICE CREAM PROJECT

Instructions and Overview

This is a two part project. Part I (the “Buyer’s Contract”) requires you to draft a contract for the purchase ice cream from the point of view of the Buyer, a small ice cream cafe. You do not have to consider whether the contract would be acceptable to a Seller.

Part II (“Memo to Harry”) requires you to explain and analyze the Seller’s boilerplate Terms of Sale (“Terms of Sale”) and respond to certain specific questions from the owner, Harry Baer.

You may choose to do this project alone or as part of a team, not to exceed three people, including yourself.

Part I – Buyer’s Contract

Please read the Background Information very carefully. It will provide you with information about the business which you represent. Your objective in drafting the Buyer’s Contract is to use the concepts which we have discussed in class to meet the operational priorities of the business while allowing enough flexibility to take account of changing business needs. Your contract must be clear enough to avoid misunderstandings between the parties.

Prior to drafting, you should make a list of the topics which are critical to this transaction. It may be helpful to think in sequential terms: follow the product from start to finish of the transaction. What are the concerns which arise along the way? What changes to your business might cause you to want to terminate or change your obligations to the Seller?

Once you have developed your issues list, you should consider how you want to resolve each of the questions on your list in a way which is best for the business and how the law can help you achieve your objectives.

The Buyer's Contract does not need to conform to a particular format. You are free to review sample agreements. However, the objective is to meet the specific needs of your business and your contract will be evaluated against that objective. It is important that the Buyer's Contract be complete, clear and protect the interests of the business.

The length of the Buyer's Contract depends on your writing style, the issues you identify, and the way you choose to resolve the issues. There is no required page length.

Part 2: Memo to Harry

After you have submitted the Buyer's Contract, you will receive a communication from Harry Baer transmitting the Seller's Terms of Sale ("Terms of Sale") and requesting that you review their proposal and explain it to him. In addition, he has some specific questions about the impact of the Uniform Commercial Code on the transaction. Finally, Harry would like you to make some recommendations about how to proceed.

Your task is to prepare a written memo ("Memo to Harry") responding to Harry's questions. You will need to justify your answers after considering the impact of the law and what is best for the business.

There is no page limitation on the Memo to Harry. Use your best judgment. However, depending on your writing style, a memo of between three to five pages is typical.

Grading

A grading sheet identifying point values and objectives is attached.

Have fun with this project; learn something – it may come in handy one day. It requires thinking, creativity and a little ingenuity.

General Background

For purposes of this exercise, please assume all of the following facts are true. You are free to make up any other facts that you consider crucial.

You are the new manager of "Coffee & Cream, LLP", a small business which operates "ice cream cafes" year round under the name "Coffee and Cream." "Coffee and Cream" operates from a storefront in an open air shopping center.

Harry Baer owns the business with his wife, Sally. Together, Harry and Sally make up Coffee & Cream, LLP ("C&C"). Harry is thinking about retiring and you and Harry have informally discussed the possibility of your buying the business.

For fifteen years, C&C purchased all its ice cream from Rago Products. They never had a written contract. The owner of Rago Products is retiring and will shut down the business at the end of the year. Harry has been searching for a replacement supplier and believes that he has found one in Wilson Treats, Inc. ("Wilson Treats"). However, since he has never done business with Wilson Treats before, Harry wants you to draft a written contract which protects C&C.

C&C sales of ice cream average approximately 10 units /month of assorted flavors during the "winter season" (November through March, inclusive) and approximately 25 units/month during the "summer season" (April through October, inclusive). (A unit = 5 gallons in a single container). However, volumes can vary radically, depending on weather, traffic through the malls, Harry's haphazard advertising, and whether the local university is hosting a sporting event. In its best year, summer volume topped 300 units. Both you and Harry believe that with better management and more creative management, C&C could significantly increase sales. Wilson Treats is a small manufacturer and Harry wants to make sure they can deliver.

C&C has limited storage space cannot inventory much product; its refrigeration unit has a maximum holding capacity of 10 units.

C&C's lease with the shopping center requires that all deliveries be made after 10:00 p.m. and before 6:00 a.m. C&C has one employee who can receive deliveries between those hours; however, this employee requires at least 24 hours notice to come in for a delivery. Under its arrangement with Rago, Rago employees off-loaded all orders and transported them from the loading dock into C&C's freezers in the back of the cafe.

Because C&C had come to know and trust Rago's quality of ice cream, there were no quality specifications in place for the product that Rago delivered. C&C prides itself on the freshness of its product (it can get "freezer burn" if it melts and refreezes) and Harry wants to make sure that there is no decline in quality as a result of the change in suppliers. Harry has sampled Wilson Treat's ice cream but no one from C&C has visited Wilson Treat's manufacturing site.

Rago always gave C&C a 5% rebate at the end of the year if purchases exceed those of the previous year by 10% or more.

Wilson Treats delivers its product in its own refrigerated trucks.

Other Assumptions

1. Base price is not an issue. Harry has agreed to \$25.00/unit.
2. C&C is having some problems with its Landlord, Real Good Realty, Inc. ("RGRI"). RGRI would like to make room for a Starbucks and is looking for any excuse to claim that C&C has breached their lease. Harry wants to be very sure that any arrangement with Wilson Treats will not create more problems with the RGRI.

Memo from Harry Baer

MEMORANDUM

To: D. Newbie
From: Harry Baer
Date: April 3, 2007
Re: Wilson Treats, Inc.

Great job on your proposed contract! Unfortunately, it must have crossed in the mail since I just received the Wilson Treats Terms of Sale (Attachment A). I would like you to take a look at it and get back to me with a memo by next week which answers the following questions:

1. What do the Terms of Sale mean? This stuff is all in "legalese." What does it mean in plain English and what is really important here?
2. At a seminar which I attended in Las Vegas, the speaker said that the UCC makes it easy to make a contract because we don't have to worry about specific terms and stuff. What would be the impact if we just sent a letter saying, "We accept your Terms of Sale except where they conflict with the UCC." Do you think that would be good enough?
3. How do you recommend that we respond to Wilson Treats?

Attachment A

TERMS OF SALE OF WILSON TREATS, INC.

1. General

1.01 **TERMS OF SALE:** These terms and conditions constitute ("Terms of Sale") shall apply to all transactions entered into with Wilson Treats, Inc. (the "Company") for the purchase of product (or any services incidental to the delivery of such product) ("Product"). No terms or conditions other than the Terms of Sale shall be binding on the Company. Acceptance is limited to the terms stated herein; any other terms or conditions are hereby rejected and shall not be binding on the Company. Buyer shall be deemed to have accepted the Terms of Sale if (i) Buyer signs the Terms of Sale; (ii) Buyer orders Product; or (iii) the Company acknowledges Buyer's order.

2. Standards of Performance

2.01 **STANDARDS:** All Product shall conform to the specifications of the Company which may be in effect from time to time. Seller reserves the right to change the specifications at its sole discretion without notice to the Buyer.

2.02 **WARRANTIES:** Except as may be expressly identified herein, the Company disclaims all warranties and guarantees, whether express or implied, including but not limited to the warranties of merchantability and fitness for a particular purpose. Any samples, brochures materials, or representations provided to Buyer by the Company are solely for illustration and shall not constitute a guarantee of Product or performance

3. Delivery

3.01 **DELIVERY:** All shipments shall be FOB the Company's facility. The Company shall use all reasonable efforts to deliver all Products in a timely manner but does not guarantee delivery within a specified time. A minimum of 72 hours notice is required between ordering and delivery. Orders requiring delivery within less than 72 hours are subject to upcharge at the Company's sole discretion.

4. Terms of Payment

4.01 **PAYMENT:** The Company shall invoice the Buyer on a monthly basis for all deliveries made during the previous thirty (30) days. Invoices are due within fifteen (15) days after date of invoice. Under no circumstances shall Buyer adjust or withhold payments due to quality or delivery issues; any adjustments in price must be approved by the Company's Customer Service Manager. In the event that payment is late, the Buyer shall pay interest on any overdue amounts at the rate of 15% per year.

5. Acceptance and Remedy

5.01 **ACCEPTANCE:** Buyer shall have the right to inspect or test Product. Buyer shall have a period of twenty-four hours after delivery of Product to advise the Company of any defect in the Product, including any deficiencies in quantity. Any such notices shall be in writing and delivered by fax to the Customer Services Manager at a number to be provided. In the event that the Buyer fails to advise the Company of any deficiencies, the order shall be deemed to be accepted and Buyer shall have no further recourse against the Company.

5.02 **LIMITATION OF REMEDY:** In the event that a shipment does not include the full quantity ordered, or if there exists a defect in the Product which constitutes a breach of the Warranty provided in Section 2, the Company, at its sole discretion, may either replace the Product or refund the purchase price of the Product. Replacement or refund shall constitute the Buyer's sole and exclusive remedy. In no event shall the Company be subject to any other damages, including but not limited to, consequential damages, lost profits, attorneys' fees or costs of substitute product. Any claims by Buyer must be in

writing and must be delivered to the Company as specified in Section 5.01. Failure to make a timely claim shall bar any recovery by Buyer.

6. Indemnification

6.01 INDEMNIFICATION: The Buyer agrees to indemnify and defend the Company, and its officers and employees to the fullest extent of the law, and hold them harmless from and against any claim, demand, cause of action, loss, expense, judgment, penalty, fine or liability (including reasonable attorney’s fees and costs of suit), resulting from or arising by reason of: (a) any injury to or death of persons (including but not limited to, the death or injury to the employees of either the Company or the Buyer); or (b) damage to, or loss of, property (whether the property is owned by the Company, the Buyer or a third party). Anything contained herein to the contrary notwithstanding, Buyer’s obligations hereunder shall not be reduced or limited because of the negligence of the Company.

7. Choice of Law

7.01 CHOICE OF LAW: The parties agree that this Agreement shall be construed under the law of the State of Louisiana.

GRADING RUBRIC

Topic	Description	Max Points	Your Score	Comments
Part 1: Buyer’s Contract	The Buyer’s Contract will demonstrate Issue Identification, Legal Analysis and Drafting skills			
Issue Identification	Identification of business priorities	15		
Legal Analysis	Analysis of impact of law on the issues; Application of law to further priorities of the business	15		
Drafting	Clear language; comprehensive; Protects C&C interests; Provides flexibility; Logical and workable	15		
Part 2: Memo to Harry	The Memo will provide an analysis of Seller’s terms and respond to Harry’ questions			
Explanation and Analysis	Explain the Terms of Sale and assess their impact	15		
Analyze UCC impact	Determine impact of Harry’s idea to use the UCC	15		
Evaluation/ Recommendation	Formulate a recommendation on Seller’s proposal based on needs of business	15		
Technical/Presentation Contract and Memo	Professionalism; grammar; spelling	10		
Total Points		100		

APPENDIX B

LEVEL of COGNITION	DEFINITION	DEMONSTRATION IN THE ICE CREAM PROJECT
Knowledge	Knowing a contract requires certain key elements	Recognition of legal issues in the Buyer's Contract and Seller's Terms of Sale
Comprehension	Understanding all of the elements of a contract and why each is necessary	Ability to "explain" the counterproposal and the impact of the UCC
Application	Applying understanding of contracts to a specific fact situation	Drafting a contract which relates legal concepts to the operational needs of the business
Analysis	Analyzing multi-faceted legal/business issues	Constructing the contract by breaking down the transaction into constituent parts; analyzing the Seller's Terms of Sale
Synthesis	Melding legal and factual understanding to create new ideas or concepts	Creating a contract which satisfies the legal and operational needs of the business
Evaluation	Judging an outcome by comparing the actual and ideal situation	Consideration of the Seller's Terms of Sale encourages an evaluation of the Proposal

Footnotes

¹ A 1994 Gallup poll showed that seventy percent of high school students hoped to start their own company at some time in the future. Colleges also report increasing numbers of freshman expressing interest in entrepreneurship as a major. James O. Fiet, *The Pedagogical Side of Entrepreneurship Theory*, 16 J. BUS. VENTURING 101, 102-03 (2001) (citations omitted).

² Fiet, note 1 *supra* at 108-09 (footnotes omitted).

³ The Ice Cream Project is contained in Appendix A which consists of following discrete sections: Instructions and Overview; General Background; Memo from Harry Baer; Terms and Conditions of Sale; and the Grading Rubric.

⁴ Roger LeRoy Miller & Frank B. Cross, *THE LEGAL ENVIRONMENT TODAY*, Fifth Edition 2007 at xxv.

⁵ For many years, the business law curriculum, influenced by the 1959 report, *HIGHER EDUCATION FOR BUSINESS*, emphasized the broad, theoretical framework of the legal system. The report, which viewed the business environment as one of "specialized staff services," propelled curriculum development toward examination of broad legal concepts at the expense of specific substantive skills. George J. Siedel, *Six Forces and the Legal Environment of Business: The Relative Value of Business Law Among Business School Core Courses*, 37 Am. Bus. L.J. 717 at 736 n.57 citing Robert A. Gordon & James Edwin Howell, *HIGHER EDUCATION FOR BUSINESS* 205 (1959).

⁶ Lean or decentralized staff, limited legal resources and the need for speedy decision making characteristic of entrepreneurial ventures, have impacted treatment of legal issues. More frequently, tasks previously performed by counsel are being carried out by non-lawyers. Seidel note 5 *supra* at 736-37 (footnote omitted). In light of this shift, the importance of legal training becomes more critical. *Id.* at 736. Ironically, recognition of the challenges involved in even a relatively simple transaction can provide a deeper appreciation of the special expertise of counsel in structuring business transactions.

⁷ The term "entrepreneurial drive" was first used in 1979 and was defined as the "drive that some people have to create things, the determination they have to achieve real progress...." Juan Florin, Ranjan Karri & Nancy Rossiter, *Fostering Entrepreneurial Drive in Business Education: An Attitudinal Approach*, 31 J. MGMT. EDUC. 17, 17-18 (2007) quoting Robert Getley, *Entrepreneurial Drive*, 11 INDUS. & COMMERCIAL TRAINING 1, 19-23 (1979).

⁸ Florin et al. identify five key attitudes in entrepreneurial success which can be engaged and enhanced by effective education: (i) preference for innovation; (ii) non-conformity; (iii) disposition toward action; (iv) self-efficacy; and (v) achievement motivation *Id.* at 21-25.

⁹ Scholarly opinion is divided as to whether entrepreneurship can be taught. *Id.* at 18-20 (citations omitted). While there is no single set of personality traits associated with entrepreneurial success, researchers have identified three components – qualities, skills and attitudes – which drive entrepreneurial behavior. At least two of these components – skills and attitude – can be enhanced by education. *Id.* at 18 (citations omitted). Business schools have reacted accordingly. In 1971, there were only sixteen colleges teaching entrepreneurship; by 2000, that number had grown to eight hundred. Fiet, note 1 *supra* at 102.

¹⁰ Larry A. DiMatteo & T. Leigh Anenson, *Teaching Law and Theory through Context: Contract Clauses in Legal Studies Education*, 24 J. LEGAL STUD. EDUC. 19, 20 (2007).

¹¹ Succinctly, active learning teaches the “drafting of contracts by drafting a contract.” *Id.* at 24 (citations omitted).

¹² Boyle, James, *The Anatomy of a Torts Class*, 34 AM. U. L. REV. 1003,1051 (1985). See also Catherine Jones-Rikkers & Constance Jones, *Active Learning in the Legal Environment of Business Classroom*, 16 J. LEGAL STUD. EDUC. 173,174 (active learning gives students a “vested interest” in their education).

¹³ Carol Chomsky & Maury Landsman, *Using Contracts to Teach Practical Skills: Introducing Negotiation and Drafting Into The Contracts Classroom*, 44 ST. LOUIS L. J. 1545, 1559 (2000); Jones-Rikkers & Jones, note 12 *supra* at 176-77.

¹⁴ DiMatteo & Anenson, note 10 *supra* at 21-27 (citations omitted); Jeffrey B. VanDuzer, *Managing the High Cost of Litigation: A Business Law Class Exercise*, 7 J. ACAD. BUS. EDUC. 50, 50-51 (2006) (citations omitted); Ida M. Jones, *Bridging the Gap: Using Contract Simulations as an Experimental Teaching Method*, 6 J. LEGAL STUD. EDUC. 71, 72 (1987).

¹⁵ See DiMatteo & Anenson, note 10 *supra* (evaluation of non-competition and liquidated damages provisions); Susan Denbo, *Contracts in the Classroom – Providing Undergraduate Business Students with Important “Real Life” Skills*, 22 J. LEGAL STUD. EDUC. 149 (2005) (covenants not to compete); Barbara Child, *The Study of Contract Drafting Strategy: Exercises in Mine Detection*, 42 J. LEGAL EDUC. 297 (1992) (analysis of contract “boilerplate”); Marlene E. Barken, *Integrating Contract and Property Fundamentals with Negotiation Skills: A Teaching Methodology*, 9 J. LEGAL STUD. EDUC. 73 (1990) (contracts for real property).

¹⁶ DiMatteo & Anenson, note 10 *supra* at 28.

¹⁷ Denbo, note 15 *supra* at 149. See also Barken, note 15 *supra* (negotiating a contract for the purchase of residential real estate).

¹⁸ Susan L. DeJarnatt, *In Re Macrate: Using Consumer Bankruptcy as a Context For Learning In Advanced Legal Writing*, 50 J. LEGAL EDUC. 50, 50-57 (2000) “[F]ull learning of substantive law is made possible by incorporating writing about that subject. Writing assignment involve all students, unlike the oral dialog, and require the students to ‘commit[] to a claim in a more definite and enduring sense...; to appreciate how the situation affects and defines his or her legal response...’” *Id.* quoting Leigh Hunt Greenhaw, “*To Say What the Law Is: Learning the Practice of Legal Rhetoric*,” 29 VAL. U. L. REV. 861, 885 (1995).

¹⁹ See Seidel, note 5 *supra* at 736-37 (increasing interest among business students in operating their own businesses has resulted in shift of traditional legal functions to non-lawyers). See also Jones note 14 *supra* at 72 (citations omitted) (noting a trend in all companies to divert legal issues to non-lawyers as a cost saving mechanism).

²⁰ See DeJarnatt, note 18 *supra* at 57 (the more fully developed the context of the assignment, the greater the opportunity for students to learn a substantive area through writing about it).

²¹ The Grading Rubric, which is a part of Appendix A, serves to provide some consistency when evaluating submissions which may differ widely in scope and approach.

²² Florin et al. suggests that classes can foster entrepreneurial attitudes toward classes innovation by providing opportunities for, and rewarding, creative and original approaches in assignments. Florin, note 7 *supra* at 22.

²³ Creation of a new, customized contract, rather than relying solely on analysis of “boilerplate,” provides opportunities for channeling the “non-conformity” which frequently characterizes entrepreneurial attitudes, into the constructive creation of alternative approaches to problem solving.

²⁴ Benjamin Bloom created a system for which categories knowledge by increasing levels of complexity and which provides a taxonomy for relating directives used in testing to different levels of cognition. BENJAMIN S. BLOOM, *TAXONOMY OF EDUCATIONAL OBJECTIVES: HANDBOOK* (1956) Bloom posits the following six levels of competence: knowledge, comprehension, application, analysis, synthesis and evaluation. *Id.* Appendix B sets forth a suggested correlation between the skills necessary for successful completion of the Ice Cream Project and Bloom’s taxonomy.

²⁵ The Ice Cream Project is positioned as an “optional” group project. Students may self-select into groups of up to three people. The option of solo participation is particularly valuable when using the project with non-traditional students who may be working and for whom the logistics of a group assignment could be burdensome. Experience with the project in over twelve courses has not disclosed any discernible difference in the quality of work submitted by individuals or groups. While there are valuable opportunities to working in a group setting, such a variant is outside the scope of this paper.

²⁶ The Terms of Sale are an attachment to the Memo from Harry Baer.

²⁷ The Memo from Harry Baer which contains specific questions concerning the UCC.

²⁸ See Appendix A for the Background and Instructions.

²⁹ Having the students draft a contract with a Buyer’s “bias” rather than a “middle of the road” approach enables students to better demonstrate their understanding of the Buyer’s business needs. Although students are invited to review “template” contracts much the way an entrepreneur might if confronted with a procurement challenge, the instruction to draft a contract from the Buyer’s point of view, discourages the use of contract templates which approach the purchase from a “neutral” position.

³⁰ Delaying distribution of Part II ensures that the student's construction of the Buyer's Contract will be constructed "from scratch" and neither influenced nor limited by the Terms of Sale.

³¹ See Appendix A for the Memo from Harry Baer.

³² In responding to Mr. Baer's inquiry whether he can accept the Terms of Sale, "except where they conflict with the UCC," students will come to the realization that such language will not protect the C&C against the most onerous of the Terms of Sale (disclaimer of warranties, indemnification and limitation of remedy) which do not "conflict" with the UCC.

³³ The Memo to Harry is an unparalleled opportunity to illustrate fundamental contract concepts, particularly warranty, indemnification, damages and the applicability of the UCC.

³⁴ The Ice Cream Project is the capstone activity of the legal studies course and is designed to be completed in approximately five weeks, with a number of informal milestones. Although the Ice Cream Project can be used to connect diverse concepts introduced in the legal studies course, the Instructions and General Background should be distributed during the time when the students are studying the contracts module. A realistic schedule for completing the Ice Cream Project might be as follows: Factual and Legal Analysis: two weeks; Drafting the Buyer's Contract: one week; Drafting the Memo to Harry: one week.

³⁵ [Our University] offers a food marketing major so that contracts involving food procurement have additional relevance.

³⁶ See notes 39-42 and accompanying text *infra* for the importance of reflection in achieving educational goals.

³⁷ For example, C&C's limited storage capacity and variable demand naturally leads to a discussion of "just in time" inventory and requirements contracts. Other issues include the risks inherent in granting access to the cafe to delivery employees, and the financial and operational impact of the lease provisions restricting delivery.

³⁸ For example, some students may choose to provide extensive product "specifications" of key components, while others adopt a "satisfaction guaranteed" standard with C&C having complete discretion to return unsatisfactory product. Others utilize a "trial period" coupled with a plant inspection to ensure product quality.

³⁹ John Sonsteng, June Cicero, Resa Gilats, Roger Haydock & John McLachlan, *Learning By Doing: Preparing Law Students For The Practice of Law*, 21 WM. MITCHELL L. REV. 111, 136 (1995) (citations omitted).

⁴⁰ "Merely doing something is not enough. Reflecting on 'the doing' and testing out the reflection must follow for learning to be effective." *Id.*

⁴¹ "Self-efficacy" refers an individual's subjective belief that they have the capability to do a task. Research suggests that a person's belief in their ability to do a task increases the likelihood that that they will attempt the task. Florin, note 7 *supra* at 24 and studies cited therein. By actually drafting a contract, and reducing the intimidation of "legalese," the Ice Cream Project builds the confidence necessary to read, understand and react to contract provisions.

⁴² While research suggests that entrepreneurs may be more achievement oriented than other managers, in the context of the educational environment, such "achievement" may be less satisfied by higher grades than by positive feedback on the students' specific efforts. Florin, note 7 *supra* at 25 (citations omitted).

⁴³ Anonymous student, Course Evaluation, Spring, 2007.

⁴⁴ Anonymous students, Course Evaluation, Fall, 2007.

⁴⁵ B.F. Skinner, *Education in 1984*, 31 NEW SCIENTIST 484 (May, 1964).