

# COLLABORATIVE CRITICAL THINKING EXERCISES FOR BUSINESS LAW STUDENTS

by

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## I. INTRODUCTION

Three business law/legal environment professors have taken a collaborative approach to developing common assignments for introductory level business law courses.<sup>ii</sup> Our premise is two-fold: case problem analysis promotes critical thinking and critical thinking is best developed through collaborative activities. Many AACSB accredited schools and U.S. universities in general make critical thinking a primary learning outcome or objective. Also, many extol the advantages of team based or collaborative learning. The value of collaborative learning was illustrated in the scene from the *Apollo 13* movie that captured the NASA engineers and scientists being told to build an oxygen delivery system from the odds and ends on the spacecraft, which they did successfully.<sup>iii</sup> While business schools do not train NASA engineers, they train people to make crucial and well informed business decisions, often using the same critical thinking and collaborative problem solving approaches used by engineers. In the legal discipline, case problems are commonly used to teach both the substantive or topical area and to help students engage in critical thinking through legal reasoning. “Case studies are often used in business law classes ... to help students identify and analyze real business problems.”<sup>iv</sup>

Many business schools that offer multiple sections of the required introductory courses are increasingly utilizing practicing attorneys as part time instructors to teach them.<sup>v</sup> These practicing attorneys generally have little time or incentive to learn how to instill critical thinking skills in business students on their own.<sup>vi</sup> As discussed later, our collaborative approach to course design provides an opportunity for full and part time faculty to work together to promote critical thinking. Through this collaborative design, we can assure that all the students in the introductory course are exposed to some critical thinking and collaborative learning activities. Collaborative design has the additional benefit of minimizing any sacrifice of educational freedom, especially since, as we’ve collaborated, we’ve found that, as with students, three minds are better than one when writing and thinking about analytical problem solving generally. Consequently, we developed common case problem assignments that, if adopted, assure that students are experiencing some consistent critical thinking practice in all the sections of the course. We want to ensure that no matter which of seven instructors the student takes the course from, the student will experience similar academic rigor, consistency of performance evaluation, and explicit development of critical thinking skills. In addition, we introduced problem solving activities using humorous and simple problems so that students could feel motivated and empowered to continue developing their critical thinking skills through successful experiences in their introductory coursework.

The case problems with accompanying teaching notes are included in the Appendix. The format of the case problems accommodates our various methods for introducing structured critical

thinking to the introductory students, including using the IRAC method and briefing cases to see how judges problem solve. Each of us use different techniques to help students learn, including use of case briefing assignments, the use of the IRAC method of case problem analysis, research projects, and more. Through our collaborative efforts we have made progress toward our goals of increased rigor, consistency and creating cases that explicitly require students to engage in critical thinking activities. We have done so in a way that preserves academic freedom and individuality in course design and implementation.

In the next section we have identified the key components of critical thinking and problem solving analysis. We also reviewed some common sense and observational data as well as some law and education scholarship on the benefits of collaborative learning. In addition, through this effort, we have experienced the benefits of our own collaborative work. This paper presents the results of our collaborative work in writing and sharing case problems for our classrooms. Part II summarizes and compares some scholarship on critical thinking and collaborative learning in the business law field. Part III summarizes the collaborative nature of the course redesign process. In the Appendix we share the case problems, teaching notes, and advice on how to utilize them.

## II. CRITICAL THINKING AND COLLABORATIVE LEARNING

### A. *Critical Thinking*

Critical thinking is a common learning outcome or learning goal embraced by many universities. While many are acknowledging and even mandating that our schools concentrate more on teaching critical thinking, the advice or mandate is not always accompanied with an explanation of just what is critical thinking. Clearly it is not the same across all disciplines, but there is a core definition that is fairly universal. First we explore what critical thinking means in the law and business context. Second, we analyze how the case problems we have agreed to use in our introductory business law course provide critical thinking practice for business students.

#### 1. What is Critical Thinking?

“Critical thinking is the process of reacting with systematic evaluation to what one reads and hears; this system for conducting evaluation consists of a set of interrelated questions that critical thinkers should be able and eager to ask and answer at appropriate times.”<sup>vii</sup>

“[An] important aspect of our work is to help students learn how to acquire knowledge that ultimately may exceed our own, to apply it in efficient and reasonable ways, and to adjust and grow when knowledge becomes outmoded and new needs for application emerge.”<sup>viii</sup>

As previously noted, although there is nearly unanimous agreement in higher education that critical thinking is a key learning outcome,<sup>ix</sup> it is not always clear just what is meant by critical thinking. Additionally, the concept may vary from one discipline to another. Many AACSB accredited business programs, including the Craig School of Business at California State University, Fresno, identify students engaging in critical thinking as a learning goal or learning.<sup>x</sup> Numerous business law/legal environment scholars have discussed critical thinking, two of

which we review and compare, then later analyze to illustrate how the case problems from the appendix promote qualities of critical thinking identified by the scholars.

Business law professors usually have law degrees, so have usually taken the Law School Admission Test (LSAT).<sup>xi</sup> That test actually introduces what business law/legal environment professors identify as critical thinking and higher order thinking, types of thinking that promote good business decision making.

The business law/legal environment course is a natural point at which students can develop critical thinking skills. In the book *RETHINKING UNDERGRADUATE BUSINESS EDUCATION: LIBERAL LEARNING FOR THE PROFESSION*,<sup>xii</sup> the authors posit that narrowly focused and discipline specific content based business courses limit the students' ability to analyze issues from multiple perspectives. Two book reviewers note that business education should be revised to incorporate more methods of analysis.<sup>xiii</sup> Business law courses already usually require more than focusing on the direct financial impact of decisions, or on purely content memorization. Since law school education requires engaging in critical thinking from inception of the legal education process, that of preparing for the Law School Admissions Test (LSAT), and continuing throughout law school itself, where analytical and logical reasoning are key components of the education, business law professors tend to encourage development of similar thinking skills in their business students. Law school education requires that learners examine issues from multiple perspectives, examine the policies underlying laws and regulations and to take positions that may conflict with the individual learner's perspective. Those are significant elements of critical thinking. As such, business law/legal environment professors are especially equipped to provide business students with better critical thinking skills.

In the authors' business law courses, they have explored the meaning of critical thinking in the business law discipline. In general education, critical thinking has been defined as the ability to "think effectively, to communicate thought, to make relevant judgments, to discriminate among values."<sup>xiv</sup> Emeritus business law professor Reitzel has summarized key elements of critical thinking:

- Ability to distinguish fact from opinion
- Ability to reason logically and systematically
- Ability to choose or develop an effective problem-solving approach
- Ability to avoid decisional pitfalls<sup>xv</sup>

Business law professors Giampetro-Meyer and Kubasek<sup>xvi</sup> have defined key factors in critical thinking in the business law course as:

- Identifying the issue and the conclusion
- Identifying the reasons
- Understanding deductive and inductive reasoning
- Identifying value conflicts and assumptions
- Considering the relevance of analogies
- Identifying errors in reasoning
- Determining what significant information is omitted

- Identifying alternate conclusions

Both examples identify key elements of critical thinking for business law courses. The factors overlap, as indicated in Table 1-Critical Thinking Factors and Examples from Case Questions in the next section. The table also identifies how questions from the case problems ask students to perform the identified types of critical thinking.

The case problem analyses law faculty regularly assign students to use in their writing have been embraced by textbook publishers and authors, referred to as IRAC or FIRAC method. They are excellent formats for developing critical thinking skills in law and business. The IRAC method requires that learners identify the issue, rule of law, application, and conclusion. FIRAC includes a summary of relevant facts at the beginning of the analysis.<sup>xvii</sup> The organized format of these methods provides tools so that business people can thrive as they develop broad-based decision-making skills beyond purely financial concerns. Law professors in business schools are uniquely situated to help students master critical thinking skills that involve logical and analytical thinking.

## 2. Engaging students in critical thinking

Examination of how and whether education encourages and promotes critical thinking has become increasingly important as scholars of business education have conducted assessments of learning of identified learning goals and learning outcomes. While measurement of learning outcomes is being conducted throughout universities, AACSB accredited business schools have included learning assessment in their programs since the 1990's, with a mandate for direct measurement of identified learning outcomes since 2003.<sup>xviii</sup> The most recently publicized learning assessment, the Collegiate Learning Assessment (CLA)<sup>xix</sup> has been administered and some educators have concluded that four years of undergraduate education has resulted in little to no significant improvement in learning.<sup>xx</sup> The CLA is a test designed to assess problem-solving and analytical thinking skills, in contrast to measuring knowledge of content, through requiring test-takers to respond in writing to a variety of complex scenarios.<sup>xxi</sup> At California State University, Fresno, for instance, student performance on the CLA was mixed and indicated need for improvement. According to the test, performance levels improved from freshmen to seniors on the performance and critique-an-argument tasks, but decreased on the analytic and make-an-argument tasks.<sup>xxii</sup> Overall, however, the estimated improvement was at or above expected percentile rank.<sup>xxiii</sup> Although the test is not without its critics, its results are consistent with commonly made faculty claims that our students learn content without improving analytic skills. The organized format of the case problem method provides tools so that business people can thrive as they develop broad-based decision-making skills beyond purely financial concerns. Law professors in business schools are uniquely situated to help students master critical thinking skills that involve logical and analytical thinking.<sup>xxiv</sup>

Although there is nearly universal agreement that students can learn to critically analyze through case analysis in our business law courses, the authors have sought a systematic way to analyze and measure whether and how that occurs. Business law professor Roger Johns has recommended a systematic approach to encourage critical thinking in business law courses.<sup>xxv</sup> The key component of his recommended teaching method is to provide students immediate

feedback (whether their answer matches the teacher’s answer) and explanation of the teacher’s answer, to encourage students to analyze and revise their thought processes based on the additional information.<sup>xxvi</sup> Johns’ method is supported by research that it is through self-reflection about how one’s thoughts work (meta-cognition) that analytical reasoning can be improved.<sup>xxvii</sup> The next section, explaining using collaborative learning techniques, might serve this purpose.

As noted above, the authors developed cases followed by questions designed to foster self-reflection and critical thinking. Self-reflection can be fostered through students evaluating their responses after they have participated in collaborative exercises. Critical thinking is embedded in the authors’ case questions. The following table outlines the factors identified by Reitzel and Giampetro-Meyer and Kubasek and explains how the case question(s) provide examples that probe each of those factors and thereby promote critical thinking. Note that the questions are not identical, but that they are consistent with the critical thinking factors outlined by authors Reitzel and Giampetro-Meyer and Kubasek.

**Table 1 Critical Thinking Factors and Examples from Case Questions**

<b>Reitzel Factors</b>	<b>Giampetro-Meyer and Kubasek Factors</b>	<b>Examples-Question (s) From the Cases in the Appendix</b>
Distinguishing fact from opinion	Identifying the issue and the conclusion	<p>What happened here? Who did what to whom? (From Appendix case: <i>A Trip Out of This World</i>)</p> <p>What is the issue or what are the issues? It might help to start by writing, “The issue is whether or not...” State it as specifically as you can, identifying the causes of action and referring to the story. (From Appendix case: <i>Inquiring Minds Want to Know</i>)</p>
Reasoning logically and systematically	Identifying the reasons	<p>Beauty Queen and Howard Huge want to sue both the interviewer Baba Wawa and the magazine that published the story Star News. You should explain the issue(s), the law, how the law might be applied to this story, and your conclusion in regards to suing the defendants. Write your essay in IRAC format (Issue, Rule, Application, Conclusion). (From Appendix case: <i>Inquiring Minds Want to Know</i>)</p> <p>Note that if students miss that they are supposed to explain and apply the definition of defamation, they can be prompted with question as in the manslaughter story, or can be given a sample answer. If the latter is done, then they</p>

Reitzel Factors	Giampetro-Meyer and Kubasek Factors	Examples-Question (s) From the Cases in the Appendix
		can be asked to perform the analysis for the related invasion of privacy torts and the affirmative defense of constitutional privilege.
Reasoning logically and systematically; Avoiding decisional pitfalls	Understanding deductive and inductive reasoning	The <i>Inquiring Minds Want to Know</i> problem could be altered for the professor to identify the tort as defamation and the prompt would be to ask for the definition with each element identified.
Choosing or developing an effective problem-solving approach; Avoiding decisional pitfalls	Identifying value conflicts and assumptions	Discuss the types of claims that Jesse might use if he brings suit. Be specific. Explain the elements of each claim and which elements might be missing in the evidence. (From Appendix case: <i>A Trip Out of This World</i> )  Explain the elements of each claim and which elements might not be shown by the evidence. As you explain the elements of each tort, identify how the facts satisfy or do not satisfy each of the elements. A plaintiff can sue more than one defendant and can make more than one claim. (From Appendix case: <i>Inquiring Minds Want to Know</i> )
Reasoning logically and systematically; Avoiding decisional pitfalls	Considering the relevance of analogies	The case of <i>New York Times v. Sullivan</i> is a famous case you should use for comparison. Summarize it and tell how it is similar and how it is different. If you do not find the case in the text, you may access a summary of the case it at the following website. <a href="http://www.casebriefs.com/blog/law/torts/torts-keyed-to-epstein/defamation/new-york-times-co-v-sullivan/">http://www.casebriefs.com/blog/law/torts/torts-keyed-to-epstein/defamation/new-york-times-co-v-sullivan/</a> (From Appendix case: <i>Inquiring Minds Want to Know</i> )
Reasoning logically and systematically; Avoiding decisional pitfalls	Identifying errors in reasoning	In your own words, explain when a federal court would have jurisdiction. What page number in the textbook is that explanation? If you used the internet to find the explanation, provide the URL and explain why you think this is a good source of information. (From Appendix case: <i>Where in the World Do I Start Resolving These Issues? A Matter of Jurisdiction</i> )

<b>Reitzel Factors</b>	<b>Giampetro-Meyer and Kubasek Factors</b>	<b>Examples-Question (s) From the Cases in the Appendix</b>
Distinguishing fact from opinion	Determining what significant information is omitted	What additional facts would you need to know in order to determine whether the company, Tom or Dick could be found guilty of involuntary manslaughter? In other words, what else do you need to know in order to make a decision? (From Appendix case: <i>Be a Manager and Stay Out of Jail!</i> )
Choosing or developing an effective problem-solving approach	Identifying alternate conclusions	Explore with students whether the result would be the same if Jesse had ordered the jacket or sunglasses. (From Appendix case: <i>A Trip Out of This World</i> )

The above table outlines the questions and how they relate to encouraging critical thinking. The third column identifies questions from case problems in the appendix that ask students to engage in the identified critical thinking activities. Now that the elements of critical thinking in working or solving a case problem have been identified, the actual assessment of how well students perform on each step in the critical thinking process of case analysis can be measured with a rubric, with multiple choice questions like those asked on the LSAT, and/or by a written exam like the CLA. Since faculty workloads are increasing, instructor grading and teaching assistance is decreasing, and demands to publish research is increasing, developing an assessment tool that allows the instructor to efficiently, accurately, and rapidly assess the depth of learning of the critical thinking skills will be crucial. While the actual assessment tools are not part of this article, the authors intend to collaboratively develop assessment methods that can be applied efficiently and accurately. Since self-awareness is an aspect of critical thinking that has previously been identified, it is possible that an assessment measurement that utilizes self and peer feedback, combining individual and collaborative communication will be developed.

The authors' collaboration and willingness to revise questions as appropriate served to promote agreement and identify which questions best promote critical thinking in identified areas, while at the same time preserving academic freedom. Some of those questions have been revised to reflect more analysis of the required elements of critical thinking and to tease out more of students' analysis.

### *B. Collaborative or Team Based Learning*

Individuals come to a problem with individual points of view. If 3 or 4 individuals share with one another their points of view on a case problem, the case problem analytical process will be altered, usually enriched, by the added activity of comparing, contrasting, and altering the points of view being considered. It is intuitive and logical that multiple varied inputs, with interaction among proponents of the inputs, will result in a more satisfactory outcome or course of action.

Anecdotal indications of the value of collaboration to problem solve come from the Apollo 13 movie referenced at the beginning of this piece and from one author's personal experience coaching student teams for Odyssey of the Mind and Destination Imagination programs.<sup>xxviii</sup>

The scholarship on team based or collaborative learning in the JOURNAL OF LEGAL STUDIES IN EDUCATION is both numerous and diverse.<sup>xxix</sup> Education scholars have studied the effectiveness of collaborative learning also.<sup>xxx</sup> Techniques for forming groups are outside the scope of this article. Readers are referred to a number of articles that discuss that issue.<sup>xxxi</sup>

George Spiro, an author in the above journal wrote about business law professors' common dual goals. "The task of a teacher of a legal environment course is to help this diverse group of students achieve a common goal: to become grounded in the fundamentals of the U.S. legal system. Further, teachers need to help their students move beyond simple recall of facts, names, and institutional structures and develop an understanding of how to work with legal concepts."<sup>xxxii</sup> Case problems have been used by business professors, especially legal studies professors, as far back as any of these authors can remember. Case problems are often the business student's initial contact with using critical thinking skills associated with analytical and logical thinking.

Case problem papers assigned in a course often reveal the students' divergent ways of analyzing problems and their difficulty with determining the logical impact of their statements. While the IRAC method is effective for logical presentation of an analysis, its parts are not easily understood by students. It makes sense to take advantage of students' varied methods of approaching a problem and of their individual analytical strengths by asking them to collaborate with one another to devise a better analysis from the individual and often incomplete analyses they may have done. They become adept at making the distinctions between the rules of law and application to facts through collaboration, through interacting with peers when writing a problem.

Recall the story of the blind men and the elephant.<sup>xxxiii</sup> Each man felt a part of the animal and concluded that his individual description embodied the whole elephant. None of them were correct, but had they collected their individual information into one description, they would have made an acceptable description of an elephant. This is the essence of collaborative or team learning. When student reflection on the team's learning is added to the activity, it is an effective method of deepening one's knowledge and of improving one's analytical skills through adopting fellow teammates' thinking methods.<sup>xxxiv</sup>

Spiro wrote, "Although we are most familiar with individualistic and competitive structures, educational psychologists and cooperative learning scholars suggest that a cooperative structure can be very useful in developing higher order learning skills."<sup>xxxv</sup> This is important to us because we have a goal of developing critical thinking in the introductory legal environment course we teach. Critical thinking contains forms of higher level thinking, of higher forms of cognition as found in Bloom's Taxonomy.<sup>xxxvi</sup>

Not all agree that collaborative learning should replace the traditional format. Professor Marianne Jennings makes a strong argument for the wisdom of retaining the traditional lecture

format and notes that opportunities for developing critical thinking skills through case analysis and case problem solving have traditionally been an intrinsic part of lecture format business law courses.<sup>xxxvii</sup> The concept of the *flipped* classroom is being used to meet the dual advantages of students benefitting from lecture while still utilizing class time for collaborative learning. In that structure, the professor records lectures which students access independently from the classroom. Their classroom work may be a review quiz to make sure the student has obtained the necessary information or content to begin manipulating it for problem solving, for the critical thinking aspect of the course. The classroom is then used for the collaborative learning aspect of case problem solving. While the authors of this article have not made recorded lectures part of the course redesign for their introductory business law course, it is conceivable that the authors will adopt recorded lectures as the development process continues.

In conclusion, many students lack problem analysis skills and many do not grasp the case problem methods we ask them to perform. We as authors have discovered that our three minds function much better than one of our minds alone. This same sharing of mental power works in a student learning environment, through collaborative or team based learning. Incidentally, working effectively in group, or engaging in cooperative learning, is also often one of business schools' goals or learning outcomes. Spiro wisely wrote:

Collaborative learning is not just group talk; rather, it requires structured team learning situations. Using this system, students will not be left to wonder, why do I need to learn this subject? Instead they will be engaged in dialogue and the creation of shared systems in order to answer that precise question. They will not only learn about law, they will also develop problem-solving skills.

These wise words have been heeded by the authors of this paper.

### III. COLLABORATION IN COURSE DEVELOPMENT

Collaboration is not just for students. We have found that, as colleagues, “think” better when we collaborate also. So by collaborating, we developed 4 common assignments that we intend to use and to ask other instructors to use to engage students in basic critical thinking throughout the semester. As noted earlier, many business schools require students to take a legal environment or business law course. In many business schools, multiple sections of the introductory business law course are offered. The business law faculty in the Craig School of Business have been working on designing common learning outcomes and learning assessment activities. Each semester we offer a number of sections of business law. Some of these are taught by adjunct faculty who are practicing attorneys. The remaining sections are taught by full-time faculty members. We use a common syllabus to help assure that students in the various sections are exposed to the key topics. It is not an identical syllabus and there is room for faculty to customize their courses. Common aspects in a multi-section course are desirable for several reasons. First, they ensure all students in the school are receiving the same basic information, even if delivered in individualized formats. Second, sharing and objectifying assessment reduces the burden on the individual faculty member, an important consideration in these times of increased teaching loads.

The business law faculty at the Craig School of Business have been engaging in course redesign for almost 3 years. While the initial work has been completed and results of learning assessment in the revised course have been collected, the faculty members continue to modify and improve the learning experience for the business students who must take the introductory business law course. We hope our initiative will serve the Craig School of Business in its efforts to define and assess critical thinking activities in the business program.

Collaboration in the context of our business law courses has occurred in face to face and online courses. At the relevant point in the course, the cases are distributed to the students.<sup>xxxviii</sup> If group discussions are a critical part of the class, these groups should be formed early in the semester to develop cohesiveness and effective sharing of resources and knowledge.<sup>xxxix</sup> In a face to face class, that means that copies are distributed to the students during class. Upon distribution of the case, students are asked to read the case and to take notes of their responses to the questions. After 5-10 minutes, depending on the length of the case, students are divided into groups of 5-7 members.<sup>xl</sup> The groups discuss the case(s) and prepare a response. The response can be written, oral or both. Groups can then be selected to report out to the class or to each other at the same time.<sup>xli</sup> In an online class, the cases are distributed to the group online via the learning management system. Groups are created at the beginning of the semester and the same groups exist permanently throughout the semester. It takes longer for the groups to “gel” in the online environment.

One question is how to select the group members. According to research on team-based or group learning, student-selected groups are most problematic because they tend to be homogenous and not have diverse abilities and talents necessary to solve complex problems.<sup>xlii</sup> Instructors can select diverse groups that have broader-based abilities. In the face to face environment, faculty can ask questions and collect answers via index cards, then divide students into groups based on a variety of criteria.<sup>xliii</sup> If this is done during the face to face class, students can see the group selection process and view it as fair, and thus they may be more motivated to complete the tasks.<sup>xliiv</sup> A similar activity can be used to select groups in an online course. In an e-mail introducing the course, the instructor can explain the process of group selection and include a brief questionnaire that solicits the same information as in the face to face class. In that way, the process of group selection can be transparent in both contexts.

#### IV. CONCLUSION

The course redesign is an ongoing process that involves refinements each semester. It is important to determine and assess impact as the course evolves. One positive impact overall has been the decrease in the number of students who fail the course (have a grade lower than a “C”). We will continue our efforts to infuse the course with critical thinking and assess whether critical thinking is occurring. Assessment includes self-reports by students as part of our teaching evaluations forms. It has also included examining standardized tests as one way to assess whether critical thinking had improved. Other assessment techniques will also be developed or licensed.

## Appendix

### Case Problems, Questions, and Teaching Notes<sup>xlv</sup>

#### I. Case Problem – Involuntary Manslaughter

##### Be a Manager and Stay Out of Jail!<sup>xlvi</sup>



Silver Recovery, Inc. removes silver from photographic film through a process that involves dipping used photographic film into tanks of cyanide solution. Francois, a 60-year-old employee of the firm, was responsible for maintaining the tanks. Francois, who spoke no English, learned how to perform the job by watching other workers. There was no formal training program at the 20-employee plant. Over a period of several years, employees who worked around the cyanide tanks periodically suffered from headaches, dizziness, and minor respiratory ailments. At one point, OSHA, a federal safety agency, inspected the plant, notified Silver that the illnesses may have resulted from cyanide exposure, and recommended changes in ventilation and equipment. Tom and Dick, president and vice president of Silver, ordered that some changes be made. Later, while cleaning a cyanide tank, Francois collapsed and died. The state charged Silver, Tom and Dick with involuntary manslaughter.

1. What happened here?
2. What is involuntary manslaughter? List each part of the definition separately. What page number(s) in the textbook are those explanations? If you used the Internet to find the explanations, provide the URL and explain why you think this is a good source of information.
3. What additional facts would you need to know in order to determine whether the company, Tom or Dick could be found guilty of involuntary manslaughter? In other words, what else do you need to know in order to make a decision?
4. Apply the definition to reach a conclusion whether Silver, Tom or Dick is guilty of manslaughter. Explain how you reached each conclusion. What examples support your conclusion?
5. Should individual managers face criminal liability for their conduct as managers?

## Teaching Note for *Be a Manager and Stay Out of Jail*

The following is a brief summary of potential student responses.

### **What happened here?**

Student responses should focus on factual details, e.g.

- While cleaning a cyanide tank, Francois collapsed and died
- Employee training
  - Francois spoke no English.
  - He learned how to perform the job by watching other workers.
  - There was no formal training program at the 20-employee plant.
- Notice of the issue
  - Over a period of several years, employees who worked around the cyanide tanks periodically suffered from headaches, dizziness, and minor respiratory ailments.
  - Government regulation and notice: At one point, OSHA, a federal safety agency, inspected the plant, notified Silver that the illnesses may have resulted from cyanide exposure, and recommended changes in ventilation and equipment.
  - Tom and Dick, president and vice president of Silver, ordered that some changes be made.

**What is involuntary manslaughter? List each part of the definition separately. What page number(s) in the textbook are those explanations? If you used the Internet to find the explanations, provide the URL and explain why you think this is a good source of information.**

California's Penal Code section 192 provides the following definition: Manslaughter is the unlawful killing of a human being without malice. It is of three kinds... Involuntary--in the commission of an unlawful act, not amounting to felony; or in the commission of a lawful act which might produce death, in an unlawful manner, or without due caution and circumspection. This subdivision shall not apply to acts committed in the driving of a vehicle.

Elements of the CA Penal Code definition

- Unlawful
- Killing
- Human being
- Without Malice
- In the Commission of
- (a) Unlawful Act-not a felony OR (b) lawful act that might produce death, in a lawful manner OR (c) without caution and circumspection
- Not while driving a vehicle

How students respond to this question would depend on the jurisdiction. If you ask students to research information by "searching the net" for answers, it is key that you ask students to provide evidence that they have evaluated the source(s) to determine validity and credibility.<sup>xlvii</sup>

**What additional facts would you need to know in order to determine whether the company, Tom or Dick could be found guilty of involuntary manslaughter? In other words, what else do you need to know in order to make a decision?**

The most common “need to know” comments/question are:

1. What safety equipment was available?
2. Whether the workers took adequate safety precautions?
3. What actions Tom and Dick upon receiving the OSHA recommendation?
4. What evidence was there that cyanide caused Francois’s death? (I generally discuss this question as one of questioning the facts and urge students to decide based on the assumption that it was the exposure to cyanide that caused Francois’s death.)
5. Whether Tom and Dick “knew” that workers became ill from exposure to the cyanide fumes? (I generally discuss this question as one of questioning the facts and urge students to decide based on the assumption that it was the exposure to cyanide that caused Francois’s death.)
6. Whether OSHA had required training and if it didn’t whether the company should be responsible?

Some of the above questions do not focus on facts but instead policies.

**Apply the definition to reach a conclusion whether Silver, Tom or Dick is guilty of manslaughter. Explain how you reached each conclusion. What examples support your conclusion?**

The table below provides an example of a brief identification of the element and its application to reach the conclusion that Tom and Dick fulfilled the elements of manslaughter. This definition did not include whether a corporation could be guilty of manslaughter and that could be a separate discussion.

<b>Element</b>	<b>Application</b>	<b>Element present?</b>
Unlawful	Violated OSHA regulations (discussion of whether violation of regulations necessarily constitutes unlawful, i.e. whether the violation was minor vs. major)	Yes
Killing	Francois died; exposure to cyanide fumes on the job; discussion of how active and direct death must be to constitute killing; could look at other cases, articles related to this	Yes
Human being	Francois was a worker/human being	Yes
Without malice	Tom and Dick’s state of mind: define malice (voluntary, deliberate, choice, possibly hatred) and no malice indicated here	Yes
In the commission of	Exposure was passive, so could generate discussion of	Yes

Element	Application	Element present?
	what action is required in order to “commit”	
(a) Unlawful act-not a felony OR (b) lawful act that might produce death, in a lawful manner OR (c) without caution and circumspection	Lawful act that might produce death (exposure to cyanide without proper equipment) or without caution and circumspection (exposure to cyanide without proper equipment); whether this was an unlawful act relates to whether violation of OSHA regulations would be considered “unlawful” in the context of this statute –see earlier note	Yes
Not while driving a vehicle	This situation did not involve driving a motor vehicle	Yes

**Should individual managers face criminal liability for their conduct as managers?**

This topic has been the subject of a great deal of discussion and the trend is toward holding managers criminally responsible.<sup>xlviii</sup> This question can invite a discussion from an ethical perspective through applying ethical theories to the question and a discussion on the policy reasons for and against. There is value in asking students to respond to this question individually, then in groups and also in a debate format. Ultimately, the trend has clearly been toward imposing criminal liability on individual managers (*see, e.g.*, the California Corporate Criminal Liability Act<sup>xlix</sup>) and *U.S. v. Park*<sup>1</sup> and their invocation of liability on responsible corporate officers.

## II. Case Problem – Torts - Defamation and Invasion of Privacy

### Inquiring Minds Want to Know<sup>li</sup>



Beauty Queen had recently married the billionaire recluse Howard Huge. She consented to the couple giving an interview to the great news person Baba Wawa. Beauty Queen hoped to further help Howard Huge overcome his reclusiveness. Baba Wawa arrived at the mansion a little early and as she walked by a large picture window at the front of the house she stopped and looked in. She saw Howard Huge holding one of Beauty Queen’s prized Afghan dogs by its collar or neck, shaking or striking it on the shoulders. Meanwhile, Beauty Queen was on her hands and knees on the carpet, wearing her underwear, wiping something wet and brown looking from the luxurious cream colored carpeting, and seemingly crying. Baba Wawa took pictures. She then waited outside the house until the appointed time for the interview.

During the interview Beauty Queen talked about how happily married the two were. Howard Huge did not say anything unless directly asked, then answered without emotion and briefly. At one point Baba Wawa asked about the prize Afghan hounds and asked to see them. Beauty Queen uncomfortably told Baba Wawa that they were under the weather and that she would not stress them by having them come to the great room. Baba Wawa completed the interview and left.

The story that she published included the photo of Howard Huge “strangling” the prize dog and looking like he was angry, with Beauty Queen appearing to be cowering and crying. Baba Wawa further indicated that the couple refused to allow the dogs to be seen and that no one had seen the dogs since the photographed scene.

The couple began to be shunned by their peers and denied permission to show the dogs. They sued Baba Wawa and Star News, her employer, seeking compensation for damaging their reputations.

The real story was that the dog was choking on some object and Howard was trying to dislodge it by hitting it between the shoulder blades and shaking it. Howard was worried about the poor dog, of which he was very fond, throughout the interview. This might explain why he seemed surly or distant during the interview.

1. Beauty Queen and Howard Huge want to sue both the interviewer Baba Wawa and the magazine that published the story Star News. You should explain the issue(s), the law, how the law might be applied to this story, and your conclusion in regards to suing the defendants. Write your essay in IRAC format (Issue, Rule, Application, Conclusion). Warning: Often there is so much law (Rule) to explain and apply that the information is clearer when you break it into a series of short law and application summaries.

2. What is the issue or what are the issues? It might help to start by writing, “The issue is whether or not...” State it as specifically as you can, identifying the causes of action and referring to the story.
3. Explain the elements of each claim and which elements might not be shown by the evidence. As you explain the elements of each tort, identify how the facts satisfy or do not satisfy each of the elements. A plaintiff can sue more than one defendant and can make more than one claim. The following sources may be useful to supplement your text’s law summaries.

Definition of defamation can be found at the following website.  
<http://www.chillingeffects.org/protest/question.cgi?QuestionID=323>. Warning: When explaining the tort of defamation, ignore distinctions between slander and libel, and concentrate on the elements of defamation alone.

Invasion of privacy as described in the *Restatement of Torts* is at the following website.  
<http://www.lexisnexis.com/lawschool/study/outlines/html/torts/torts22.htm>
4. Explain the defense(s) that Baba Wawa and Star News will use and which elements might not be shown for the defense.
5. The case of *New York Times v. Sullivan* is a famous case you should use for comparison. Summarize it and tell how it is similar and how it is different. If you do not find the case in the text, you may access a summary of the case it at the following website.  
<http://www.casebriefs.com/blog/law/torts/torts-keyed-to-epstein/defamation/new-york-times-co-v-sullivan/>
6. Based on your analysis, provide your conclusion to the problem.

## Teaching Note for *Inquiring Minds Want to Know*

1. **Beauty Queen and Howard Huge want to sue the interviewer Baba Wawa and the magazine that published the story Star News. You should explain the issue(s), the law, how the law might be applied to this story, and your conclusion in regards to suing each of the two defendants. Write your essay in IRAC format (Issue, Rule, Application, Conclusion). Warning: Often there is so much law (Rule) to explain and apply that the information is clearer when you break it into a series of short law and application summaries.**

This section asks for an overview of the problem and how to discuss it. It includes the questions asked in the other 3 case problems: What happened here? Who did what to whom? But it does not ask the student to restate the facts. It goes beyond asking what the students read and asks what it caused them to think about from their text reading, class discussions, and lectures. They should identify it as defamation quickly.

2. **What is the issue or what are the issues? It might help to start by writing, “The issue is whether or not....” State it as specifically as you can, identifying the causes of action and referring to the story.**

The issue is whether or not Beauty Queen and Howard Huge can prevail against Baba Wawa and Star News for defamation and for three of the four types of invasion of privacy: intrusion upon seclusion, publication of private facts, and placing one in a false light. Often students require a lot of practice in issue stating to articulate the issue. Sometimes they might be advised to just write their information and thoughts and then to decide what the issue that they wrote about is. While it is reverse order, it might work for the student who tends to think deductively rather than inductively.

3. **Explain the elements of each claim and which elements might not be shown by the evidence. As you explain the elements of each tort, identify how the facts satisfy or do not satisfy each of the elements. A plaintiff can sue more than one defendant and can make more than one claim. The following sources may be useful to supplement your text’s law summaries.**

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The student may find a sufficient definition of the following in his or her text. Some texts omit invasion of privacy types and some texts omit the definition of defamation, preferring to discuss libel and slander. For this reason, the prompts refer the student to basic legal information easily found online and from credible sources. Use of the Internet

and obtaining information literacy are ancillary issues, which may be addressed in case problem exercises. If the instructor tells the student to go online and find some information, the result may not be acceptable. These 2 sites were identified because they present the definitions provided in the *Restatement of Torts* broken into their elements.

The Chilling Effects website defines **defamation**: “(1) A publication to one other than the person defamed; (2) of a false statement of fact; (3) which is understood as being of and concerning the plaintiff; and (4) which is understood in such a way as to tend to harm the reputation of plaintiff.” It has the advantage of setting out elements for the student, which the online legal dictionary definitions do not necessarily do. Many definitions omit the element of publication, often saying communication instead. That misleads the legal thinking person because it would seem to include statements said to the plaintiff her or himself. The elements are presented below:

<b>Element</b>	<b>Application</b>	<b>Element present?</b>
Publication	The story was published in the Star News, a magazine that people read.	Yes
False statement of fact	This element is problematical because while the photo and description of it are misleading, it is debatable whether a factual statement was made. This requires further research to determine whether the law presumes hurtful statements are false without having to prove so. (The Smith and Roberson’s text from which I learned to teach did explain that if the statements are hurtful, the courts tend to presume they are false, thus shifting the burden to the defendant to prove the statements are true. Often it is impossible to prove the truth or falsehood of mean statements.) While often a single student will not consider the nuances of each element, the likelihood that such will be recognized increases when students are working collaboratively.	Possibly
Concerning the plaintiff	This element is satisfied without much comment.	Yes
Harm the reputation of plaintiff	This element has some facts that address it directly, that the dog show sponsors will not let the plaintiffs show their dogs. Again, the enterprising student may look for a further explanation of how courts interpret harm in the tort of defamation. Many texts explain that in defamation most courts do not require the plaintiff to show physical or monetary harm; the tort protects the plaintiffs’ reputations even in the absence of showing monetary harm.	Yes

A similar analysis would apply to the torts listed below.

**Invasion of privacy** and the descriptions from the referenced website which references the *Restatement of Torts*. “The *Restatement* has defined four separate torts for invasion of privacy: intrusion upon seclusion, appropriation of plaintiff’s name or picture, placing the plaintiff in a false light before the public, and public disclosure of private facts. [See generally *Restatement* § 652A.] All four privacy torts enjoy general judicial acceptance today.”

**Intrusion Upon Seclusion.** “One who intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns, is subject to liability to the other for invasion of his privacy, if the intrusion would be highly offensive to a reasonable person.” There is more relevant explanatory language, so the plagiarism risk exists here also. The facts say Baba Wawa arrived early and peered into the window. Entering premises before permission was given may be trespass, which is less likely to be discussed when students are writing the essay individually than when they have collaborated with one another. Regardless of whether there was trespass, peering through the window may satisfy the offensiveness element.

**Appropriation of Name or Picture and the Right of Publicity.** This was not done. If the students try to apply this one, hopefully they will read that the defendant probably has done this as a form of advertising, as a way to sell its product. Students will say Star News used the picture to sell papers, so it is appropriation. Then you should point out to them that the tort is to prevent defendants from leading the public to believe someone is endorsing the defendant’s product when in fact the person is not.

**False Light.** “The privacy tort of false light overlaps in large measure with defamation. The elements of false light which must be established by all plaintiffs include the defendant’s (1) publicizing (2) false facts (3) that a reasonable person would object to.” This tort will give rise to discussion since again the false facts are in issue. Note that all courts do not false facts, but only misleading statements or pictures. This is what we have in the story. Arguably, the false light tort does not require false statements of facts, in spite of what the *Restatement* seems to say. It requires misleading statements. So the cited source is not exactly accurate in that aspect of the explanation.

**Public Disclosure of Private Facts.** “The tort elements include (1) publicity of (2) private facts (3) highly offensive to a reasonable person which are (4) not of a legitimate public interest.” When applying these elements to the story, all the elements are fairly clearly met. The picture may not have cast the pair in a false light, but it certainly was factual, private, offensive, and irrelevant to the public interest.

4. **Explain the defense(s) that Baba Wawa and Star News will use and which elements might not be shown for the defense.**

The defenses to defamation and to some of the invasion of privacy torts are the same. Truth is a complete defense to defamation and false light. Privileges are defenses to defamation, intrusion upon seclusion (although possibly a different privilege), false light, and even public disclosure of private facts. The absolute privilege permits the defendant

to defame anyone in governmental proceedings. It is irrelevant in this story. The conditional privilege, especially its offshoot, the constitutional privilege, might be used to avoid liability for defamation, false light, and maybe even public disclosure of private facts. The constitutional privilege is the most relevant. It goes along with the invitation to discuss and apply a case to the problem.

5. **The case of *New York Times v. Sullivan* is a famous case you should use for comparison. Summarize it and tell how it is similar and how it is different. If you do not find the case in the text, you may access a summary of the case at the following website. <http://www.casebriefs.com/blog/law/torts/torts-keyed-to-epstein/defamation/new-york-times-co-v-sullivan/>**

If the student does not have the case in his or her text, the prompts refer the student to a brief of *New York Times v. Sullivan*, 376 U.S. 254 (1964). If you haven't reviewed the facts in the case recently, the following is pasted from the above referenced site.

- (1) The Plaintiff was one of three Commissioners of Montgomery, Alabama, who claimed that he was defamed in a full-page ad taken out in the *New York Times*. The advertisement was entitled, "Heed Their Rising Voices" and it charged in part that an unprecedented wave of terror had been directed against those who participated in the civil rights movement in the South. Some of the particulars of the advertisement were false. Although the advertisement did not mention the Plaintiff by name, he claimed that it referred to him indirectly because he had oversight responsibility of the police. The Defendant claimed that it authorized publication of the advertisement because it did not have any reason to believe that its contents were false. There was no independent effort to check its accuracy. The Plaintiff demanded that the Defendant retract the advertisement. The Defendant was puzzled as to why the Plaintiff thought the advertisement reflected adversely on him. The jury found the ad libelous per se and actionable without proof of malice. The jury awarded the Plaintiff \$500,000 in damages. The Alabama Supreme Court affirmed. The Defendant appealed.

The Supreme Court used the case to recognize a conditional privilege of the press in particular, but arguably all defendants, to defame a public official or public figure, so long as it is done without actual malice. The Court even explained what it meant by "actual malice." When applied to the facts, Beauty Queen and Howard Huges are public figures in that they are famous and people like to hear "news" about them, similar to how we are now examining every picture of Kate to see if her "bump" is growing.

Note: This case problem has a possible comparative law aspect to it. In international business law the professor often compares domestic law to that in other countries. There is no precedent for the constitutional privilege in England, the most famous common law country from which the U.S. common law system was derived. England has no U.S. Constitution and no First Amendment guaranteeing freedom of speech. Many famous people sue the tabloids in England instead of in the U.S. because the law is more protective of famous people's reputations there than in the U.S.

**6. Based on your analysis, provide your conclusion to the problem.**

If the prediction is supported by the students' summary and application of the law to the facts, then credit should be given for a decision either way

Note: The other 3 case problems in this article ask, "What additional **facts** would you need [or like] to know to determine whether...?" Here the question should probably be directed toward what additional **law** the student would need or like to know to more fully explain the case and to predict the outcome under the facts given. Since this is common law, which is state law, it is possible that some jurisdictions do not even recognize invasion of privacy torts, and even if all do, that the definitions will be interpreted and applied differently. Since the problem is being promoted as an in class collaborative thinking and writing exercise, the more in depth information would not be explored. However, if the assignment were a research project, then students would be invited to learn how the courts have interpreted the definitions where the terms are not clear.

### III. Case Problem - Contracts

#### A Trip Out of This World<sup>lii</sup>



Extreme Cola conducted an advertising campaign. It offered customers “Extreme Cola Stuff” for “Extreme Cola Points.” Extreme Cola Points were available on packages of its products. Customers could purchase additional points directly from Extreme Cola for 10 cents each as long as they had a minimum of 25 points from products. During television commercials, Extreme Cola showcased a number of its prizes such as a T shirt, a jacket, and sunglasses, and the number of points required to earn them. At the conclusion of the commercial, a happy customer is shown looking out the window of a space shuttle. The text reads “orbit the earth 7,000,000 Extreme Cola points.”

The television commercials and print advertisements referred customers to the catalog of “Extreme Cola Stuff,” which was available in select stores, through the mail, and on the Internet.

Jesse is a resident of the state of Texas, where he saw the Extreme Cola advertisement for a trip on a space shuttle to circle the earth. Jesse always wanted to go into space, so he was particularly interested in the trip on a space shuttle to circle the earth. Using the address indicated in the promotion, Jesse sent Extreme Cola a letter, an order form with 1 trip to circle the earth hand written on it, 1,000 Extreme Cola points, and a check for \$699,900 to purchase the additional points.

Extreme Cola responded by writing Jesse a letter that says that a trip to orbit the earth is not included in the catalog and is not included on the order form which lists the 53 items that are available. Extreme Cola also said

The item that you have requested is not part of the Extreme Cola Stuff collection. It is not included in the catalog or on the order form. Only catalog merchandise can be redeemed as part of this program.

The trip to orbit the earth in the commercial is fanciful and is included simply to create a humorous and entertaining advertisement. We apologize for any misunderstanding or confusion that you may have experienced.

We are enclosing some free product coupons for you to use.

Extreme Cola returned Jesse’s check and points. Jesse wants Extreme Cola to perform the contract.

Extreme Cola characterizes the ad for a trip to circle the earth as zany humor. Extreme Cola also claims that no reasonable person would think that Extreme Cola was offering a trip to orbit the earth.

1. What happened here? Who did what to whom?

2. What is an offer? List each part of the definition separately. What page number(s) in the textbook explain offers? Is there a case in the chapter that you can use for guidance. If so, summarize it and explain how it is similar and how it is different. If you used the internet to find the explanations, provide the web site citation and URL and explain why you think this is a good source of information.
3. Discuss the types of claims that Jesse might use if he brings suit. Be specific. Explain the elements of each claim and which elements might be missing in the evidence.
4. Explain the defense(s) that Extreme Cola will use, their elements, and which elements might be missing in Extreme Cola's defense.
5. What additional facts would you like to know in order to determine whether there was an offer? What other information would be important? Why would it be significant? This can include other factual information or additional information about the law.
6. Apply the definition of an offer to determine whether Extreme Cola made an offer to members of the public. Explain how you reached your conclusion. What examples support your conclusion?

## Teaching Note for *A Trip Out of This World*

### What happened here? Who did what to whom?

Extreme Cola created a marketing campaign to promote its products. As an incentive it put points on its packaging. Customers could collect points and redeem them for merchandise. It also created television commercials publicizing the promotion. At the end of the commercials it indicated that points could be redeemed for a ride on the space shuttle. Jesse saw the commercial and tried to redeem points for a space shuttle ride.

**What is an offer? List each part of the definition separately. What page number(s) in the textbook explain offers? Is there a case in the chapter that you can use for guidance. If so, summarize it and explain how it is similar and how it is different. If you used the internet to find the explanations, provide the web site citation and URL and explain why you think this is a good source of information.**

An offer can be defined various ways. For example, BLACK'S LAW DICTIONARY defines an offer as

A promise to do or refrain from doing some specified thing in the future; a display of willingness to enter into a contract on specified terms, made in a way that would lead a reasonable person to understand that an acceptance, having been sought, will result in a binding contract.<sup>liii</sup>

The exact definition will depend on the text being used. Another definition is

An offer involves an indication (by promise or another commitment) of one's willingness to do or refrain from doing something in the future.<sup>liv</sup>

The table below provides a brief analysis of an offer based on the description in Daniel V. Davidson, et al, BUSINESS LAW: PRINCIPLES AND CASES IN THE LEGAL ENVIRONMENT. This text does not include any relevant court cases.<sup>lv</sup>

Element	Application	Element present?
Clear intent to make a contract	Most advertisers do not intend to make an offer in their commercials. It is doubtful that Extreme Cola intended to make an offer for either Extreme Cola Stuff or the shuttle ride.	No
Communication of the proposed terms to the offeree	The commercial was communicated to the public at large including Jesse. The question remains whether Extreme Cola was proposing terms. Extreme Cola will argue that most advertisements are not offers of proposed terms. They would also argue that <i>if</i> they	Yes

Element	Application	Element present?
	did communicate terms, the terms are in the order form and catalog of Extreme Cola Stuff.	
Reasonably definite terms setting the parameters of the proposed contract	The terms on the order form and catalog are reasonably definite. Most order forms and catalogs are reasonably definite. However, courts still generally hold that they are not offers. In other words, they do not propose a contract.	No

**Discuss the types of claims that Jesse might use if he brings suit. Be specific. Explain the elements of each claim and which elements might be missing in the evidence.**

This is a civil matter. Jesse could sue for breach of contract, fraud, unfair or deceptive business practices, and/or misleading advertising. Jesse primarily wants specific performance of the alleged contract.

For a breach of contract dispute, there must be a contract consisting of an offer, an acceptance, and consideration. At the heart of the question here is whether Extreme Cola's words and conduct constitute an offer to form a contract which Jesse can accept. If it is not an offer, Jesse is the one making the offer and Extreme Cola is free to accept or reject his offer.

Advertisements and catalogs are generally not contracts or offers. The presumption is that they are invitations to negotiate.<sup>lvi</sup> In an exceptional case, they may be an offer but the words used must be very plain and clear.<sup>lvii</sup> When a customer completes an order form it is not an acceptance: there is no enforceable contract until the order form is accepted and the check is cashed.

Offers are not evaluated based on the subjective beliefs of the plaintiff or the defendant. They are evaluated based on what an objective reasonable person would have understood. Comments made in jest do not constitute offers where a reasonable person could see that no offer was intended. An obvious joke would not give rise to a contract.

“A basic rule of contracts holds that whether an offer has been made depends on the objective reasonableness of the alleged offeree's belief that the advertisement or solicitation was intended as an offer.”<sup>lviii</sup> The commercial did not constitute an offer. No objective person could reasonably conclude that the commercial actually offered a trip to circle the earth. Jesse is not entitled to specific performance because there is no contract.

Jesse might argue that the fact that the trip to circle the earth was not included in the catalog did not affect his understanding of the offer. Leonard made that argument in *Leonard v. PepsiCo, Inc.*, but the court responded that it should have affected Leonard's understanding.<sup>lix</sup> Neither the catalog nor the order form included the trip to circle the earth.

Fraud is based on the false statement of a material fact. The statement must be made with scienter and the intent that the other side will rely on the false statement. The person who relies on the false statement must act reasonably in his or her reliance and must suffer an injury. “General allegations that defendant entered into a contract while lacking the intent to perform it are insufficient to support ... [a fraud] claim.”<sup>lx</sup>

The table below sets out the elements of fraud as they are commonly taught in business law textbooks.

<b>Element</b>	<b>Application</b>	<b>Element present?</b>
False statement of fact	Neither an offer nor an invitation for offers is a false statement of fact.	No
Material statement	The fact that Extreme Cola was not offering a shuttle trip was material to Jesse. Some states use a subjective test for whether a statement is material. Many states use an objective test. Most people would realize that the shuttle trip was a joke. There is also the issue of whether it was a “statement” at all.	No
Scienter	Extreme Cola did know that it was not planning to offer a shuttle trip around the earth. In that sense, they might have scienter. They did not think they were making a false statement. They thought they were making a joke.	Maybe
Intent to deceive victim	Extreme Cola was not trying to deceive Jesse and other members of the public. They were trying to create a catchy commercial that consumers would remember.	No
Reasonable reliance by the victim	Under the circumstances Jesse was not reasonable in believing that he could exchange Extreme Cola points for a shuttle trip around the earth. Using the objective standard, a reasonable person would understand that that part of the commercial was a joke.	No

If the space shuttle trip is a joke, then it would not be the basis for a successful suit based on unfair business practices or false advertising either. The court in *Leonard v. PepsiCo, Inc.* distinguished the Pepsi points situation from those situations where a company offers a reward when a product fails. A classic example of this is the English case of *Carlill v. Carbolic Smoke*

*Ball Co.*<sup>lxi</sup> Mrs. Carlill purchased and used a Carbolic Smoke Ball in reliance on an advertisement that said the Carbolic Smoke Ball Company would pay a 100# reward to anyone who caught the influenza or a cold after using the carbolic smoke ball as directed. Mrs. Carlill contracted the flu after using the product. The court permitted her to recover.

**Explain the defense(s) that Extreme Cola will use, their elements, and which elements might be missing in Extreme Cola's defense.**

Extreme Cola's defense will center on the fact that they did not intend to make an offer. Further, a reasonable viewer would realize that they were not making an offer. They were making a joke.

Extreme Cola would also argue that normal rules about advertisements and catalogs should apply to this case. They should be treated as invitations for offers. When Jesse made an offer to Extreme Cola, it was free to reject the offer without any liability to Jesse.

**What additional facts would you like to know in order to determine whether there was an offer? What other information would be important? Why would it be significant? This can include other factual information or additional information about the law.**

Students might wonder:

1. Did other viewers think that the offer was a serious offer?
2. Did anyone else try to redeem points for a shuttle ride?
3. Were shuttle rides commercially available?
4. How much would a shuttle ride cost and was this a reasonable price for a shuttle ride?
5. Did Jesse really think that he was going to get a shuttle ride?

Students might like additional information about court cases involving jokes.

**Apply the definition of an offer to determine whether Extreme Cola made an offer to members of the public. Explain how you reached your conclusion. What examples support your conclusion?**

Students will generally determine that Extreme Cola was not making an offer. Instead, they will decide that points for a shuttle ride was a joke and that the reasonable person who saw the commercial would recognize that it was a joke. Students will probably distinguish cases like *Lefkowitz v. Great Minneapolis Surplus Store, Inc.*<sup>lxii</sup> and *Carlill v. Carbolic Smoke Ball Co.*<sup>lxiii</sup>

Additional Questions for Class Discussion

**Explore with students whether the result would be the same if Jesse had ordered the jacket or sunglasses.**

In this situation the court would probably decide that Jesse was making an offer to Extreme Cola, which it could accept or reject. This is the rule generally applied when customers order items from catalogs.

**Assume that Extreme Cola later modified the advertisement. In the revised advertisement the announcer said, “Just Kidding” after showing the space shuttle. Is this relevant to your decision?<sup>lxiv</sup> Why or why not?**

This probably would not affect the decision. Most people would recognize that this was a joke without the announcer mentioning the fact.

**Is the fact that other customers thought that it was a serious offer relevant?<sup>lxv</sup> Why or why not?**

The fact that other customers thought that it was a serious offer is probably not relevant. But it might depend on how many thought it was a serious offer. If Jesse could convince the trier of fact that most customers thought that Extreme Cola was making a serious offer for the shuttle trip, the court might apply the objective standard and decide that it was an offer.

#### IV. Case Problem – Jurisdiction

##### Where in the World Do I Start Resolving These Issues? A Matter of Jurisdiction



Captain Kirk and Mr. Spock have entered into a contract for Kirk to purchase a spaceship for his personal use. Kirk, the buyer, lives in California and Spock's earth residence is in New York. Spock has agreed to sell the spaceship to Kirk for \$175,000. At the last minute, Kirk backed out of the contract claiming that he had been called for a mission by the Federation and decided that another ship would be more suitable. In this situation:

1. Does any court system (federal or state) have exclusive jurisdiction over this case?  
Concurrent jurisdiction?
  - a. What happened here?
  - b. In your own words, explain concurrent and exclusive jurisdiction. What page number(s) in the textbook are those explanations? If you used the internet to find the explanations, provide the URL and explain why you think this is a good source of information.
  - c. What additional facts would you need to know in order to determine whether Spock could file suit in New York?
  - d. Apply the definition to reach a conclusion whether any court has exclusive jurisdiction. Apply the definition to reach a conclusion whether any court would have concurrent jurisdiction. Explain how you reached each conclusion.
2. What if this was a case where Spock claimed he'd been deprived of his right to freedom of speech under the U.S. Constitution and that his harm was \$20,000. Would a federal court have jurisdiction? Explain.
  - a. In your own words, explain when a federal court would have jurisdiction. What page number in the textbook is that explanation? If you used the internet to find the explanation, provide the URL and explain why you think this is a good source of information.
  - b. Apply the definition to reach a conclusion whether a federal court would have jurisdiction. Explain how you reached each conclusion.

## Teaching Note for *Where in the World Do I Start Resolving These Issues?*

Does any court system (federal or state) have exclusive jurisdiction over this case?

**Concurrent jurisdiction?**

a. **What happened here?**

- Kirk, the buyer, lives in California.
- Spock's earth residence is in New York.
- Spock has agreed to sell the spaceship to Kirk for \$175,000.
- Kirk backs out of the contract.

b. **In your own words, explain concurrent and exclusive jurisdiction. What page number(s) in the textbook are those explanations? If you used the internet to find the explanations, provide the URL and explain why you think this is a good source of information.**

Concurrent jurisdiction: more than one court has the power to hear the case

Exclusive jurisdiction: only one court has the power to hear a case.

c. **What additional facts would you need to know in order to determine whether Spock could file suit in New York?**

Where the contract was made

Whether the parties had an agreement about choice of forum

d. **Apply the definition to reach a conclusion whether any court has exclusive jurisdiction. Apply the definition to reach a conclusion whether any court would have concurrent jurisdiction. Explain how you reached each conclusion.**

Exclusive jurisdiction: is this a federal only or a state only case of jurisdiction? If concurrent jurisdiction applies, then the answer to that question is no. One overlap (evidence of concurrent jurisdiction) between the state and federal courts is diversity of citizenship. Diversity of citizen applies when citizens of two different states have a claim for more than \$75,000. That applies here, so no court has exclusive jurisdiction.

**What if this was a case where Spock claimed he'd been deprived of his right to freedom of speech under the U.S. Constitution and that his harm was \$20,000. Would a federal court have jurisdiction? Explain.**

a. **In your own words, explain when a federal court would have jurisdiction. What page number in the textbook is that explanation? If you used the internet to find the explanation, provide the URL and explain why you think this is a good source of information.**

Federal courts have jurisdiction in cases involving (1) federal questions, (2) diversity of citizenship, (3) U.S. constitutional issues, and (4) when the U.S. Government is a party.<sup>lxvi</sup>

- b. Apply the definition to reach a conclusion whether a federal court would have jurisdiction. Explain how you reached each conclusion.**

If Spock sued because he'd been deprived of his right to freedom of speech under the U.S. Constitution, then he'd be able to file suit in federal court regardless of the amount involved.

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<sup>ii</sup> For purposes of this article, the distinctions between business law and legal environment courses and faculty are not significant. Hereafter the authors will use business law in its generic sense, e.g., to refer to faculty who teach legal concepts to business students. See Carol J. Miller & Susan J. Crane, *Legal Environment v. Business Law Course: A Distinction Without a Difference?*, 28 J. LEGAL STUD. EDUC. 149, 151-62, 100-203 (2011) for an in-depth discussion of the differences between the two approaches. Miller and Crane also discuss the fact that the label for a given course may not accurately reflect the type of course or the approach taken in teaching the course.

<sup>iii</sup> See *Square Peg in a Round Hole* (1995), Apollo 13 (7/11) MOVIECLIP, YOUTUBE (published Jan. 16, 2011), at <http://www.youtube.com/watch?v=C2YZnTL596Q> (last visited Apr. 17, 2013).

<sup>iv</sup> Tammy W. Cowart & Wade M. Chumney, *I Phone, You Phone, We All Phone with iPhone: Trademark Law and Ethics from an International and Domestic Perspective*, 28 J. LEGAL STUD. EDUC. 331, 332 (2011).

<sup>v</sup> See *Deploying Professionally Qualified Faculty: An Interpretation of AACSB Standards*, AN AACSB WHITE PAPER ISSUED BY AACSB INTERNATIONAL ACCREDITATION COORDINATING COMMITTEE AACSB INTERNATIONAL ACCREDITATION QUALITY COMMITTEE, 1 (January 2006), revised February 2008 & March 2009, at <http://www.aacsb.edu/accreditation/papers/DeployingProfessionallyQualifiedFaculty.pdf> (last visited Apr. 17, 2013) (“the growing importance of professionally qualified faculty in light of the pending shortage of doctorally qualified faculty....”)

<sup>vi</sup> Most of these practitioners experienced the socratic method with varying degrees of success when they were law students. The question has been raised whether law schools do an adequate job of teaching critical thinking. See, e.g., Christine M. Venter, “Analyze this: Using Taxonomies to Scaffold Students’ Legal Thinking and Writing Skills,” Working Paper, Berkeley Electronic Press (bepress) Legal Series, Year 2005, Paper 757, <http://law.bepress.com/expresso/eps/757> (last visited Feb. 22, 2013).

<sup>vii</sup> Nancy Kubasek & M. Neil Browne, *Integrating Critical Thinking into the Legal Environment of Business Classroom*, 14 J. LEGAL STUD. EDUC. 35, 37 (1996).

<sup>viii</sup> J. David Reitzel, *Critical Thinking and the Business Law Curriculum*, 9 J. LEGAL STUD. EDUC. 471, 471 (1991).

<sup>ix</sup> Roger J. Johns, *The Logic Doctor is In: Using Structure Training and Metacognitive Monitoring to Cultivate the Ability to Self-Diagnose Legal Analysis Skills*, 26 J. LEGAL STUD. EDUC. 357 (2009).

<sup>x</sup> The critical thinking learning outcome for the Craig School is expressed as “the successful undergraduate student in the CSB will be able to...[p]rocess information and express complex ideas to address business problems.” [http://www.fresnostate.edu/academics/oie/documents/SOAP/Craig\\_School\\_of\\_Business/craigschoolofbusiness-2013.pdf](http://www.fresnostate.edu/academics/oie/documents/SOAP/Craig_School_of_Business/craigschoolofbusiness-2013.pdf).

<sup>xi</sup> See Law School Admission Council’s (LSAC) webpage, *About the LSAT* (describing the exam questions) at <http://www.lsac.org/jd/lsat/about-the-lsat.asp> (last visited Apr. 21, 2013). Unlike the Collegiate Learning Assessment (CLA), the Law School Admission Test (LSAT) is multiple choice. Yet it measures the test taker’s reading skill, logical reasoning skills, and analytical reasoning skills. Also, unlike the CLA, sample LSAT tests are readily available. While there is not an obvious link between logical and analytical reasoning and business learning, understanding and being able to use those types of thinking skills serve business executives in business decision making. The case problem format adopted by the authors requires students to utilize basic forms of logical and analytical thinking while problem solving.

<sup>xii</sup> ANNE COLBY, ET. AL, *RETHINKING UNDERGRADUATE BUSINESS EDUCATION: LIBERAL LEARNING FOR THE PROFESSION* (2011).

<sup>xiii</sup> Joshua E. Perry & Jamie Darin Prenkert, *Charting a Course to Effective Education: Lessons from Academically Adrift and Rethinking Undergraduate Business Education* (book review) 29 J. LEGAL STUD. EDUC. 127, 138 (2012). Perry and Prenkert also argue that critical thinking in business involves articulating and applying efficient markets theory and the mathematical bases of those theories.

<sup>xiv</sup> This definition is quoted by J. David Reitzel, *Critical Thinking and the Business Law Curriculum*, 9 J. LEGAL STUD. EDUC. 471, n.2 (1991) (referring to the Report of the Harvard Committee: General Education in a Free Society).

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<sup>xv</sup> Retizel, *Id.* at 486.

<sup>xvi</sup> Andrea Giampetro-Meyer & Nancy Kubasek, *A Test of Critical Thinking Skills for Business Law and Legal Environment Students*, 9 J. LEGAL STUD. EDUC 501, 503-507 (1991).

<sup>xvii</sup> Kubasek & Browne, *supra* note 7, at 38. These scholars have suggested that the IRAC method should also include an evaluation of the ethical implications of decisions. *Id.*

<sup>xviii</sup> Dennis Zocco, *A Recursive Process Model for AACSB Assurance of Learning*, 15:4 ACADEMY OF EDUCATIONAL LEADERSHIP JOURNAL 67, 67 (2011), at <http://www.questia.com/library/1G1-263157468/a-recursive-process-model-for-aacsb-assurance-of-learning> (last visited Apr. 21, 2013). According to Zocco,

As a historical perspective, prior to 1991, AACSB learning standards were based on a "Common Body of Knowledge" requirement of all undergraduate and graduate business majors. These standards were based on discipline (e.g., finance and accounting) as well as more specific sub-disciplines which were evaluated based on contact hours within the program. In 1991, AACSB adopted mission-linked, outcome-oriented AoL standards and the peer-review process. The measurement of outcomes was broadly defined, with surveys of students, alumni, or employers allowed. The latest conceptual change in AoL standards for initial accreditation and reaccreditation occurred in April, 2003, with the most recent revision to the 2003 standards occurring in Jan. 2010. The 2003 standards called for a more direct measure of learning achievement for each degree program as a natural extension of the concept of "outcomes assessment" introduced in the 1991 standards.

<sup>xix</sup> *Collegiate Learning Assessment (CLA): Returning to Learning*, Council for Aid to Education website at <http://www.collegiatelearningassessment.org/> (last visited April 21, 2013). "The CLA helps institutions improve undergraduate education through assessment, professional development, best practices and collaboration."

<sup>xx</sup> This is the conclusion reached by RICHARD ARUM & JOSIPA ROKSA, *ACADEMICALLY ADRIFT: LIMITED LEARNING ON COLLEGE CAMPUSES* 35 (2011).

<sup>xxi</sup> *Collegiate Learning Assessment (CLA): Returning to Learning*, Council for Aid to Education website at <http://www.collegiatelearningassessment.org/> (last visited Apr. 21, 2013). "To gauge summative performance authentically, the CLA presents realistic problems that require students to analyze complex materials and determine the relevance to the task and credibility. Students' written responses to the tasks are evaluated to assess their abilities to think critically, reason analytically, solve problems and communicate clearly and cogently."

<sup>xxii</sup> 2007-2008 CLA Institutional Report, at 3,

[http://teachingcommons.cdl.edu/learningoutcomes/cla/documents/CSUFresnoCLARepor2007-2008\\_000.pdf](http://teachingcommons.cdl.edu/learningoutcomes/cla/documents/CSUFresnoCLARepor2007-2008_000.pdf) (last visited Apr. 21, 2013).

<sup>xxiii</sup> *Id.*

<sup>xxiv</sup> We should not only institute critical thinking in business programs, but we should also help instructors succeed at getting students to engage in critical thinking by developing curriculum wide thinking activities and by assisting the instructional faculty in use and assessment of critical thinking in business/legal environment courses.

<sup>xxv</sup> Johns, *supra* note 9.

<sup>xxvi</sup> *Id.* at 360.

<sup>xxvii</sup> *Id.* at 360-362.

<sup>xxviii</sup> Apollo 13 (7/11) Movie Clip. Square Peg in a Round Hole (1995). YouTube MovieClips.com

<https://www.youtube.com/watch?v=C2YZnTL596Q>

(last visited Mar. 30, 2013). For information on Destination Imagination, go to: Destination Imagination: Who We Are. <http://www.destinationimagination.org/who-we-are/vision-mission-history>

It turns out that Odyssey of the Mind is alive and well, at least on its website. Destination Imagination said they bought the rights to Odyssey of the Mind in 1999. But apparently they did not buy the Odyssey of the Mind charter. The Odyssey of the Mind website includes its history tracing its founding back to a teacher in the public university system.

The Odyssey of the Mind has its roots in the Industrial Design classes of Dr. Sam Micklus, Odyssey of the Mind founder. As a professor at Rowan University in New Jersey (formerly Glassboro State College) Dr. Micklus challenged his students to create vehicles without wheels, mechanical pie throwers and flotation devices that would take them across a course on a lake. He evaluated them not on the success of their solutions, but on the ingenuity applied and the risk involved in trying something new and different. Students had fun. Word spread and the students' activities attracted attention from the local media. Soon, people on the outside wanted a part of the action. This public interest led to the development of a creative problem-solving competition for

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school children. The Odyssey of the Mind was on its way. Since then, Dr. Micklus's life has been happily consumed with developing problems for other people to solve. His rewards are in the joy and pride of the millions of participants who rise to the challenge of solving those problems.

Odyssey of the Mind: Information, at

[http://www.odysseyofthemind.com/learn\\_more.php](http://www.odysseyofthemind.com/learn_more.php) (last visited Mar. 30, 2013).

<sup>xxix</sup> See, e.g., Marianne M. Jennings, *In Defense of the Sage on the Stage: Escaping from the "Sorcery" of Learning Styles and Helping Students Learn How to Learn*, 29 J. LEGAL STUD. EDUC. 191 (2012) (discussing the movement in college education from lecture based courses to collaborative learning models of education, questioning the research in support of the new methods, and proposing an alternative approach); Ida M. Jones, *Can You See Me Now? Defining Teaching Presence in the Online Classroom Through Building a Learning Community*, 28 J. LEGAL STUD. EDUC. 67 (2011) (describing methods for gaining professorial presence in online classes, identifying group discussions as a method of learning online); Sandra S. Benson, *Going for the Intrinsic Gold: A Collaborative Quizbowl Quest to Motivate Students and to Showcase Business Law Courses*, 26 J. LEGAL STUD. EDUC. 457 (2009); Susan W. Dana, *Implementing Team-Based Learning in an Introduction to Law Course*, 24 J. LEGAL STUD. EDUC. 59 (2007); Laurie A. Lucas, Diane F. Baker, & Dave Roach, *Team Learning Versus Traditional Lecture: Measuring the Efficacy of Teaching Method in Legal Studies*, 19 J. LEGAL STUD. EDUC. 63 (Dec 2001) (comparative study of team learning method and traditional lecture, with inconclusive results); Judith Stilz Ogden & Mary Ellen Benedict, *What's On Your Mind? A Negotiation Role-Play*, 18 J. LEGAL STUD. EDUC. 307, 308 (2000) ("Cooperative learning in small groups helps students to learn better. Additionally, ... teamwork, interaction and communication are increasingly valuable in the workplace ..."); Catherine Jones-Rikkers & Constance Jones, *Active Learning in the Legal Environment of Business Classroom*, 16 J. LEGAL STUD. EDUC. 173 (1998); George W. Spiro, *Collaborative Learning and the Study of the Legal Environment*, 10 J. LEGAL STUD. EDUC. 55 (1992) (exploring the theory behind collaborative learning and providing examples of how it can be used in business schools); and Robert S. Adler & Ed Neal, *Cooperative Learning Groups in Undergraduate and Graduate Contexts*, 9 J. LEGAL STUD. EDUC. 427 (1991). These are only a sampling of the articles that address collaborative learning in business law courses.

<sup>xxx</sup> See generally, DAVID W. JOHNSON & ROGER T. JOHNSON, *LEARNING TOGETHER AND ALONE: COOPERATIVE, COMPETITIVE, AND INDIVIDUALISTIC LEARNING* (Prentice-Hall, 2d ed., 1987); Kenneth A. Bruffee, *Liberal Education, Scholarly Community and the Authority of Knowledge*, 71 *Liberal Educ.* 231 (1985); Kenneth A. Bruffee, *The Structure of Knowledge and the Future of Liberal Education*, 67 *Liberal Educ.* 181-85 (1981). These books and articles were cited by George Spiro in his article which is being used here to explain the advantages of collaborative learning in business law courses.

<sup>xxxi</sup> Michael R. Koval, *Step Away from the Syllabus: Engaging Students on the First Day of Legal Environment*, 30 J. LEGAL STUD. EDUC. 179, n. 24 (2013) (students select a piece of candy without looking at it. Students with the same type of candy form a group. This approach facilitates quick formation of groups during the first class period.) Koval also discusses other approaches such as those espoused by Barbara Oakley, et. Al., *Turning Student Groups into Effective Teams*, 2 J. Student Centered Learning 9, 11 (2004) (faculty form teams to minimize cheating and to model employees' lack of control in workplace teams), Denise Potosky & Janet Duck, *Forming Teams for Classroom Projects*, 34 *Dev. Bus. Simulation & Experiential Learning* 144, 145 (2007) (students are less satisfied when they are assigned to teams compared to when they select their own teams). For a discussion of some of the special challenges in using teams in the online learning environment, see Regina O Smith, *Trust in Online Collaborative Groups - A Constructivist Psychodynamic View*, paper presented at the Midwest Research to Practice Conference in Adult, Continuing, and Community Education, Michigan State University, September 26-28, 2010 (on file with author).

<sup>xxxii</sup> Spiro, *supra* note 29 at 57.

<sup>xxxiii</sup> See *Blind Men and an Elephant*, WIKIPEDIA, at [http://en.wikipedia.org/wiki/Blind\\_men\\_and\\_an\\_elephant](http://en.wikipedia.org/wiki/Blind_men_and_an_elephant) (last visited Feb. 27, 2013). It summarizes the possible origins of the story, quotes the John Godfrey Saxe poem that embodies the story and the moral of the story, and then identifies several disciplines' applications of the story. See also All Poetry Classics, Top 500 Poems, at <http://allpoetry.com/classics> (last visited Feb. 27, 2013).

It was six men of Indostan, to learning much inclined,  
who went to see the elephant (Though all of them were blind),  
that each by observation, might satisfy his mind.

The first approached the elephant, and, happening to fall,  
against his broad and sturdy side, at once began to bawl:  
"God bless me! but the elephant, is nothing but a wall!"

The second feeling of the tusk, cried: "Ho! what have we here,

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so very round and smooth and sharp? To me tis mighty clear,  
this wonder of an elephant, is very like a spear!"  
The third approached the animal, and, happening to take,  
the squirming trunk within his hands, "I see," quoth he,  
the elephant is very like a snake!"  
The fourth reached out his eager hand, and felt about the knee:  
"What most this wondrous beast is like, is mighty plain," quoth he;  
"Tis clear enough the elephant is very like a tree."  
The fifth, who chanced to touch the ear, Said; "E'en the blindest man  
can tell what this resembles most; Deny the fact who can,  
This marvel of an elephant, is very like a fan!"  
The sixth no sooner had begun, about the beast to grope,  
than, seizing on the swinging tail, that fell within his scope,  
"I see," quoth he, "the elephant is very like a rope!"  
And so these men of Indostan, disputed loud and long,  
each in his own opinion, exceeding stiff and strong,  
Though each was partly in the right, and all were in the wrong!  
So, oft in theologic wars, the disputants, I ween,  
tread on in utter ignorance, of what each other mean,  
and prate about the elephant, not one of them has seen!

Had the blind men collaborated and shared their information, they would have developed an accurate description of an elephant.

<sup>xxxiv</sup> See also, George T. Spiro, *supra* note 29, at 56-57 (giving examples of 3 students with 3 views of the study of business law and summarizing Peter Elbow's WRITING WITHOUT TEACHERS 151-152 (1973) explanation of levels of cognition in learning, using as example varying interpretations of the same data).

<sup>xxxv</sup> *Id.* See also D. JOHNSON & P. JOHNSON, *supra*, note 30; Bruffee, *supra*, note 30.

<sup>xxxvi</sup> See Mary Forehand, Bloom's Taxonomy: Original and Revised. In M. Orey (Ed.), *Emerging Perspectives on Learning, Teaching, and Technology*. (2005) at <http://projects.coe.uga.edu/epltt/> (last visited May 30, 2013). The article summarizes and explains the Revised Bloom's Taxonomy (RBT) 2001.

<sup>xxxvii</sup> See generally, Jennings, *supra* note 29 (opining that much active learning occurs in the lecture format, and that both methods lend themselves to case problem analysis which is an ideal method of practicing critical thinking).

<sup>xxxviii</sup> See the Appendix for the cases and teaching notes.

<sup>xxxix</sup> Cohesiveness and sharing resources and feedback are key components of successful group learning. See, e.g., LARRY K. MICHAELSEN, ET. AL., TEAM-BASED LEARNING: A TRANSFORMATIVE USE OF SMALL GROUPS IN COLLEGE TEACHING, 74-75 (2002); Larry K. Michaelsen et. al., *Problems with Learning Groups: An Ounce of Prevention...* 17 J. LEGAL STUD. EDUC. 91, 92-94 (1999) (effective learning teams work best when the members are willing to communicate and motivated to prepare to communicate something of substance).

<sup>xl</sup> MICHAELSEN, ET. AL, TEAM-BASED LEARNING, *supra* note 29, at 74-75 (research supports the proposition that the optimal size for small groups is 5-7 members to ensure a broad base of intellectual abilities and effective participation).

<sup>xli</sup> *Id.* at 63 (simultaneous reports tend to promote more vigorous debate; sequential reporting on the same case can result in later groups merely endorsing previous groups' reports).

<sup>xlii</sup> *Id.* at 29, 76.

<sup>xliii</sup> *Id.* at 29, 39-40 (instructor criteria to select group members can include student characteristics such as gender, ethnicity, full-time work experience, and previous relevant coursework).

<sup>xliv</sup> *Id.* at 76.

<sup>xlv</sup> Images courtesy of a license from dreamstime.com.

<sup>xlvi</sup> This is based on Stefan Golab's death while working for Silver Recovery Systems. See e.g., Jeffery P. Grogin, *Corporations Can Kill Too: After Film Recovery, Are Individuals Accountable for Corporate Crimes?*, 19 LOY. L.A. L. REV. 1411 (1986), available at <http://digitalcommons.lmu.edu/llr/vol19/iss4/12> (last visited May 30, 2013); *People v. O'Neil*, 550 N.E.2d 1090 (1990); R. Bruce Dold, *Ex-worker Says Firm Masked Cyanide Peril*, CHI. TRIB. NEWS, Apr. 17, 1985, [http://articles.chicagotribune.com/1985-04-17/news/8501220589\\_1\\_film-recovery-systems-stefan-golab-plant-manager](http://articles.chicagotribune.com/1985-04-17/news/8501220589_1_film-recovery-systems-stefan-golab-plant-manager) (last visited May 30, 2013); Harold Hendersen, *Murder in the Air*, ChicagoReader.com, June 14, 1990, <http://www.chicagoreader.com/chicago/murder-in-the-air/Content?oid=875834> (last visited May 30, 2013); *Job-Related Murder Convictions of 3 Executives are Overturned*, N.Y. TIMES, January 20, 1990,

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<http://www.nytimes.com/1990/01/20/us/job-related-murder-convictions-of-3-executives-are-overturned.html> (last visited May 30, 2013).

<sup>xlvi</sup> Determining whether information is credible is an essential skill for 21<sup>st</sup> century literacy. Instructors can ask students to complete a checklist as they develop that skill. Two helpful checklists are:

- CARS (Credibility accuracy, reasonableness, support):  
[http://novella.mhhe.com/sites/0079876543/student\\_view0/research\\_center-999/research\\_papers30/conducting\\_web-based\\_research.html](http://novella.mhhe.com/sites/0079876543/student_view0/research_center-999/research_papers30/conducting_web-based_research.html)
- More detailed information about evaluation, including CARS <http://www.virtualsalt.com/evalu8it.htm>

Instructors can find more through information literacy standards promulgated by the Association of College and Research Libraries <http://www.ala.org/acrl/standards/informationliteracycompetency>.

<sup>xlviii</sup> See, e.g., Jennifer Arlen, Evolution of Corporate Criminal Liability: Implications for Managers. NYU, Law and Economics Research Paper No. 04-022; LEADERSHIP AND GOVERNANCE FROM THE INSIDE OUT, Jeffrey Sonnenfeld & Robert Gandossey, ed., 2004, available at SSRN: <http://ssrn.com/abstract=591202>; Ida M. Jones, Criminalizing Failure To Report Or Correct Unsafe Workplace Conditions And Unsafe Products As A Means of Preventing Unethical Business Conduct (unpublished manuscript, on file with author).

<sup>xliv</sup> CA Penal Code §387 (2013).

<sup>l</sup> 421 U.S. 658 (1975).

<sup>li</sup> The title is referring to National Enquirer's old slogan. This is the type of story that a gossip magazine like National Enquirer would publish.

<sup>lii</sup> This assignment is based on the dispute between Leonard and PepsiCo as reported in Leonard v. PepsiCo, Inc., 88 F. Supp. 2d 116, 1999 U.S. Dist. LEXIS 11987 (S. Dist. NY, 1999) and affirmed by Leonard v. PepsiCo, Inc., 2000 U.S. App. LEXIS 6855 (2nd Cir., 2000). All references refer to the district court opinion unless otherwise noted. Leonard v. PepsiCo, Inc., 1996 U.S. Dist. LEXIS 22407 (S. Dist. FL, 1996) dealt with the motion to transfer the case from the district court in Florida and PepsiCo, Inc. v. Leonard, 1997 U.S. Dist. LEXIS 18926 (S. Dist. NY, 1997) dealt with personal jurisdiction over Leonard in New York. Business law faculty may want to expand their discussion to these topics, too.

<sup>liii</sup> BLACK'S LAW DICTIONARY, (7th, 1999), at 1111.

<sup>liv</sup> DANIEL V. DAVIDSON, LYNN M. FORSYTHE, & BRENDA E. KNOWLES, BUSINESS LAW: PRINCIPLES AND CASES IN THE LEGAL ENVIRONMENT (Wolters Kluwer Law & Business, 2011), at 321.

<sup>lv</sup> *Id.*

<sup>lvi</sup> *Restatement (Second) of Contracts* § 26 cmt. b (St. Paul, American Law Institute Publishers, 1979).

<sup>lvii</sup> See Lefkowitz v. Great Minneapolis Surplus Store, Inc., 251 Minn. 188, 86 N.W.2d 689, 1957 Minn. LEXIS 684 (Minn., 1957).

<sup>lviii</sup> E. Allan Farnsworth, *Farnsworth on Contracts* § 3.10 (2d ed. 1998), as quoted in Leonard v. PepsiCo, Inc., at 127.

<sup>lix</sup> Leonard v. PepsiCo, Inc., at 126.

<sup>lx</sup> Leonard v. PepsiCo, Inc., at 132 quoting precedents.

<sup>lxi</sup> 1 Q.B. 256 (Court of Appeal, 1892). This case is discussed in Leonard v. PepsiCo, Inc., at 125-127.

<sup>lxii</sup> 251 Minn. 188 (Minn., 1957).

<sup>lxiii</sup> 1 Q.B. 256 (Court of Appeal, 1892).

<sup>lxiv</sup> The court said that it was not relevant in Leonard v. PepsiCo, Inc., at 130.

<sup>lxv</sup> The court said that it was not relevant. *Id.*

<sup>lxvi</sup> DAVIDSON, *supra* note 54, at 94-95.