

**ASSOCIATION OF AMERICAN LAW SCHOOLS  
MID-YEAR MEETING**

**Workshop on Transactional Law**

*Joint Plenary Session: Integrating Transactional Law in the Traditional Courses*

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**I. Foundational Definitions**

a. Transactional Law

- i. Conference brochure – “Transactional Law refers to the various substantive legal rules that influence or constrain planning, negotiating, and document drafting in connection with business transactions, as well as the ‘law of the deal’ (i.e., the negotiated contracts) produced by the parties to those transactions.”
  - ii. Panel enhancements – “Transactional law focuses on illuminating the process of the deal rather than the process of litigation. Among the substantive and practical legal areas at the core of transactional law are the laws and regulations governing bankruptcy and reorganizations, business associations, commercial law, contract drafting, corporate finance, mergers and acquisitions, real estate acquisitions and financing, secured transactions, and securities regulation. Transactional law also encompasses training in the skills needed by a lawyer to structure, negotiate, and draft documents for the deal. In sum, transactional law covers the theory, policy, doctrine, and skills required to realize the legal aspects of business transactions.”
- b. Traditional Course – “A traditional course is a course focusing on theory, policy, doctrine, and (perhaps) legal process, rather than law practice skills. The entire standard first-year curriculum would be traditional courses, other than any offerings on legal research, legal writing, and lawyering. Upper division courses relevant to this panel that are traditional courses include, e.g., Business Associations, Commercial Law, Corporate Finance, Intellectual Property, Securities Regulation, and Tax.” This panel also will include information about transactional law clinical, simulation, and seminar offerings (individually and as part of a unified curriculum) as a context for, and as extensions of, the transactional law taught in traditional courses.

**II. Techniques**

a. Classroom Teaching

- i. Choosing teaching materials
  - ii. Teaching/modeling the hierarchy of transactional law rules
  - iii. Finding and highlighting transactional aspects of cases
  - iv. In-class exercises
- b. Take-Home Assignments
- i. Writing across the curriculum<sup>1</sup>
    - 1. Contract/instrument drafting
    - 2. Drafting disclosure documents
    - 3. Intra-office memoranda
  - ii. Explaining planning and drafting choices through IRAC
  - iii. Researching transactional law and scholarship
  - iv. Finding precedent transaction documents
  - v. Using/marking up precedent transaction documents
- c. Communications Modeling
- i. Role-playing
  - ii. Discussion boards
  - iii. E-mail
- d. Examinations and Other Evaluative Tools
- i. Oral examinations
  - ii. Written examinations
  - iii. Graded writing assignments
  - iv. Teaching by students
  - v. Other in-class presentations

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<sup>1</sup> Samples of transaction-oriented writing assignments are available on request. I have arranged to post one from my Business Associations course to the conference Web site.

### III. Examples of Cases that Illustrate Transactional Law Principles (in addition to or as part of the rule of the case)

#### a. Business Associations

- i. *Blount v. Taft*, 246 S.E.2d 763 (N.C. 1978) – protecting important substantive provisions in bylaws and contracts with supermajority amendment provisions
- ii. *Centaur Partners, IV v. National Intergroup, Inc.*, 582 A.2d 923 (Del. 1990) – choosing where to put corporate organizational provisions (as between charters and bylaws); drafting charters and bylaws in a consistent manner
- iii. *Klang v. Smith's Food & Drug Centers*, 702 A.2d 150 (Del. 1997) – subsidiary mergers, valuation, valuation experts and opinions
- iv. *Nixon v. Blackwell*, 626 A.2d 1366 (Del. 1993) – dual class stock; employee benefits (including ESOPs and employee stock options)
- v. *RKO-Stanley Warner Theatres, Inc. v. Graziano*, 355 A2d 830 (Pa. 1976) – interplay between corporate governance and contract drafting ( the need for a board of directors to authorize a corporation's obligations under a contract); purchase options as an alternative to outright acquisitions of property
- vi. *Smith v. Van Gorkom*, 488 A.2d 858 (Del. 1985) – planning board of directors meetings; documenting management and board activities

#### b. Securities Regulation

- i. *Basic Inc. v. Levinson*, 485 U.S. 224 (1988) – advising management and boards of directors on disclosure obligations and issues (duties to disclose, materiality, etc.) before they arise
- ii. *SEC v. Datronics*, 490 F.2d 250 (4th Cir. 1973), cert. denied, 416 U.S. 937 (1974) – subsidiary mergers; spin-offs
- iii. *SEC v. Ralston Purina*, 346 U.S. 119 (1953) and *In the Matter of Google, Inc. and David C. Drummond*, consent decree available at <http://www.sec.gov/litigation/admin/33-8523.htm> - employee stock options as securities; the undesirability of repeating violative conduct/re-learning lessons of the past as corporate counsel (!)
- iv. *SEC v. Wallenbrock*, 313 F.3d 532 (9th Cir. 2002) – operational financing to smooth cash flow issues (receivables financing, factoring, etc.)

- v. *In re W.R. Grace & Co.*, SEA Release No. 39,157 (Sept. 30, 1997) – D&O Questionnaires as part of the process of preparing and cross-checking annual and other SEC filings; SEC enforcement by administrative action

c. Corporate Finance

- i. *Broad v. Rockwell International*, 642 F.2d 929 (5th Cir. 1981) – contract interpretation in a transactional context; detail orientation (“and” versus “or”)
- ii. *Matter of Cawley v. SCM Corp.*, 530 N.E.2d 1264 (N.Y. 1988) – triangular mergers; two-step tender offers/acquisitions
- iii. *Katz v. Bregman*, 431 A.2d 1274 (Del. 1981) – documenting the support for legal conclusions that boards of directors must reach as predicates to transactional structure or the substantive or procedural rights of corporate constituents; jurisdictional differences in appraisal rights/lack of appraisal rights for asset dispositions under Del. law
- iv. *Katz v. Oak Industries*, 508 A.2d 873 (1986) – the process and regulation of exchange offers; duties to creditors in the zone of insolvency (?)
- v. *Mutual Savings Life Insurance Co. v. James River Corp.*, 716 So. 2d 1172 (Ala. 1998) – the importance of precisely defining terms and understanding terms of art (all redemptions are repurchases, but not all repurchases are redemptions . . .)
- vi. *Van Gemert v. Boeing*, 520 F.2d 1373 (2d Cir. 1975) – stock exchange listing agreements and their role in corporate finance; registered versus bearer indebtedness; the role of equity in corporate finance