

**ASSOCIATION OF AMERICAN LAW SCHOOLS  
2009 MID-YEAR MEETING**

**Conference on Business Associations**

Concurrent Session: Corporate Finance

*Teaching the Legal Aspects of Corporate Finance through Planning and Drafting*

Joan MacLeod Heminway

**I. Course Design**

a. Substantive Focus

- i. Theory (finance economics/value maximization)
- ii. Practice
  1. Business (central role of valuation)
  2. Law (corporate law, securities law, and contract law)
- iii. Linkage of theory to practice through doctrine (i.e., the legal aspects of corporate finance)

Corporate Finance, as taught by me, is a multidisciplinary course in law and legal practice skills. The foundation of the course is advanced, specialized work in finance and economic theory, corporate law doctrine, and contract drafting, but our work in the course also (unavoidably and realistically) involves incursions into securities regulation, bankruptcy, administrative law, tax, professional responsibility, contract drafting, and other areas of law and legal practice.

b. Pedagogy

- i. Lecture
- ii. Q&A
- iii. Problem method
- iv. Hands-on planning/drafting – writing across the curriculum
- v. Simulation/role-playing exercises

c. Key (Overlapping) Factors in Choosing Focus and Pedagogy

- i. Objective
- ii. Instructor knowledge/experience
- iii. Institutional resources – capacity and constraints
- iv. Role of the course in the curriculum

**II. Linking Theory to Practice through Planning and Drafting**

a. Classroom Teaching

i. Teaching materials

1. Cases (*see* item II.a.iii. *infra*)
2. Codified rules
  - a. Statutes
  - b. Regulations and related guidance
  - c. Stock exchange rules and guidance
3. Precedent transaction documents
  - a. Debentures
  - b. Indentures
  - c. Certificates of designation
  - d. Stock purchase agreements
  - e. Notices of redemption
  - f. Closing opinions
  - g. Timetable/responsibility checklist
4. SEC filings
5. Law review/journal articles
6. Transcript of expert witness testimony

- 7. PowerPoint
  - a. Antidilution/antiadjustment
  - b. Mergers and acquisitions
- 8. News media
- ii. Hierarchy of rules applicable to corporate governance issues arising in corporate finance transactions
- iii. New way of using cases – “This is not your Daddy’s Langdellian method.”
  - 1. “If “X” wanted “Y,” then “X” should have “Z.”
  - 2. Finding and highlighting theoretical, doctrinal, and transactional aspects of cases and other materials
- iv. In-class drafting exercises
  - 1. First class – debt instrument
  - 2. Redemption notice
  - 3. Individual provisions arising in cases
- b. Out-of-Class Planning and Drafting Assignments<sup>1</sup>
  - i. Drafting for different contexts
    - 1. Disclosure – description of conversion or redemption provisions in debt instrument or preferred stock terms as part of the “Description of Securities” section in a prospectus
    - 2. Contracts/instruments – substantive provision of the student’s choice for use in a particular transactional context
    - 3. Intra-office memoranda
      - a. communication of uncertainties, issues, and drafting decisions to supervising attorney
      - b. construction of a legal argument to support planning and drafting decisions

---

<sup>1</sup> Samples of transaction-oriented writing assignments are available on request.

- c. critique of a colleague's research, legal analysis, and written work product
  - ii. Making planning and drafting choices using IRAC
  - iii. Researching transactional law and scholarship
    - 1. Electronic resources
    - 2. Hard-copy/print resources
    - 3. Human resources
  - iv. Identifying appropriate precedent transaction documents
    - 1. Benefits and perils of Web-based sources
    - 2. Specialized training on Lexis and Westlaw
    - 3. Limited utility of most forms books
  - v. Drafting from precedent transaction documents
    - 1. The fine art of plagiarism?
    - 2. Taking documents back to a "first draft"
    - 3. The importance of carefully articulated standards and precise defined terms, in each case, consistently employed
- c. Practice Context
  - i. Class as a law firm or law office
  - ii. Communication of questions/ideas
    - 1. Discussion boards
    - 2. E-mail
    - 3. In-person meetings
  - iii. Professionalism
  - iv. Collegiality/collaboration

d. Evaluation – “You don’t know what you don’t know until you try to write or speak about what you think you know.”

i. Three graded writing assignments

1. Prospectus disclosure
2. Planning and drafting a specific provision for use in an instrument or contract; evidenced by an intra-office memorandum and the draft provision
3. Intra-office memorandum critiquing a colleague’s memorandum and draft provision

ii. Teaching by students

1. One class per semester
2. Each student must collaborate with another student
3. I provide substantive guidance on the material
4. I provide each student with basic evaluation metrics

iii. Overall attendance and participation

1. Class meetings
2. Web site discussion board

