

# Business Law 360 Degrees

## *Bridging the Gap between Theory and Practice*

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### Abstract

Critical thinking and analytical skills are gaining increased recognition as essential contributors to the educational and professional success of today's business students. Paradoxically, researchers have paid selective attention to the development of critical thinking skills within courses on business law, a subject popularly associated with critical thinking. Although limited scholarship has focused on the use of case briefs and mock trial exercises to enhance student critical thinking skills in business law courses, these pedagogical exercises are insufficient for the needs of today's modern business students. Specifically, case briefs and mock trial exercises may fail to address legal issues germane to the business profession. In instances where such exercises do focus directly on business issues, these methods still fall short by placing undue emphasis on the procedural aspects of litigation, leaving students without a proper examination of the issue's larger role within business practice. To ensure today's business graduates are able to effectively tackle diverse and complex legal issues, business law courses must persistently employ new pedagogical approaches to develop comprehensive critical thinking skills. This article will describe one such approach, the Business Law 360° Memorandum, which builds upon and reinforces the need for business students to practically apply analytical and critical thinking skills to legal-business issues that currently beset the business community.

**Keywords:** business law course, critical thinking, legal analysis

### 1. Introduction

There is increasing scholarship within the academic community surrounding the best means to effectively develop critical thinking, a cognitive ability that is essential to success in both educational and professional pursuits, in college and university students (Arum & Roksa, 2011; Herbert, 2011; Morgan-Thomas, 2012). Due to the demanding expectations of today's students, AACSB, and the business community, business schools continue to enhance their coverage of integrative topics and explore innovative teaching techniques (Athavale, Davis, & Myring, 2008). For instance, the integrated curriculum, in addition to highlighting the customary goal of knowledge attainment, also stresses the development and growth of skills that are germane to a successful career (Athavale, Davis, & Myring, 2008). Furthermore, empirical evidence within the academic literature demonstrates the importance of infusing critical thinking into curriculum integration (White, 2004; Morgan-Thomas, 2012).

However, researchers have paid only marginal attention to examining the advancement of legal-business problem solving in the context of business law courses, subjects popularly associated with critical thinking. Nevertheless, existing research reflects a general consensus on the need to offer diverse teaching methodologies, such as the utilization of case briefs and mock trial exercises, in order to solidify critical thinking as an integral part of courses in legal studies (Morgan-Thomas, 2012). However, these pedagogical exercises are insufficient for the needs of today's business students, as case briefs and mock trial exercises may fail to adequately address legal issues that business students will encounter as future managers and executives. Even in instances where such exercises focus directly on business issues, these methods nevertheless place undue emphasis on the litigation and procedural law aspects of the dispute. As a result, the mindset that law must be viewed separately from business operations is imprudently reinforced, leaving students incapable of recognizing the role of legal disputes within the overall context of organizational success.

In order to ensure today's business graduates are positioned to effectively tackle the diverse and complex legal issues prevalent in the current business environment, business law courses must persistently employ new pedagogical approaches to develop comprehensive critical thinking skills. This article will describe an assignment for business law courses, the Business Law 360° Memorandum, which builds upon and reinforces the need for business students to apply critical thinking skills to issues that currently plague the business environment.

## 2. Literature Review

Instruction on business law is an indispensable component of the business school curriculum (Morgan, 2003). As one scholar noted, business law courses highlight the importance of understanding the nuances and subtle differences in the meaning of business documents, as well as teach proper document drafting and review techniques that minimize exposure to potential legal liability (Cooley, 2009). These skills are invaluable today, as the growing complexity of legal regulation has created a *de facto* need for organizations to include legal thinking at every stage of strategic business planning and decision making (Siedel, 2000). For example, law can be a substantial factor in value creation (DiMatteo, 2010) through the protection of innovation, the enabling of free labor markets, and the efficient regulation of contracts (Bird, 2008). Scholars have argued that law touches nearly every facet of commercial strategy and operations (Siedel, 2000).

In response to the call for greater development of critical thinking in business law courses (Reitzel, 1991; Kubasek, 1998; Prentice, 2001; Asfour, 2009), a variety of teaching methodologies have been adopted to accomplish this goal. For example, the frequently used mock trial exercise has been connected to diverse pedagogical benefits, such as improving critical thinking and analytical skills, facilitating the recognition of cause-and-effect relationships, promoting the long-term retention of course concepts, and providing key knowledge necessary for interactions with in-house and outside legal counsel (Miller, 1987; Karraker, 1993; Lawton & Oswald, 1993). Similarly, under the Langdellian case method, students learn the law by reading court opinions to critically interpret, analyze, synthesize and evaluate patterns of facts, judicial reasoning, legal rules and court holdings (Morgan-Thomas, 2012). While existing research literature demonstrates the benefits to critical thinking afforded by the mock trial and case briefing exercises, there is a debate regarding whether such exercises cause courses in business law to paint an inaccurate picture of the litigation process (Dobray & Steinman, 1993; Leibman, 1994; Lawton, 1997).

For example, students use the Langdellian method to dissect legal case opinions written by appellate judges on specific legal disputes that have been brought before appellate courts. It is through this analytical process that students identify, learn, and classify substantive legal principles (Hammond, 2009). However, a major drawback of the Langdellian method is that it fails to provide students with an accurate context to the legal issues they examine when reading these opinions. As noted by Harner and Rhee (2014), through this method students are improperly exposed to facts and procedures that have been heavily distilled by appellate judges and casebook authors, resulting in snapshots of case opinions that do not remotely resemble actual litigation. Harner and Rhee (2014) further note that students need to think beyond the narrow universe established by appellate decisions, as lawyers are required to "develop facts and construct the case theories, deal with uncertainties, calculate risk and reward, make decisions, and solve problems." While case briefing and mock trials support business law students in developing critical thinking skills, such pedagogical exercises fail to channel students' analytical queries and perceptions in the proper direction.

In response to these shortcomings, business law professors are now making greater use of a diverse range of teaching methods and exercises in the business law classroom. Based on the pedagogical support for student learning through the examination of real-world situations and materials (Smith & Williams, 2008), traditional legal casebooks containing appellate opinions have been largely supplanted by scenarios that mimic real-life deals and documents (Hammond, 2009). For instance, some business law faculty use authentic corporate contracts to describe the process of "thinking like a lawyer" (Warkentine, 2000; Stark, 2004), while other faculty use problem solving and role-playing exercises to facilitate active learning and encourage critical thinking (Goforth, 2000). Likewise, case simulations are used to highlight the uncertainties, tradeoffs and dynamics of complex business transactions and negotiations (Harner & Rhee, 2014), enhancing students' learning of business law by reducing the gap between "business problems" and "legal issues" (Harner & Rhee, 2014). As noted by Siedel (2001), this is absolutely critical, as business students need to learn the legal aspects of business decision-making. By presenting real-world problems from unique angles and perspectives, case simulations hone students' analytical, problem-solving, and decision-making skills (Rakoff & Minow, 2007; Harner & Rhee, 2014). Moreover, unlike the traditional Langdellian case method, these pedagogical exercises are collaborative rather than competitive processes (Hammond, 2009).

Assuming that the majority of business students are less likely to become attorneys and more likely to become managers, executives, and business owners, legal thinking exercises must be appropriately tailored to incorporate legal issues that are directly relevant to a business career. Due to the importance placed upon law by senior managers, who have ranked it as one of the most valuable subjects in the core curriculum (Siedel, 2000), business law students must be able to apply their critical thinking skills and knowledge of the law to practical issues that currently beset the business community. Therefore, it is essential that business law courses continue to supplement instruction on general legal theory with pedagogical exercises that focus analytical thinking skills on critical business issues. Students who acquire such skills will be better positioned to achieve success in the modern business environment (Siedel, 2000). In the next section, I will introduce the components of the Business Law 360° Memorandum, an assignment that can be utilized in business law courses to bridge the gap between legal theory and business practice.

### 3. Critical Thinking: Bringing Law, Ethics and Business Together

In the Business Law 360° Memorandum, students work in groups to pinpoint, scrutinize, and respond to the legal, ethical, and business implications of a legal problem. Specifically, students are asked to (1) critically evaluate a current legal crisis involving a Fortune 500 company, and (2) produce a legal research memorandum on their findings that demonstrates skills in legal research, concise writing, critical thinking and application of business law principles. Based on the results of their research, students are asked to take on the role of their chosen company's chief decision maker, develop potential courses of action, and conclude with an overall recommendation.

An additional component of this assignment requires students to incorporate at least seven primary sources into their research memorandums. They are given instructions that primary sources can include court cases, state or federal statutes, industry reports, trade journal articles, and company press releases. Students are cautioned and limited in the number of internet sources they may use. This component recognizes the importance of the internet as a research tool, but reinforces the concept that students must also apply critical thinking to the research process itself.

#### 3.1 The Assignment

Once a topic has been selected and approved by the instructor, students are asked to begin their research by exploring the nature of the business, the structure of the organization, and its chief industries. For example, students are asked to locate the jurisdiction where the company is headquartered, and to the best extent possible, identify any partnerships, associations, or joint ventures involving the company. While such questions may seem basic and unnecessary, they are instrumental for identifying potential areas of legal exposure and calculating the jurisdictions where the company may find itself brought into court.

Once students have developed a solid foundation on the company, the pertinent questions that must be addressed within the body of the legal memorandum are addressed in Table 1 below:

Table 1. The pertinent questions

SUBJECT AREA	KEY QUESTION(S)
Legal Analysis	What areas of law are implicated? (ex. tort law, contract law)
	What major state and federal statutes are involved? (Provide key statute language when necessary)
	Do these laws imposing conflicting obligations?
	If litigation exists, is it widespread or localized to the company?
	Does the company have a compliance and ethics program in place?
	Has the company previously engaged in similar unlawful practices?
	Has the government initiated an investigation or indicated a desire to increase legislation and oversight?
Ethical Analysis	Does the issue implicate the legal systems of other countries?
	What are the major ethical concerns associated with your chosen issue?
	Is your issue affected by the inconsistency between law and ethics?
	Is this an emerging or established ethical dilemma?
	What stakeholders are affected by this issue?
	Does the company have a social responsibility policy, code of ethics, or media campaign that addresses this issue?

Strategic/Marketing Analysis	<p>How did this issue affect the company's financial and strategic objectives?</p> <p>How well did the company manage the conflict created by the issue?</p> <p>What strategic changes were made? Did the company modify existing strategies or implement new strategies in response?</p> <p>Has this issue led to litigation? If so, did the company fight the lawsuit or settle the case?</p> <p>Did the company cease or transfer business operations to a different geographical location?</p> <p>Did the company institute marketing, production, or quality control changes at the local, regional, or global level?</p> <p>Has the issue led to bad publicity, loss of supplier relationships, or a sharp decline in share prices?</p>
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After examining their chosen legal issue from the perspectives of law, ethics, and business strategy, students are then asked to generate three potential alternatives for effectively addressing the legal crisis. As a supplementary requirement, each independent alternative must be precise, quantifiable, and realistic. By requiring that alternatives be presented in this fashion, students are encouraged to give serious consideration to the diverse and nuanced consequences that are unique to their chosen issue, organization, and industry. Moreover, this level of specificity reduces the temptation students may have to provide alternatives that are generalized and overbroad.

After three precise, quantifiable, and realistic alternatives have been identified, students are asked to identify the alternative that will most effectively (and directly) address the legal crisis at issue. Once a solution has been selected, students are asked to develop an action plan for its implementation within the organization. Specifically, action plans must account for required internal and external organizational changes, as well as provide options for mitigating anticipated resistance from upper management, lower level employees, or company shareholders. Finally, students are asked to identify a time frame for implementing their proposed solution, as well as indicate how the organization will measure the adopted solution's short-term and long-term success.

### 3.2 The Pedagogy

The overall structure of the Business Law 360° Memorandum assignment is based on the legal problem solving model as described by Nathanson (1989), and incorporates problem identification, factual investigation, identification and assessment of legal issues, advice and decision making, implementation and monitoring. However, this assignment is unique in several key respects. It alleviates some of the burden that business law faculty may experience in feeling obligated to constantly generate new factual scenarios for class exercises and assignments. This assignment puts the student in the research seat, further adding to the learning process. By researching the key facts themselves, students are forced to critically evaluate and navigate through diverse materials and reference sources of uncertain validity. As real-world business decisions are often made based on imperfect information, the research aspect of this assignment closely simulates that uncertainty. Moreover, unlike other business law assignments, the Business Law 360° Memorandum requires students to go beyond the "thinking like a lawyer" mindset and consider legal issues in conjunction with, not apart from, strategic business issues. Instructors may tailor this assignment to fit the needs of undergraduate and graduate courses in business law.

## 4. Conclusion

In order to meet the ever increasing demands of today's competitive job market, colleges and universities are constantly searching for innovative methods to develop the critical thinking skills of their business graduates. Given the correlation between experience with critical thinking exercises and the improvement of critical thinking abilities, courses in business law are well suited to the interdisciplinary goal of promoting critical thinking. The goal of the Business Law 360° Memorandum is to encourage students to effectively channel and harness their critical thinking skills to better understand how the relationship between law and business affects the broader context of the organization, its industry, and the business community.

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