

Thinking Like a Deal Lawyer

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I am a former corporate partner at Chadbourne & Parke, where I had a broad-based transactional practice with an emphasis on acquisitions, dispositions, recapitalizations, and financings. There I was repeatedly frustrated by the new associates' lack of sophistication about business and business deals. One day I made the mistake of articulating that concern at a corporate partners' meeting. The Powers That Be swiftly assigned me the task of turning the neophytes into sophisticates. It was then that I first began to develop a model for teaching students and associates to be transactional lawyers.

That model begins with the proposition that doing deals is fundamentally different from litigating, in terms of both the skills used and the substantive knowledge required. This applies at the most basic level—that is, what it means to think like a lawyer. Although the academy prides itself on teaching students to think like a lawyer, for the most part we teach students to think like litigators.¹ To teach our students to be deal lawyers, we must teach them to think like deal lawyers.

The remainder of this essay describes what it means to think like a deal lawyer. Part I discusses the analytic skill of translating the business deal into contract concepts. Part II proposes an analytic framework that students can use to learn how to add value to a deal. Part III argues that knowing about business is an imperative for deal lawyers, just as knowing civil procedure and evidence is an imperative for litigators. In addition, that part describes a course that Fordham offers that is designed to teach students essential business concepts.

I. Translating the Business Deal into Contract Concepts

The analytic skill that litigators use is different from the one that deal lawyers use. Specifically, litigators use the analytic skill that we teach in our

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I thank Stephen Armstrong, Mary Daly, and Richard Neumann for their thoughtful comments on this essay. In addition, I thank my always helpful research assistant, Lisa Cannavino.

1. Only recently has the academy focused its efforts on students who intend to have a deal practice. See Edith Warkentine, *Kingsfield Doesn't Teach My Contracts Class: Using Contracts to Teach Contracts*, 50 J. Legal Educ. 112 (2000); Daniel B. Bogart, *The Right Way to Teach Transactional Lawyers: Commercial Leasing and the Forgotten "Dirt Lawyer,"* 62 U. Pitt. L. Rev. 335 (2000); Karl S. Okamoto, *Learning and Learning-to-Learn by Doing: Simulating Corporate Practice in Law School*, 45 J. Legal Educ. 498 (1995).

first-year courses. There we teach students to take the law and apply it to the facts to create a persuasive argument. That argument is then memorialized in a brief or a memo or is otherwise used to sway another, be it the other party or the court. The paradigm is one in which the litigators seek a certain legal result by working backwards from the law to a static set of facts. The analytic skill of deal lawyers stands this paradigm on its head.

Deal lawyers start from the business deal. The terms of the business deal are the deal lawyer's facts. The lawyer must then find the contract concepts that best reflect the business deal and use those concepts as the basis of drafting the contract provisions. I call this skill "translating the business deal into contract concepts." Mastering it is the first steppingstone to becoming a deal lawyer. All else flows from this skill. It is the foundation of a deal lawyer's professional expertise and problem-solving ability. Without it, negotiating and drafting are abstractions.

Two simple hypotheticals bring the different skills into relief. Imagine that a driver is going eighty miles an hour and hits a pedestrian; the pedestrian dies, and his heirs bring a lawsuit against the driver. The legal issue is whether the driver was negligent. To determine that, we teach students to look at the components of the cause of action for negligence and then to see whether each of the components can be matched up with the facts. The law is applied to the facts. That is the litigator's analytic skill.

To illustrate the deal lawyer's analytic skill, I will use an exercise from my drafting course.² The exercise entails two students negotiating the purchase of a used car. The car hypothetical is an excellent one to teach the translation skill for two reasons. First, the students can immediately relate to the fact pattern. Second, they find the mock negotiation fun; it's an excellent ice-breaker in a class where student involvement is essential.

The negotiation begins with the buyer asking basic questions about the car. What make and model is it? How many miles has it been driven? Has the car been in any accidents? Once the seller has answered all the buyer's questions, I ask the students how they would incorporate the seller's responses into the contract. Stated otherwise, how would they translate the business deal into contract concepts?

Inevitably, the students are taken aback and give me blank stares—if they even dare lift up their eyes from their papers. But they are not at fault for not knowing that the answer is representations and warranties. Unfortunately, most of them have never discussed these concepts in the context of a sophisticated commercial agreement. Instead, they undoubtedly learned about misrepresentations in torts and about warranties in connection with the Uniform Commercial Code Article 2. The students are also at a loss because the way of thinking is new to them.

To further see the translation skill in action, imagine that the seller has told the buyer that the car has been driven exactly 50,000 miles. Imagine further that the buyer tells his lawyer that he does not want to buy the car on the

2. I also use this exercise in my clinic, *Introduction to the Deal*.

closing date if the car has been driven more than an additional 500 miles.³ Once again, there is a business goal, and the question is how to translate that goal into contract concepts and then into contract provisions.

To answer the question, the deal lawyer must analyze the goal from both a business and a legal perspective. The answer requires that the contract have three separate provisions, each interlocking with the next. Each provision implicates a different contract concept.

First, the seller would need to represent and warrant to the buyer the number of miles the car has been driven as of the signing date. This representation and warranty provides a base-line measurement, induces the buyer to enter into the transaction, and provides a basis for a cause of action if it is false. The seller is at risk of liability if its statement is false.

Next, the seller would have to covenant that the car would not be driven more than 500 miles between the signing and the closing. This covenant picks up on a timeline at the point where the representation and warranty left off. The representation and warranty spoke as of a moment in time (the signing of the contract). The covenant goes forward in time from the signing until the closing. It protects the buyer because it is a promise which, if broken, gives the buyer the right to sue for damages.

Finally, the contract would need to include a condition precedent that the buyer would not be obligated to close unless all of the covenants had been performed; that is, the buyer would not have to buy the car on the closing date if the car had been driven more than 500 additional miles. Thus, to protect the client properly, the deal lawyer must have analyzed the business transaction and recognized that there were three different points on the timeline from the signing to closing and that adequate protection for the client required a different contract protection at each point on the timeline. Again, the desired business result determines the contract concepts to be used. The law and business are inextricably intertwined.

Upon completing the car purchase exercise, students can understand a point that is fundamental to their education as transactional lawyers: there is an underlying similarity to all contracts. Their structure is composed of representations, warranties, covenants, and conditions precedent. They are the contract's building blocks. Therefore, the translation skill applies not only to a car purchase agreement and an employment agreement, but also to a multibillion-dollar acquisition agreement, a license agreement, and a construction contract.

3. As an aside, the passive voice is correct in this instance. The issue is not whether the seller has driven the car more than 500 miles, but whether anyone has driven the car more than 500 miles. The issue is the act, not the actor.

When learning the translation skill, students must learn not only the legal aspects of a contract concept,⁴ but also its business purpose. So the class studies the role of representations and warranties as a risk allocation mechanism.⁵

Initially, the students look at risk allocation in the context of the car seller's representation and warranty that the car has been driven exactly 50,000 miles. That representation and warranty is what deal lawyers call "a flat representation." It is precise and without any wiggle room, and it is a high-risk statement for the seller. If the number of miles is even slightly wrong, the seller is potentially liable for damages. To reduce the seller's risk, the representation and warranty must be qualified. For example, the seller could state that the car had been driven *approximately* 50,000 miles. Now, a minor difference in the number of miles will not impose liability on the seller. Because this change reduces the seller's risk, more risk has now been allocated to the buyer. If the car has been driven 51,000 miles, the buyer may or may not be able to make a successful claim for misrepresentation and breach of warranty. It all depends on what "approximately" means.

Because of the importance of the risk allocation concept, the class also looks at a more sophisticated example—a series of alternative representations and warranties that show how a buyer and seller might negotiate a "no litigation" representation and warranty. The first representation is flat. It states as an absolute that the seller is not a party to any litigation and that there are no threatened litigations against the seller. This representation and warranty, of course, puts all the risk on the seller. If there is even one threatened litigation, the seller is liable.

The next representation and warranty refers to a disclosure schedule that lists any existing or threatened litigations. ("Except as set forth on Schedule 3.10, there are no existing or threatened litigations.") The remainder of the representations and warranties gradually shift the risk with respect to threatened litigations from the seller to the buyer.

- To the knowledge of the Seller, there are no threatened litigations.
- To the knowledge of the officers of the Seller, there are no threatened litigations.
- To the knowledge of the executive officers of the Seller, there are no threatened litigations.
- To the knowledge of A, B, and C, there are no threatened litigations.

In each instance, the pool of knowledge for which the seller is responsible becomes progressively smaller; the seller's risk diminishes and the buyer's risk increases. As the students work through this exercise, they begin to see that

4. For example, the difference between a representation and a warranty. See *CBS Inc. v. Ziff-Davis Pub. Co.*, 553 N.E.2d 997 (1990).

5. The class also looks at the role of covenants as a risk allocation mechanism. There the issue is the "degree of obligation" that the promisor makes. Does the promisor absolutely obligate itself to do something, or does it obligate itself to use only commercially reasonable efforts?

the translation process is not a mechanical one. Thinking like a deal lawyer is nuanced.

Students also see the subtleties of the translation skill in the exercise they work on after we have covered the basic skill in class. Working in groups of three or four,⁶ they review an employment agreement deal memo that enumerates thirteen business points. After reviewing each deal point, they annotate the deal memo indicating how they would translate each business point into a contract concept. The following excerpt is one of the business points from the deal memo:

Adele Administrator is currently executive vice president at Holistic Hospitals Corp. She is party to an employment agreement with that company that purportedly ends September 30, 2004.

Healthy Hearts Inc., a competitor, wants to hire Administrator effective October 1, 2004. It also wants to sign an employment agreement with her right away—before her employment with Holistic ends. However, Healthy Hearts is very concerned that Administrator might breach the Holistic employment agreement if she signs with Healthy Hearts now. Any breach could, of course, make Healthy Hearts potentially liable for tortiously interfering with the Holistic employment agreement.

Unfortunately, Healthy Hearts is unable to assuage its concerns by reviewing the Holistic employment agreement. According to Administrator, that agreement forbids her to show the agreement to anyone but her advisers. Nonetheless, Administrator insists that she is free to enter into an employment agreement with Healthy Hearts and that doing so will not breach the Holistic employment agreement. Please let me know what kind of provisions will give Healthy Hearts comfort on this point. Specifically:

- (a) Healthy Hearts wants to show that it entered into its employment agreement with Administrator in the good faith belief that it was not causing a breach under the Holistic employment agreement.
- (b) Healthy Hearts wants to be able to sue Administrator if the employment agreement with Healthy Hearts in fact causes Administrator's breach of the Holistic employment agreement.

When analyzing this deal point, the class discusses three issues. First, this fact pattern is a classic example of when representations and warranties are appropriate. Administrator has told Healthy Hearts information upon which it is relying in making its business decision to enter into the contract with her.

6. Students collaborate on all in-class exercises and most homework assignments. The benefits are manifold. First, to some degree this practice reflects the real-world environment where lawyers work together. It may not reflect the hierarchical structure that junior lawyers face, but not all legal work is done in that type of structure. (Associates often work jointly on such projects as due diligence, and senior lawyers collaborate on everything from deal structuring to negotiation strategy.) Second, working together is fun, so the students become more actively engaged in the exercise. Third, collaborating provides students with the opportunity to test their ideas in a nonthreatening environment. Fourth, in broaching and defending their ideas, the students are taking the first steps in learning how to negotiate transactional issues. See Dina Schlossberg, *An Examination of Transactional Law Clinics and Interdisciplinary Education*, 11 *Wash. U. J.L. & Pol'y* 195, 202–03 (2003); Catherine Gage O'Grady, *Preparing Students for the Profession: Clinical Education, Collaborative Pedagogy, and the Realities of Practice for the New Lawyer*, 4 *Clinical L. Rev.* 485 (1998); Jay M. Feinman, *Simulations: An Introduction*, 45 *J. Legal Educ.* 469, 474–75 (1995).

She has made statements of fact as of a moment in time to induce Healthy Hearts to rely on the statements, and Healthy Hearts has relied on them.

Second, the representations and warranties only theoretically protect Healthy Hearts. They do not actually do so because if they are false and Healthy Hearts sues Administrator, it is unlikely to recoup any damages. The reason? Administrator, an individual, probably is not a deep pocket from which Healthy Hearts can recover. This leads to a general discussion of creditworthiness as a business issue.

Finally, to protect Healthy Hearts properly, the students (as the lawyer for Healthy Hearts) must find another deep pocket. To do that, we return to the facts and note that her employment agreement permits Administrator to show the agreement to her advisers. This would include her lawyers—lawyers who could opine that Administrator’s signing of an agreement with Healthy Hearts would not breach the Holistic employment agreement.

The nub of our class discussion is that there are no easy answers in translating a business deal into contract concepts. It is not a mechanical skill. It is an analytic skill that students must learn and that we must teach if we are to graduate students who think like deal lawyers.

II. Adding Value to the Deal

Translating the business deal into contract concepts is only one aspect of thinking like a deal lawyer. The better deal lawyers are able to look at a transaction from the client’s perspective and add value to the deal. Looking at a contract from the client’s perspective means understanding what the client wants to achieve and the risks it wants to avoid. “Adding value to the deal” is a euphemism for “finding and resolving business issues.”⁷ These skills are problem-solving skills and are an integral component of a deal lawyer’s professional expertise. They require a sophisticated understanding not only of substantive law, but also of business, the client’s business, and the transaction at hand. At a law firm, having these skills is generally the province of the partners, and not necessarily all of them.

In a totally unscientific survey, I asked partners how they identified business issues.⁸ These are some of the responses:

- Identifying business issues requires a sixth sense.
- A business issue is any issue you find that the client should resolve.
- You know one when you see one.

The gist of these answers is that the partners learned how to discern business issues from experience. If this is so, how do we teach law students to find business issues? Aren’t the business issues in an acquisition agreement differ-

7. This definition of adding value is not at odds with the concept of lawyers’ adding value by acting as transaction cost engineers. Rather, finding and resolving business issues is one aspect of being a transaction cost engineer. See Ronald J. Gilson, *Value Creation by Business Lawyers: Legal Skills and Asset Pricing*, 94 *Yale L.J.* 239 (1984).

8. In an unrelated survey, Karl Okamoto asked partners a similar question. The answers were, not surprisingly, quite similar. See Okamoto, *supra* note 1, at 498.

ent from those in an employment agreement? What could we possibly teach students that would enable them to find business issues in agreements as diverse as a license agreement and a power purchase agreement?

Such pessimism is unwarranted. A careful analysis of a cross-section of agreements reveals that five business issues recur in most agreements. With an understanding of these issues, the student (or lawyer) is better able to analyze the transaction and to recognize how each of the issues manifests itself in a particular agreement. The five issues are money, risk, control, standards, and endgame. They are the five prongs of the business issue framework.

I teach the five-prong framework through a brief lecture followed by a series of exercises that require the students to apply the framework to different fact patterns. (I also provide the students with a detailed outline.) I will briefly outline the prongs and then discuss an excerpt from one of the exercises.

Virtually all agreements have issues related to *money*: purchase price, interest rates, time value of money, or earn-out calculations. Lawyers can often add value by using their practice-specific expertise. For example, if a corporation is entering into a broker arrangement in connection with the purchase of a jet, the lawyer may be able to draw upon her expertise and note that the brokerage fee is outside the normal range.

The second prong is *risk*. Representations and warranties, covenants, and conditions precedent are all risk allocation mechanisms. How they are negotiated directly affects a client's risk in a transaction. Risk can also manifest itself in multiple other ways in a transaction. First, a contract can raise the specter of tort liability—fraudulent inducement, product liability, or tortious interference with contract. Second, the provisions can create contract risk. For example, a noncompete, liquidated damages, or an indemnity provision could be unenforceable. Third, a contract could create the risk of statutory liability. A classic example is liability under the securities laws. Finally, risk could be inherent in the transaction. Credit risk is a salient example.

Ferretting out risks is not usually a problem for most lawyers. They have been taught issue spotting. But if that is all that a lawyer does, she will justly earn a reputation as a deal killer. To be effective, she must assess the probability that a risk will occur and, if it is significant, find a way to limit it.⁹

The third business issue is *control*. In analyzing control as a business issue, the initial inquiry must be whether having control is good or bad from a client's perspective. The answer is fact dependent. For example, limited partners are entitled to limited liability because they exercise no control over the limited partnership. In this context, lack of control is good. But limited partners generally do not want to abdicate to the general partner all control over their investment. They want the right to make decisions to protect their investment. Therefore, the limited partners will seek as much control as the general partner will tolerate and as much as they can accrete without

9. When I teach the five-prong framework, I review with the students some of the more basic risk reduction mechanisms: security agreements, guaranties, indemnities, letters of credit, insurance, escrow agreements, and a change in deal structure.

	Money	Risk	Control	Standards	Endgame
<p>If you or any prospective purchaser damage my apartment or its furnishings in any way, Best agrees to indemnify me in full for the cost of replacement or repair.</p>	<ol style="list-style-type: none"> Oglethorpe will lose money if the apartment or furnishings are damaged. Oglethorpe wants to be made financially whole. The facts assume that Best should pay. Maybe Oglethorpe should be responsible (homeowner's insurance). 	<ol style="list-style-type: none"> Damage to apartment or furnishings. Whose risk should it be? Is Best creditworthy? (Credit is always an issue when a payment is required.) Who decides whether the amount of the indemnification should be based on "the cost of replacement or repair"? 	<ol style="list-style-type: none"> How can Oglethorpe control the credit risk? Determine if Best has insurance and the amount available under the policy. 	<ol style="list-style-type: none"> "Prospective purchaser" is too narrow a standard. What if the prospective purchaser brings a friend who knocks over the Ming vase? "Damage" is too narrow a standard. What about thefts? 	

becoming general partners under the relevant state law. Control is a two-edged sword for limited partners.

Control is always an issue when there is risk. To add value, a deal lawyer must recognize the risk and then determine how to control or diminish it.

The fourth prong of the framework is *standards*. Virtually every word in a contract is a standard. There are both macro and micro standards. For example, every representation and warranty establishes a standard of liability. If the standard is not met, the recipient of the representation and warranty may sue the maker. This is a macro standard. But that macro standard can be changed at the micro level. By changing a word or a phrase in a representation and warranty, the standard changes. Are property, plant, and equipment in *good repair*, *customary repair*, or *in compliance with industry standards*?

Covenants and conditions precedent are also standards, as is every adjective (*material* contracts) and adverb (*promptly* deliver). Definitions are also standards (how a financial ratio is defined determines the standard to be incorporated into a loan covenant). A deal lawyer adds value by recognizing when a standard is inappropriate and by negotiating an alternative that more accurately reflects the client's business goals.

The last prong is *endgame*. Every transaction ends. It may end happily or unhappily. The relationship between a banker and its borrower can end with the loan repaid in full (happy) or with the borrower in default (unhappy). If a trademark license agreement ends, the contract must provide for, among other things, a mechanism for determining how and when the licensee should make the final payments, as well as instructions for what the licensee should do with any remaining merchandise. Endgame provisions are some of the most significant provisions in a contract because they often involve money—a topic near and dear to most clients' hearts.

To learn how to apply the five-prong framework, the students analyze several contracts. For each contract, they work with a chart specially created for that contract. Running down the y axis, separated from each other, are each of the sentences of the contract. Going across the x axis are each of the prongs of the framework. The students take each sentence and, working across the x axis, ask whether that prong of the framework raises any business issues. If so, they note the issue in the appropriate box. As the hypotheticals play out, the students see that not every issue is present in every sentence and that sometimes a business issue straddles two or more categories. Although the exercise is somewhat mechanical, it forces the students to think about business issues rather than legal ones.

The following sentence comes from one of the exercises—a real estate brokerage agreement that is set forth in a letter from Mr. Oglethorpe, the seller, to his broker, Mr. Best.

If you or any prospective purchaser damage my apartment or its furnishings in any way, Best agrees to indemnify me in full for the cost of replacement or repair.

After working through the exercise, the students' charts will bear some resemblance to the chart on the facing page.

I have found the five-prong framework and the related exercises to be a successful tool for teaching students to think about business issues.¹⁰ Having learned this framework, students are one step further along in learning to think like deal lawyers.

III. Business Essentials

As simple-minded as this might sound, in order to think like a deal lawyer, a lawyer must understand business and the business deal. For a deal lawyer, not knowing about business is akin to a litigator's not knowing civil procedure and evidence. Business is the discipline-specific substantive knowledge—the professional expertise—that a deal lawyer must have to function effectively.

Unfortunately, students generally have little opportunity to get a thorough grounding in business before they leave law school. For those students who intend to do deals, this deficiency puts them significantly behind the curve when they start to practice. In contrast, students who become litigators are much better prepared. We teach them not only the appropriate skills, but also discipline-specific substantive knowledge.

To address this problem, Fordham has offered since 2001 a two-credit course called Business Essentials. Its purpose is to teach students essential business concepts and how those concepts relate to the work they will do as commercial lawyers. It is intended as an analog to the course that M.B.A. students take to learn how the law affects business.¹¹ The topics it covers include the following:

- How corporations are organized. Functional organization v. divisional organization. What difference does it make if someone works in a profit center v. a cost center? Who has power and why? What is the difference between a straight-line and a dotted-line reporting relationship?
- How corporations make financial decisions.
- Cash flow statements.¹²
- Financial fraud.
- Financial analysis.
- Time value of money.
- How the stock exchange works (not SEC rules or the rules of the exchange, but rather what a market maker is, how shares are bought and sold, etc.).

10. In addition to teaching at Fordham, I teach CLE programs at law firms. One of the courses that I teach most frequently is the five-prong framework. Both partners and associates have given the framework a very warm reception. Midlevel associates particularly like it because it helps them to cross the bridge from junior associate (read: mundane tasks) to senior associate (read: good work).

11. See Larry A. DiMatteo, *Managing the Legal Factor: The Legal Implications of Business Decision Making*, 4 *J. Legal Stud. Bus.* 165 (1995).

12. The relatively large number of classes on accounting-related topics reflects the importance of these topics in a deal practice. Indeed, one commentator has suggested that deal lawyers must be familiar with accounting in order to fulfill their ethical obligation of competency. See Lawrence A. Cunningham, *Sharing Accounting's Burden: Business Lawyers in Enron's Dark Shadows*, 57 *Bus. Law.* 1421, 1449–59 (2002).

- Insurance. The difference between a claims made and an occurrence policy. Definition of an “occurrence.”¹³ Deductibles, excess policies, binders, reinsurance, and pricing.
- The bank regulatory framework. How commercial banks make credit decisions. A detailed review of a credit agreement.
- Mergers and acquisitions from a business perspective. What does an investment banker do? How does he decide what company is a viable candidate for a takeover? What distinguishes an LBO from other acquisitions?
- Valuation.
- Business ethics.

I chose these topics for the course on the basis of several factors. First, I wanted the course to give students insights into the business environment within which they would be practicing. Second, I wanted them to know basic financial concepts—concepts their clients would be facile with. Finally, I chose several topics about which I knew enough to be able to teach the classes. I thought it important that I be more than an observer of guest lecturers.

In choosing guest lecturers, I especially considered expertise in the subject matter and teaching experience. Two of the guest lecturers last year were other adjuncts, and one was a member of the Fordham faculty. Three were frequent panelists on CLE programs;¹⁴ two were senior corporate executives who made regular presentations; and one was a member of a corporation’s public affairs office. With the exception of one lecturer who got mixed student reviews, the guests were well received.

The course materials are a potpourri. The primary “textbook” is the *Wall Street Journal*. Students purchase a one-semester subscription at a reduced rate. At the first class they receive a booklet, published by the *Journal*, on how to read that paper. It describes the different sections of the paper and includes such basics as how to read the stock tables. Throughout the semester we discuss articles that deal with material we are covering in class. In addition, homework assignments require the students to synthesize articles they have read. For example, last year I had students write an essay discussing why interest rates had remained low despite significant investor demand for bonds.

Other assigned readings have come from *Business Week*, *Forbes*, the *California Management Review*, *Business Horizons* (a publication of the Indiana University Kelley School of Business), and *Harvard Management Update*.

A terrific resource for materials is the Harvard Business School, which has made its course materials available for purchase online. My students have worked with HBS problem sets when studying the statement of cash flows and

13. The need to understand insurance concepts is brought home to the students in assigned readings that describe litigation concerning the attack on the World Trade Center. At issue is whether the destruction of the twin towers was one occurrence (one terrorist attack against two buildings) or two occurrences (two attacks—one against each of the twin towers). If there were two occurrences, the insurer’s liability would double to approximately \$7.2 billion.
14. To state the obvious, being a panelist on a CLE program is not a gauge of a person’s teaching ability. But I knew two of the guest lecturers, and the third had excellent recommendations.

financial analysis. In addition, they have read "Notes" written by HBS faculty about organizational structure, auditors' reports, venture capital, and bank loans.

In addition to these course materials, some guest lecturers have supplied their own materials. For example, the banker who discussed how banks make credit decisions distributed an internal bank memorandum on the subject. Another of the guest lecturers played a videotape, produced by the American Institute of Certified Public Accountants, which showed vignettes of corporate officers deciding how to book financial transactions. (In one vignette, for example, the issue was how much the company should write down certain inventory. The officers' decision had serious repercussions: if the company wrote down the inventory to \$0, it would show a loss for the year.) After each vignette, the class discussed what considerations the company had to take into account in reaching a final decision. The goal was for the students to understand that financial statements are not truth, but rely substantially on estimates and judgment.

Homework assignments have consisted of readings, the essays relating to *Wall Street Journal* articles, and problem sets. In addition, as a culminating project, each student wrote a five- to seven-page paper on one of three public companies: Dell, Delta, or Wal-Mart.¹⁵ One consideration in choosing these companies was to circumscribe the assignment: each operates primarily in one industry. Among the topics that students had to discuss in their papers were the following:

- The company's current business and its business model.
- The company's current financial condition, along with a comparison to the prior two years.
- The company's competitive position in relation to the other companies in its industry.
- How the company's share price fared during the semester.
- Whether the student would invest \$10,000 in the company.

Students seem to like Business Essentials. Evaluations have been positive, and class size has hovered between fifteen and twenty students, even when the course was not included in the initial course list.

Of course, Business Essentials does not completely solve the problem of students' lack of business savvy. But it lets them make some progress. Further progress will depend on their future teachers' abilities to sensitize them to business matters and the students' willingness to continue learning on their own.

15. Early in the semester one of Fordham's librarians spoke to the students about the research resources that are available on the Web.