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## **CONTENT & OPINIONS**

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## FROM THE EDITOR

### **Unprecedented Times: A History of Adapting to Educational Challenges**

*The new semester had barely begun as a highly virulent viral infection created havoc on college campuses everywhere, spurring mitigation efforts. Some institutions closed completely; others halved class sizes and quarantined symptomatic students. Public gatherings were prohibited and athletic competitions cancelled. Movie theaters, bowling alleys, and churches shuttered; restaurants limited indoor dining. Students were advised to avoid groups and refrain from class attendance if feeling ill. Masks and social distancing were ordered by health authorities, and travel restrictions between city centers established and enforced.*

Although descriptions in the preceding paragraph aptly align with our experience of the continuing COVID-19 pandemic, the events are actually derived from 102-year-old historical accounts by college students, faculty, and administrators during the 1918 influenza pandemic. The similarities are concurrently remarkable and unremarkable as individuals globally sought to contend with—and adapt to—the unimaginable crisis of their respective time.

Historical similarities also suggest that the learning environment of both 1918 and 2020 was characterized by the ability to adjust, to reinvent, and to innovate. Smaller indoor class sizes, outdoor field trips and open-air classrooms, journaling, hybrid instruction (by phone in 1918 or by computer in 2020)—these are some of the learning-within-a-pandemic creations that are evident in both periods. Although higher education students, faculty and administrators of these 20<sup>th</sup> and 21<sup>st</sup> century crises are separated by a hundred years of change, examples of pandemic college learning shows that the mixing of innovative traditional and non-traditional learning tools and modes is virtually timeless.

Among the many lessons of the current crisis is knowledge that there is an element to learning that transcends method, approach, or venue, and the authors of this Volume 3 Issue 1 deftly capture this essence in their work. This issue of the *Journal of Business Law & Ethics Pedagogy* provides classroom ideas and resources for teaching that are innovative and simultaneously malleable to the multiple learning platforms many of us have recently adopted. Some of the exercises and concepts found in these articles are inspired by the current crisis; all will provide students with enhanced ability to make connections between their studies, business operations, and the world in which they live and work.

In *Business Continuity in Light of Coronavirus Disruption—A Group Exercise*, author Nanci Carr shows how crisis can create opportunity—even in the classroom—through a study of business disruption. This practical exercise focuses on allowing hospital-based employees to begin working remotely, and examines the requisite logistical and legal issues associated with such a transition. Covering a variety of topics, such as consent, liability, and HIPAA regulations, Professor Carr’s lesson helps students make a vivid direct correlation between the COVID-19 crisis and its impact on business operations.

Author Tonia Hap Murphy has developed a valuable compendium of resources and their application in her article *Law in the Time of Coronavirus: How and Why to Cover COVID-19 Disruptions in a Business Law or Legal Environment Course*. Including a virtual textbook range of business law topics, Professor Murphy presents engaging and immersive examples that capture the “silver lining” of our current crisis—understanding a connection between real world current challenges and the lessons we take with us from these issues to apply in the future.

In the essay *Getting Our Hands Dirty: Making the Problem of Dirty Hands Work for Us*, author Barry Sharpe suggests using the concept of dirty hands to introduce students to some of the more complex aspects of ethical thinking. Because the idea that an action may be both justified and wrong is difficult to reconcile, Professor Sharpe believes that the paradoxical nature of dirty hands is a useful framework to reconsider ethical theories and their often hasty, “cookie-cutter” application. Student encounters with messy moral landscapes helps to broaden their ethical toolbox for challenges and more thoughtful decision-making in both life and work.

Using the analogy of a flowing river, author Nancy White illustrates how cases and law move through the court system in *The River of Case Law and the Engagement Ring*. Including a short lecture (<4 mins.) and a well-organized exercise (with teaching notes), Professor White provides students with an opportunity to understand the complexities of how cases are decided and how precedents are created and applied. Focusing on the law of the “engagement ring” and other gifts given in contemplation of marriage, *The River of Case Law* is an engaging (pun intended) look at the consistency and structure of our legal system.

Authors Susan Willey and Cheryl Black present a practical, multifaceted project in their article *Speaking Their Language: Assigning Infographics and Videos as “Digital Deliverables” to Teach Legal Environment of Business Students About Social Media Policy*. In this highly engaging exercise, students are asked to analyze a corporate media policy, create an infographic and training film, and apply the policy to various workplace scenarios. Drawing on Generation Z’s affinity for social media, the importance of digital deliverables, and the need for projects that align with many learning platforms, Professors Willey and Black have created a versatile lesson that combines knowledge and technical skills in a unique and innovative way.

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Christine Ladwig  
EDITOR-IN-CHIEF

# Business Continuity in Light of the Coronavirus Disruption—A Group Exercise

Nanci K. Carr\*

## ABSTRACT

The coronavirus and variants continue to sweep the world, adversely affecting individuals, schools and businesses. As the pandemic began, global communities were plagued by a lack of supplies, canceled travel and events, and an almost instantaneous economic decline. While we may typically teach disruption in the context of new technologies, the disruption caused by the coronavirus is an excellent opportunity to teach business continuity. In a business law context, we can highlight that clients all over the world are contacting their attorneys for advice on how to keep their businesses running until the crisis is resolved, and engage in an exercise based upon an actual client request.

**KEY WORDS:** LEARNER-CENTERED INSTRUCTION, BUSINESS CONTINUITY, CRISIS MANAGEMENT

## I. INTRODUCTION

The Centers for Disease Control and Prevention (the “CDC”) began responding to the worldwide coronavirus<sup>1</sup> pandemic in early 2020. On January 30, 2020, the International Health Regulations Emergency Committee of the World Health Organization declared the outbreak a “public health emergency of international concern”.<sup>2</sup> The next day, Health and Human Services Secretary Alex M. Azar II declared a national public health emergency,<sup>3</sup> and U.S. cities and states began implementing local emergency declarations to free up funding and other resources to respond to the crisis.<sup>4</sup> Meanwhile, the stock market dropped precipitously and people were wondering how to keep their businesses running. While it is always a good practice to have a continuity plan in place when operating a business, each crisis is unique. Therefore, even if an organization has contingency plans for operations during a disruptive event, those plans are subject to alteration depending on the circumstances. Without a plan, it is likely that a company will take longer to recover from an adverse event, or even go out of business.<sup>5</sup>

When designing a business continuity plan, consider:

- Do you have a way to get HR, manufacturing and sales and support functionally up and running so that the company can continue to make money right after a disaster?

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<sup>1</sup> The virus is named SARS-CoV-2 and it causes coronavirus disease 2019, nicknamed COVID-19. *Coronavirus Disease 2019 (COVID-19) Situation Summary*, CDC.GOV, (Mar. 3, 2020) <https://www.cdc.gov/coronavirus/2019-ncov/summary.html>.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> On March 5, 2020, California’s Gov. Gavin Newsom declared a state of emergency “intended to help California prepare for and contain the spread of the coronavirus by allowing state agencies to more easily procure equipment and services, share information on patients and alleviate restrictions on the use of state-owned properties and facilities.” Soumya Karlamangla, Colleen Shalby, Taryn Luna, & Melody Gutierrez, *Grand Princess Cruise Ship at Center of Coronavirus Fight Amid Concerns about Spread*, L.A. TIMES, (Mar. 5, 2020, 8:48 AM). Los Angeles Mayor Eric Garcetti said “We have to be prepared. We have to protect the well-being of our loved ones and our neighbors.” *Id.*

<sup>5</sup> Kim Lindros and Ed Tittle, *How to Create an Effective Business Continuity Plan*, CIO.COM, (Jul. 18, 2017, 3:00 AM PDT) <https://www.cio.com/article/2381021/best-practices-how-to-create-an-effective-business-continuity-plan.html>.

- ...[I]f the building that houses your customer service representatives is flattened by a tornado, do you know how those reps can handle customer calls?
- Will [employees] work from home temporarily, or from an alternate location?<sup>6</sup>

In the context of COVID-19, companies also must avoid discriminating against customers, clients or employees of Asian descent. Los Angeles County Supervisor Hilda Solis acknowledged that since the COVID-19 outbreak originated in Asia, “There’s been too much misinformation spreading around,” Solis said. “As we expected, it’s cultivating fears and leading to racial profiling.”<sup>7</sup>

Attorneys, both at law firms and those serving as in-house counsel, are often asked for advice on how to keep businesses running until a particular crisis is resolved. Bonnie Puckett of Ogletree Deakins Nash Smoak & Stewart PC “is part of a team answering clients’ questions related to canceling business travel, dealing with workers who have typical cold and flu symptoms, managing global events and handling employees’ anxieties.”<sup>8</sup> Michelle Johnson Tidjani, Senior Vice President and General Counsel of the Henry Ford Health System, said, “I think the key from the general counsel perspective is education, education, education—really supporting the workforce and making sure that we have accurate messaging.”<sup>9</sup> COVID-19 has created uncertainties in the workplace relating to employment, health, safety, and privacy issues, making it important that attorneys are involved early on in the process of managing the crisis.<sup>10</sup> Ben Briggs of Seyfarth Shaw LLP pointed out that “a health crisis is unique ... in that it has the potential to bring a business to a screeching halt.”<sup>11</sup> Response to a crisis like COVID-19 likely requires a team that includes attorneys, as the human resources department may be wondering how to manage daily staffing and employee communications, while the IT department is occupied trying to support increased demand on the infrastructure for remote employees. It is up to the attorneys to be sure that the proposed solutions are compliant before they are implemented.

## II. Class Exercise – Set Up

We begin the class meeting<sup>12</sup> by discussing COVID-19 and its impact on the university and its students, including students’ work experiences. COVID-19 altered the structure of classroom learning, including social distancing, masking, testing, hybrid and remote learning, internships, work-study positions and many other aspects of student life. This is a good time to let the students express their fears and concerns, and some of them may reveal that they think the “emergency” is overblown, and that people are overreacting.<sup>13</sup> We discuss hoarding and supply chain issues leading to shortages, such as toilet paper, may include laughter as well as the psychological value of exerting control over something when there is something looming that we cannot

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<sup>6</sup> Lindros and Tittle, *supra* note 5.

<sup>7</sup> Karlamangla, Shalby, Luna, & Gutierrez, *supra* note 4.

<sup>8</sup> Michele Gorman, *GCs Swing Into Action as Cos. Hope to Avoid Virus Outbreaks*, LAW360, (Mar. 6, 2020, 12:57 PM EST), <https://www.law360.com/articles/1250987>.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> While this article demonstrates an activity in a traditional classroom, it could be adapted to the online setting if the course is either a hybrid or fully online course. There are several tools available in most learning management systems for online discussions and group projects. For example, on Canvas, see the discussion, chat, and conversation tools, as well as group sets. *Canvas Guides*, GUIDES.INSTRUCTURE.COM, <https://guides.instructure.com/searches?utf8=√&text=group+sets&commit=Search> (last visited Mar. 5, 2020). Also, Padlet would be useful for brainstorming ideas for the elements of the consent. PADLET, <https://padlet.com> (last visited Mar. 7, 2020).

<sup>13</sup> See Richard Blake, *A China Expert Explains Why Coronavirus Fears are Overblown*, BARRON’S, (Feb. 29, 2020, 8:39 AM ET) <https://www.barrons.com/articles/a-china-expert-explains-why-coronavirus-fears-are-overblown-51582983000>; Brad Heath, *Americans Divided on Party Lines over Risk from Coronavirus: Reuters/Ipsos Poll*, REUTERS, (Mar. 6, 2020, 11:24 AM) <https://www.reuters.com/article/us-health-coronavirus-usa-polarization/americans-divided-on-party-lines-over-risk-from-coronavirus-reuters-ipsos-poll-idUSKBN20T2O3>.

control.<sup>14</sup> Next, we divide the students into smaller discussion groups, perhaps four to six students, with each group representing a law firm work group (partner, associate, paralegal, etc.) that is meeting to address a request from a hospital client trying to manage through the COVID-19 emergency. All students are provided with the following letter:

Dear Attorney,

Hospital managers are concerned about how we can respond to challenges presented by COVID-19 by asking some employees to work remotely. Please draft a consent to be signed by certain employees, permitting our IT services department to assist those employees with their home computers to set up remote work. Our IT people will access an employee's home computer, either by visiting an employee's home or by remotely accessing the employee's home computer, to install software, change settings, etc. so that the employee can conduct hospital support services from home. This will allow, for example, radiologists to read x-rays and other images from home, and allow the behind-the-scenes business of the hospital to continue (purchasing, human resources, food services management, etc.) when employees are not able to be on-site at the hospital. The IT services department is creating a list of the software to be installed that the employee will be asked to approve before installation.

Time is of the essence. We would appreciate a draft within 24 hours.

Thank you,  
Client

Students then consider what elements such a consent should contain. Why has the hospital requested it? What does the hospital want to protect against? Allow 10-15 minutes to let students brainstorm in their groups, monitoring the discussions and offering guidance as needed. Next, bring students back together as a group to offer their suggestions for elements of the consent. In Section III, there are details about six such elements that might be included in such a consent. After discussing elements as a class, students return to their groups, with each group assigned to draft one element. Note that students are drafting something that can be compiled into one document. They will need defined terms, abbreviations established in the legal document to provide consistency and clarity. Provide the following definitions to students:

#### **CONSENT TO IT SERVICES TO ACCOMMODATE REMOTE WORK**

The employee signing below (the "**Employee**") has requested that one or more representatives (collectively, the "**Representative**") from the IT services department ("**Hospital-IT**") of the Los Angeles General Hospital (the "**Hospital**") either remotely access, or visit the Employee's home to access, the Employee's personal computer and related equipment (the "**Computer Equipment**") in order to install or adapt software that will permit remote work on behalf of Hospital (the "**IT Services**"). The Employee hereby agrees as follows:

This prefatory clause specifies that the Hospital employee requests the IT Services. Students may recognize that the purpose of this position is to protect the Hospital against any allegation that an employee has been instructed to stay at home, lessening any argument of a discriminatory intent.<sup>15</sup>

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<sup>14</sup> See Frances Mao, *Coronavirus Panic: Why are People Stockpiling Toilet Paper?*, BBC NEWS, (Mar. 4, 2020)

<https://www.bbc.com/news/world-australia-51731422>. Students may also discuss the scarcity of hand sanitizers. See, e.g., Andy Serwer with Max Zahn, *The Crazy Story of Purell and the Coronavirus*, Yahoo Finance, (Mar. 7, 2020) <https://finance.yahoo.com/news/the-crazy-story-of-purell-and-the-coronavirus-130056513.html>.

<sup>15</sup> For example, at the beginning of the pandemic, when this was referred to as the "Chinese virus," if an employer instructed an Asian employee to work from home, but white employees were allowed to be in the office, there could be an appearance of a discriminatory intent. See Marietta

During group discussions, the instructor moves from group to group providing guidance as the students draft their element, which each group can then share with the entire class once everyone is back together to discuss the entire document.

### III. Class Exercise – Elements of the Consent

#### A. Request of Employee

Companies have a variety of reasons for permitting work from home during a crisis. In some cases, such as COVID-19, an employee may either be immunocompromised and concerned about being exposed to the virus, or the company may be trying to “reduce human density” in the workplace in order to reduce the spread of the virus.<sup>16</sup> The Hospital will be concerned about business continuity, but also about limiting its liability that could arise from going to an employee’s home and altering employee-owned equipment. First, if there is damage to the employee’s property or loss of data, the Hospital would assert that its actions were at the request and risk of the employee.

One challenge arising from COVID-19 is anti-Asian racial discrimination.<sup>17</sup> so the hospital would not want to be subject to a claim that any request to Asian employees to work from home is discriminatory. The reaction has been related to the HIV/AIDS crisis in the 1980s when there were few answers regarding the virus, and certain groups, particularly gay men, were ostracized.<sup>18</sup> Such a reaction dates back even farther, to the Bubonic Plague in the 1300s, when Jewish people were thought to be poisoning the water to spread the disease.<sup>19</sup> Here, the Hospital is giving the employee the option, similar to Apple CEO Tim Cook’s memo to employees directing them to “please feel free to work remotely if your job allows.”<sup>20</sup> Suggested language for this provision follows:

**The Employee requests that the Representative access the Employee’s Computer Equipment at the Employee’s home.**

#### B. Software and Data Backup

While the Representatives should be instructed by the Hospital to take care to not cause any harm to employee’s computer, the Hospital will further want to instruct the employee that the computer must be backed up before the Representative accesses it,<sup>21</sup> and the Hospital will want the employee to state affirmatively that the computer has been backed up within 24 hours prior to the Representative’s visit.

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Vazquez, *Calling COVID-19 the “Wuhan Virus” or “China Virus” is Inaccurate and Xenophobic*, YALE SCHOOL OF MEDICINE (Mar. 12, 2020), <https://medicine.yale.edu/news-article/calling-covid-19-the-wuhan-virus-or-china-virus-is-inaccurate-and-xenophobic/>.

<sup>16</sup> Connor Perrett, *Apple CEO Tim Cook Tells Office Employees to Work from Home as the Company Plans to Reduce ‘Human Density’ in Stores Amid Coronavirus Outbreak*, BUSINESS INSIDER, (Mar. 8, 2020, 1:52 PM PDT), <https://www.yahoo.com/news/apple-ceo-tim-cook-tells-205200404.html> (noting that Apple office employees were urged to work from home, similar to action taken by Microsoft, Facebook and Alphabet).

<sup>17</sup> Karlamangla, Shalby, Luna, & Gutierrez, *supra* note 4. See also, Sarah Al-Arshani, *A Costco Sample-Stand Worker Turned Away a Kid Wearing a Face Mask Because She Thought He Was from China and Could Give her the Coronavirus*, BUSINESS INSIDER, (Jan. 29, 2020, 9:41PM) <https://www.businessinsider.com/wuhan-coronavirus-kid-turned-away-food-samples-at-costco-2020-1>. Costco has since suspended its sampling practice. Natasha Anderson, *Report: Costco Suspends Free Sample Practice Amid Coronavirus Concerns*, FOX8.COM, (Mar. 6, 2020, 6:24 PM EST) <https://fox8.com/news/coronavirus/report-costco-suspends-free-sample-practice-amid-coronavirus-concerns/>.

<sup>18</sup> Alexandra Ma and Kelly McLaughlin, *The Wuhan Coronavirus is causing Increased Reports of Racism and Xenophobia Against Asian People at College, Work, and Supermarkets*, BUSINESS INSIDER, (Feb. 3, 2020, 6:16 AM) <https://www.businessinsider.com/wuhan-coronavirus-racism-asians-experience-fears-outbreak-2020-1>.

<sup>19</sup> Ma and McLaughlin, *supra* note 18.

<sup>20</sup> Mark Gurman, *Apple’s Cook Offers Work From Home This Week to Many Global Employees*, BLOOMBERG, (Mar. 8, 2020, 11:41 AM PDT) <https://www.bloomberg.com/news/articles/2020-03-08/apple-s-cook-offers-work-from-home-this-week-to-most-staff>.

<sup>21</sup> *Why Backing Up Your Computer is Important*, NERDALERT BLOG, (Dec. 25, 2019) <https://nerdalert.com/why-backing-up-your-computer-is-important/>.

Students may also raise the issue of whether the Hospital requires anti-virus software and malware software, and what might happen if the Hospital's software differ from the employee's software.<sup>22</sup> Those are important questions, but the specifications of the software to be installed will be addressed in a separate document, as mentioned in the letter from the client.<sup>23</sup> Suggested language follows:

**The Employee will back up the data and software on Computer Equipment to be accessed by a Representative of Hospital-IT not less than 24 hours before the Representative commences the IT Services.**

### ***C. Employee will Supervise Employee***

A Representative may perform IT Services at the Hospital premises, securing remote Computer access.<sup>24</sup> Once that access is obtained, the Representative can proceed to add software or change settings on the Computer Equipment. The Hospital has an interest in having the employee watch that remote access so that there is no secret about what the Representative is doing, and no potential claim later by the employee that the Representative did something to which the employee objects.

In addition, if the Representative will be visiting the employee's home, the Hospital wants to protect against any claims that the Representative caused any damage or took any property while the employee was not watching.<sup>25</sup> Insisting that the employee observe the Representative should lessen any such claims. Suggested language follows:

**The Employee will observe the Representative's work at all times and will not leave the Representative unattended while in the Employee's home.**

### ***D. Hospital Has No Liability***

Continuing the discussion from the prior section, students will likely recognize that the Hospital will not want to be liable for any damage to the Computer Equipment or software, or any loss of data due to any actions of the Representative. This is a good opportunity to introduce or review *respondeat superior*, which provides that an employer may be vicariously liable for the torts of its employees committed within the scope of employment. In this situation, the employer will want to guard against that by having the employee waive that liability for actions by the Representative.<sup>26</sup> The employer will try to guard against being liable for the intentional torts of its employees as well.<sup>27</sup> Suggested language follows:

**The Hospital shall have no liability for any damage to the Employee's Computer Equipment (including, without limitation, the Employee's computer, tablet, router, or**

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<sup>22</sup> See e.g., *The Importance of Antivirus Software & Why You Need to Use It*, COMPUTERFIXPERS, (Apr. 24, 2017) <https://computerfixperts.com/security/importance-antivirus-software/>; Dalvin Brown, *Hackers Are Using Coronavirus Fears to Send You a Computer Virus: How to Stop Them*; USA Today, (Feb. 3, 2020, 4:14 PM ET) <https://www.usatoday.com/story/tech/2020/02/03/hackers-use-coronavirus-spread-computer-viruses-inject-malware/4644439002/> (noting that hackers are sending spam emails disguised as legitimate information about the coronavirus to infect computers with malicious software).

<sup>23</sup> See *supra* Section II.

<sup>24</sup> See, e.g., Tim Fisher, *15 Best Free Remote Access Software Tools*, LIFEWIRE, (Mar. 3, 2020) <https://www.lifewire.com/free-remote-access-software-tools-2625161>.

<sup>25</sup> Chris Morran, *Contractor Steal Homeowners' Valuables, Demands Cash for their Return*, CONSUMERIST, <https://consumerist.com/2015/03/20/contractor-steals-homeowners-valuables-demands-cash-for-their-return/>.

<sup>26</sup> See RESTATEMENT (SECOND) OF AGENCY § 219 (Am. Law. Inst. 1958) (“(1) A master is subject to liability for the torts of his servants committed while acting in the scope of their employment. (2) A master is not subject to liability for the torts of his servants acting outside the scope of their employment, unless: (a) the master intended the conduct or the consequences, or (b) the master was negligent or reckless, or (c) the conduct violated a non-delegable duty of the master, or (d) the servant purported to act or to speak on behalf of the principal and there was reliance upon apparent authority, or he was aided in accomplishing the tort by the existence of the agency relation.”)

<sup>27</sup> See RESTATEMENT (SECOND) OF AGENCY § 245 (Am. Law. Inst. 1958) (“A master is subject to liability for the intended tortious harm by a servant to the person or things of another by an act done in connection with the servant's employment, although the act was unauthorized, if the act was not unexpected in view of the duties of the servant.”)

**modem), software, or saved files, including any damage due to the intentional misconduct of the Representative.**

### ***E. Employee's Assumption of Risk and Release***

Students may need more guidance on this section as they may be under the impression that the issue of the Hospital's liability was already covered by the prior two sections. However, as counsel for the Hospital, it is important to have this additional provision to serve as suspenders to the prior sections' belt.<sup>28</sup> A release—"... a device by which parties seek to control the risk of the potential outcomes of litigation"<sup>29</sup>—is used in a wide variety of circumstances "to resolve the claims the parties know about as well as those that are unknown or uncertain."<sup>30</sup> Depending on the claims and the related circumstances, releases can extend for multiple pages, and often cite relevant code sections.<sup>31</sup> However, because this is an emergent situation, and one where the Hospital wants to protect itself (but does not want to cause additional alarm or stress for the employee), a simple release, such as the following, would be recommended:

**Furthermore, the Employee agrees to assume any risk associated with hosting the Representative's visit and hereby releases the Hospital from any and all claims of loss or damage that may arise during the Representative's visit. Such releases are without limitation, and include attorneys' fees, personal injury, property damage, and any other losses or damages suffered by the Employee.**

### ***F. HIPAA***

Many students they may be somewhat familiar with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") because they have been asked to sign privacy policy forms at a doctor's office,<sup>32</sup> created for the purpose of maintaining confidentiality of protected health information. While students do not need a detailed understanding of the statute, a general discussion of the rights of patients to have their health information protected by the covered entities that treat them may be valuable. The Hospital will have extensive privacy policies and procedures for enforcing HIPAA regulations onsite. The goal here is to extend those policies to the work that employees conduct remotely. Suggested language follows:

**The Employee is familiar with the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereunder ("HIPAA") as implemented in the policies of the Hospital. The Employee agrees to comply with such policies, particularly regarding the obligation to maintain the confidentiality of and to securely protect patient protected health information, when working from home or any other remote location.**

A sample draft of a complete consent incorporating all of the foregoing provisions is attached in **Appendix A**. It could be shared with the class after the exercise, either on handouts or by posting it on the learning management system.

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<sup>28</sup> See *Belt-and-suspenders*, MERRIAM-WEBSTER.COM, <https://www.merriam-webster.com/dictionary/belt-and-suspenders> ("involving or employing multiple methods or procedures to achieve a desired result especially out of caution or fear of failure").

<sup>29</sup> ARLEN W. LANGVARDT, A. JAMES BARNES, JAMIE D. PRENKERT, MARTIN A. MCCRORY, JOSHUA E. PERRY, BUSINESS LAW: THE ETHICAL, GLOBAL, AND E-COMMERCE ENVIRONMENT, 434, (17<sup>th</sup> ed. 2019) (excerpting *Hicks v. Sparks*, 2014 Del. LEXIS 142 (Del. Sup. Ct. 2014)).

<sup>30</sup> *Id.*

<sup>31</sup> See e.g., CAL. CIV. CODE § 1542 (West 2019) ("A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.")

<sup>32</sup> *Notice of Privacy Practices*, HHS.GOV, (last visited Mar. 9, 2020) <https://www.hhs.gov/hipaa/for-individuals/notice-privacy-practices/index.html>.

### **III. STUDENT FEEDBACK**

This activity was well received by undergraduate business law students, and likely would be beneficial for graduate students as well.<sup>33</sup> As is often the case, the students appreciated seeing a “real world” task and enjoyed working for an imaginary client. Many students commented that they had never heard of continuity planning and had not discussed it in other classes, so it gave them a lot to think about, regardless of the future career plans. Several students admitted that their personal continuity planning was not likely what it should be either, with several admitting that they did not have personal contingency plans in the event of earthquakes, wildfires, or storms. However, the overwhelming nature of the comments was related to the coronavirus, and that instead of fearing it, or worrying about it, they finally got to do something. Much like the hoarding of toilet paper to exercise some degree of control,<sup>34</sup> the students agreed that for the duration of the exercise, they felt that they were focused on doing something positive and taking steps forward, rather than sitting and waiting for an apocalypse.<sup>35</sup>

### **IV. CONCLUSION**

While the spread of COVID-19 and variants continue to disrupt communities and businesses throughout the world, this reality of a global pandemic is forcing all of us to make contingency plans in both our personal and professional lives. As we hope for a return to “normalcy”—whatever that may look like going forward— we have the unique (yet ominous) opportunity to use this crisis as a teaching moment.

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<sup>33</sup> Feedback from the students was solicited during a discussion. In hindsight, a survey would have provided more detailed comments and an opportunity for all students to provide feedback. In the future, I would recommend doing so with Survey Monkey, which provide the opportunity for anonymous feedback, giving the students more freedom to comment. SURVEY MONKEY, <https://www.surveymonkey.com> (last visited June 30, 2020).

<sup>34</sup> Mao, *supra* note 14.

<sup>35</sup> This exercise was first conducted just days before the university announced it was transitioning to online instruction in response to COVID-19.

## Appendix A

### CONSENT TO IT SERVICES TO ACCOMMODATE REMOTE WORK

The employee signing below (the “**Employee**”) has requested that one or more representatives (collectively, the “**Representative**”) from the IT services department (“**Hospital-IT**”) of the Los Angeles General Hospital (the “**Hospital**”) either remotely access, or visit the Employee’s home to access, the Employee’s personal computer and related equipment (the “**Computer Equipment**”) in order to install or adapt software that will permit remote work on behalf of the Hospital (the “**IT Services**”). The Employee hereby agrees as follows:

1. The Representative is accessing the Computer Equipment at the home of and at the request of the Employee.
2. The Employee will back up the data and software on Computer Equipment to be accessed by a Representative of Hospital-IT not less than 24 hours before the Representative commences the IT Services.
3. The Employee will observe the Representative’s work at all times and will not leave the Representative unattended while in the Employee’s home.
4. The Hospital shall have no liability for any damage to the Employee’s Computer Equipment (including, without limitation, the Employee’s computer, tablet, router or modem), software, or saved files, including any damage due to the intentional misconduct of the Representative.
5. Furthermore, the Employee agrees to assume any risk associated with hosting the Representative’s visit and hereby releases the Hospital from any and all claims of loss or damage that may arise during the Representative’s visit. Such releases are without limitation, and include attorneys’ fees, personal injury, property damage, and any other losses or damages suffered by the Employee.
6. The Employee is familiar with the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereunder (“HIPAA”) as implemented in the policies of the Hospital. The Employee agrees to comply with such policies, particularly regarding the obligation to maintain the confidentiality of and to securely protect patient protected health information, when working from home or any other remote location.

I have read and agree to the foregoing.

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_