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CONTENT & OPINIONS

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FROM THE EDITOR

Promoting Diversity in Teaching and Scholarship

There are many ways to accommodate diverse learners in the classroom, such as including inclusivity and disability statements in syllabi, incorporating multiple identity groups, and selecting content that encourages reflection and dialogue. But how often do we consider diversity in our research? A colleague and I had a conversation last year about a possibility I had not considered before—diversity in sourcing for scholarship and writing.

A recent panel of writers within the Association of Health Care Journalists discussed “source diversity” as a great way to bring new perspectives to a journal or news article. Rather than just relying on the typical experts in an area for opinions—which may be somewhat monolithic—the panel participants encouraged the audience to look for voices that will add rich, diverse perspectives to writing. They recommended taking the time to seek out sources that may better represent, engage, and include readers, and concurrently reflect the many knowledgeable contributions in the world from diverse role models.

As authors writing about the important subjects of business law and ethics, we should consider the process of seeking new and/or different authoritative voices for our articles. This process is important to keep in mind for case writing as well. Several other colleagues recently discussed with me their research on gender inclusiveness in case studies; they found in a review of over 200 cases from a business case journal that just over a third (37%) featured a female protagonist. The Harvard Business Case Publishing Group—one of the leading academic case publishers—featured even fewer female protagonists—only 11% of cases. Too few case studies include underrepresented minorities as well. In 2021, Chair Jan Rivkin of the Harvard MBA Program identified this disparity and said “By studying cases with a wide diversity of protagonists, students learn that talent and leadership come from all background and identities. If students don’t understand that, they’ll worsen inequities, miss opportunities for themselves, and miss chances to create opportunities for others.”

In this issue of the *Journal of Business Law & Ethics Pedagogy*, the featured authors provide a number of teaching exercises and research results that will both reach diverse learners and start conversations.

In the first article, *Interactive Videos: An Effective Tool for Improving Learning Outcomes in Business Law*, author Jeffrey Bone discusses his successes with a blended learning program that highlights legal cases. Pairing Face-to-Face instruction with multi-media, Professor Bone explores hybrid learning, which is becoming more and more commonplace in the post-COVID era.

Authors Michael Conklin and Andrew Tiger begin a conversation about potential gender bias in their article *Student Gender Bias in College Class Selection*. They ask the question “When college students are faced with the real-life decision of choosing classes, does the gender of the instructor influence their decision?” See the surprising and interesting results of this multiple regression analysis, which leads to many more questions and potential future research avenues.

In the teaching exercise *A GOAT Walks into a Copyright Lecture: Using the Jumpman Logo Case to Teach Copyright Law Basics*, author Jason Hildebrand highlights *Rentmeester v. Nike, Inc.*—the Jumpman logo case—as perhaps the “Greatest of All Time” pedagogical case for teaching business students copyright law basics and the importance of making wise intellectual property business decisions. In this informative case discussion, students learn the importance of this unique and interesting copyright case, as well as how to navigate and search government intellectual property records.

In the teaching article *Contract Exercises in the Age of Snapchat*, authors Dale Thompson, Susan Supina and Susan Marsnick offer two in-class expedient contract exercises intended to keep students on the edge of their seats—or screens—as the case may be. Breaking down the known complexities of contract making, the authors simplify and condense procedures, highlight relevant issues, and help students to understand this important process in little more than a *snap*.

* * *

Christine Ladwig
EDITOR-IN-CHIEF

Contract Exercises in the Age of Snapchat

Dale B. Thompson*, Susan A. Supina** and Susan J. Marsnik***

ABSTRACT

New technologies present many distractions for students' attention. In response, business law faculty can implement rich in-class exercises, in order to re-attract students' attention by carefully integrating law with strategy. This article offers two such in-class, integrative, contract-law exercises. In one, students negotiate, draft, and execute a complete sales contract, all within one-hour. In the other, students analyze complete contracts, on the basis of whether they meet specified strategic business objectives. By developing and using more in-class exercises like these, business law faculty will demonstrate to all the essential lens of law in educating ethical and effective business leaders.

KEY WORDS: CONTRACT NEGOTIATION, CONTRACT DRAFTING, CONTRACT MANAGEMENT

I. Introduction

Is it possible for students to effectively negotiate, draft, and execute a contract within a one-hour class? In a different one-hour class period, can students demonstrate their understanding by critiquing complete contracts on the basis of whether the contracts are meeting specified strategic objectives? To demonstrate that the answer to these questions is *yes*, this article offers two in-class, contract-law based exercises to show how a single class period can effectively accommodate complex contract exercises that hold students' attention—allowing them to demonstrate their understanding of basic contract principles while linking business law and strategy in a meaningful way. Exercises like these help to ingrain the essential lessons of law in business majors for the long term.

Contract drafting and negotiation exercises have long been used by business law professors.¹ Contracts are legal instruments that capture the complexity of business, with clauses relating to purchasing, supply, finance, employment, legal procedure, risk, and other business concepts. Working with contracts allows students to appreciate the role that law plays in managing a business across these disciplines. To enable students to work through this complexity, contract exercises frequently take place over extended periods with students working both in and out of class.

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¹ In the past twelve years, the *Journal of Legal Studies Education* has published a number of articles using contract drafting and negotiation exercises, including, for example, Larry A. DiMatteo & T. Leigh Anenson, *Teaching Law and Theory through Context: Contract Clauses in Legal Studies Education*, 24 J. LEGAL STUD. EDUC. 19 (2007); Susan J. Marsnik & Dale B. Thompson, *Using Contract Negotiation Exercises to Develop Higher Order Thinking and Strategic Business Skills*, 30 J. LEGAL STUD. EDUC. 201 (2013); Bruce W. Klaw, *Deal-Making 2.0: A New Experiential Simulation in Contract Negotiation and Drafting for Business Students in the Global and Digital Age*, 33 J. LEGAL STUD. EDUC. 37 (2016); and Tonia Hap Murphy, *Nondisparagement Clauses in Severance Agreements: A Capstone Contracts Exercise*, 34 J. LEGAL STUD. EDUC. 5 (2017).

However, a variety of factors on our campus—from reduced course lengths, to flipped classes, to pandemic responses—have required us to develop compact exercises that can be completed within a single class. We designed—and redesigned—the exercises offered here to meet this timeframe, while maintaining their ability to illuminate business complexities through a contract lens.

From a pedagogical perspective, our exercises connect law with business and strategy. By showing the importance of understanding and applying business law in strategically managing businesses, these exercises reinforce the relevance of contract law—and law itself—for business students. Demonstrating the connections to both students and to other business faculty is critical as we strive to keep law as part of a complete business curriculum.

After this introduction, we review different strands of business law pedagogical research that intersect to support our exercises. We then offer the two in-class contract exercises, describing how they were developed, the rationale behind their development, and our experiences using them. We also provide appendices containing each exercise for those wishing to use or modify them. We conclude by demonstrating how the exercises emphasize the relevance of business law in a complete business education.

II. Literature Review

The exercises this article describes rely on four separate strands of business law pedagogy and scholarship dating from 2011 to 2020. These include literature on the role of business law in business education, the application of business law as a strategic advantage, the use of flipped classrooms, and the role of contracts in business law exercises. Our one-class contract exercises address issues raised by these distinct strands. We offer this overview to faculty who might want to investigate these related works as they consider adding these exercises or developing their own.

A. The Role of Business Law in Business Education

The first line of research related to our exercises concerns the need to demonstrate the relevance of law in a business curriculum. The amount of law in business curricula is declining. In the last century, law had a much more robust presence in business schools. William Britton's 1922 survey found that most business schools "considered two semesters of legal education to be minimum necessary instruction."² In recent years, business law scholars note that, despite the increasing complexity and integration of law in business, its presence in business curricula is threatened.³ One cause of the reduction in the role of law in the business curriculum relates to the "shrinking" of the business core. Some programs are moving away from extensive core requirements to enable students to complete programs more flexibly and quickly.⁴

Another threat comes from within. The literature indicates that business school faculty have inconsistent views concerning business law in the curriculum despite the increased relevance of business law

² Robert C. Bird, *On the Future of Business Law*, 35 J. LEGAL STUD. EDUC. 301, 306 (2018), citing William E. Britton, *The Teaching of Law in Schools of Business*, 5 AM. L. SCH. REV. 201, 201 (1922).

³ *Id.* See also, Henry Lowenstein, *Building the Managers Tool Box: Reflections of a Former Business Dean on the State of Law in the Business Curriculum*, 30 J. LEGAL STUD. EDUC. 347 (2013); Carol J. Miller & Susan J. Crain, *Legal Environment v. Business Law Courses: A Distinction Without a Difference?* 28 J. LEGAL STUD. EDUC. 149 (2011); George J. Siedel, *Business School Learning Goals: The Legal and Regulatory Context of Organizations in a Global Economy*, 34 J. LEGAL STUD. EDUC. 325 (2017).

⁴ This movement started with MBA programs. For example, consider the following core requirements for business law in MBA programs: Seton Hall—one 2-credit course is required; Duquesne: one 1.5 credit course required; SMU online—one 2-credit course required; and Rutgers: its 2-credit course is part of a set of "optional core," where students choose 3 of 6 courses. The following MBA programs have no required business law course as part of their core curriculum: Texas Full-Time MBA; University of Virginia Full-Time MBA; Wisconsin Full-Time MBA; and Penn State Online MBA. Meanwhile, this trend is now spreading to the undergraduate level. For example, the authors' institution, the Opus College of Business at the University of St. Thomas, has recently adopted a new undergraduate business curriculum, shrinking the required business core from 32 credits to 22 credits. See Dale B. Thompson & Sheneeta White, "Lessons from Vision 2030: A New Business Curriculum for the University of St. Thomas," presentation at the 2019 AACSB Redesigning the Undergraduate Curriculum, Providence, R.I., (May 7, 2019). Under this new curriculum, mandatory core business law has decreased from four credits to two credits.

and regulation to business practice.⁵ Therefore, to strengthen the perception of our discipline, law faculty should align their courses to business objectives that demonstrate law's strategic relevance in the current regulatory landscape.⁶

Thought leaders in the discipline speak to the importance of law in modern business curricula. In his 2013 article, Henry Lowenstein explained how the characteristic of "Legal Management—Legal Astuteness" was a "Key Tool in the Manager's Tool Kit" that distinguished those whose studies included business law.⁷ Lowenstein advocated working with our colleagues in other business disciplines to "educate, influence, and garner support"⁸ for expanded business law offerings. He also suggested systematic and active engagement of corporate CEOs with legal backgrounds and law partners to serve on business college advisory boards.⁹

With a smaller core, our perspective on law and strategy has become more focused. Many of our business law courses have moved away from "black letter law" case analysis to the broader environments in which businesses function.¹⁰ As law courses recede in length from their historic high,¹¹ instructors lack the time to fully develop case-based legal analysis skills in our students. Furthermore, despite the ongoing importance of the case method in law schools, fostering legal astuteness and the ability to use law to solve problems and create value are more important skills for business students.¹² These students need to understand use of the law and the role it plays in business. Consequently, legal studies in business faculty seek new ways to present legal content to these students.

In 2018, Robert Bird examined challenges and opportunities facing business law faculty.¹³ To maintain business law's proper place in business curricula, he emphasized the link between business law and business strategy. He recommended that business law faculty "evolve our pedagogy"¹⁴ for continued relevance in three specific ways:

1. Describe business law analysis in terms of "legal risk management;"
2. use "legal strategy ... to capture a competitive advantage for the enterprise;" and
3. connect business law courses, majors and concentrations to develop acumen in "corporate compliance."¹⁵

George Siedel has proposed a "Three Pillar Model" for business decision making that looks for the intersection of ethical, legal, and strategy perspectives.¹⁶ He has also offered a sequence of questions to develop business schools' learning goals.¹⁷ Learning goals reflect what business curricula must achieve. Accordingly, these goals

⁵ Bird, *supra* note 2, at 308.

⁶ Lowenstein, *supra* note 3, at 368.

⁷ *Id.* at 361. The full heading of this section of this article reads, "2. Recognizing Legal Management – Legal Astuteness: A Key Tool in the Manager's Tool Kit."

⁸ *Id.*

⁹ *Id.* at 374.

¹⁰ Miller & Crain, *supra* note 3, at 157.

¹¹ According to a study published in 2011, "the evolution from two or more business law courses to one required legal environment course has occurred over the past half century" with 87% of AACSB accredited business programs requiring one three credit hour legal environment course. See Miller & Crain, *supra* note 3, at 266.

¹² Lowenstein, *supra* note 3, at 362.; Constance E. Bagley, *What's Law Got to Do with It? Integrating Law & Strategy*, 47 AM. BUS. L. J. 587 (2010).

¹³ Bird, *supra* note 2, at 301.

¹⁴ *Id.* at 312.

¹⁵ *Id.* at 313.

¹⁶ GEORGE J. SIEDEL, THE THREE PILLAR MODEL FOR BUSINESS DECISIONS: STRATEGY, LAW AND ETHICS (2016).

¹⁷ Siedel, *supra* note 3, at 325. These goals are a key part of AACSB accreditation. *Id.*

play a determinative role in the development of business curricula. For business law, Siedel's ultimate recommendation is that learning goals address these key issues:

1. The ability to recognize the legal issues that arise on a daily basis in business; ...
2. the ability to decide which legal issues require you to seek professional advice; ... [and]
3. the ability to communicate effectively with lawyers when you do seek their advice.¹⁸

This approach fundamentally concerns business management of legal risks and the need to develop students' analytical and communication skills. These recommendations for law in business curricula are connected to well-developed literatures on using business law as a strategic advantage.

By designing exercises that incorporate Bird's standards for relevance, and Siedel's learning goals, these exercises can help clarify the relevance of law for business students and our business faculty colleagues. And in doing so, our exercises can help maintain the place of law in business curricula.

B. Using Law to Gain Strategic Advantages

Siedel's and Bird's pedagogical recommendations to strengthen the role of law in business curricula point to another strand of scholarship. This work focuses on presenting business law as a means to advance business objectives. Although some businesspeople and students perceive the law as a barrier, many of us understand that sustainable business models must approach business decisions through a legal and strategic lens. Writing in the *Journal of Business Ethics*, Timothy Fort¹⁹ synthesized a decision-making framework for business leaders.²⁰ Using this framework, an "executive takes into account all the forces that are a natural part of human life, [specifically] consider[ing] legal, economic, and ecologizing values."²¹

In The Three Pillar Model for Business Decisions, George Siedel explained how the Harvard Business School used a similar approach in the late 1990s.²² Harvard MBA faculty initially taught a module on "Leadership, Values & Decision Making,"²³ and later developed this module into the course "Leadership and Corporate Accountability."²⁴ Their approach "focuse[d] on three key elements—economics, law and ethics—that form the foundation for decision-making in business."²⁵ The course teaches students to aim for the "'zone of sustainability.' Actions and strategies that fall inside this zone tend to be acceptable to the firm's constituencies and thus repeatable over time, while those that lie outside typically invite negative repercussions from injured, wronged or otherwise disappointed parties."²⁶

In the early 2000s, George Siedel²⁷ and Constance Bagley²⁸ published books advancing the concept of business law qua business strategy. Siedel and Bagley asserted that businesspeople who better appreciate the

¹⁸*Id.*, at 337-8.

¹⁹ Timothy L. Fort, *How Relationality Shapes Business and Its Ethics*, 16 J. BUS. ETHICS 1381 (1997).

²⁰ Fort adapted a "tripartite dialectic from scholars William Frederick and Michael Novak" and combined it with Michael Porter's "Fives Forces Theory." *Id.*

²¹ *Id.* at 1389.

²² SIEDEL, *supra* note 16, at 7-8.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.* at 8.

²⁶ *Id.* at 9.

²⁷ GEORGE J. SIEDEL, USING THE LAW FOR COMPETITIVE ADVANTAGE (2002).

²⁸ CONSTANCE E. BAGLEY, WINNING LEGALLY (2005).

law can use it as a competitive advantage.²⁹ In 2010, the *American Business Law Journal* published a special issue devoted to “Law as a Source of Strategic Advantage.”³⁰ The issue began with an overview by Robert Bird on “The Many Futures of Legal Strategy.”³¹ In the overview, Bird put the issue’s articles in the context of three texts: Siedel’s *Using the Law for Competitive Advantage*, Bagley’s *Winning Legally*, and an essay collection from international business law scholars entitled *Legal Strategies*.³² As Bird concluded, the purpose of the issue was “to find ways that legal resources can serve as the basis for strategic behavior.”³³

The issue’s articles further developed the law and strategy theme. Bagley’s article, “What’s Law Got to Do with It?,” offered a “comprehensive model of law and strategy that embeds legal and other nonmarket factors in mainstream theories of competitive advantage.”³⁴ Bagley further identified opportunities where legal competitive advantages can be sustainable.³⁵ In “Using Proactive Law for Competitive Advantage,” Siedel and Helena Haapio merged the “common themes” between an American investigation of “law as a source of competitive advantage” and the European examination of proactive law.³⁶ Other articles discussed intellectual property law,³⁷ contract law,³⁸ and rule-of-law³⁹ for competitive advantages.

In addition to these texts and the special issue of the ABLJ, a number of other articles on using law for competitive advantage have been published.⁴⁰ The overall body of work demonstrates how a better understanding of business law can be used for strategic advantage. It is within the context of this literature on the relationship between law and competitive advantage that we have developed and honed our contract exercises.

C. Flipped Classroom Pedagogies

A third strand leading to the exercises provided here involves flipping the classroom. “Flipping” requires students to master basic content concepts outside the classroom using texts and technology. When class meets (in-person or online), students use that time to apply learned concepts. Faculty using a flipped environment often require and benefit from complex, hands-on exercises that develop students’ analytical skills.

The *Journal of Legal Studies Education* published three articles on this topic between 2014 and 2018, presenting examples of and benefits from flipping business law courses. These articles by Tanya Marcum and

²⁹ See SIEDEL *supra* note 27; and BAGLEY, *id.*

³⁰ 47 AM. BUS. L.J., Issue #4 (2010).

³¹ Robert C. Bird, *The Many Futures of Legal Strategy*, 47 AM. BUS. L.J. 575 (2010).

³² ANTOINE MASSON & MARY J. SHARIFF, eds., *LEGAL STRATEGIES: HOW CORPORATIONS USE LAW TO IMPROVE PERFORMANCE* (2009).

³³ Bird, *supra* note 31, at 586.

³⁴ Bagley, *supra* note 12, at 589.

³⁵ *Id.*, at 629-39.

³⁶ George J. Siedel & Helena Haapio, *Using Proactive Law for Competitive Advantage*, 47 AM. BUS. L.J. 641 (2010).

³⁷ David Orozco, *Legal Knowledge as an Intellectual Property Management Resource*, 47 AM. BUS. L.J. 687 (2010).

³⁸ Larry A. DiMatteo, *Strategic Contracting: Contract Law as a Source of Competitive Advantage*, 47 AM. BUS. L.J. 727 (2010).

³⁹ David Silverstein & Daniel C. Hohler, *A Rule-of-Law Metric for Quantifying and Assessing the Changing Legal Environment of Business*, 47 AM. BUS. L.J. 795 (2010).

⁴⁰ See e.g., Robert C. Bird, *Pathways of Legal Strategy*, 14 STAN. J. L., BUS., & FIN. 1 (2008); Robert C. Bird, *Law, Strategy, and Competitive Advantage*, 44 CONN. L. REV. 61 (2011); Robert C. Bird & David Orozco, *Finding the Right Corporate Legal Strategy*, MIT SLOAN MGMT. REV. (Sept. 16, 2014), <http://sloanreview.mit.edu/article/finding-the-right-corporate-legal-strategy/>.

Sandra Perry,⁴¹ Matt Hlinak,⁴² and Mystica Alexander⁴³ demonstrated how business law faculty can maximize the value of class time by asking students to apply the material they have already started to learn on their own online. Flipped classrooms represent an important pedagogical development, and in our own experiences in the transition to online classes required by COVID-19, we are now looking to extend the amount of material that can be covered in an asynchronous online environment to save in-person or synchronous class sessions for material that cannot be done asynchronously.

D. Utility of Contract Exercises in Business Law Courses

The final strand is the use of contract exercises emphasizing the practical use of legal concepts. Many faculty require students to negotiate or draft contracts as an application of contract law and integration of principles of law and business.⁴⁴ Members of our academy have published numerous pedagogical articles on contracts.⁴⁵ Some of these have focused on contract negotiation and drafting, including articles by Susan Marsnik and Dale Thompson⁴⁶ and by Bruce Klaw.⁴⁷ These articles set forth examples of complex contract negotiation projects that take place over multiple days. Marsnik and Thompson provided two exercises, one applying the Uniform Commercial Code (UCC), and the other the United Nations Convention on Contracts for the International Sale of Goods (CISG).⁴⁸ Both of these exercises involved multiple complex issues with little guidance given over the ultimate form of the contract. They also required students to meet multiple times over many weeks to deal with various components of the project.⁴⁹ Klaw's exercise involved the purchase of "intangible social media and intellectual property assets in a cross-border setting."⁵⁰ That simulation spanned four separate components, each requiring students to meet for multiple hours.⁵¹

The widespread use and publication of contract exercises underlines their pedagogical value. When considered in light of shorter courses, lengthy contract projects pose some difficulties. What we have done is redesign contract projects in such a way that they demonstrate the link between law and business while fitting flexibly within condensed class timelines.

⁴¹ Tanya M. Marcum & Sandra J. Perry, *Flips and Flops: A New Approach to a Traditional Law Course*, 32 J. LEGAL STUD. EDUC. 255 (2014).

⁴² Matt Hlinak, *Flipping and Mooving Your Class Or: How I Learned to Stop Worrying and Love the MOOC*, 33 J. LEGAL STUD. EDUC. 23 (2015).

⁴³ Mystica M. Alexander, *The Flipped Classroom: Engaging the Student in Active Learning*, 35 J. LEGAL STUD. EDUC. 277 (2018). Professor Alexander won the 2017 Charles Hewitt Master Teacher Competition with her presentation and article on the flipped classroom.

⁴⁴ For examples, see DiMatteo & Anenson; Marsnik & Thompson; Klaw; and Murphy; *supra* note 1.

⁴⁵ *Id.* Not all contract-related exercises require negotiation and drafting. Tonia Hap Murphy developed a capstone exercise requiring analysis of non-disparagement clauses in contracts. Murphy, *supra* note 1. Judith Kish Ruud, William Ruud, and Farzad Moussavi use clips from a major motion picture to lead students to develop better contract analysis skills. Judith Kish Ruud, William N. Rudd & Farzad Moussavi, *You've Got A Deal! Using the Film Draft Day to Teach Fundamental Contract Law and Analytical Skills*, 34 J. LEGAL STUD. EDUC. 41 (2017).

⁴⁶ Marsnik & Thompson, *supra* note 1.

⁴⁷ Klaw, *supra* note 1.

⁴⁸ Marsnik & Thompson, *supra* note 1.

⁴⁹ *Id.* at 221-2, and 232-3.

⁵⁰ Klaw, *supra* note 1, at 45.

⁵¹ *Id.*

E. Lessons from these Literatures

Taken together, these literatures define an intersection in business law pedagogy. This intersection calls for innovations to reinforce strategic lessons for future business managers. It calls for new approaches that support business law in the curricula while also accommodating shortened schedules.

An approach that integrates legal analysis and strategy benefits students. Student evaluations and observing faculty and administration anecdotally supports our conclusion that our focus on practical strategy in contract work makes our courses more interesting, valuable, and relevant. It also allows us to demonstrate the importance of these topics to colleagues in other business disciplines, who may feel that hearing legal analysis is like listening to someone speaking another language that they do not know, but can immediately grasp our meaning when it is put into the common language of strategy or risk management. Perhaps our most essential outcomes for business students include enabling them to identify legal risks, to understand when to involve a lawyer, and how to communicate well with their lawyer. The flipped classroom literature reminds us that our courses can benefit from regular use of in-class applied exercises through which students meaningfully apply the course content they learned outside of class meetings.

Weaving together these intersecting concepts, we present two contract exercises. These exercises are informed by each stream of scholarship we have reviewed. Each exercise focuses on recognition and management of risk in contract negotiation or administration. This focus demonstrates the importance of law to business by requiring students to apply contract law concepts with visible business consequences.

These exercises add to the pedagogical literature. They differ from published contract exercises that either require multiple meetings over several weeks or limit focus to individual contract clauses. Ours are designed such that students work with an entire contract during a single class session. These exercises enable students to complete the work in a short period based on prior learning. Although not required, our exercises work well in the context of flipped classrooms, in which students are responsible for learning concepts independently, and attend class to learn how to apply those lessons.

III. Contract Exercises

A. Exercise One: Contract Negotiation Simplified and Standardized

The first exercise is one in which pairs of students, after appropriate preparation, negotiate, draft, and execute a sales contract in one hour or less.⁵² One student acts as a buyer and the other as a seller of lithium batteries. Lithium batteries may cause fires if not manufactured correctly. The seller has access to different manufacturing facilities, one with the better, safer process, and the other with the worse process. Students negotiate the price, delivery, and other legal aspects of this contract for batteries.

This exercise is a modification of a previously published contract negotiation exercise that involved multiple class sessions.⁵³ Although the general scenario and legal issues are similar, some of the more technical legal issues have been modified such that it can be completed in one class period.⁵⁴ By modifying the instructions and giving students a form contract with blanks, this project suits a shorter business law course and can be completed in one session. In addition, because businesses often use form contracts for routine transactions, the exercise simulates a common business practice.

⁵² See Appendix A.

⁵³ Marsnik & Thompson, *supra* note 1.

⁵⁴ For example, we deleted all mention of a possible strike, which eliminated the need to negotiate a contingency supplier.

Previously, this project was a multi-week project with fairly open-ended instructions for drafting the contract. That project enabled students to develop higher-order skills essential for their future careers as business leaders. Given a sample sales contract in text or online, students identified the legal issues that were relevant for their situation, and hence would need to be included in their own drafted contract. They also attempted to find sample contract language that they could adapt for their situation.

While developing important skills, that design also created difficulties. We noticed some students would take the sample contract too literally. These students tended to include irrelevant clauses from the sample. Many failed to realize they were missing key clauses for their problem. Students also frequently incorporated contract language from either the sample contract or from an internet source without adapting the language. Although warned about using “legalese” that they themselves did not understand, they frequently cut-and-pasted some clause with arcane language that they almost certainly did not understand. This misuse of boilerplate created other issues in interpreting their drafted contract.

Another problem with that exercise requiring out-of-class group work was the difficulty in getting reasonable participation by all students. Group projects frequently run into the “free rider” problem, leading other students to grudgingly pick up the slack. Converting the project to an in-class exercise meant better participation by all students. But, we also needed to make it possible to complete the negotiation within the designated class time. Through these adjustments, we also made the project easier to grade.

For each legal issue raised by the modified scenario, we gave a specific “assignment” to each student to deal with that issue, and gave focused tips on how to use class materials or the internet to complete that assignment. And, we created a form contract: “sales contract with blanks”⁵⁵ that students would use to standardize their drafting. Providing a form helped to focus students on key contract issues while encouraging them to draft in simple language they understood. The form includes lettered blank clauses and clause headings that are directly associated with the assignment (*e.g.* clause B is for a shipping clause, and clause C is for a warranty clause; see Figures 1 and 2).

Figure 1. Excerpt from Instructions (Clauses B and C)

Assignment:

- A. [...]
- B. Use class discussion / notes / PowerPoint to figure out how you could phrase a shipping clause [for “B” in the contract blank].
- C. Use class discussion / notes / PowerPoint to figure out what sales law concept could protect you from the risk of the lesser-technique batteries. How might you write a clause to ensure that concept would apply to your contract? In doing so, use legal terms from class with explanations that both you and your partner would understand. Also, make sure that this clause refers to the specific facts of your situation [for “C” in the contract blank].

⁵⁵ Appendix A.3.

Figure 2. Excerpt from Contract Blank (Clauses B and C)

SALES CONTRACT
[Students fill in blanks]

SOLD BY
TO
QUANTITY
DESCRIPTION
PRICE
DATE OF ARRIVAL
B. [Shipping Clause]
C. [Warranty Clause]

While still achieving many course objectives, students can complete the resulting exercise in less than one hour of class time.⁵⁶ The forms make the finished contracts much easier to grade. This adaptation allows us to give them feedback as soon as the next class day, including a report of performance on their negotiated contracts.

Our informal observations of student use of this adapted exercise show it emphasizes the importance of preparation. In our experience, law is a subject where students will succeed much more if they come to class prepared. Because these topics and approaches are different from what business students experience in other business courses, students appear to benefit much more from class if they have already read the text and cases to be discussed. In a similar manner, for this project, it is essential that students have completed the four preparatory assignments (A-D) given in their instructions.⁵⁷ These preparatory assignments involve some simple math to determine profit margins and development of basic contract positions on shipping and warranties, among other issues.⁵⁸

For this exercise, students must fill in a worksheet with costs to determine the effects on their profits from different contract options.⁵⁹ They also need to review other legal issues to be included in their contracts.⁶⁰

Student preparation directly impacts performance on the drafted contract.⁶¹ As this exercise evolved, concerns about results from unprepared students led to revisions to clarify the pre-negotiation steps. For comparison, Appendices A.6 and A.7 provide exercise results from two semesters, with one set pre-revision and one set post-revision. As seen in the pre-revision results, some students agreed to low-profit prices or even large losses. These prices indicate that students did not fully understand how different contract prices would affect their net profits. Because preparation materials include all necessary numbers and a profitability worksheet, these results are likely due to inadequate preparation. Based upon our findings, we developed a pre-negotiation assignment for buyers and sellers, requiring them to fill in sections A 1-9 **prior** to coming to class to negotiate (see Figure 3).

⁵⁶ But see discussion *infra* about adaptations of this exercise in the fully online COVID environment.

⁵⁷ See Appendix A, A.1 Buyer's Instructions, and A.2 Seller's Instructions.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ See Figures 1-2, *supra*, and Appendix A.

⁶¹ See discussion of feedback, *infra*.

Figure 3. Exercise Preparation (Section A)

- A. Complete the table, questions #1 - #9. In doing these calculations, you will use a “low price” for some and a “high price” for others. Comparing profits with different prices lets you see what happens to your profits as you change prices. That will help when you are bargaining over different prices.
 [Note: some prices are populated before assignment.]

Total Revenues from New cell phones, if you receive batteries prior to October 21		\$10,000,000
Total Costs from all other Expenses		\$6,000,000
Expected number of overheating incidents if lesser technique used (for 100,000 batteries)		30
Expected number of overheating incidents if better technique used (for 100,000 batteries)		0
Average Expected Damages to Consumers from each Overheating Incident		\$100,000
Total Expected Damages to Consumers if Lesser Technique Used	#1	
Proposed “Low” Total Price for 100,000 batteries		\$500,000
Total Profits if the only costs you pay are the “Low” price for the batteries (no shipping and no damages due to overheating)	#2	
Total Profits if the only costs you pay are the “Low” price for the batteries and damages (assume that the lesser technique is used) (no shipping costs)	#3	
Total Profits with “Low” price if you pay for shipping but there are no damages (assume that the better technique is used)	#4	
Total Profits with “Low” price if you pay for both shipping and damages (assume that the lesser technique is used)	#5	
Proposed “High” Total Price for 100,000 batteries		\$3,800,000
Total Profits if the only costs you pay are the “High” price for the batteries (no shipping and no damages due to overheating)	#6	
Total Profits if the only costs you pay are the “High” price for the batteries and damages (assume that the lesser technique is used) (no shipping costs)	#7	
Total Profits with “High” price if you pay for shipping but there are no damages (assume that the better technique is used)	#8	
Total Profits with “High” price if you pay for both shipping and damages (assume that the lesser technique is used)	#9	

In the revised iteration, shown in Appendices A.6 and A.7, no parties lost money. Most buyers and sellers made respectable profits. The only major difference between the assignments was the pre-negotiation assignment.

Another aspect of this contract negotiation exercise concerns drafting an arbitration clause. Dispute resolution models introduced earlier in the semester inform student work on this piece of the exercise. Students need to understand that, if done properly, arbitration is something that can benefit both sides to a contract. In this project, students learn more about the American Arbitration Association as a source of fair arbitration rules and procedures.

Students also see an example of how legal concepts can be used to achieve strategic needs, as suggested by Siedel and Bagley.⁶² This project presents a situation of incomplete information — buyers cannot be sure which facility the sellers used to manufacture the batteries. This incomplete information creates the risk of enormous liability to the buyers if the lower quality facility is used. Nonetheless, by requiring the sellers to offer a standard warranty on the batteries, buyers can be assured that the sellers will use the better manufacturing facility, because it will thereby be in the sellers’ own financial interest to do so. Thus, students begin to appreciate how proper use of legal concepts can change business outcomes and manage risk. This appreciation can bring strategic advantages, as noted by Bird.⁶³

⁶² SIEDEL, *supra* note 27; BAGLEY, *supra* note 28.

⁶³ Bird, *supra* note 36.

Finally, students see their potential role in real-life negotiation and finalization of contracts. In less than an hour, they will have negotiated, drafted, and executed a sales contract involving some complexities. Our desired outcome is to give students confidence to take on some contracting responsibilities rather than leaving them all to their lawyers.

Another feature of the exercise is ease of grading. A standardized drafting form speeds evaluation of the work. The grader does not need to hunt for particular clauses, but can scan through a limited number of important clauses in a short space. We evaluate each of the three clauses for correctness and clarity and for the reasonableness of the negotiated price. For each negotiated contract, we can use a spreadsheet to quickly assign numerical performance scores based on the clauses and negotiated price.⁶⁴ The spreadsheet also allows for quick compilation of individual and combined profits for each negotiating pair. In the next class, in addition to returning graded contracts, we can use the spreadsheet to anonymously present overall contract negotiation outcomes.⁶⁵

By referring to the table shown in Figure 3,⁶⁶ we reinforce the importance of preparation of their numbers (A1-9) to make sure they do not suggest prices that lead to low profits or even losses. We inform students that more than \$1 million in profits is available. We also point out that price is only one aspect contributing to overall profits; student-drafted shipping, dispute resolution, and warranty clauses may also change the transaction's bottom line. For example, teams K, N, and P in the earlier (no advance assignment) offering and teams F, G, and H in the later (with advance assignment) offering outperformed the others when it came to drafting their shipping, warranty, and arbitration clauses.

We share a few notes about how we adapted this exercise in the fully online, COVID environment. Much of this exercise transfers seamlessly to the fully online environment. The division of students into buyers and sellers, the distribution of the instructions, and the preparatory quiz all function identically to its use in a "flipped" course. The main differences came in the negotiations themselves, and the submission of the executed contract.

In the fully online context, the negotiations were conducted during a single synchronous session. At the beginning, the instructor reviewed the process that they would follow, and restated what needed to be turned in at the end. Then, each buyer-seller pair was placed into an individual Zoom "breakout room," allowing them to discuss and negotiate on their own. The instructor then visited each breakout room, to see if students had questions.

Rather than turning in a single, handwritten contract, students were given the "Contract with Blanks" as a Microsoft Word file. They could then edit the file, adding the necessary clauses. They then typed their names in as signatures. The final contract was then uploaded onto the Canvas Assignment dropbox. One other difference between its use in the flipped format was that with the online submission, we allowed students to turn their completed contracts in the next day if they wanted extra time to discuss and review their contract. Nonetheless, approximately ninety percent of partner groups had submitted their completed contract before the end of the synchronous session.

In the end, this revised exercise provides students with important lessons about both management strategy and business law. It does so in a limited amount of class time and with a reduced and accelerated grading burden.

B. Exercise Two: New Contract Manager Simulation

At the undergraduate level, we often observe that students struggle to understand how law can be part of an integrated business strategy. Some students tell us that they view law as a completely separate discipline, one that applies at the end of a business transaction, if at all. In response to our observations, we developed a simulation that highlights the importance of law as a way to achieve specific business outcomes. The exercise

⁶⁴ Appendix A.6.

⁶⁵ Appendix A.7.

⁶⁶ See also Appendices A.6-7.

also demonstrates one way that managers without law degrees may use application of law-related skills in the accomplishment of business goals.

For this classroom exercise, students assume the role of an incoming contract manager, a position many of our graduates have assumed. Working in groups, they apply contract law to promote strategic business goals. The groups analyze contract terms and brainstorm better alternatives. They then select recommend new terms that serves the business strategies of a particular company.

The simulation instructions state that each group has been hired to take over contract management for a fictitious company. Each group receives a profile for its company, including specific business goals.⁶⁷ The instructions state that the company formerly employed a single contract manager, but that person quit to work for a competitor. The departing contract manager left files in disarray, and several contracts appear to be missing the company's preferred terms. Company policy prohibits contacting former employees who work for competitors for assistance with ongoing internal matters.

This scenario places the fictitious company in doubt about the quality of its existing contracts and whether they will support strategic goals. In the absence of reliable information, company executives may discount the usefulness of contracts to strategic planning.⁶⁸ Group review and analysis of sample documents shows students how well-understood contracts can reveal risk and impact strategy.

Each new contract management group receives two contracts to review.⁶⁹ The groups must:

1. Identify the parties, subject, and scope of each contract.
2. Review and critique each contract's terms in light of the company's strategic goals.
3. Suggest revisions to each contract for possible renegotiation to reduce the company's risks and better meet its needs.

Each group presents its findings in a short, informal presentation at the end of the analysis period. Depending on time constraints, groups may take questions from the class and the instructor.

When we launched this simulation, it did not include assigned business profiles. Without the strategic goals in hand, we found that groups overgeneralized and failed to connect the review with business concerns. A group reviewing a warranty disclaimer might recite that (a) sellers may reduce potential liability by disclaiming warranties, but (b) buyers prefer to have as many warranties as possible. But a group acting as a furniture manufacturer, for instance, quickly grasps the need for hardware warranties. If the fictional furniture maker has recently faced legal action from injured consumers, the effect is amplified. Students more readily see how contract terms (for instance, a clear warranty) align with the company's objectives.

We begin the simulation by establishing groups and handing out business profiles. The next step is to demonstrate how to review a sample contract with the whole class. Using a short exemplar contract, we identify the contract's object; parties; consideration; price, timeline, and other details; and terms applicable when the parties have problems with the agreement (warranties, dispute resolution, and termination provisions). After covering these fundamentals, we suggest potential legal risks the contract poses for its parties.⁷⁰ Modeling this analysis for the class gives students a foundation for starting their group work. If the instructor prefers, these two steps may take place at the class meeting prior to the exercise, giving the students more time to digest the material outside of the classroom prior to the exercise. Splitting the work across two sessions would facilitate a flipped approach.

⁶⁷ Appendix B.

⁶⁸ Georg A. Akerlof, *The Market for "Lemons": Quality Uncertainty and the Market Mechanism*, 84 Q. J. ECON. 488 (1970).

⁶⁹ Appendix B.

⁷⁰ Appendix B.

The basic, two-contract version of the exercise takes about 60-75 minutes, but instructors may expand the scope as desired. For a more advanced course, instructors may choose a set of contracts to match course topics. For instance, a contract series featuring varying dispute resolution terms would help focus students on the use of alternative dispute resolution clauses for a litigation-shy business. In looking for other contracts to be used for specific needs, we suggest:

1. **Conflicting Terms:** An otherwise banal agreement with conflicting provisions can spur vigorous class discussion. For example, mismatched pairs of shipping terms, payment provisions, or dispute resolution clauses underline practical issues in contract negotiation and illustrate legal risk. Many students are surprised that inaccurate boilerplate use and cut-and-paste errors occur in the “real world.” Some may be so taken aback that they try to justify the conflict as a strategic maneuver. When the groups present their findings, ask which clause is better for the buyer or seller and how these errors are made, as well as how they might be prevented. What happens if the conflicting clauses are relevant to a dispute between the parties?
2. **Battle of the Forms:** In a Uniform Commercial Code Article 2 scenario, provide a sequentially dated order form, confirmation, and emailed objection to a term in the confirmation. Note that the three documents were clipped together and left on the former contract manager’s desk. Can students identify the terms of the final contract? Do they recognize the practice? Another U.C.C. concept may be tapped by providing an email summarizing the discussions between two merchants for a sale of goods. Is it a contract, standing alone? What if the other side disagrees with the emailed description? What best practices should a company maintain to work with these types of documents?
3. **Non-Contracts:** Provide a letter or contract-like document that purports to give rights to a party, but which actually involves an illusory promise or failed consideration. Employment-related messages lend themselves particularly well to this model. What does the document need to make it a valid contract? May one of the parties still enforce the document’s terms in equity? What risks do these types of messages pose, and how could a business avoid these problems?
4. **Warranties:** One-sided warranties offer a new perspective on contract negotiation and drafting. Consider including documents with excessively detailed specifications or explicit disclaimers. Are these terms balanced by other provisions? Why would a party agree to these warranties (or disclaimers)? How could disclaimers raise risks for both parties in future?
5. **Bad Drafting:** Omitting dates, party names, or timelines, or including inadequate descriptions of goods or services help show the challenges of working with contracts. For every omitted or inadequate term, what are the potential practical business consequences? What if two departments in the same business interpret a contract in different ways? What risks are increased by poor agreement drafting, and for which parties?
6. **Unconscionability:** Consumer or artistic representation contracts provide good fodder for unconscionability discussions. An overbroad and unethical “recording contract” might sign away a naïve musician’s rights to songs and performances. If students stall in their analysis, suggest that they play out the consequences of the contract over the long-term future to identify the overreach. During discussion, consider offering examples of musicians who made millions for others, and their later attempts to recover royalties. The Ronettes’ lawsuits against Phil Spector⁷¹ are a classic example, but the more recent Lil Wayne dispute⁷² may better resonate.

⁷¹ *Greenfield v. Phyllis Records*, 98 N.Y.2d 562, 780 N.E.2d 166, 750 N.Y.S.2d 565 (2002).

⁷² Shawn Setaro, *Lil Wayne and Cash Money: A New Chapter in a Shady History*, FORBES (Jan.30, 2015) available at <https://www.forbes.com/sites/shawnsetaro/2015/01/30/lil-wayne-and-cash-money/#7af24d3073d8>.

These and other problematic contract issues may be found in existing sample contracts, or the contracts provided in Appendix B,⁷³ which may be modified as desired. Some instructors may wish to revise sample contracts to follow existing classroom scenarios or student interests. For example, an instructor emphasizing the healthcare sector could update the parties' identities and replace the existing product descriptions with health-related commodities. Likewise, if a class focuses on a particular state or region, the jurisdictions given in the contracts could be edited. But, when using alternative contracts, we find that the simulation is as productive, and preparation time is shortened, if the parties we describe in the profile are simply said to have several different divisions that make their own contracts. In that case, the given company profiles⁷⁴ could be used intact or lightly updated.

When presenting an adapted version, provide two to four contracts per group, depending on the complexity of the documents and the time available. All groups may receive the same selection of agreements between the same parties, with multiple groups portraying each business, or each group may receive different agreements and a related company profile.⁷⁵ In the latter case, distribute all the contracts for the final class discussion.

The simulation may proceed informally, or as a group assessment. If run as an assessment, a group worksheet and rubric⁷⁶ simplify grading. As another modification, the group worksheet may supplement or replace the post-analysis presentation and discussion. Aligning these tools to focus on contracts as a vehicle for business strategy emphasizes the message. While this work may be graded, it is difficult to accurately apply a rubric to classroom group work. An informal group presentation or worksheet may not completely capture all of the group members' contributions or the quality of the discussion. Unless the instructor observes that work, the grade will only reflect reporting quality, rather than measure increased understanding.

We prefer not to assess group work here. While the exercise fosters significant and focused work, we find it more valuable as an open-ended learning experience. Students otherwise tend to drive toward the assessed report, rather than paying close attention to the core issue of contract utility.

This exercise works well online. The available time should drive changes to the exercise. If time is short, the instructor can establish groups and assign roles offline prior to class. The preliminary contract analysis could be presented in an online video to further shorten the presentation, leaving a single session completely devoted to the exercise.

However, if time allows, the exemplar contract analysis works well live, whether online or in-person. Moving the preparatory work to the session prior to the simulation gives students more time to understand the scope of the exercise. During the following session, instructors can divide the class into their assigned groups using virtual rooms. The instructor can move from room to room online, checking in with students as they work. The short group presentations can close the session. If time remains an issue either online or in person, the instructor can modify this exercise to require a written report from each group rather than a presentation.

Many undergraduates take business law solely as a requirement, and some see the class as an obstacle to pursuing other courses in a preferred business discipline. This exercise emphasizes how careful contracting serves larger strategic goals. It helps them reach the "aha!" moments that can be difficult to achieve through the legal case method. Moving from theory to independent application fosters a more mature understanding of law as an aspect of—rather than a hindrance to—successful business transactions.

⁷³ We include the two contracts for the basic exercise described here in Appendix B.

⁷⁴ Appendix B.

⁷⁵ The former model is represented in Appendix B.

⁷⁶ Appendix B.

IV. Conclusion: The Relevance of Contract Strategy Exercises to Business Education

In an era of increasing legal complexity, business educators face the competing pressure to reduce credit hours for business law. Despite this pressure, business law faculty have made adaptations to highlight the relevance of business law as part of business curricula. Required courses have evolved from a black-letter law approach, to legal and regulatory environment approaches, and now towards law integrated with business strategy. This latter approach helps future business leaders understand the law in terms that they are interested in and familiar with from other courses within their business majors. Another way business law faculty can highlight the relevance of business law is through the use of integrative, experiential exercises. With the use of flipped classrooms and other pedagogical technologies, business law faculty can modify our exercises to be used in a single class period. As a result, students participate in hands-on strategic thinking and application of law to business, all within a concentrated time.

Contract exercises are natural opportunities to demonstrate this integration, because contracts are basic building blocks of business and business strategy. The contract drafting exercise results in a complete and executed sales contract over the course of one class meeting. Prior scaffolding assignments prepare students to work with a realistic contract scenario, requiring strategic decisions and compromise. The exercise builds student confidence in combining strategic and legal considerations. This exercise also demonstrates useful mechanisms for adapting business law faculty's own contract exercises for use as in-a-single-class exercises.

The contract management exercise provides a single-session experience without specific prior preparation. This undergraduate-directed exercise helps students appreciate the use of contracts to achieve business objectives, as well as introducing a potential career path. It also introduces them to the language of actual contracts.

New technologies present many distractions for students' attention. However, business law faculty can also incorporate new pedagogical technologies to enable the use of rich in-class exercises. Our exercises should re-attract students' attention by carefully integrating law with strategy. As the exercises show, contract law provides a fertile context for applying this integration, but the same can be said for many other areas of business law. By developing and using more integrative in-class exercises, business law faculty will demonstrate to all concerned—students, other business faculty, businesses themselves, and others—the essential lens of law in educating ethical and effective business leaders.

NOTE: See also Word Document following this article for ease of modification.

APPENDIX A: Contract Negotiation and Drafting Exercise

A.1 Buyer's Instructions

A.2 Seller's Instructions

A.3 Contract Negotiation: Sales Contract with Blanks

A.4 Seller's Pre-negotiation Quiz

A.5 Buyer's Pre-negotiation Quiz

A.6 Contract Negotiation Results Scoring (both without and with pre-quiz)

A.7 Contract Negotiation Performance Results: Displayed to Class (both without and with pre-quiz)

A.1 Buyer's Instructions:

You are the head of a division of an electronics company, Honeycrisp, headquartered in St. Paul, Minnesota, and you will be releasing a new cell phone. In order to deliver long battery life but compact size, you will utilize lithium batteries in your device. You will be meeting with the CEO of a lithium battery manufacturer, Libatt, to discuss having them supply 100,000 lithium batteries for you (one for each cell phone). In preparation for this meeting, you have collected some important information from within your company.

Your company has determined (with absolute certainty) that you will be able to sell all of these cell phones for \$100 each. With the exception of the battery costs, all other costs (including inputs, marketing, etc.) will total \$60 for each device. Consequently, you could generate a profit from your cell phones, as long as the total cost (including any shipping charges that you pay, plus any expected damage payments that you are responsible) for all batteries is below four million dollars (\$4,000,000).

One of the key concerns with lithium batteries is the possibility that the batteries may catch fire or explode. There have been a number of recalls for lithium batteries for laptops. In 2006, Dell, Apple, Toshiba, and Lenovo recalled lithium laptop batteries due to possible fire or explosions.⁷⁷ Hewlett Packard recalled lithium batteries in 2009.⁷⁸ Lithium battery recalls have not been limited to laptop computers either. In August 2010, Apple recalled iPod nanos due to lithium batteries, because they could "overheat and prevent the iPod nano from working and deform it."⁷⁹

⁷⁷ See <http://computer.howstuffworks.com/dell-battery-fire.htm>.

⁷⁸ See <http://www.cpsc.gov/cpscpub/prerel/prhtml09/09221.html>.

⁷⁹ See <http://support.apple.com/kb/TS2099>. See also http://www.theregister.co.uk/2009/07/10/saab_inferno/ for a story where an iPod might have led to a fire that "torched" a Saab; http://www.theregister.co.uk/2007/10/08/ipod_nano_blaze_horror/ for a story where an iPod might have caught someone's pants on fire; and http://www.meti.go.jp/english/press/data/nBackIssue20080819_02.html for a story where an iPod's "battery overheated and partially scorched a tatami mat."

These problems are caused by small metal particles that sometimes show up in the lithium solution inside a battery cell. When heated significantly, such as during extended use of a battery, these metal particles may cut into the separator between battery cells. This causes a short circuit, which can lead to a fire or explosion.⁸⁰

You face a major problem in buying these batteries from Libatt. You have heard that Libatt uses two different techniques: one essentially eliminates the risk of fire or explosion, while this risk remains for the other. Your problem is that, once manufactured, you will be unable to determine which technique was used for your batteries (the differences are within the sealed liquids, and you may not trust the external markings). Your engineers have constructed estimates of possible fires, explosions, and monetary damages that would result from these. These are included in the table below. You should consider whether you might want some sort of legal protection from Libatt when you cannot tell which technique has been used. (What legal concept would protect you in case of a fire or explosion?)

You are expecting to have a good product launch, but it is essential for the batteries to be available to your Shakopee, Minnesota manufacturing facility by November 21st (**you may lose all sales if you miss this deadline** – i.e. your revenues will be **zero!**).

You also have information about your exclusive shipping contractor, Consolidated Express (which is the only one you are allowed to contract with). The cost for shipping 100,000 batteries from anywhere within the United States will be \$100,000. Libatt may use another shipper.

Furthermore, as you can probably tell, you are extremely busy, and do not want to deal with the long delays and cost of litigation. You would prefer using an alternative, if any dispute arose. You have heard that the American Arbitration Association can provide a fair and unbiased alternative procedure.

Below is a table with some data provided by your company, and some calculations that you should do to help in your negotiation:

Total Revenues from New cell phones, if you receive batteries prior to October 21		\$10,000,000
Total Costs from all other Expenses		\$6,000,000
Expected number of overheating incidents if lesser technique used (for 100,000 batteries)		30
Expected number of overheating incidents if better technique used (for 100,000 batteries)		0
Average Expected Damages to Consumers from each Overheating Incident		\$100,000
Total Expected Damages to Consumers if Lesser Technique Used	#1	
Proposed “Low” Total Price for 100,000 batteries		\$500,000
Total Profits if the only costs you pay are the “Low” price for the batteries (no shipping and no damages due to overheating)	#2	
Total Profits if the only costs you pay are the “Low” price for the batteries and damages (assume that the lesser technique is used) (no shipping costs)	#3	
Total Profits with “Low” price if you pay for shipping but there are no damages (assume that the better technique is used)	#4	

⁸⁰ See <http://computer.howstuffworks.com/dell-battery-fire.htm>.

Total Profits with “Low” price if you pay for both shipping and damages (assume that the lesser technique is used)	#5	
Proposed “High” Total Price for 100,000 batteries		\$3,800,000
Total Profits if the only costs you pay are the “High” price for the batteries (no shipping and no damages due to overheating)	#6	
Total Profits if the only costs you pay are the “High” price for the batteries and damages (assume that the lesser technique is used) (no shipping costs)	#7	
Total Profits with “High” price if you pay for shipping but there are no damages (assume that the better technique is used)	#8	
Total Profits with “High” price if you pay for both shipping and damages (assume that the lesser technique is used)	#9	

Assignment:

You are going to attempt to negotiate a sales contract for purchasing batteries. You must do the following:

- B. Complete the table, questions #1 - #9. In doing these calculations, you will use a “low price” for some and a “high price” for others. Comparing profits with different prices lets you see what happens to your profits as you change prices. That will help when you are bargaining over different prices. Record your calculations in Canvas for the “pre-class assignment”.
- C. Use class discussion / notes / PowerPoint to figure out how you could phrase a shipping clause.
- D. Use class discussion / notes / PowerPoint to figure out what sales law concept could protect you from the risk of the lesser-technique batteries. How might you write a clause to ensure that concept would apply to your contract? In doing so, use legal terms from class with explanations that both you and your partner would understand. Also, make sure that this clause refers to the specific facts of your situation.
- E. Research a standard clause you might want to use in order to apply the process of the “American Arbitration Association.”
- F. Come to class Tuesday ready to negotiate.
 - a. First negotiate over the three clauses (B-D).
 - b. Then negotiate price for the batteries.
- G. Draft your contract, and execute it.
 - a. Fill out the relevant blanks.
 - b. Fill out the three clauses you negotiated.
 - c. Don’t forget to _____!

A.2 Seller's Instructions:

You are the CEO of a lithium battery manufacturer headquartered in Minneapolis, Libatt. A large electronics company, Honeycrisp, has approached you about supplying batteries for its new cell phone. These phones normally sell for around \$100 - \$150. You know that they are looking to purchase 100,000 batteries for their cell phone. You know that they have other costs in producing these devices, but you would like to keep as large a share of their sales revenues for yourself. You are preparing to meet with the division head in charge of this new product. You have collected some important information from within your company.

One of the key concerns in lithium battery manufacturing is the possibility that the batteries may catch fire or explode. There have been a number of recalls for lithium batteries for laptops. In 2006, Dell, Apple, Toshiba, and Lenovo recalled lithium laptop batteries due to possible fire or explosions.⁸¹ Hewlett Packard recalled lithium batteries in 2009.⁸² Lithium battery recalls have not been limited to laptop computers either. In August 2010, Apple recalled iPod nanos due to lithium batteries, because they could “overheat and prevent the iPod nano from working and deform it.”⁸³ These problems are caused by small metal particles that sometimes show up in the lithium solution inside a battery cell. When heated significantly, such as during extended use of a battery, these metal particles may cut into the separator between battery cells. This causes a short circuit, which can lead to a fire or explosion.⁸⁴

In one of your older facilities in Worcester, Massachusetts, you use a manufacturing process that leaves some of these particles in the lithium battery solution. However, in a new facility in Corvallis, Oregon, you have developed an advanced and costly manufacturing method that virtually eliminates these particles, leading to an essentially zero chance of fire or explosion. Below, you will find a table showing your engineers' calculations of the manufacturing costs of your batteries in each facility; along with their extremely accurate estimates of possible fires, explosions, and monetary damages that would result from these.⁸⁵ If these damages are high, your profits will be significantly lower if you agree to be responsible for paying them. On the other hand, due to the sealed nature of the batteries and a possible distrust of your external markings, your customer may be unable to determine which process you have used.

You can have the batteries delivered within three weeks of the order.

⁸¹ See <http://computer.howstuffworks.com/dell-battery-fire.htm>.

⁸² See <http://www.cpsc.gov/cpscpub/prerel/prhtml09/09221.html>.

⁸³ See <http://support.apple.com/kb/TS2099>. See also http://www.theregister.co.uk/2009/07/10/saab_inferno/ for a story where an iPod might have led to a fire that “torched” a Saab; http://www.theregister.co.uk/2007/10/08/ipod_nano_blaze_horror/ for a story where an iPod might have caught someone's pants on fire; and http://www.meti.go.jp/english/press/data/nBackIssue20080819_02.html for a story where an iPod's “battery overheated and partially scorched a tatami mat.”

⁸⁴ See <http://computer.howstuffworks.com/dell-battery-fire.htm>.

⁸⁵ All damages will be shown to be the result of manufacturing defects. Manufacturing costs include any fees associated with importing and exporting.

You also have information about your exclusive shipping contractor, Federal Parcel Service (which is the only one you are allowed to contract with). The cost for shipping the batteries from either facility with FPS will be \$200,000. Honeycrisp may use another shipper.

Furthermore, as you can probably tell, you are extremely busy, and do not want to deal with the long delays and cost of litigation. You would prefer using an alternative, if any dispute arose. You have heard that the American Arbitration Association can provide a fair and unbiased alternative procedure.

Below is a table with some data provided by your company, and some calculations that you should do to help in your negotiation:

Total Manufacturing Cost if use Massachusetts Facility		\$1,000,000
Total Manufacturing Cost if use Oregon Facility		\$1,900,000
Expected number of overheating incidents if lesser technique used (for 100,000 batteries)		30
Expected number of overheating incidents if better technique used (for 100,000 batteries)		0
Average Expected Damages to Consumers from each Overheating Incident		\$100,000
Total Expected Damages to Consumers if Lesser Technique Used	#1	
Proposed "High" Total Price for 100,000 batteries		\$5,000,000
Total Profits with "High" price if Use Massachusetts facility, you are not responsible for costs other than manufacturing ones (no shipping nor damage costs)	#2	
Total Profits with "High" price if Use Massachusetts facility, you are responsible for damages to consumers but not shipping costs	#3	
Total Profits with "High" price if Use Massachusetts facility, you are responsible for damages to consumers and also shipping costs	#4	
Total Profits with "High" price if Use Oregon facility, you are not responsible for costs other than manufacturing ones (no shipping nor damage costs)	#5	
Total Profits with "High" price if Use Oregon facility, you are responsible for damages to consumers but not shipping costs	#6	
Total Profits with "High" price if Use Oregon facility, you are responsible for damages to consumers and also shipping costs	#7	
Proposed "Low" Total Price for 100,000 batteries		\$2,000,000
Total Profits with "Low" price if Use Massachusetts facility, you are responsible for damages to consumers but not shipping costs	#8	
Total Profits with "Low" price if Use Oregon facility, you are responsible for damages to consumers but not shipping costs	#9	

Assignment:

You are going to attempt to negotiate a sales contract for selling batteries. You must do the following:

- A. Complete the table, questions #1 - #9. In doing these calculations, you will use a "low price" for some and a "high price" for others. Comparing profits with different prices lets you see what happens to your profits as you change prices. That will help when you are bargaining over different prices. Record your calculations in Canvas for the "pre-class assignment".
- B. Use class discussion / notes / PowerPoint to figure out how you could phrase a shipping clause.
- C. Use class discussion / notes / PowerPoint to figure out what sales law concept could force you to produce the batteries via the better-technique. How might you write a clause to ensure that concept would apply to your contract? In doing so, use legal terms from class with explanations that both you and your partner would understand. Also, make sure that this clause refers to the specific facts of your situation.
- D. Research a standard clause you might want to use in order to apply the process of the "American Arbitration Association."
- E. Come to class Thursday ready to negotiate.
 - a. First negotiate over the three clauses (B-D).
 - b. Then negotiate price for the batteries.
- F. Draft your contract, and execute it.
 - a. Fill out the relevant blanks.
 - b. Fill out the three clauses you negotiated.
 - c. Don't forget to _____!

A.3 Contract Negotiation: Sales Contract with Blanks

SALES CONTRACT

SOLD BY _____
TO _____
QUANTITY _____
DESCRIPTION _____
PRICE _____
DATE OF ARRIVAL _____

B. _____

C. _____

D. _____

DATE: _____

Buyer

Seller

Title

Title

A.4 Seller's Pre-negotiation Quiz (correct responses in **bold**)

#1 Total Expected Damages

- \$100,030
- \$100 thousand
- \$3 million**
- \$30

#4 Total Profits

- loss of \$2.8 million
- \$3.8 million
- \$1 million
- \$800 thousand**

#2 Total Profits

- \$1 million
- \$4 million**
- \$3.9 million
- \$5 million

#5 Total Profits

- loss of \$2.9 million
- \$3.4 million
- \$3.1 million**
- \$6.4 million

#3 Total Profits

- loss of \$3 million
- \$1 million**
- \$4 million
- \$3.5 million

#6 Total Profits

- \$3.2 million
- \$3.1 million
- \$6.2 million
- loss of \$2.8 million

A.4 Seller's Pre-negotiation Quiz (correct responses in **bold**) (continued)

#7 Total profits

- \$3.1 million
- \$200 thousand
- \$2.9 million**
- loss of \$3 million

#8 Total Profits

- loss of \$2 million**
- loss of \$2.9 million
- \$1 million
- \$100 thousand

#9 Total Profits

- \$2 million
- \$200 thousand
- loss of \$2.9 million
- \$100 thousand**

A.5 Buyer's Pre-negotiation Quiz (correct responses in **bold**)

#1 Total Expected Damages

- \$100,030
- \$30
- \$100 thousand
- \$3 million**

#4 Total Profits

- \$500 thousand
- loss of \$2.8 million
- \$3.5 million
- \$3.4 million**

#2 Total Profits

- \$4 million
- \$9.5 million
- \$3.5 million**
- \$500 thousand

#5 Total Profits

- \$3.4 million
- \$400 thousand**
- loss of \$2.9 million
- \$6.4 million

#3 Total Profits

- \$4 million
- loss of \$2.8 million
- \$500 thousand**
- \$3.5 million

#6 Total Profits

- \$6.2 million
- \$3.2 million
- \$200 thousand**
- loss of \$2.8 million

A.5 Buyer's Pre-negotiation Quiz (correct responses in **bold**) (continued)

#7 Total profits

- \$200 thousand
- \$3.2 million
- loss of \$2.8 million**
- \$6.2 million

#8 Total Profits

- \$3.1 million
- \$6.1 million
- \$100 thousand**
- loss of \$2.9 million

#9 Total Profits

- loss of \$2.9 million**
- \$3.1 million
- \$100 thousand
- \$200 thousand

A.6 Contract Negotiation Results Scoring

Results when no pre-quiz required:

Team	Price	Shipping Costs for buyer	Uncertainty in shipping	Shipping Costs for Seller	Damages (which occur if no warranty)	Arbitration (maybe mediation for lesser benefit)	Transaction Costs due to Unclear arbitration clause	Transaction Costs due to Unclear warranty	Profit for Seller	Profit for Buyer	Joint Profits
A	\$2,900,000	100000	(\$10,000)			\$50,000		-30000	\$1,010,000	\$1,010,000	\$2,020,000
B	\$2,900,000	100000	-3500			\$50,000		-20000	\$1,026,500	\$1,026,500	\$2,053,000
C	\$2,500,000	100000	-5000			\$50,000		-5000	\$640,000	\$1,440,000	\$2,080,000
D	\$2,900,000	100000	-1000			\$50,000		-10000	\$1,039,000	\$1,039,000	\$2,078,000
E	\$7,400,000		-10000	200000		\$50,000		-20000	\$5,320,000	(\$3,380,000)	\$1,940,000
F	\$4,000,000		-5000	200000		\$50,000		-20000	\$1,925,000	\$25,000	\$1,950,000
G	\$2,900,000		-1000	200000		\$15,000		-25000	\$789,000	\$1,089,000	\$1,878,000
H	\$2,900,000	100000	-10000			\$50,000	-5000	-25000	\$1,010,000	\$1,010,000	\$2,020,000
I	\$2,900,000		-10000	200000		\$50,000	-5000	-20000	\$815,000	\$1,115,000	\$1,930,000
J	\$2,900,000		-10000	200000		\$50,000		-10000	\$830,000	\$1,130,000	\$1,960,000
K	\$3,000,000	100000				\$50,000		-5000	\$1,145,000	\$945,000	\$2,090,000
L	\$2,900,000		-10000	200000		\$50,000		-5000	\$835,000	\$1,135,000	\$1,970,000
M	\$2,900,000	100000	-10000			\$50,000		-20000	\$1,020,000	\$1,020,000	\$2,040,000
N	\$2,250,000	100000				\$50,000		-1000	\$399,000	\$1,699,000	\$2,098,000
O	\$3,000,000	100000	-500			\$15,000		-10000	\$1,104,500	\$904,500	\$2,009,000
P	\$2,900,000	100000				\$50,000		-1000	\$1,049,000	\$1,049,000	\$2,098,000

Results with pre-quiz required:

Team	Price	Shipping Costs for buyer	Uncertainty in shipping	Shipping Costs for Seller	Damages	Arbitration	TC - Arb	TC - Unclear warranty	Profit for Seller	Profit for Buyer	Joint Profits
A	\$2,850,000	\$100,000	(\$5,000)			\$40,000		(\$10,000)	\$975,000	\$1,075,000	\$2,050,000
B	\$3,300,000	\$100,000				\$50,000		(\$25,000)	\$1,425,000	\$625,000	\$2,050,000
C	\$3,200,000	\$100,000	(\$5,000)			\$50,000		(\$10,000)	\$1,335,000	\$735,000	\$2,070,000
D	\$3,000,000	\$100,000				\$50,000		(\$10,000)	\$1,140,000	\$940,000	\$2,080,000
E	\$2,800,000	\$100,000				\$50,000		(\$1,000)	\$949,000	\$1,149,000	\$2,098,000
F	\$2,150,000	\$100,000				\$50,000			\$300,000	\$1,800,000	\$2,100,000
G	\$2,900,000	\$100,000				\$50,000			\$1,050,000	\$1,050,000	\$2,100,000
H	\$2,900,000	\$100,000				\$50,000			\$1,050,000	\$1,050,000	\$2,100,000
I	\$3,750,000	\$100,000				\$50,000		(\$10,000)	\$1,890,000	\$190,000	\$2,080,000
J	\$2,900,000			\$200,000		\$50,000			\$850,000	\$1,150,000	\$2,000,000

A.7 Contract Negotiation Performance Results: Displayed to Class

Results when no pre-quiz required

Team	Price	Profit for Seller	Profit for Buyer	Joint Profits
A	\$2,900,000	\$1,010,000	\$1,010,000	\$2,020,000
B	\$2,900,000	\$1,026,500	\$1,026,500	\$2,053,000
C	\$2,500,000	\$640,000	\$1,440,000	\$2,080,000
D	\$2,900,000	\$1,039,000	\$1,039,000	\$2,078,000
E	\$7,400,000	\$5,320,000	(\$3,380,000)	\$1,940,000
F	\$4,000,000	\$1,925,000	\$25,000	\$1,950,000
G	\$2,900,000	\$789,000	\$1,089,000	\$1,878,000
H	\$2,900,000	\$1,010,000	\$1,010,000	\$2,020,000
I	\$2,900,000	\$815,000	\$1,115,000	\$1,930,000
J	\$2,900,000	\$830,000	\$1,130,000	\$1,960,000
K	\$3,000,000	\$1,145,000	\$945,000	\$2,090,000
L	\$2,900,000	\$835,000	\$1,135,000	\$1,970,000
M	\$2,900,000	\$1,020,000	\$1,020,000	\$2,040,000
N	\$2,250,000	\$399,000	\$1,699,000	\$2,098,000
O	\$3,000,000	\$1,104,500	\$904,500	\$2,009,000
P	\$2,900,000	\$1,049,000	\$1,049,000	\$2,098,000

Results when Pre-quiz required

Team	Price	Profit for Seller	Profit for Buyer	Joint Profits
A	\$2,850,000	\$975,000	\$1,075,000	\$2,050,000
B	\$3,300,000	\$1,425,000	\$625,000	\$2,050,000
C	\$3,200,000	\$1,335,000	\$735,000	\$2,070,000
D	\$3,000,000	\$1,140,000	\$940,000	\$2,080,000
E	\$2,800,000	\$949,000	\$1,149,000	\$2,098,000
F	\$2,150,000	\$300,000	\$1,800,000	\$2,100,000
G	\$2,900,000	\$1,050,000	\$1,050,000	\$2,100,000
H	\$2,900,000	\$1,050,000	\$1,050,000	\$2,100,000
I	\$3,750,000	\$1,890,000	\$190,000	\$2,080,000
J	\$2,900,000	\$850,000	\$1,150,000	\$2,000,000

APPENDIX B: Contract Management Exercise

Company Profile: Ace 1 Corporation

Ace 1 is a New York corporation that manufactures high-end lighting fixtures (table lamps, chandeliers, and similar products). The company's major customers are custom home builders and residential high-rise developers across the United States. Architects and designers often specify Ace 1 products when they are seeking stylish and high-quality lighting to achieve a coordinated look throughout a project. Ace 1 proudly advertises that its products are made in the United States.

Ace 1 products have been traditional electrical fixtures, operated by a switch or dimmer. There is an increasing demand for lighting that works with various smart-home technologies. The company recently lost out on a big contract because it doesn't offer that feature. Ace 1 is seeking a vendor that can provide electronic modules that can be installed within the parameters of its existing designs

Ace 1 has a reputation for quality, but an event last year threatened the company's good will. A small fire broke out during a Custom Home Tour. No one was injured, but the real estate agent at the house tweeted a picture of the fire and blamed it on an Ace 1 lamp. The agent deleted the tweet after the Ace 1 CEO asked her to do so, but it had already been seen and commented on by several customers. Ace 1 tested the lamp and determined that there was indeed a wiring issue that caused the fire. Ace 1 did not release this information, but did pay for the repairs to the house. The company is also facing increased competition, so it is important that the products have top quality finishes and parts.

Ace 1's head of manufacturing recently met with a rep from Component World, a company headquartered in California. The rep says that CW can deliver smart-home modules that will fit Ace 1's designs. Ace 1 wants to close this contract quickly and start offering new versions of the designs before the next building season. The draft contract for this deal was written by the Component World rep; it is attached as Contract 1.

Meanwhile, the president of Component World heard about the potential deal and looked up Ace 1's website. Component World is sponsoring a show home in California, and wants to buy all the fixtures—with CW modules—for the show home. Ace 1's attorney put together a contract for that transaction. The draft contract is attached as Contract 2.

Company Profile: Component World, Inc.

Component World is a California corporation that sells electronic components. CW manufactures some of the units at its Fresno-area facility, but imports others from a manufacturer in China that works to CW's specifications. CW does spot inspections on the imported units, and has never identified a quality control problem. Sometimes the Chinese supplier does not ship on time, and that leads to inventory problems. CW will buy replacements from other suppliers if the imports are late and domestic production is running behind. The company usually doesn't have time to check these units; if there is a problem, CW just replaces the faulty unit when inventory is restored. A failed unit defaults to "off," and is not a fire risk. Recently, CW started requiring buyers to inspect the units themselves, and disclaims problems that aren't reported shortly after delivery. If such a buyer has a unit fail, then they must buy a replacement; they aren't a lot of money individually. The CEO also believes that adding this term to the contract will reduce the possibility of lawsuits. The CEO formerly led a company that was sued many times, and has made lawsuit avoidance a priority at CW.

Component World has sales representatives operating around the country. The rep for New York state just met with an executive from Ace 1, a New York company that makes light fixtures. Ace 1 wants a particular unit that it can use to integrate lighting fixtures into smart-home and security systems. The rep says that the size of the unit is very important to Ace 1 because the company does not want to change its existing fixture molds. The units need to fit inside the fixtures. The specs for the unit are a millimeter under the maximum size that Ace 1 mentioned, which is tight, but it should work if all the units are consistent. The rep shared a sample with Ace 1 that fit in the required space.

Each unit sells for \$7.97 in quantities over 10,000. Ace 1 wants 25,000, but it wants them fast and Component World doesn't have enough on hand to fulfill the order immediately. The sales director recommends that the rep promise delivery within three months, and allow for partial shipments just in case there is a problem getting the product ready (or in case it needs to be brought in from the factory in China). The director also recommends making no special promises about unit size. The draft contract that the CW rep put together for this deal is attached as Contract 1.

Component World's president is working on some marketing projects. CW will sponsor a show home in a local tour this year. The president already knew about Ace 1 lighting, and is interested in both landing the supply deal (Contract 1) and in having Ace 1 provide the most stylish and current lights for the show home. It is essential that the lights be delivered in perfect condition to the construction site by the date that the electrician will install them. The president spoke with an executive at Ace 1 about the idea, and then the Ace 1 attorney drafted a contract for the parties to review. That agreement is attached as Contract 2.

Contract 1

Sale of Goods Contract

WHEREAS Ace 1 Corp. ("BUYER") wishes to buy electronic components ("GOODS"), AND

WHEREAS Component World, Inc. ("SELLER") is in the business of selling electrical components,
AND

WHEREAS SELLER wishes to sell GOODS to BUYER,

NOW THEREFOR SELLER and BUYER (the "PARTIES") enter into this agreement ("AGREEMENT") effective as of the last date given below.

1. SALE: SELLER agrees to transfer ownership and rights to GOODS to BUYER for the agreed-upon compensation ("PURCHASE PRICE"). SELLER warrants that SELLER has full right and authority to so transfer GOODS.
2. PURCHASE PRICE: BUYER agrees to pay SELLER \$199,250 (ONE HUNDRED NINETY-NINE THOUSAND TWO HUNDRED AND FIFTY U.S. DOLLARS) upon satisfactory receipt of GOODS with accompanying invoice for the total amount of \$199,250 (ONE HUNDRED NINETY-NINE THOUSAND TWO HUNDRED AND FIFTY U.S. DOLLARS).
3. DELIVERY: SELLER will provide GOODS to BUYER by shipping to BUYER'S facility using SELLER'S preferred trucking company. All GOODS will be adequately packaged to avoid damage (packaging included). BUYER will pay trucking costs on receipt of trucking invoice forwarded by SELLER.
4. GOODS: The GOODS will consist of the component discussed by the PARTIES, and the shipment(s) will include 5,500 individual components of that type. Each component will be exactly as shown in SELLER samples/catalog for that component.
5. SHIPMENT: SELLER will pack and ship GOODS in no more than two shipments, with the first shipment containing at least half of the contracted GOODS. All GOODS will be shipped within three months of the date of this contract.
6. DISPUTES: BUYER will inform SELLER of any problems with GOODS within 72 hours of receipt. SELLER is unable to accept returns for any reason after 72 hours. If timely notice is not received, BUYER will be considered to have unconditionally accepted GOODS.
7. MISCELLANEOUS: Beyond this contract, neither BUYER nor SELLER has made any statements that either PARTY is relying upon.

The PARTIES hereto agree to the foregoing as evidenced by their signatures inscribed below as of the last date given thereto.

ACE 1 CORP.

COMPONENT WORLD, INC.

_____ Date: _____

_____ Date: _____

Contract 2

Supply Contract

Effective Date: The latest date shown in the signature section below.

Parties: Ace 1 Corp, a New York corporation, SELLER

Component World, Inc., a California corporation, BUYER

Subject of Contract: Lighting fixtures and lamps for CW Show Home from the “Lightspace” product series, in specific quantities and types as set forth in the attached appendix [omitted], incorporated herein by reference.

Applicability: This contract summarizes the agreement of the SELLER and BUYER for purchase of the lighting products specified in the appendix. The products will be sold by the SELLER in accordance with and subject to the Terms and Conditions provided below.

Terms and Conditions:

1. Delivery: BUYER will arrange and pay shipping to the CW Show Home. SELLER will provide adequate packaging to prevent damage to goods of this sort and make packaged products available to BUYER’s shipper. Partial shipments are acceptable. All products will be made available to BUYER’s shipper at least four business days before the Show Home event. Timely delivery is of the essence. Title and risk of loss pass to BUYER upon pick-up by shipper.
2. Technician: SELLER will provide a technician employed by SELLER to travel to the CW Show Home to oversee installation and testing of the products shown in the appendix. If any light does not function properly in all aspects, the technician will remedy the issue within 24 hours. BUYER will bear all costs associated with the technician at 30% over actual cost.
3. Product Appearance: If any product has a visible flaw, BUYER will email an image of the issue. SELLER will ship a replacement part if the image shows a flaw larger than a half-inch square.
4. Labelling: SELLER will be credited in the Show Home catalog and in tent cards on-site. All credits will include “featuring Component World smart-home electronics” in the text. SELLER’s logo and name will be no less than 50% larger than BUYER’s name.
5. Production: SELLER may contract for production with the entity of its choice.
6. CW Components: SELLER warrants that all products provided under this agreement will contain CW “smart home” components. SELLER disclaims liability for any failure of or damage caused by the failure of these components.
7. Payment: The price is shown in the appendix. BUYER must remit payment in full prior to any of the goods being made available for shipment by SELLER.

8. Quality: With the exception of the CW components contained within the products, SELLER warrants that all products will be fit for their intended purpose upon shipment.
9. Indemnification: BUYER shall defend, indemnify, and hold harmless SELLER, its subsidiaries, affiliates, successors, or assigns against any and all loss, injury, death, damage, liability, claim, action, judgment, award, fine, cost, or expense, including reasonable attorney and professional fees and costs, up to and including the cost of enforcing said indemnification against BUYER, arising out of or occurring in connection with the products shown in the appendix.
10. Applicable Law: This agreement shall be governed by the law of the state of New York.
11. Disputes: Any disputes arising out of or in connection with this agreement will be submitted to the state trial court of New York. BUYER and the court shall waive any objection to jurisdiction over any such dispute.
12. Complete Agreement: This contract and its appendix form the sole and entire agreement of the BUYER and SELLER with respect to this transaction. As such, it supersedes any prior or contemporaneous understandings, negotiations, or other communications of any sort, whether written or oral, with regard to this transaction.
13. Signatures: The signatures below indicate the parties' willingness to be bound by this agreement.

ACE 1 CORP.

COMPONENT WORLD, INC.

Date: _____

Date: _____

Sample Contract for Exercise Introduction

Hand out or project this short contract and work with students to identify the contract's object; parties; price and timeline; warranties; dispute resolution; and termination provisions.

Automobile Purchase Agreement

Date: March 30, 2019

Buyer Joey Jojoh (signature below) agrees to buy a 2005 Nissan Sentra, vehicle identification number 1NIS49275XT2396UY, from SUPER USED CARS OF HOOTERVILLE, INC. (Seller) for ONE THOUSAND ONE HUNDRED FIFTY DOLLARS (\$1,150), plus applicable sales tax and license fee.

- Buyer affirms that Buyer has declined a \$100 "safe-car" inspection by Seller. Seller therefore makes no representations regarding the safe condition or operation of the vehicle.
- Seller is making no promises that Buyer is relying on, other than (1) the vehicle contains a new battery installed on March 20, 2019, with adequate power to start the vehicle, should the vehicle be otherwise in working order, and (2) the SUPER SATISFACTION GUARANTEE detailed below.
- Payment due at pick-up at the SUPER USED CARS lot; pick-up to occur within two business days of the date given above.
- SUPER USED CARS retains the right to refuse payment and pick-up if Buyer does not bring identification or if Buyer is intoxicated.
- No trade-in agreed.
- Any disputes will be subject to final and binding arbitration through SUPER DISPUTE RESOLUTION, located across the street from SUPER USED CARS. Buyer must inform SUPER USED CARS and SUPER DISPUTE RESOLUTION of any claims by registered letter.
- Buyer and Seller agree that no disputes will be brought after conclusion of the SUPER SATISFACTION GUARANTEE period plus two business days.

SUPER USED CARS SUPER SATISFACTION GUARANTEE! If the vehicle breaks down through no fault of the buyer within three days of purchase and the vehicle is determined by SUPER USED CARS to be unrepairable for less than 150% of the amount paid for the vehicle, SUPER USED CARS will refund the buyer, less a 5% restocking charge for return of the vehicle.

Joey Jojoh

Group Worksheet

1. Identify at least two provisions in each contract that you would want to change to better serve your company's interests or the interests of both parties. Briefly explain why you selected these items.

Contract 1

(a)

(b)

Contract 2

(a)

(b)

2. Name at least one important missing contract provision that your company would want to include in each contract. Explain why you chose that provision in terms of your company's interests.
3. (Optional) Select either contract and identify at least one important provision that is currently missing that the *other* company would want. Explain why you chose that provision.

Rubric for Single-Session Version (Group Grading)

Component	Excellent	Very Good	Satisfactory	No Points
Identifies problematic clauses in both contracts	Accurately identifies major problematic clauses in both clauses	Identifies some problematic clauses; may identify some minor issues	Identifies few problematic clauses; may prioritize minor issues over major clause problems	Does not identify major problematic clauses
Explains how each identified clause is problematic for the parties	Clearly explains how each identified clause may cause problems	Accurately explains how some clauses may cause problems	Offers incomplete or partially inaccurate explanations	Fails to link identified clauses with potential problems
Identifies missing clauses the assigned company would want	Accurately identifies at least one missing clause for each contract that the assigned company would want	Identifies at least one clause that should be included in one of the contracts for the assigned company	Identifies missing clause that the opposite party would want, or identifies minor missing clause	Fails to identify important missing clauses