

LAW AND BUSINESS AS A SCHOOL OF THOUGHT: A PEDAGOGY TO TEACH THE THEORY AND PRACTICE OF THE SCHOOL

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ABSTRACT

A managerial analysis with law is a school of thought of law and business that includes a theory and practice, but needs a pedagogy to teach the theory and practice in business education. The theory and practice are based on managers and lawyers sharing, integrating and using legal and business knowledge, analytics and decision-making methodologies to make lawful decisions and examine unlawful decisions and decision-making. Specifically, the theory creates managerial evaluation and legal-managerial analytics to add predictability and continuity to the legality and utility of business situations at the beginning stage of, and in other stages of, the process of business decision-making. The practice uses managerial evaluation and legal-managerial analytics to determine the legality and utility of business situations and business information, findings and conclusions, respectively, to make lawful decisions and examine unlawful decisions and decision-making. The pedagogy teaches graduate and undergraduate business students the theory and practical use of managerial evaluation and legal-managerial analytics in the first step and other steps, respectively, of the process of business decision-making. From this evaluation and legal-managerial analytics, students are taught to make analytical outcomes

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An earlier version of this article was presented at the Annual Meeting of the Academy of Legal Studies in San Juan, Puerto Rico in August 2016. I give a special thanks to my colleagues at this meeting for their comments and suggestions on the article.

and use analytical tools to determine the legality and utility of the business situation in the beginning stage, and of the business information, findings and conclusions in other stages to complete the process of business decision-making.

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I. INTRODUCTION

Modern business and legal education enables lawyers and managers to theoretically and practically share, integrate and use business and legal knowledge, analytics and decision-making methodologies to make lawful decisions and examine unlawful decisions and decision-making. The theoretical and practical integration predicts and demonstrates how managers and lawyers identify, classify and verify the legality and utility of an actual business situation that has been recognized by them to begin or complete the first step of the process of business decision-making. This integration also predicts and demonstrates how managers and lawyers enter, move and use legal rules accompanied by legal-analytical methods to determine the legality and utility of business and other information, findings and conclusions entering the other steps of the process of business decision-making steps. Moreover, legal and business education recognizes the need to share, integrate and use legal and business knowledge, analytics and decision-makings methodologies through teaching business analytics in schools of law¹ and teaching business strategy and law in colleges of business.² This education recognizes that managers and lawyers participate in business decision-making to decide whether the business organization should

¹ See Howell E. Jackson, *Analytical Methods for Lawyers*, 53 J. LEGAL EDUC. 321, 321-22 (2003) (explaining the quantitative analytical skills that are used by corporate managers but should be known and understood by lawyers); Lee Epstein & Gary King, *The Rules of Inference*, 69 U. CHI. L. REV. 1, 116 (2003) (explaining the need for empirical research skills in the law school curriculum).

² See David Orozco, *Strategic Legal Bullying*, 13 N.Y.U. J.L. & BUS. 137, 138-43 (2016); Robert C. Bird, *Law, Strategy, and Competitive Advantage*, 44 CONN. L. REV. 61, 63 (2011); George J. Siedel & Helena Haapio, *Using Proactive Law for Competitive Advantage*, 47 AM. BUS. L.J. 641, 641 (2010); Constance E. Bagley, *What's Law Got to Do With It? Integrating Law And Strategy*, 47 AM. BUS. L.J. 587, 588 (2010); 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, 797-98 (2010); Larry A. DiMatteo, *Strategies Contracting: Contract Law as a Source of Competitive Advantage*, 47 AM. BUS. L.J. 727, 727-30 (2010); Constance E. Bagley, *Winning Legally: The Value of Legal Astuteness*, 33 ACAD. MGMT. REV. 378, 378 (2008); Robert C. Bird, *Pathways of Legal Strategy*, 14 STAN. J.L. BUS. & FIN. 1, 2-3 (2008).

enter a business transaction, solve a business problem or address a strategic need, such as mergers and acquisitions, corporate relocations and massive employee layoffs.³ The solutions, entries and outcomes of business decision-making and planning demand that managers and lawyers share, integrate and use business and legal knowledge, analytics and decision-making methodologies to make lawful decisions and examine unlawful decisions and decision-making.⁴ Thus, the integration and use of business and legal knowledge, analytics and decision-making methodologies create more certainty, predictability and continuity in the process of business decision-making.

As transactions, needs and problems grow increasingly more complex and sensitive to government policies, business markets and global economics, today's business managers and lawyers must be more knowledgeable of the analytical outcomes and tools of the process of business decision-making. Managers and lawyers who share, integrate and use more business and legal knowledge, analytics and decision-making methodologies seek access to the rationality and analytics of the theory and practice of a school of thought of law and business. Of course, the school of thought needs a pedagogy to teach prospective managers who are graduate and advanced undergraduate business students a theory and practice to share, integrate and use business and legal knowledge, analytics and methodologies in the process of business decision-making. The theory, practice and pedagogy add predictability, continuity and certainty to sharing, integrating and using legal and business knowledge, analytics and methodologies in the steps of the process of business decision-making.

A school of thought of law and business is the *managerial analysis with law* that consists of theory, practice and pedagogy. Foremost, the theory of the managerial analysis with law adds predictability and certainty to the legality and utility of the business decision or situation at the beginning (first step) of the process of business decision-making.⁵ Next, the practice (practical use) of the

³ See Praveen Kosuri, *Beyond Gilson: The Art of Business Lawyering*, 19 LEWIS & CLARK L. REV. 463, 472-75 (2015) (citing George W. Dent, Jr., 64 BUS. LAW. 279, 296-99 (2009)) (recognizing lawyers as problem-solvers and knowledgeable of business); James C. Freund, *Teaching Problem Solving: New Business Lawyers Need to Know How to Find the Deal: A Lawyer's Perspective*, BUS. L. TODAY, July/Aug. 1999, at 32, 32-36.

⁴ See Kosuri, *supra* note 3, at 478. Professor Kosuri recognizes that lawyers must also be part of the management team by stating that “[g]reat business lawyers integrate themselves into the client team and break down that barrier. Fully integrating into the team also better aligns incentives which allows the business lawyer to fully prioritize his client’s success.”

⁵ James E. Holloway, *A Concept-Sensitive Managerial Analysis with Law: Applying a Business Concept to a Legal Rule to Identify the Domain of Business Situations*, 6 WM. & MARY BUS. L. REV. 137, 137-68 (2015) [hereinafter Holloway-Concept-Sensitive Managerial Analysis]; James E. Holloway, *A Primer On The Theory, Practice And Pedagogy Underpinning A School Of Thought Of Law And Business*, 38 U. MICH. J. L. REFORM 587, 587-648 (2005) [hereinafter Holloway-Primer on the Theory, Practice and Pedagogy]; James E. Holloway, *The Practical Entry and*

managerial analysis with law adds predictability and continuity to the legality and utility of business and other information, findings and conclusions needing to enter the other steps of the process of business decision-making. Finally, the pedagogy teaches the theory and practice to students who must learn how managers and lawyers share, integrate and use business and legal knowledge, analytics and decision-making methodologies in each step of the process of business decision-making. Thus, the managerial analysis with law includes a pedagogy to teach business students how managers and lawyers share, integrate, and use business and legal knowledge, analytics and methodologies in the steps of the process of business decision-making.

A managerial analysis with law enables professors of business and business law to educate business students on sharing, integrating and using legal and business knowledge, analytics and decision-making methodologies to make lawful decisions and examine unlawful decisions and decision-making. Initially, business students share, integrate and use legal rules and business concepts (knowledge) to determine the legality and utility of an actual business situation that was recognized by managers as a problem or a need to make a decision. Students are taught to integrate rules and concepts by applying an established business concept to a known legal rule to determine the legality and utility of the actual business situation in the first step of the process of business decision-making.⁶ Next, these students are taught to share, integrate and use specific legal knowledge (rules) accompanied by legal-analytical methods or unaccompanied by legal-analytical methods⁷ to determine the legality and utility of business and other information, findings and conclusions entering the other decision-making steps.⁸ Ultimately, the legal rule accompanied by a legal-analytical method enters a distinct business decision-making step to form legal-managerial analytics that make specific legal findings and conclusions, such as a legal issue, to determine the legality and utility of business information, findings and conclusions entering

Utility of a Legal-Managerial Framework without the Economic Analysis of Law, 24 CAMPBELL L. REV. 133, 133-200 (2002) [hereinafter Holloway-Practical Entry and Utility].

⁶ See *infra* Part III.A and accompanying notes (explaining the application of a legal rule to business concept that is descriptive in identifying and classifying a domain of situations that are unlawful, lawful and gray-area); Appendix A and accompanying text (a table that describes the levels, actions and functions of a managerial analysis with law).

⁷ See *infra* Part IV.B and accompanying notes (describing legal-analytical methods that are learned by business students to conduct an analysis of a judicial decisions); Appendix A and accompanying text (a table that describes the levels, actions and functions of a managerial analysis with law).

⁸ See *infra* Part IV.B.1 and accompanying notes (describing the analytical nature of the steps in process of business decision-making that is normally learned by business students in their first management course); Appendix A and accompanying text (a table that describes the levels, actions and functions of a managerial analysis with law).

this specific step.⁹ Therefore, a pedagogy of the managerial analysis with law permits business and business law professors to teach graduate and advanced undergraduate business students to share, integrate and use business and legal knowledge, analytics and methodologies making and examining business decisions.

The article establishes a pedagogy of the managerial analysis with law to teach graduate and advanced undergraduate business students to knowingly share, integrate and use legal and business knowledge, analytics and decision-making methodologies to make lawful business decisions and examine unlawful decisions and decision-making. The introduction, Section I, identified the need for a pedagogy of the managerial analysis with law to teach the integration and use of legal and business knowledge, analytics and decision-making methodologies to make lawful decisions and examine unlawful decisions and decision-making. Section II explains the need to teach in traditional business law and business courses the conceptual impact of a business theory on a legal rule and analytical effects of legal analytics and methodology on business analytics and methodology in business decision-making. Section III reviews the theoretical and practical nature and describes the pedagogical nature of managerial analysis with law based on the integration of legal and business knowledge, analytics and decision-making methodologies. Section IV explains the use of the managerial analysis with law to teach business and legal information, legal analytics and decision-making methodologies to make lawful decisions and analyze unlawful decisions and decision-making. Section V explains how professors can teach business students to determine the legality and utility of actual situations and business information, findings and conclusions to begin and complete business decision-making, as well as to communicate business and legal findings and conclusions and business decision-making and its rationale by using diverse kinds of written report formats. Finally, Section VI, the conclusion, states that a pedagogy of the managerial analysis with law teaches graduate and advanced undergraduate students to ascertain the impact of a legal rule on a business concept and to use a legal rule accompanied by legal-analytical methods to form legal-managerial analytics within the steps of the decision-making process to make lawful decisions and examine unlawful decisions.

II. NEED FOR THE PEDAGOGY OF THE MANAGERIAL ANALYSIS WITH LAW

Legal theory, unlawful business decisions, and modern business education further the development of a theory, practice and pedagogy of law and

⁹ See *infra* Part III.B.1 and accompanying notes (explaining the formation of a legal-managerial analysis that is the integration of legal-analytical method and decision-making (analytical) step in the process of business decision-making); Appendix A and accompanying text (a table that describes the levels, actions and functions of a managerial analysis with law).

business. As indicated above, the theory and practice of the managerial analysis with law have grounds in sharing, integrating and using legal and business knowledge, analytics and methodologies to make lawful decisions and analyze unlawful decisions and decision-making. This pedagogy teaches and guides the application of legal rules and use of analytics and methodologies in the process of business decision-making. At the first step of the process, the pedagogy teaches students to apply business concepts to legal rules to initiate or begin business decision-making. In the other steps in the process, this pedagogy also teaches students to use legal rules accompanied by legal-analytical methods or unaccompanied by legal-analytical methods to form legal-managerial analytics in business decision-making steps. Thus, students are taught how managers and lawyers share, integrate and use legal and business knowledge, analytics and methodologies to determine the legality and utility of a business situation and business, statistical and other information, findings and conclusions in the business decision-making steps.

A. Using Legal Rules and Business Concepts as Part of a Theory

The pedagogy of the managerial analysis with law rests on a two-level analytical framework to teach students to find and use lawful situations and provide and use legal information, findings and conclusions in the process of business decision-making. This framework allows professors and their students to rationally make extrapolations, draw inferences or make assumptions in seeking only business and legal information, findings and conclusions that cannot be disclosed by lawyers and managers after making the business decision.¹⁰ Professors teach students how and why managers with available legal advice still make unlawful decisions and engage in unlawful decision-making. Yet, the theory and practice acquire predictability and continuity from the analytical nature and rational use of legal and business analytics and decision-making methodologies to make lawful decisions as well as to examine unlawful decisions and decision-making to avoid unlawful decision-making.¹¹ On the one hand,

¹⁰ See Douglas R. Richmond, *The Frightening At-Issue Exception to the Attorney-Client Privilege*, 121 PENN ST. L. REV. 1, 10-22 (2016) (recognizing that lawyers (in-house counsels) give legal advice to business managers who are employees engaged in the process of business decision-making and that legal findings and conclusions are advice and can constitute privileged information in some instances).

¹¹ See Thomas Chermack, *Decision-Making Expertise at the Core of Human Resource Development*, 5 ADVANCES IN DEVELOPING HUM. RESOURCES 365, 367 (Nov. 2003) [hereinafter Chermack-HRD] (citing K. R. Hammond, *Duality of Error and Policy Formation*, HUMAN JUDGMENT AND SOCIAL POLICY New York: Oxford University Press (1996)). Professor Chermack states that: “[t]his dilemma has been referred to in **decision-making** literature as the “duality of error.” That is, the “duality of error” includes the recognition that analyses of decision failures often center on the lack of action or the action that should have been taken but was not. The notion

lawyers apply legal rules and legal-analytical methods to decide whether business situations and business and other information, findings and conclusions to begin and complete, respectively, are lawful and useful in the process of business decision-making.¹² On the other hand, the educated managers use more business, statistical and other knowledge and analytics to recognize business situations and make and use business and other information, findings and conclusions to begin and complete the process of business decision-making. Thus, the pedagogy of the managerial analysis with law relies on a two-level analytical framework to make lawful decisions and examine unlawful decisions and decision-making.

Managers and lawyers share and integrate legal rules and business concepts to verify or determine the legality and utility of actual situations that result in better solutions, opportunities, and advantages. These rules and concepts are used to reveal a domain of situations that are not actual situations but are used to determine or verify the legality of an actual business situation. This domain can be described as a mental model that consists of possible potential lawful, unlawful or gray-area situations.¹³ A domain is created by managers and lawyers who share and integrate applicable business and legal knowledge by applying a specific business concept to a legal rule as a managerial evaluation. This rule and concept must cover the same or similar factual transactions, factual patterns or organizational matters that created the need to begin decision-making. Furthermore, all lawful situations are not useful or do not possess utility to begin business decision-making. Organizational policies and standards can prohibit lawful and gray-area situations by limiting managerial discretion or latitude of managers. Some lawful and gray-area situations may cause managers or organizations to harm a public interest or breach an ethical standard.¹⁴ The utility

of duality of error informs us that equally as important as preventative actions are actions that should not have been taken at all.” Chermack-HRD, at 367 (citing K. R. Hammond, *Duality of Error and Policy Formation*, HUM. JUDGMENT & SOC. POL’Y. New York: Oxford University Press (1996)).

¹² See Steven T. Voigt, *The Attorney-Client Privilege—Differentiating Between a Lawyer’s Legal and Business Communications*, 79 PA. BAR ASSN. Q. 65, 66 (2008) (recognizing that in-house legal counsels are involved in giving legal advice and actively participating in business decision-making and specific transactions).

¹³ See Chermack-HRD, *supra* note 11, at 374 (describing how managers make mental models by using their knowledge, experience and skills); Thomas J. Chermack, *Mental Models in Decision Making and Implications For Human Resource Development*, 4 ADVANCES IN DEVELOPING HUM. RESOURCES, 408, 414 (Nov. 2003) [hereinafter Chermack-Mental Models] (“Some preliminary conclusions can be drawn from concepts presented in this article, namely, (a) that mental models are inherently important in and influence the decision-making system, (b) that decision makers must work to make their mental models explicit, and (c) if the mental models are inadequate for addressing the problem at hand, they must be changed. . . .” Chermack-Mental Models, *supra*, at 420).

¹⁴ See Holman W. Jenkins, Jr., *Wells Fargo Incentives Go Awry*, WALL ST. J. (EASTERN EDITION), New York, N.Y., Sep. 21, 2016, at A11 (“To meet quotas, employees have opened unneeded

of lawful situations must be verified to prevent ethical dilemmas and minimize public policy concerns. Thus, managers and lawyers must determine the legality and utility of the actual business situation by conducting a managerial evaluation and determining their discretion or latitude in the first step of decision-making.

1. Need for the Managerial Analysis with Law

The participation of lawyers in business decision-making begins with the first step but does not stop there. Lawyers advise managers on legal issues and regulatory concerns raised by the entry, movement and use of business and other information, findings and conclusions in the other steps.¹⁵ Marketing, finance, statistical and other information, findings and conclusions provide information, findings and conclusions as technical guidance and practices. These pieces of information, findings and conclusions may raise legal issues, ethical dilemmas, and public policy concerns. Lawyers address these issues by giving legal advice to managers through applying a legal rule accompanied by one or more legal-analytical methods to a step in the process of business decision-making.¹⁶ Thus, managers and lawyers determine the legality and utility of business and other information, findings and conclusions entering, moving and being used in the other steps of the process of business decision-making.

A managerial analysis with law is a theory and practice of sharing, integrating and using legal and business knowledge, analytics and methodologies to determine the legality and utility of business situations and business information, findings and conclusions in the process of business decision-

accounts for customers, ordered credit cards without customers' permission and forged client signatures on paperwork. Some employees begged family members to open ghost accounts. So reported the Los Angeles Times three years ago, opening a window on a snafu at Wells Fargo at that, by now, has led to the dismissal of over 5,000 employees, \$185 million in fines and Tuesday's abject appearance of CEO John Stumpf before the Senate Banking Committee."); Hiroko Tabuchi, Jack Ewing & Matt Apuzzo, *U.S. Charges 6 Volkswagen Executives in Emissions-Cheating Case*, N.Y. TIMES (Jan. 11, 2017), https://www.nytimes.com/2017/01/11/business/volkswagen-diesel-vw-settlement-charges-criminal.html?_r=0 (One can easily conclude that some managers and executives will consider the use of a situation that may led to decision-making in violation of federal law to increase profits and market share. "Federal prosecutors announced criminal charges on Wednesday against six Volkswagen executives for their roles in the company's emissions-cheating scandal . . ."); see also Marianne H. Jennings, *When the CEO "Didn't Know,"* CORP. FIN. REV. 32, 33 (Nov.-Dec. 2015) ("The Volkswagen case is instructive for all in understanding what drives otherwise reasonable people to choose disastrous, headline-churning solutions.").

¹⁵ See Kosuri, *supra* note 3, at 474-75 (finding that lawyers participate in mergers and acquisitions and other transactions and a few learned the client's business and can weigh the impact of the transaction or advise on the client's business).

¹⁶ See *id.* at 475 (recognizing that great business lawyers are more than technical advisers but are also problem-solvers and strategists).

making.¹⁷ The theory and practice are grounded in the knowledge, analytics and methodologies of law and business. On one hand, the theory and practice are rarely grounded in a knowledge-based foundation that includes the stability and continuity of legal rules¹⁸ and the predictability and continuity of business concepts.¹⁹ On the other hand, the theory and practice are grounded on an analytical and methodological foundation that includes the fact-driven, rational-oriented analytics and reiterative process methodology of legal decision-making²⁰ and the situation-driven, logic-oriented analytics and reiterative process

¹⁷ See Holloway-Concept-Sensitive Managerial Analysis, *supra* note 5, at 142 (“Both business and legal disciplines need to consider a more timely, extensive, and sensitive managerial analysis that combines business concepts, legal rules, and business and legal analytical methods. Business managers and organizations need this managerial analysis to identify a family of business situations that can aid and inform business decision making.”); Appendix A and accompanying text (a table that lists the levels, actions and functions of a managerial analysis with law).

Students of colleges and schools of business need a purely business taxonomy to explain and teach the impact of common law, regulation and public policy on business and business disciplines. The taxonomy describes how managers, professors and other business professionals affect and are affected by regulation, common law and public policy. The taxonomy consists of a managerial failure, managerial loss and managerial discretion that are concepts common to all managers within business and business disciplines. See Holloway- Concept-Sensitive Managerial Analysis, *supra* note 5, at 174-76. A managerial failure occurs when managers continue to use the same situation that harms a public interest leading government to enact regulation. See *id.* at 174-75. This regulation totally or partially prohibits this use of this situation that was within the coverage of a business theory. See *id.* at 175. When a situation is no longer within the coverage of a theory, this loss of coverage of this theory is a managerial loss. See *id.* at 176. The regulation that causes a managerial loss denies managerial discretion to managers by prohibiting the use of this situation to initiate decision-making. See *id.* Students must be taught a taxonomy that describes how common law and regulation affect all managers within the practice of a business discipline, such finance, marketing and others, by causing a loss of managerial discretion.

¹⁸ See *Allegheny Gen. Hosp. v. NLRB*, 608 F.2d 965, 969-70 (3d Cir. 1979) (defining a precedent as “attach[ing] a specific legal consequence to a detailed set of facts in an adjudged case or judicial decision, which is then considered as furnishing the rule for the determination of a subsequent case involving identical or similar material facts and arising in the same court or a lower court in the judicial hierarchy.”).

¹⁹ See John G. Wacker, *A Definition Of Theory: Research Guidelines For Different Theory-Building Research Methods in Operations Management*, 16 J. OPERATIONS MGMT. 361, 364 (1998) (giving a definition of a theory in operations research); ARTHUR A. THOMPSON, *ECONOMICS OF THE FIRM: THEORY AND PRACTICE*, 9-10 (5th ed. 1989) (explaining the nature and use of a theory in economics); see also ROBERT E. SCHELLENBERGER, *MANAGERIAL ANALYSIS* 8 (1969) (defining “[m]anagerial analysis . . . [as] the systematic investigation, compilation, manipulation, and presentation of information to a decision maker in order to aid the decision making process”).

²⁰ See Richard B. Cappalli, *The Disappearance of Legal Method*, 70 TEMPLE L. REV. 393, 398-99 (1997) [hereinafter Cappalli-Legal Method] (recognizing legal analysis as “qualities of a systematic, objective, verifiable body of knowledge, a meta-law by which the legal system itself may be analyzed and evaluated”) (citing Harold J. Berman & Charles J. Reid, Jr., *The Transformation of English Legal Science: From Hale to Blackstone*, 45 EMORY L. J. 441 (1996)).

methodology of business decision-making.²¹ The managerial analysis with law recognizes that the statements of legal issues and business problems may differ but both issues and problems are solved by established knowledge, sound analytics, and rational decision-making.

The theory of the managerial analysis with law includes the predictability and continuity that exist in sharing, integrating and using the legal and business knowledge, analytics and methodologies of the process of business decision-making. The theory is the integration of legal and business knowledge, analytics and methodologies by application and usage to make analytical outcomes in lawful decision-making. The theory of the managerial analysis with law contains three fundamental applications that are as follows: (1) the application of a business concept to a legal rule identifies a domain of lawful situations to aid in initiating decision-making; (2) the application of managerial discretion and analysis identifies usable but lawful situations to initiate decision-making; and (3) the application of legal rules accompanied by legal-analytical methods identifies lawful business and other information, findings and conclusions entering the business decision-making steps.²² The theory predicts and adds continuity to how managers and lawyers share, integrate and use legal and business knowledge, analytics and methodologies to make analytical outcomes to begin and complete business decision-making.

The practice of the managerial analysis with law includes the practical use of legal and business knowledge, analytics and methodologies by lawyers to give legal advice and by managers to make business decisions. The practical use encompasses the need for and use of legal knowledge and legal-analytical methods to create and use analytical tools to determine the legality and utility of business situations and business information, findings and conclusions in the business decision-making steps.²³ The first step of decision-making differs from the other steps by recognizing the business problem or need that is a business situation. The business problem or need may include a legal concern that is covered by a legal rule and business concept. The practical use includes managers and lawyers applying a business concept to a legal rule to identify, classify and verify the legality of an actual business situation. Next, the practical use includes the application of managerial discretion to the lawful, actual situation to

²¹ William F. O'Dell, *Effective Business Decision Making*, SMALL BUS. REPS. 68, 70-71 (Mar. 1992); see Earnest R. Archer, *How to Make a Business Decision: An Analysis of Theory and Practice*, 69 MGMT. REV. 54, 54-61 (1980).

²² See Holloway-Concept-Sensitive Managerial Analysis, *supra* note 5, at 144-45.

²³ See Holloway-Practical Entry and Utility, *supra* note 5, at 134 ("This article examines the practicality underlying the entry and utilization of a [legal-managerial] analysis and legal information into the process of business decision-making by lawyers and managers who generally do not understand or use each other's [sic] methodology and thinking, such as business methods and legal analysis, in their professional works and practices.").

determine its utility to initiate decision-making under organizational policies and directives. The other steps in decision-making serve different analytical functions to complete the process of business decision-making. Here the practical use includes managers and lawyers using a legal rule accompanied by one or more legal-analytical methods to form legal-managerial analytics that determines the legality and utility of business and other information, findings and conclusions entering a specific decision-making step.²⁴ Thus, the practical uses are part of the practice of law and business and execute the theory by demonstrating how lawyers and managers can form and use (or perhaps have been using) analytical tools within the steps of the process of business decision-making.

B. Business Concepts and Methodology in American Legal Theory

American legal theory includes the use of other disciplines to examine the law and its development and impact on society, markets and government. Business disciplines do not share a theory of the law grounded firmly in management, marketing and other business theories. Economic and other social science theories explain the nature and utility of common law and regulation,²⁵ business education relies on economics and other social sciences to support business functions and their uses in markets, organizations and society.²⁶ Colleges and schools of business provide business education, such as marketing, accounting, management, management information systems, and finance, and this education includes business theories, analytics, and methodologies to educate undergraduate and graduate students.²⁷ However, a few law schools have

²⁴ See Holloway-Concept-Sensitive Managerial Analysis, *supra* note 5, at 146 (“The concept-sensitive managerial analysis with law is an integrated conceptual framework with three major components to demonstrate the impact of the legal rule on business and business disciplines.”).

²⁵ See Nuno Garoupa & Thomas S. Ulen, *The Market for Legal Innovation: Law and Economics in Europe and the United States*, 59 ALA. L. REV. 1555, 1567 (2008) (citing ROBERT COOPER & THOMAS ULEN, *LAW & ECON.* 3 (5th ed.) (“Law and economics refers not to a particular field but rather to a methodology or set of tools—the use of, for example, microeconomic theory, econometric empirical techniques, and the like—for investigating legal issues.”). Law and other social science disciplines include law and psychology, law and sociology, law and political science. *Id.* at 1564-65. Other legal theories include realism, legal formalism, law and literature, critical legal studies, critical race theory, and feminism. *Id.*

²⁶ See ASS’N TO ADVANCE COLLEGIATE SCHS. BUS., ELIGIBILITY PROCS. & ACCREDITATION STANDARDS FOR BUS. ACCREDITATION 35 (2013 ed., rev. 2017), <http://www.aacsb.edu/-/media/aacsb/docs/accreditation/standards/business-accreditation-2017-update.ashx?la=en> [hereinafter AACSB-ELIGIBILITY STANDARDS] (AACSB Eligibility Standard 9 states that business and management knowledge includes “[e]conomic, political, regulatory, legal, technological, and social contexts of organizations in a global society [and] [s]ocial responsibility, including sustainability, and ethical behavior and approaches to management.”). *Id.* at 33.

²⁷ AACSB-ELIGIBILITY STANDARDS, *supra* note 26, at 34-35. AACSB Eligibility Standard 9 covers “[c]urriculum content [that] refers to theories, ideas, concepts, skills, knowledge, etc., that make up a degree program.” *Id.* at 34. These contents include “[f]inancial theories, analysis,

recognized the impact of business analytical tools and decision-making methodology on the legality of business analysis, findings and decisions.²⁸

Although colleges and schools of business do not share an American legal theory of law and business, the managerial analysis with law gives these colleges and schools an opportunity to do so. Foremost, they can accept the application of a business concept to a legal rule and use managerial discretion and analysis as analytical tools to verify or determine the legality and utility of an actual business situation to begin decision-making. The application of a concept to a rule is a legal-managerial evaluation that we shall refer to as a managerial evaluation. Next, the managerial analysis with law does not end at the start of decision-making. These colleges and schools can accept that the applications of a legal rule accompanied by a legal-analytical method(s) or an unaccompanied legal-analytical method to find and then apply a legal rule are analytical tools within a decision-making step. These legal-analytical methods are analytical tools applied to determine the legality and utility of business information, findings and conclusions entering a decision-making step. The entry of a legal-analytical method accompanied by a legal rule or an unaccompanied legal-analytical method in a decision-making step forms a legal-managerial analysis. Thus, the managerial analysis with law creates a managerial evaluation and legal-managerial analysis that represent a theory of law and business usable in colleges and schools of business.

A managerial analysis with law applies a business concept to a legal rule to identify, classify and verify the business situation (problem or need) at the beginning of business decision-making. This application identifies possible or likely lawful, unlawful and gray-area situations that do not actually exist in the organization or market. These likely situations are used to determine whether an actual situation is lawful to initiate business decision-making.²⁹ An actual business situation must also be unusable under organizational policies and directives so managerial discretion and analysis can be applied to determine the manager's latitude to use the lawful, actual situation to initiate decision-making.³⁰ The managerial analysis with law analyzes the effects of the business concept on a legal rule when both the rule and concept cover an actual situation in the first step of business decision-making.

reporting, and markets, [s]ystems and processes in organizations, including planning and design, production/operations, supply chains, marketing, and distribution[,] group and individual behaviors in organizations and society [and] [i]nformation technology and statistics/quantitative methods." *Id.* at 35.

²⁸ See Epstein & King, *supra* note 1, at 116; Jackson, *supra* note 1, at 321-22.

²⁹ See Holloway-Concept-Sensitive Managerial Analysis, *supra* note 5, at 144-45.

³⁰ See Juan Lopez-Cotarelo, HR Discretion: Understanding Line Managers' Role in Human Resource Management, *ACAD. MGMT. ANN. MEETING* (2011).

1. Analytics to Address Theoryless and Policyless Decisions

Legal analysis and reasoning cannot fully analyze unlawful decisions and decision-making that were used and made to further business objectives, such as increase market share, increase profits and implement strategic growth. Unlawful decisions do not permit managers to create lawful business practices and strategies under finance, management, banking, marketing, or other concepts.³¹ Unlawful decisions are not within the organizational or market predictions and continuity of business concepts and further undermine important public interests, such as financial markets, by being lawless, theory-less and policy-less.³² Many managers who made unlawful decisions studied finance, marketing and other business concepts³³ and studied or received legal advice on common law and regulation.³⁴ These unlawful decisions that did not demonstrate the use of legal rules and business concepts caused harm to the business organizations, institutions or public.³⁵ Currently, the analytical approaches used to examine unlawful decisions begins with ethical analysis and ends with judicial analysis so that managers are unethical or unlawful or both. Another analytical approach is needed. An approach must include business and legal knowledge, analytics and methodologies to show that unlawful decisions and decision-making are often theory-less, policy-less and lawless.

An analytical approach that predicts analytical outcomes and creates analytical tools is a managerial analysis with law that examines unlawful decisions and decision-making by integrating and using business and legal knowledge, analytics and decision-making methodologies. The managerial

³¹ See FIN. CRISIS INQUIRY COMM'N, FINAL REPORT OF THE NATIONAL COMMISSION ON THE CAUSES OF THE FINANCIAL AND ECONOMIC CRISIS IN THE UNITED STATES xxii (2011), <http://www.gpo.gov/fdsys/pkg/GPO-FCIC/pdf/GPO-FCIC.pdf>. **We conclude there was a systemic breakdown in accountability and ethics.** The report catalogues the rising incidence of mortgage fraud, which flourished in an environment of collapsing lending standards and lax regulation. The number of suspicious activity reports—reports of possible financial crimes filed by depository banks and their affiliates—related to mortgage fraud grew 20-fold between 1996 and 2005 and then more than doubled again between 2005 and 2009. One study places the losses resulting from fraud on mortgage loans made between 2007-2009 and at \$112 billion. Financial Crisis Inquiry Commission, *supra*, at xxii.

³² See Holloway-Primer on the Theory, Practice and Pedagogy, *supra* note 5, at 592-94 (discussing the nature of theory-less, policy-less and lawless decisions made by American corporations at the ends of Twentieth Century but have not ceased in second decade of the Twenty-First Century).

³³ See AACSB-ELIGIBILITY STANDARDS, *supra* note 26, at 35 (studying finance, marketing, organizations, production/operations, management information system and quantitative methods).

³⁴ See generally Voigt, *supra* note 12, at 66 (stating that lawyers participate in business decision-making within the organization, though the documents and communications may be privileged information).

³⁵ FIN. CRISIS INQUIRY COMM'N, *supra* note 31, at xxii (concluding that unethical conduct led to the financial crisis).

analysis with law examines the legality and utility of the actual business situation by using a managerial evaluation and assesses business information, findings, and conclusions by using legal-managerial analytics.³⁶ Business knowledge includes business concepts to predict and guide business outcomes that must comply with the law and recognize public interests. These concepts are learned in business courses, explain business needs and actions and include relevant economics, psychology, and other information.³⁷ Business knowledge (concepts), analytics, and methodology are taught to and learned by managers to use in business decision-making.³⁸ Business analytics and decision-making methodology allow managers to analyze and explain the effects of business concepts and information on legal rules and their uses in business decision-making steps. If managers could not understand the effects of legal rules on business concepts, then state prosecutors and private lawyers could be implicitly defending business concepts and analytics by prosecuting and suing managers for making and implementing poor decisions. To avoid lawyers defending business disciplines, the managerial analysis with law uses business and legal knowledge, analytics and methodologies to identify and examine business situations and analyze and use business and other information, findings and conclusions to begin and complete the process of business decision-making.

C. Expanding the Current Teaching of Business and Business Law

Legal rules, analytics and methodology provide legal information (legal rules) and legal findings and conclusions to find and solve legal issues and concerns, such as the legality of a business situation. Legal analytics includes a factual analysis of situations, circumstances and happenings that are covered by a fact-sensitive legal rule.³⁹ Yet, a limitation of legal analysis is that a factual inquiry of a situation cannot be performed to decide whether a fact-sensitive business concept⁴⁰ covers a business situation when the legal rule cannot predict

³⁶ See Holloway-Concept-Sensitive Managerial Analysis, *supra* note 5, at 146 (defining the scope of concept-sensitive managerial analysis with law).

³⁷ See AACSB-ELIGIBILITY STANDARDS, *supra* note 26, at 35 (declaring that business must include business courses in economics, psychology and other social science). Legal knowledge includes legal theories that are based on the use of social science and other disciplines to explain the impact of law on society, economic system, social system, and person. See Garoupa & Ulen, *supra* note 25, at 1564-65 (finding that law and economics, law and psychology, law and sociology, and law and political science are legal theories that offer new analytical approach to explain law and its effects).

³⁸ See AACSB-ELIGIBILITY STANDARDS, *supra* note 26, at 35.

³⁹ See *Allegheny Gen. Hosp. v. N.L.R.B.*, 608 F.2d at 969-70 (3d Cir. 1979) (a judicial “precedent attaches a specific legal consequence to a detailed set of facts . . .”).

⁴⁰ See Wacker, *supra* note 19, at 364 (giving a definition of business theories that demonstrate the response of these theories to situations and other circumstances).

organizational and market outcomes. Legal analysis ascertains only the need for the law and its application to the facts, such as recognizing the issue, in legal decision-making. In fact, legal analysis is a bundle of legal-analytical methods, such as finding the issue or analyzing facts or allegations. These legal-analytical methods can be separated by lawyers who can deliver to managers one or more legal-analytical methods to accompany the legal rule or advice. Thus, managers must use the appropriate legal-analytical method, such as issue recognition, to accompany legal rule in order to ascertain the legality of business and other information, findings or conclusions entering a decision-making step.

The managerial analysis with law includes the use of legal-analytical methods accompanied or unaccompanied by the legal rule to analyze business situations and business and other information, findings, and conclusions in steps of the process of business decision-making. First, legal analysis allows the managerial analysis with law to create a managerial evaluation that uses a factual inquiry in the application of business concepts to legal rules to evaluate the legality of business situations. Business concepts and legal rules that apply to similar or identical situations can identify, classify and verify the legality and utility of actual, business situations.⁴¹ Second, legal analysis allows the managerial analysis with law to create and use a legal-managerial analysis (a set of analytical tools) that uses legal-analytical methods accompanied or unaccompanied by legal rules in the unique analytics of each step of business decision-making. Business and legal analytics and methodologies are integrated to create legal-managerial analysis that is a set of analytical tools to determine the legality and utility of business and other information, findings and conclusions in the steps of business decision-making.⁴² Thus, the managerial analysis with law overcomes the limitations of traditional legal analysis by using business and legal knowledge to create a managerial evaluation and using business and legal analytics and methodologies to form a legal-managerial analysis in business decision-making.

1. Pedagogy to Bolster Teaching in Traditional Legal Studies

A pedagogy of the managerial analysis with law teaches graduate and advanced undergraduate students the theory and practice (practical use) of the managerial analysis with law. These students learn to make lawful business decisions and plans to solve business problems and address business needs by taking advantage of or creating business opportunities, advantages and solutions. This pedagogy is consistent with the goals and objectives of business education

⁴¹ See Holloway-Concept-Sensitive Managerial Analysis, *supra* note 5, at 142-43 (defining the scope of concept-sensitive managerial analysis with law).

⁴² See *id.* at 146.

that include teaching legal knowledge and its application, business and other knowledge and analytical tools, and business decision-making and planning. On one hand, this pedagogy expands the knowledge of common law and regulation by teaching students the need for and use of legal advice (legal knowledge) to make lawful decisions and decision-making. On the other hand, the pedagogy expands business knowledge, such as finance and accounting, by teaching students to identify unlawful business situations and determine unlawful business and other information, findings and conclusions in the process of business decision-making. The pedagogy furthers business education by teaching students how lawyers and managers share, integrate and use business and legal knowledge, analytics and methodologies in beginning the first step and completing the other steps of business decision-making.

The pedagogy of the managerial analysis with law expands business law or legal studies by teaching students to use a few basic business concepts, analytics and methodology in studying common law and regulation. The pedagogy includes the teaching of traditional legal rules, analysis and reasoning but adds the teaching of basic business knowledge, analytics and decision-making methodology to integrate law and business. In initiating decision-making, the integration of a fact-sensitive legal rule and a fact-sensitive business concept identifies, classifies and verifies the actual business situation. The verification avoids the use of lawful situations that are unethical or publicly harmful to begin business decision-making. In completing the other steps of decision-making, the integration of traditional legal analytics and methodology (analysis and reasoning) and basic business analytics and decision-making identifies unlawful business information, findings and conclusions entering the process of business decision-making. The pedagogy of the managerial analysis with law teaches the integration of business and legal knowledge, analytics and methodologies to begin and complete the steps in the process of business decision-making.

III. ESSENTIAL LEVELS OF THE MANAGERIAL ANALYSIS WITH LAW AS A SCHOOL OF THOUGHT

The first and second levels of the managerial analysis with law are theory and practice (practical use), and the third level is pedagogy. This theory and practice serve two analytical functions of a school of thought of law and business. Foremost, the first function is to integrate and use business and legal knowledge, analytics and decision-making methodologies to make and implement lawful decisions. Next, the second function is to integrate and use business and legal knowledge, analytics and decision-making methodologies to analyze unlawful decisions and decision-making. The managerial analysis with law allows managers, lawyers and students to a conduct managerial evaluation, employ

managerial discretion, and use legal-managerial analysis to make lawful decisions and analyze unlawful decisions and decision-making.

A. Theory of Law and Business Conceptualizing a School of Thought

Fact-sensitive business concepts and legal rules and restrictive managerial discretion enable managers to identify, classify and verify the legality and utility of an actual business situation by applying a business concept to a legal rule and applying managerial discretion to lawful situation. The latter application verifies the utility of the lawful, actual situation by using another business concept to evaluate the latitude of the manager to initiate decision-making. The recognition of an actual situation is the first step of decision-making⁴³ that may raise legal, ethical and public policy concerns involving the use of an actual situation to initiate decision-making. This application of a business concept to a legal rule to determine legality and utility of the actual, business situation is a managerial evaluation.

At the first step of business decision-making, this managerial evaluation is an application of a concept to rule that creates a domain of lawful, unlawful, and gray-area situations. The domain is a mental model of possible situations that were not recognized by the manager but may include the actual business situation recognized by the business problem. The domain is based on the legal and business knowledge, experience and skills of lawyers, managers and other persons participating at the beginning of the process of business decision-making.⁴⁴ This knowledge, skills and experience establish factual parameters and other essentials, such as legal requirements and exceptions, of the legal rule and business concept to determine the domain of situations.⁴⁵ This domain normally does not include all situations. It normally includes situations exceeding unlawful and lawful situations of judicial precedents. The domain is used to determine and verify the legality of an actual business situation by comparing this actual situation (problem) with the possible lawful, unlawful and gray-area situations of the domain. For example, a business organization wants to establish a more flexible workforce by using more independent contractors. A managerial evaluation would apply organizational flexibility theory to the criteria to determine employee status to identify a domain of lawful, unlawful and gray-area

⁴³ See O'Dell, *supra* note 21, at 70-71 (recognizing the existence or presence of a problem or need that requires a business decision to address).

⁴⁴ See Chermack-HRD, *supra* note 11, at 374 ("Mental models and cognitive maps are . . . concepts that attempt to explain the way we frame our experiences in the world and from which we draw our assumptions about situations and alternatives.").

⁴⁵ See *id.*

employment situations.⁴⁶ The domain of employment situations is based on the experience, skills and knowledge of managers and lawyers but cannot include all possible employment situations under this concept and rule. The managerial evaluation permits managers to determine whether the actual employment situation fits within or compares favorably to the lawful or another employment situation of the employment or workforce domain.

A managerial evaluation determines the legality and utility of an actual situation that must comply with the law and cannot breach company policies and ethical standards. Lawful situations cannot include conduct, transactions or actions prohibited by organizational policies and directives. This conduct and other activities are normally not within the managerial discretion or latitude of managers. Lawyers should assist managers to identify and examine corporate policies and directives that deny managers the latitude or discretion to use a lawful actual situation. For example, a corporate directive prohibits unethical or harmful actions to workers in the creation of a flexible workforce. This directive explicitly declares the hiring of large numbers of unskilled or lowly paid contractor workers as harmful to employee welfare and morale. Although an actual situation that includes hiring large numbers of contract workers is lawful, this situation lacks the utility and is not usable under organizational directive. The lawful situations that do not hire large numbers of contract workers are usable situations that do not deny managers the managerial discretion to begin decision-making. Thus, managerial evaluation uses factual analysis of legal analysis,⁴⁷ situation analysis of the definition of the situation,⁴⁸ and legal and business knowledge and experience⁴⁹ to identify a domain of possible business situations to verify the legality and utility of an actual situation.

1. Usable Situations to Complete Business Decision-Making

The integration of legal and business analytics and methodologies forms legal-managerial analytics to allow managers to use legal rules and make legal information, findings and conclusions to determine the legality and utility of business information, findings and conclusions in the process of decision-making. Managers must recognize or define a usable, lawful situation to begin decision-making. They must complete other decision-making steps by solving or

⁴⁶ See Holloway-Concept-Sensitive Managerial Analysis, *supra* note 5, at 177-81 (explaining the application of the managerial analysis with law to an organization's decision-making to consider a flexible workforce).

⁴⁷ See Cappalli-Legal Method, *supra* note 20, at 398-99 (recognizing that law consists of legal analysis that is legal methodology).

⁴⁸ See O'Dell, *supra* note 21, at 70-71 (recognizing the existence or presence of a problem or need that requires a business decision to address).

⁴⁹ See Chermack-Mental Models, *supra* note 13, at 414; Chermack-HRD, *supra* note 11, at 374.

addressing a usable, lawful business situation (problem and need) that requires business and other information, findings and conclusions. The other decision-making steps require managers to use legal advice to determine the legality and utility of business information, findings and conclusions. Legal advice consists of legal rules and legal information, findings and conclusions that are used to determine the legality and utility of business information, findings and conclusion inserted and utilized in a decision-making step. Legal rules, analysis and reasoning are not self-executing by automatically entering the process of business decision-making. Managers must know when they need to request legal advice, where they should enter legal advice and when they should ask for additional legal advice in the process of business decision-making. Managers must communicate with lawyers as counselors or make the lawyer a member of the decision-making or planning team. This communication allows lawyers to know when managers need legal advice that also includes legal-analytical methods. As legal analysis and reasoning, these methods are used by lawyers and managers to use legal rules and make legal information, findings and conclusions in business decision-making. Managers must also be prepared to use legal advice as legal rules accompanied by legal-analytical methods in business decision-making steps. The entry of legal-analytical methods in a decision-making step forms unique legal-managerial analytics to determine the legality and utility of business and other information, findings and conclusions in the decision-making steps.

Legal-managerial analytics demonstrates how lawyers and managers integrate and use legal and business analytics and decision-making methodologies to request and use legal advice or legal rules. Legal analytical methods enter a decision-making step to form unique legal-managerial analytics to make legal information, findings and conclusions. This unique legal-managerial analysis is used to determine the legality and utility of business, statistical and other information, findings and conclusions. Managers need legal-managerial analytics to make legal advice more usable within the process of business decision-making. Lawyers give legal advice to managers based on the function and analytical needs of each decision-making step based on the entry of business information, findings and conclusions. Managers request legal advice that can be effectively entered, moved and used by attaching the appropriate legal-analytical method in the decision-making step. The process of decision-making may require more than one legal rule (or kind of legal advice) so managers need to request and use legal advice, such as finding the issue, to form legal-managerial analytics. Thus, legal-managerial analytics are analytical tools that permit managers to make better use of legal advice. This advice consists of a legal rule(s) accompanied by legal-analytical methods that is used in a decision-making step. When legal advice is not available, more knowledgeable and skilled managers may use one or more unaccompanied legal-analytical methods to find or apply a legal rule(s) in a decision-making step and seek legal advice later.

B. Practicality of a Law-Business School to Support Managers and Attorneys

Managerial evaluation and legal-managerial analytics must fit both legal and business practices to address legal concerns in the beginning step and recognize legal concerns and issues in completing the other steps in business decision-making. Management, finance, accounting, marketing, and management information systems are sources of business concepts for a managerial evaluation and sources of business analytics and methodology for legal-managerial analytics. As professionals, managers and lawyers recognize, perhaps unknowingly, the impact of the business concepts on legal advice (rules) at the beginning of decision-making. Likewise, lawyers and managers recognize, perhaps unknowingly, the entry, movement and use of legal advice (legal rules) depend on specific legal-analytical methods to address the legality and utility of business information, findings and conclusions within a decision-making step. The managerial analysis with law includes practical uses of the integration of business and legal knowledge, analytics and decision-making methodologies by using managerial evaluation to identify outcomes and forming legal-managerial analytics as analytical tools in the steps of decision-making.

A managerial evaluation adds analytical outcomes to management, marketing and other business practices to identify and classify situations and verify an actual situation that was recognized as initiating the business decision-making process. The outcomes are situations that present expected business opportunities, advantages or solutions to a business organization. As introduced above, when organizational flexibility theory is applied to the criteria to determine the employee status (employee status), this application identifies and classifies employment situations as lawful, unlawful and gray-area. Gray-area situations contain legal ambiguity or substantial uncertainty or risk in establishing a flexible workforce. When managers are willing to take legal risk or uncertainty, one of the gray-area situations may verify an actual situation as both usable and lawful to initiate decision-making under legal risk or uncertainty. An actual employment situation is a real-time flexible workforce that provides a market or business opportunity, advantage or solution. If they are not willing to take risk or uncertainty, an actual employment situation or real-time flexible workforce must fit within the lawful situations of the domain of usable, lawful situations that comply with legal rule(s) and organizational policies and directives. Although the domain is a mental model, it is not too far-fetched.⁵⁰ Lawyers must always identify factual patterns to apply legal rules in beginning and when completing business decision-making. When managers do not seek legal advice but rely

⁵⁰ See Chermack-HRD, *supra* note 11, at 374 (recognizing that professionals, such as managers and lawyers, frame their experience to make assumptions and alternatives).

entirely on precedents, they rely on a narrow, lawful domain based solely on past factual patterns or situations that were not of more competitive domestic and global economies. Thus, managers and lawyers can use a managerial evaluation to identify a domain of usable, lawful situations to verify the legality and utility of an actual situation to initiate decision-making.

1. Initiating and Completing Other Steps in Decision-Making

Managers and lawyers must move from one step to the next in the process of business decision-making to make and implement a lawful decision. All business decision-making steps may need to use legal rules accompanied by legal-analytical methods or unaccompanied legal-analytical methods to determine the legality and utility of business information, findings and conclusions entering these steps. Legality and utility include using legal rules to provide legal information and make legal findings and conclusions (e.g., legal issues) in decision-making steps (e.g., identifying alternatives). Legal information, findings and conclusions are made by using or applying legal advice (legal rules) accompanied by legal-analytical methods (legal analysis, reasoning, and judicial decision-making) within each business decision-making step (business analytical tools and internal decision-making functions) to form legal-managerial analytics.⁵¹ Legal information, findings and conclusions would be legal advice as lawyers actively participate in the process of business decision-making to aid managers. Within the process of business decision-making, the managerial analysis with law uses managerial evaluation and legal-managerial analytics to determine the legality and utility of the actual business situation and thereafter business, statistical and other information, findings and conclusions

C. Pedagogy of Law and Business to Teach Law within Business Functions

The pedagogy teaches graduate and advanced undergraduate students to integrate, share and use business and legal knowledge, analytics and decision-making methodologies to recognize and solve business problems and address business needs. Specifically, the pedagogy teaches managerial evaluation and legal-managerial analytics in business and business law courses. This evaluation and analytics are learned by teaching students to use legal and business knowledge, analytics and methodologies. Thus, this pedagogy teaches students to integrate and use business and legal knowledge, analytics and methodologies to

⁵¹ See *infra* Part IV.B and accompanying notes (explaining the formation of legal-managerial analytics to make legal findings and conclusions in steps of the process of decision-making to determine the legality and utility of business information, findings and conclusions).

make analytical outcomes and form analytical tools to make lawful decisions and examine unlawful decisions and decision-making.

Business law professors must learn the most fundamental decision-making methodology and learn some fundamental business knowledge and analytics of one or two business disciplines. Business knowledge is business concepts that are applied to legal rules to conduct a managerial evaluation. Yet, these professors teach business students to study legal knowledge (legal rules) and apply the legal rule to facts to make a legal decision.⁵² Now, these professors must learn basic business knowledge, analytics and methodology so they can teach the managerial analysis with law to teach business students and communicate with business professors. Business students and professors study business knowledge, analytics and decision-making methodology and very little legal knowledge, analysis and reasoning. Business law professors who teach managerial evaluation and legal-managerial analytics⁵³ in a business law course must learn and teach a few business concepts and basic business analytics and decision-making. Thus, the business law professors must know, integrate and use legal and business concepts, analytics and decision-making methodologies to teach the managerial analysis with law.

1. Using the Managerial Analysis with Law in Other Business Courses

Business courses teach business knowledge, analytics and methodology to graduate and advanced undergraduate students who often know basic legal knowledge, analytics and decision-making methodology. Business professors can use the pedagogy of the managerial analysis with law by recalling or learning basic legal knowledge, analytics and decision-making methodology. In fact, many business professors studied legal rules and basic legal-analytical methods (analytics and decision-making methodology) in undergraduate and graduate legal studies courses. Preferably, these professors should use the body of law that is commonly known and used in their respective disciplines. This body of law includes employment relationships in management, product advertising in marketing, and privacy of personal information in management information systems. Business professors should use this body of law and its analytics and

⁵² See also Cappalli-Legal Method, *supra* note 20, at 398-99 (citing Harold J. Berman & Charles J. Reid, Jr., *The Transformation of English Legal Science: From Hale to Blackstone*, 45 EMORY L. J. 441 (1996)) (recognizing that legal methodology includes “qualities of a systematic, objective, verifiable body of knowledge, a meta-law by which the legal system itself may be analyzed and evaluated”).

⁵³ See *infra* Part IV.B and accompanying notes (discussing the legal-analytical methods of the legal methodology that is learned from a case analysis) and used to form legal-managerial analytics).

methodology to conduct managerial evaluation and legal-managerial analytics. These professors can create the managerial evaluation by applying a business concept to a legal rule to create a domain of business situations. This domain is used to determine the legality and utility of an actual business transaction, such as using a tying arrangement to market or sell two products. Next, the legal-managerial analytics enables the professor to determine the legality and utility of business information, findings and conclusions entering a decision-making step, such as identifying feasible alternatives. Thus, the managerial analysis with law enables business professors to determine the legality and utility of actual situations to begin decision-making and business information, findings and conclusions entering other decision-making steps to make usable, lawful decisions.

A managerial analysis with law treats legal and business concepts, analytics and methodology slightly different than their treatment in traditional business law courses. First, legal analytics and decision-making methodology are treated as discrete legal-analytical methods rather than a single bundle of methods referred to as legal analysis and reasoning. These methods accompany the entry, movement and use of a legal rule in a decision-making step to determine the legality and utility of business and other information, findings and conclusions entering this step. These methods also operate without an accompanying legal rule. In fact, these methods operate similarly to steps and functions of quantitative and qualitative analytical tools entering a decision-making step to perform a specific analytical function, such as finding the mean or a financial ratio. Second, it is well-known that the traditional application of the legal rule is to the facts. In the managerial analysis with law, both business law and business professors must apply a specific business concept to a specific legal rule. This application identifies a domain of business situations and thereafter verifies or determines the legality and utility of the actual business situation that was recognized to begin the process of business decision-making. Thus, business and business law professors must apply legal and business knowledge and use legal and business analytics and decision-making methodologies differently than taught in traditional business and business law courses.

IV. PEDAGOGY OF THE MANAGERIAL ANALYSIS WITH LAW IN LEGAL AND BUSINESS EDUCATION

A managerial analysis with law strengthens the legal education of managers by supporting the learning and teaching objectives of business education. The legal education of managers is normally one business law or legal environment course that is taught in one semester. Legal education introduces students to discrete analytical skills and rational thinking that is comparable to skills and thinking in statistics, management information systems, finance,

management science and other business courses. These skills and thinking further traditional learning objectives, such as analysis, application and synthesis,⁵⁴ and these skills can be taught in the pedagogy of the managerial analysis with law.

A. Using the Managerial Analysis with Law to Teach Information

The pedagogy requires knowledge and application of business concepts and legal rules of business courses and business law courses, respectively. A business concept can be applied to a legal rule when this concept and rule cover the same or similar factual patterns. A legal rule governs a specific set of facts that often contain prohibited relationships, transactions or actions of persons, organizations or government.⁵⁵ Likewise, a business concept governs facts that identify business transactions, relations or actions that can be used in management, finance, and other business practices to create advantages, opportunities and solutions.⁵⁶ A legal rule and business concept that share a similar factual or situational coverage permit integration by applying a business concept to a legal rule to identify and classify a domain of possible business situations. This domain is useful to begin business decision-making if the lawful situations of this domain contain the actual business situation that was recognized by a manager to initiate decision-making. This domain is not a physical or actual model but a mental model of business situations that are created from the legal and business knowledge, experience, and analytical skills of the professor and students of a course.⁵⁷ Thus, the legal, business and other experience, knowledge and skills of professors and business students are used to establish the parameters of the factual patterns or situations of a mental model.⁵⁸ These kinds and levels of experience, knowledge and skills allow the professor and students to make creative and innovative models or domains.

1. Nature of Legal and Business Information to Apply Concepts to Rules

A managerial analysis with law treats finance, marketing, management and other business theories and principles (concepts) as business knowledge and

⁵⁴ See B. Bloom & B. Masia, TAXONOMY OF EDUCATIONAL OBJECTIVES: THE CLASSIFICATION OF EDUCATIONAL GOALS HANDOUT 1: COGNITIVE DOMAIN 201-07 (1956) (listing learning objectives that many business law and business course may advance in studying qualitative and quantitative subject matter).

⁵⁵ See *Allegheny Gen. Hosp. v. NLRB*, 608 F.2d 965, 969-70 (3d Cir. 1979).

⁵⁶ Wacker, *supra* note 19, at 364.

⁵⁷ Chermack-HRD, *supra* note 11, at 374 (stating that mental models use personal experiences and knowledge to choose or select alternatives).

⁵⁸ See Holloway-Concept Sensitive, *supra* note 5, at 173-74 (discussing the parameters that identify and restrict the size of the domain of lawful, unlawful and gray-area situations).

treats legal rules and principles as legal knowledge. Business and legal knowledge is used to create information and make findings and conclusions of business and legal disciplines, respectively. These kinds of knowledge tell much about the nature and use of a legal rule, business concept and their shared factual and predictive natures. On one hand, business law professors teach legal knowledge that explains legal rules and principles in business law, government regulation and the legal environment of business courses. An explanation of a legal rule or principle consists of the field of law, concise statement, purpose, essential elements, and application of a rule. The most important legal information is the concise statement and essential elements that determine the factual patterns or situations covered by a legal rule and its application. On the other hand, business professors teach an explanation of a business concept (knowledge) that includes the business function, precise statement, purpose, need for, and use or application of the concept (theory and principle) in business and business organizations. Business professors teach these kinds of business information in introductory and advanced business courses in marketing, finance, management, accounting, and management information systems. The most important business information is the business functions and precise statement that predict technical, operational or strategic outcomes of organizational or market situations. Thus, legal and business information is needed to conduct managerial evaluation to initiate decision-making and use in legal-managerial analysis to complete business decision-making.

Business and legal information allow professors and students to determine whether the business concept and legal rule share the same or similar situational or factual coverage. Normally, the business concept covers lawful, unlawful and gray-area situations or factual patterns that are usually broader than those the legal rule covers, as the legal rule only covers the prohibited factual patterns. Most significantly, when the legal rule and business concept share the similar or same coverage, the business concept can be applied to the legal rule to identify and classify a domain of lawful, unlawful and gray-area situations. This domain is used to verify the legality and utility of an actual business situation that was recognized as a problem or need to begin decision-making. Managers and lawyers still must consider the utility of lawful actual situations that must be permitted under organizational policies and directives to initiate decision-making.

A managerial analysis with law applies managerial discretion and analysis⁵⁹ to determine whether a lawful actual situation contains unethical or

⁵⁹ See López-Cotarelo, *supra* note 30. In the management literature by contrast managerial discretion refers to the choice of actions available to managers in the pursuit of organizational goals: high discretion means managers have low environmental and organizational constraints on their choice of actions. . . Latitude of objectives refers to a manager's freedom to pursue their own objectives rather than those of other stakeholders. Latitude of actions, on the other hand, refers to differing ranges of actions available for managers to pursue organizational objectives. These two

harmful behavior, practices or conduct under organizational policies and directives. Managers must avoid using lawful situations that are not in compliance with organizational policies and directives. Such policies and directives may deny managerial discretion to begin decision-making with a lawful situation, though it is profitable and beneficial to the organization. Consider this hypothetical. Organization Y's employment policy prohibits discrimination in recruiting independent contractors and consultants. Manager X refuses to recruit female contractors for engineering and technical projects. These contractors are not employees and not protected under employment discrimination law.⁶⁰ Manager X's conduct is lawful but is not in compliance with Organization Y's recruitment policies. Organization Y's policy denies Manager X the managerial discretion to begin decision-making with a discriminatory situation that excludes female contractors. Thus, managerial discretion decides whether a lawful situation contains an unethical or harmful behavior, practice or conduct under organizational policies and directives.

B. Using the Managerial Analysis with Law to Teach Methods

A pedagogy of the managerial analysis with law teaches a series of distinct legal-analytical methods that enter, move and use legal rules and information to make findings and conclusions in decision-making steps. These methods often accompany legal rules applied in a decision-making step to determine the legality and utility of business and other information, findings and conclusions. Each method serves a distinct analytical purpose to provide legal information and make legal findings and conclusions.⁶¹ These methods are legal

aspects are useful in framing my discussion below. *See id.* at 1 (citing D. C. Hambrick & S. Finkelstein, *Managerial Discretion: A Bridge Between Polar Views of Organizational Outcomes*, RES. IN ORG. BEHAV. 9, 369 (1987); Wei Shen & Theresa S. Cho, *Exploring Involuntary Executive Turnover Through Managerial Discretion Framework*, 4. ACAD. MGMT. REV. 30, 843-54 (2005).

⁶⁰ 42 U.S.C. § 2000e (stating that “[t]he term “employee” means an individual employed by an employer”).

⁶¹ James R. Maxeiner, *Legal Indeterminacy Made in America: U.S. Legal Methods and The Rule of Law*, 41 VAL. U.L. REV. 517, 526 (2006).

Almost every advanced legal system pays at least lip service to requirements of the rule of law at a high level of generality. But how does one determine whether a legal system delivers on its promise? One approach is to consider how it implements the rule of law. Legal methods are the principal means by which law content is made clear and by which law application is made predictable.

In a broad sense, legal methods are devices used to apply abstract legal rules to factual situations in order to decide concrete cases. Legal methods as the means to decide concrete cases include, in a broad sense, creating as well as implementing legal rules.

See id. (citing Robert S. Summers, *The Principles of the Rule of Law*, 74 NOTRE DAME L. REV. 1691, 1691 (1999); Discussions of **legal methods** qua **legal methods** often focus on handling precedents and construing statutes. *See, e.g.,* D. NEIL MACCORMICK & ROBERT S. SUMMERS,

analytics (identifiable parts) of judicial decision-making methodology that include the application of legal rules and use of legal analysis and reasoning to make findings, conclusions and reasons.⁶² These methods include analyzing the facts, finding the law, recognizing the issue, making the decision, and giving reasons (or rationale) for the decision.⁶³ Analyzing the facts or a factual inquiry examines disputes or situations to find pertinent facts or allegations that are within the coverage of the legal rule and its elements. Next, finding (analyzing) the law determines and examines the legal rule and its elements that are applied to the factual patterns or allegations. Consequently, issue recognition uses the facts and legal rules to find and frame the legal issue (or problem) of law as a legal question that must be decided by the application of a legal rule. Making the decision is responding to the legal issue by applying the legal rule to the facts to make a conclusion. Finally, giving reasons (or a rationale) for the decision is setting forth grounds or justifications for the decision under the facts, legal rule, and policy or purpose of the rule.⁶⁴ These methods are taught to graduate and undergraduate students in business law courses as a judicial case analysis. In a legal-managerial analysis, all methods may not be needed to accompany a legal rule or may operate unaccompanied (separate from the legal rule) as a qualitative analytical method in a decision-making step.

1. Using Analytical Methods of Business Decision-Making

A pedagogy of the managerial analysis with law depends on the use of decision-making steps to recognize and solve business problems and address business needs. These problems and needs often require business, statistical and other information, findings and conclusions to make business decisions.⁶⁵ This information, findings and conclusions are used to make business decisions when managers enter them in the process of business decision-making. This traditional process consists of six functional steps to begin and complete business decision-making.⁶⁶ These steps include recognizing the situation (problem), identifying feasible alternatives, evaluating alternatives, selecting the best alternative,

INTERPRETING PRECEDENTS: A COMPARATIVE STUDY (1997); D. NEIL MACCORMICK & ROBERT S. SUMMERS, INTERPRETING STATUTES: A COMPARATIVE STUDY (1991); WOLFGANG FIKENTSCHER, *METHODEN DES RECHTS IN VERGLEICHENDER DARSTELLUNG* 13-15 (1975); Cf. JAN SCHAPP, *HAUPTPROBLEME DER JURISTISCHEN METHODENLEHRE* (1983) (relating statute, case, and judicial decision).

⁶² See Maxeiner, *supra* note 61, at 526.

⁶³ See *id.*

⁶⁴ See *id.*

⁶⁵ Sun Zhaohua et al., *Business Analytics-Based Enterprise Information Systems*, 57 J. COMPUTER INFO. SYS. 169, 172 (2017).

⁶⁶ See Archer, *supra* note 21, at 54-61.

implementing the chosen alternative, and following up on the results.⁶⁷ The first step initiates the process of decision-making by recognizing the problem or need (the actual situation) and its causes, relationships, and other factors.⁶⁸ The second step identifies possible alternatives that should not be limited by lawful alternatives of past judicial precedents but must also include innovative and creative alternatives.⁶⁹ The third step evaluates the alternatives by determining whether or not these alternatives are feasible, satisfactory and meet other criteria.⁷⁰ The fourth step selects the best alternative and makes the decision that complies with feasibility, satisfactoriness and other criteria.⁷¹ The fourth decision-making step was the decision that must be executed and followed up to determine its effectiveness and effects on the organization or market.

Once the decision has been made, two remaining steps require managers to implement the decision and follow-up on the results of the decision. The fifth step is the implementation of the best alternative or chosen decision and includes consideration of individual, organizational, market and other responses to the decision.⁷² The sixth step is the follow-up that evaluates the results of the decision — to decide whether the decision successfully or adequately furthers organizational goals and objectives, which may be more than profits.⁷³ The managerial analysis with law determines the legality and utility of actual business situations⁷⁴ and business and other information, findings and conclusions to begin and complete the process of business decision-making.

C. Using the Managerial Analysis with Law with Information and Methods

Business professors need not be experts on the business law professor's body of knowledge, analytics and methodology to teach the managerial evaluation. Business professors only need to know and use a few legal rules of a body of law to conduct a managerial evaluation. Foremost, legal rules prohibit unlawful actions but often do not cover all lawful situations within the coverage of a business concept. Many legal rules are stated and explained in business law textbooks. These explanations would permit business professors who often do not possess a law degree to teach a few of these explanations of legal rules.

⁶⁷ See O'Dell, *supra* note 21, at 70-71.

⁶⁸ See *id.*

⁶⁹ See *id.*

⁷⁰ See *id.*

⁷¹ See *id.*

⁷² See *id.*

⁷³ See *id.*

⁷⁴ See *id.*; Archer, *supra* note 21, at 54-61.

As stated immediately above, business concepts are normally broader than the legal rule. It is worth repeating that the legal rule covers only prohibited conduct, behavior or transactions that have proven harmful to society. Business concepts guide managers in allocating resources, financing operations, marketing goods, making strategic plans, and other business needs. These concepts are theories and principles that are explained in graduate and undergraduate management, marketing and other textbooks. They provide enough business information for a business law professor to teach business concepts to conduct managerial evaluation. Both business law and business professors must also learn and teach enough managerial discretion and analysis to determine whether the lawful, actual situation is unethical or too harmful under organizational policies and directives. Business textbooks do not contain organizational policies and directives that prohibit lawful but unethical or harmful conduct, though the business curriculum may include an ethics course or lecture to teach ethical theories and standards. When a lawful, actual situation contains unethical or harmful behavior, this situation cannot be used to begin business decision-making. Thus, the pedagogy teaches a managerial evaluation that verifies the legality and utility of an actual business situation to begin decision-making.

1. Using Legal and Business Decision-Making Methodologies

A managerial analysis with law begins with a managerial evaluation to determine the legality and utility of a business situation. A usable situation recognizes a problem or need that is referred to as the recognition of the situation.⁷⁵ The managerial evaluation identifies and classifies likely situations that determine the legality and utility of an actual situation raising a legal concern. Unlike the use of a domain of only precedents, a managerial evaluation provides situations that are based on the creativity of the manager, lawyer and other participants who seek only a usable and lawful situation to begin decision-making. All participants must share their knowledge, experience and skills to identify or build a domain and classify its situations as unlawful, lawful or gray-area. When an actual situation fits or matches a lawful situation within the domain, the actual situation is lawful and does not raise a legal concern under a specific legal rule. The situation possesses utility or is useful to initiate decision-making when the lawful, actual situation does not breach an organizational policy or directive. The utility of an actual situation is determined by using managerial discretion that is used as a business rather than an economic theory. Organizational policies and directives establish unethical or harmful situations that cannot be used by managers to begin decision-making. The managerial

⁷⁵ See *supra* Part IV.B.1 and accompanying notes (explaining the nature of the steps in the process of business decision-making).

evaluation determines the legality and utility in the first step in the process of decision-making.

Other decision-making steps need legal-analytical methods to determine the legality and utility of business, statistics and other information, findings and conclusions as they enter these steps. Legal-analytical methods may or may not accompany a legal rule entering a decision-making step to find and interpret legal information and make findings and conclusions. On one hand, when the need for the legal rule, such as employee status, is known by the lawyer and manager, a legal rule is accompanied by one or more legal-analytical methods to determine whether employment, labor and other business findings entering a decision-making step are lawful, unlawful or gray. On the other hand, legal-analytical methods are not always accompanied by a legal rule when these methods enter a decision-making step solely to decide whether a legal rule is needed to make legal findings and conclusions or just provide more legal information. Analysis of facts and analyzing the legal rule are legal-analytical methods that can be used to determine the need for a legal rule in a decision-making step. A legal-analytical method that is not accompanied by a legal rule can aid in determining the legality of business information, findings and conclusions in a decision-making step.

This unaccompanied method within a decision-making step performs a specific analytical function upon the entry of questionable business and other information, findings, and conclusions. The recognition of the issue method can enter into the determination of the feasibility of alternatives step to determine whether business information provided by a manager is unlawful or too legally uncertain to make an alternative infeasible. For example, a manager is deciding whether to hire contract worker but includes an alternative that requires the manager's employer to provide tools to these workers. The recognition of the issue method analyzes this alternative that includes the employer providing tools to determine whether an alternative to provide tools would allow these workers to maintain an independent contractor status and could lawfully classify these workers as independent contractors. The actual situation to create a flexible workforce is lawful but will not provide a lawful decision if unlawful information, findings or conclusions enter a decision-making step leading to the making of the decision or its implementation. Thus, the pedagogy of the managerial analysis with law teaches students to determine the legality and utility of business information, findings and conclusions by forming and using more precise legal-managerial analytics in a decision-making step

V. TEACHING STUDENTS TO MAKE LAWFUL AND EXAMINE UNLAWFUL DECISION-MAKING

The pedagogy of the managerial analysis with law teaches students to learn and use managerial evaluation, legal-managerial analytics, and an

appropriate written report format. Students learn and use a managerial evaluation to identify, classify, and verify the legality and utility of an actual business situation to begin the process of decision-making. Next, students learn and use legal-managerial analytics that makes legal findings and conclusions to determine the legality and utility of business and other information, findings and conclusions entering the decision-making steps. Finally, students learn to use different written report formats to communicate the legality and utility of the business situation in the first step and business and other information, findings and conclusions in the other steps of the process of business decision-making. As a note, the teaching method is the professor's choice but could include the use of business cases that require students to make business decisions involving legal issues and public policy concerns. These cases permit students to demonstrate the use of managerial evaluation, legal-managerial analytics, and appropriate written report formats.

A. Teaching Evaluation and Analytics to Begin and Complete Decision-Making

Students are taught a managerial evaluation to identify and classify a domain of business situations so that students can verify the legality and utility of an actual business situation to initiate decision-making. A managerial evaluation teaches students to use their newly learned business, legal and other knowledge and personal experience and skills to identify and classify a domain of lawful, unlawful and gray-area business situations. Students who have learned finance, management and other business concepts can be easily taught to perform a managerial evaluation in a business law course.

The business or business law professor can assign a business case or a hypothetical, such as the need to establish a flexible workforce, so that students can begin decision-making with a managerial evaluation. Students will analyze the assigned business case or hypothetical to determine whether this case or hypothetical contains an actual situation and this situation raises a legal concern. Students must identify the legal concern and its legal rule, such as employment relationships and criteria to determine employee status. This analysis must also determine whether the actual situation that could provide a business advantage, opportunity or solution is covered by a business concept, such as organizational flexibility. Students apply organizational flexibility to the criteria to determine employee status to identify and classify a domain of lawful, unlawful and gray-area situations. This domain or mental model allows students to be innovative and creative in identifying possible situations that could exist to provide an opportunity, advantage or solution. Students compare the assigned actual situation to the possible lawful and gray-area situations of the domain to determine if the actual situation is among the lawful or gray-area situations. The

gray-area situations create legal uncertainty or risk and must be used with great care depending on the level of legal risk and uncertainty. When the actual situation is within the lawful and gray-area situations, the actual situation is likely lawful to initiate business decision-making.

The pedagogy teaches students that lawful situations are not always usable to initiate business decision-making. The managerial evaluation teaches students to use managerial discretion and analysis to determine the usefulness or utility of the lawful, actual situation that was recognized as a workforce need. Managerial discretion is a business concept that requires students to consider organizational limits on business decision-making by managers and lawyers. Students must ascertain whether the lawful, actual situation complies with organizational policies and directives on unethical behavior and harmful practices. Managerial discretion is taught in a management course or may be introduced in other business courses. Students use managerial discretion to identify and eliminate unethical or harmful actual situations that are prohibited by organizational policies and directives, such as ethical codes. Thus, students are taught a managerial evaluation to verify useful, lawful actual situations at the beginning or first step of business decision-making.

1. Teaching Legal-Managerial Analytics to Complete Business Decision-Making

Students are taught to use the steps in the process of business decision-making that may raise a legal concern or issue in any step. Legal-analytical methods ascertain the legality and utility of business and other information, findings and conclusions entered by managers in the second through sixth steps of business decision-making. Within the decision-making process, these methods and steps form legal-managerial analytics to provide legal information and make legal findings and conclusions. A usable, lawful actual situation allows students to continue decision-making on an assigned hypothetical or business case by completing the other decision-making steps. For example, the lawful actual situation is the need to establish a flexible workforce structure. The professor and students identify several workforce alternatives in the second step and move to complete the third step by establishing criteria to evaluate alternatives. Students identify the following workforce criteria to evaluate highly flexible workforce alternatives: workforce impact, education, experience, professional status, compensation, hometown and gender. These workforce criteria are business, employment and other information that must enter the criteria to evaluate alternatives. Students analyze workforce criteria (information) by applying the recognition of the legal issue method to find if one or more of the workforce criteria raise a legal concern or issue. Students use the recognition of the issue method to accompany a legal rule, namely Title VII of the Civil Rights Act,

entering the criteria to evaluate alternatives step when students are evaluating alternatives by using gender as one of active workforce criteria. Students enter the recognition of legal issue method into the criteria to evaluate alternatives step to form legal-managerial analysis that determines whether a legal issue or concern is raised under Title VII by using gender as a one of the workforce criteria. The existence of a legal issue or concern requires students to determine whether the criterion that is based on gender lacks legality and utility to evaluate proposed alternatives.

If other legal-analytical methods are needed, they can enter the criteria to evaluate alternatives step to form other legal-managerial analytics. When a legal issue is recognized by students, a legal-managerial analysis is formed to make a legal conclusion by entering making a decision (conclusion) method into the criteria to evaluate alternatives steps. This kind of legal-managerial analysis includes the application of Title VII to the criterion of gender to make a legal conclusion on the legal issue. As stated above, this issue is whether the use of gender as a workforce criterion is unlawful to evaluate alternatives under Title VII. Therefore, students enter one or more legal-analytical methods into a decision-making step to make legal information, findings and conclusions on the legality and utility of business and other information, findings and conclusions.

B. Teaching Evaluation and Analytics to Examine Decision-Making

The managerial analysis with law can be taught to analyze or examine decision-making by business organizations and managers. Students must examine unlawful decisions and decision-making for three purposes in business education. First, students must be taught to analyze legality and utility of the actual business situation that had been used by managers and lawyers to begin unlawful decision-making and make an unlawful decision. Second, students must be taught to analyze the legality and utility of business, statistical and other information, findings and conclusions that had been used by managers and lawyers to complete the steps in unlawful decision-making and unlawful decisions. Third, students must be taught to determine legality and utility of legal information, findings and conclusions that had been given to or made by managers to recognize an unlawful actual situation and business and other information, findings or conclusions. Thus, the managerial analysis with law integrates and uses legal and business knowledge, analytics and methodologies to create managerial evaluation and legal-managerial analytics to examine unlawful actual situations and unlawful business information, findings and conclusions.

Students must be taught to use a managerial evaluation to analyze or examine how managers began the process of business decision-making with an unlawful actual business situation. Students should expect a rational decision that has grounds in a business concept and legal rule in recognizing and verifying an

actual business situation. The application of the rule to the concept identifies and classifies a domain of lawful, unlawful and gray-area situations that should be used to examine the actual situation. Students must determine whether the actual situation is an unlawful situation in the domain, and what could have been a lawful situation in the domain to begin business decision-making. In the Volkswagen scandal of 2015, marketing, engineering and other managers began decision-making to increase market share but strangely made an unlawful market share decision in violation of United States environmental regulation.⁷⁶ Here, students should conduct a managerial evaluation by applying a market share concept⁷⁷ to federal environmental regulation to identify and classify a domain of possible lawful market share situations. Students examine the domain to find situations similar to or fitting Volkswagen's actual situation that included gaining a greater market share in the global automobile market but was hampered by ineffective pollution control equipment.⁷⁸ Students classify these situations as lawful, unlawful, or gray-area situations and use them to determine Volkswagen's actual situation. Students must decide whether Volkswagen's actual situation fits within one or more lawful or gray-area situations and whether these managers knew they were beginning decision-making with an unlawful actual situation to increase market share. Students can also determine that Volkswagen managers never performed a managerial evaluation and relied only on a factual situation that was theory-less, policy-less and lawless.

1. Teaching a Legal-Managerial Analytics to Examine Decision-Making

Students must be taught to examine how managers and lawyers used business concepts, legal rules and their information, findings and conclusions to complete unlawful decision-making. Students should expect rational decisions that use and follow a process of business decision-making and rely on valid

⁷⁶ See Jennings, *supra* note 14, at 32 (stating that the CEO may have not been aware that managers and engineers made decisions in violation of federal environmental protection law to achieve corporate goals and objectives). *But see* William Boston, *Germany Names Former Volkswagen CEO Martin Winterkorn as Suspect; Investigation Relates to Volkswagen's Long-Running Emissions Scandal*, WALL ST. J. (Jan. 27, 2017), <https://www.wsj.com/articles/volkswagens-ex-ceo-martin-winterkorn-probed-on-suspicion-of-fraud-1485518259> (“German prosecutors on Friday named Volkswagen AG’s former chief executive, Martin Winterkorn, as a suspect in a fraud investigation stemming from the auto maker’s emissions-cheating scandal, alleging that Mr. Winterkorn may have known about the issue earlier than he acknowledged.”). This accusation does not say that the senior executives recognized an unlawful situation to initiate decision-making.

⁷⁷ See Jennings, *supra* note 14, at 32 (finding that managers and engineers made decisions in violation of federal environmental protection law to achieve corporate goals and objectives).

⁷⁸ See *id.*; Tabuchi, Ewing & Apuzzo, *supra* note 14, (stating the federal government had indicted several Volkswagen officials for violating federal environmental protection law).

business and legal information, findings and conclusions. Students can use legal-managerial analytics to examine business information, findings or conclusions that were unlawful under common law, administrative regulations or statutes. Students should start the analysis of unlawful business information, findings and conclusions by forming legal-managerial analytics in each step of process of business decision-making.

Students must be taught to examine legality and utility of business information, findings and conclusions and their effects on the outcome of a decision-making step, such as identifying feasible alternatives. Students are taught to form legal-managerial analytics to examine the legality and utility of business and other information, findings and conclusions entering a decision-making step. If the legal rule is known by students, they can examine unlawful business information, findings and conclusions by applying the legal rule accompanied by an appropriate legal-analytical method to a decision-making step.

We will use the Volkswagen scandal of 2015 to demonstrate how students must be taught to examine business information, findings and conclusions of an unlawful decision and decision-making. Engineering, marketing and other managers of Volkswagen made an unlawful decision to contribute to market share and profits.⁷⁹ In examining the decision-making process, students should look at environmental pollution regulation (legal rule) accompanied by the recognition of the issue method (legal-analytical method) in determining feasible alternatives step (decision-making step). Next, students should integrate method and step to form a legal-managerial analysis to determine whether one or more of feasible alternatives raised a legal issue. Students should be taught to determine if the legal issue was raised by one or more alternatives to increase market share. This issue would have been raised by unlawful marketing, management or other business information and findings that entered the determining feasible alternatives step to make a feasible alternative. Students would find, at least, one alternative increased market share but required managers not to install effective software pollution equipment in Volkswagen vehicles.⁸⁰ If students found a legal issue that was not raised in making the unlawful decision, students would still need to add selecting a decision method to form another legal-managerial analysis (apply the law) to make a legal conclusion. Students must decide whether managers ignored or overlooked a legal issue in the feasibility of alternatives step regarding not installing pollution equipment in, at least, one alternative. Students could decide whether these managers chose to include an unlawful or infeasible market share alternative that did not install mandated pollution software under federal environment pollution control

⁷⁹ See Jennings, *supra* note 14, at 32; Tabuchi, Ewing & Apuzzo, *supra* note 14.

⁸⁰ See *id.*

regulation. Volkswagen's ultimate decision was to increase market share and never to violate environmental regulation. Students would learn that unlawful business, engineering, operations and other information, findings and conclusions entering a decision-making step cause an outcome, such as an infeasible (unlawful) alternative, ended in making an unlawful decision.

Decision-making steps often require business information, findings and conclusions that may be legally ambiguous, uncertain or risky. This may cause the need to verify or validate legal information, findings and conclusions. Students can examine unlawful decisions and decision-making to decide whether unlawful business and other information, findings and conclusions entered a decision-making step. This entry would make the outcome of this step unlawful. For example, students can examine Volkswagen's decision by using and entering giving a legal reason method accompanied by environmental regulation into selecting the decision step to form legal-managerial analysis to verify or validate a legal conclusion. Students are taught to form and use the specific legal-managerial analysis to examine the justification for legal findings and conclusions in the select a decision step. In the Volkswagen case, students examine select the decision step to decide whether the environmental, market share and other information, findings or conclusions that were used by managers in one or more alternatives were unlawful under environmental regulation. The giving a legal reason method is used to explain and justify the legal findings and conclusion of applying environmental regulation to market share, engineering and other information entering the select the decision step.⁸¹ Students use the ensuing legal-managerial analysis to find and analyze the legal reasoning for the legal conclusion to the application of the environmental regulation to market, engineering and other information. If the students do not find a reason for the legal conclusion on the need to install effective environmental emission equipment, Volkswagen managers failed to choose the best alternative in the selecting the decision step. Students should be taught that when an unlawful decision is discovered,⁸² the business organization should strongly consider discontinuing the implementation and starting the follow-up to the decision to assess business and market losses to the organization. Thus, business students must be taught to form legal-managerial analysis to examine or analyze business information, findings and conclusions that enter decision-making steps to make unlawful decisions and decision-making.

⁸¹ See Jennings, *supra* note 14, at 32.

⁸² See Tabuchi, Ewing & Apuzzo, *supra* note 14 (noting that the Federal government indicted several Volkswagen officials for violating federal environmental protection law).

C. Teaching Evaluation and Analytics by Assigning Different Written Reports

The pedagogy of the managerial analysis with law requires students to draft and submit written reports to demonstrate and communicate knowledge and use of the managerial analysis with law. Written reports communicate managerial evaluation by identifying and classifying a domain of business situations to determine the legality and utility of an actual business situation at the beginning of decision-making. These reports give the concept and rule, describe a domain of possible situations, compare the actual situation to all situations of the domain, and apply managerial discretion to determine utility of lawful, actual situation. To illustrate, a report applies organizational flexibility (concept) to the criteria to determine employee status (legal rule) to describe a domain of employment situations, explain the legality of the actual workforce situation, and note the utility of lawful workforce situation under organizational policy and directives.⁸³ The written report demonstrates and communicates a managerial evaluation to determine the legality and utility of a business situation.

Students draft written reports to demonstrate and communicate the use of legal-managerial analytics to determine the legality and utility of business decision-making steps. Written reports communicate legal-managerial analytics by identifying and explaining the legal rule, decision-making step, specific legal-managerial analysis and business legal and other information, findings and conclusions. The use of legal-managerial analysis ascertains and describes the legality and utility of the business information, findings and conclusions entering this decision-making step. To illustrate, the organization recognizes a usable, lawful actual situation to establish a flexible workforce. It selects the chosen alternative to make a decision and moves to the implementation of the decision. It must also know whether or not any legal issue or concern exists and would delay the implementation of the workforce decision. The written report explains that the recognition of the issue method enters the implementation of a business decision step to use business information and make legal findings and conclusions. This entry forms a legal-managerial analysis to determine the legality and utility of business and other information, findings and conclusions entering the implementation of the decision step. The written report would describe pertinent economic, organizational, workforce and employment information, findings and conclusions used by managers entering the implementation of the decision step. Next, the report would make and describe the law and its application as legal knowledge, information, findings and conclusions. This law and its application

⁸³ See Holloway-Concept Sensitive Managerial Analysis, *supra* note 5, at 177-81 (discussing the application of a managerial evaluation and legal-managerial analysis to decision-making to create a contingent workforce).

must be used to determine the legality and utility of employment, workforce and other information, findings and conclusions entering the implementation of the decision step. An unlawful implementation of the decision step means the process of decision-making is incomplete, requiring managers to return to an earlier decision-making step, such as selecting the chosen alternative step. Students must demonstrate and communicate the formation and use of legal-managerial analytics making legal findings and conclusions to determine legality and utility of business information, findings and conclusions in the steps of the process of business decision-making.

1. Teaching Different Kinds of Analytics as Written Assignments

The communication of the need for and use of business and legal information, findings and conclusions of managerial evaluation and legal-managerial analytics may require more than one kind of written report format. Students can use different kinds of written report formats to communicate the business situation and explain legal, business and other information, findings and conclusions of business decision-making.⁸⁴ Written reports can be a requirement of the business case method⁸⁵ of teaching students to use and communicate analytical, thinking⁸⁶ and writing skills.⁸⁷ These written reports must communicate the legality and utility of the business situation or legality and utility of the business and other information, findings and conclusions.

Written reports allow students to use and demonstrate appropriate writing skills to communicate business situations and legal and business information, findings and conclusions. These reports include the letter, interoffice

⁸⁴ See STEPHEN GLADIS, WRITETYPE: PERSONALITY TYPES AND WRITING STYLES 29-40 (1993) (giving a detailed explanation of each kind of writer, which means students and managers can be classified as correspondent, technical, creative or analytical writer); STEPHEN GLADIS, ARE YOU THE WRITE TYPE, TRAINING AND DEVELOPMENT 34, 32-36 (1993).

⁸⁵ See Debra Dobray & David Steinman, *The Application of Case Method Teaching to Graduate Business Law Courses*, 11 J. LEGAL STUD. EDUC. 81 (1993) (discussing the use of business case method teaching in graduate business programs (MBA)); Anne Lawton, *Using a Management Driven Model to Teach Business Law*, 15 J. LEGAL STUD. ED. 211, 211-35 (1997) (recognizing that business law is taught based on a litigation model and recommending that the litigation model be replaced with a management-driven model using business cases).

⁸⁶ See Holloway-Concept Sensitive Managerial Analysis, *supra* note 5, at 137; Holloway-Practical Entry and Utility, *supra* note 5, at 133. Legal-analytical methods determine and address legal issues and other matters encountered in the process of business decision-making. See Cappalli-Legal Method, *supra* note 20, at 398-99.

⁸⁷ See Karla H. Fox & Madelyn M. Huffmire, *The Use of Court Reports and Other Writing Assignments in the Business Law Curriculum*, 9 J. LEGAL STUD. ED. 117 (Fall 1990) (finding that writing assignments permit students to further analytical and communication skills); Barbara E. Behr, *The Positive Effectiveness of Controlled Student Writing Activity: A Statistical Analysis*, 3 J. LEGAL STUD. ED. 46 (Spr. 1985) (suggesting that writing improves studying and thinking skills).

memorandum, technical report, and white paper⁸⁸ that can be used in graduate and upper-level undergraduate business law and business courses. The interoffice memoranda can describe the general situation and its needs, essential legal and business findings, legal conclusions and business recommendations (or decisions). For example, students are assigned a flexible workforce situation and should give a recommendation on the use of a flexible workforce. The memorandum should describe the employment relationship of workforce situation, give employment relations findings and conclusions and their legality under criteria to determine employee status, and lastly, give a recommendation on use of a flexible workforce. Using the same example, the technical report could describe the nature of the employment relationships of the workforce structure, state legal issues impacting the use of these employment relationships, give employment and workforce information, findings and conclusions on the workforce structure, give legal information, findings and conclusions on legal issues of the workforce structure, and make recommendation on implementation of the workforce structure. The technical report communicates legal findings and conclusions on a legal issue that was decided by applying law accompanied legal-managerial analytics. These legal findings and conclusions are from the application of law that determines the legality and utility of business and other information, findings and conclusions entering a decision-making step. Thus, the pedagogy of managerial analysis with law allows professors to assign or use various kinds of written reports.

VI. CONCLUSION

The managerial analysis with law demonstrates how managers and lawyers share, integrate and use legal and business knowledge, analytics and decision-making methodologies to make lawful decisions and examine unlawful decisions and decision-making. This integration and use involve business decision-making to provide business needs, enter into business transactions and solve business problems. Furthermore, the integration of business and legal knowledge, analytics and decision-making methodologies is the foundation of the theory, practice and pedagogy of the managerial analysis with law. The theory integrates business and legal knowledge, analytics and methodologies in the process of business decision-making to predict analytical outcomes and tools to make lawful decisions and examine unlawful decisions and decision-making. Next, the practice integrates and uses business and legal knowledge, analytics and methodologies to make an analytical outcome to begin and examine the first step in the process of business decision-making. The practice also integrates and uses

⁸⁸ See Warren A. Smith & Brain H. Kleiner, *How to Improve Business Writing Skills*, MANAGERIAL AUDITING J. 1 (1995) (“Well-written communication is no accident. Even the shortest and simplest correspondence takes time, thought and planning.”).

business and legal knowledge, analytics and methodologies to create and use analytical tools to complete and examine the other steps in the process of business decision-making. The theory and practice of a managerial analysis with law enable students, managers and professors to use legal rule and methodology in making lawful decisions and examining unlawful decisions and decision-making.

Consequently, the pedagogy teaches graduate and upper level undergraduate business students the theory and practice of the managerial analysis with law. The pedagogy teaches students to make useful analytical outcomes and create specific analytical tools to determine and explain the legality and utility of business situations and business information, findings and conclusions in the process of business decision-making. Student are taught and must learn to determine and explain the legality and utility of business situations and business information, findings and conclusions by using the managerial analysis with law.

Students are taught a managerial analysis with law that consists of managerial evaluation and legal-managerial analytics to make lawful decisions and examine unlawful decisions and decision-making. The pedagogy teaches students to use managerial evaluation and legal-managerial analytics to determine the legality and utility of the facts, substance and thinking in the process of decision-making. During the first step, students are taught that managers must recognize the business problem or need to begin business decision-making. Students are taught a managerial evaluation that applies a business concept to a legal rule to identify and classify a domain of lawful, unlawful and gray-area situations. This domain is a mental model of likely or possible situations that could exist and be used to verify or determine the legality and utility of the actual situation. The likely situations are compared to the actual situation to verify whether the actual situation would be among the domain's lawful situations that can be used to begin decision-making.

Students are taught that a lawful actual situation is not always usable to begin decision-making. On its face, the lawful actual situation may be unethical or harmful to the public organization. Managers may be prohibited by organizational policies and directives from using the lawful actual situation to begin decision-making. In the managerial evaluation, students are taught to use managerial discretion to determine whether the lawful actual situation is within the latitude or discretion of the manager. Students are taught to review organizational policies and directives and whether they are usable to begin decision-making. If the actual situation is not usable, managers must then find another actual situation and verify it.

Students are taught legal-managerial analytics to enter legal-analytical methods accompanied by a legal rule or enter legal-analytical methods to find the legal rule that must be applied in one or more steps of the process of business decision-making. The entry of the method and legal rule into a step forms a legal-

managerial analysis to make and use legal information, findings and conclusions in the process of decision-making. Legal-managerial analysis determines the legality and utility of business, statistical and other information, findings and conclusions entering the steps of business of decision-making.

Students must demonstrate and communicate the use of the managerial analysis with law by writing the appropriate report. The written report formats include a letter, memorandum, technical report or white paper. The written report communicates the legality and utility of the actual situation and business information, findings and conclusions that were used to begin and complete, respectively, the process of business decision-making. Thus, the pedagogy of the managerial analysis with law teaches students managerial evaluation, legal-managerial analytics and written report formats to demonstrate and communicate the business situation, business and legal findings and conclusions, and business recommendation or decision of the process of business decision-making.

APPENDIX A

**Diagram of the Managerial Analysis with Law
(Analytical Levels, Actions and Functions)**

Analytical Levels	Analytical Outcomes & Tools of Business and Legal Knowledge, Analytics and Methodologies	Determination of Legality & Utility in a Decision-Making Step
Managerial Evaluation	Application of Concept to Rule Use of Managerial Discretion	Identify, Classify and Verify Situations Lawful Actual Situation Usable and Lawful Actual Situation
Legal-Managerial Analysis	Form Legal-Managerial Analysis Use Legal-Analytical Method(s) Complete Decision-Making Step Use Business Analytical Tools	Use Legal Information and Make Legal Findings and Conclusions Business and Other Information Business and Other Findings Business and other Conclusions

Appendix A illustrates analytical levels, actions and functions of the managerial analysis with law. The two analytical levels have unique analytical outcomes and tools to make lawful decisions and examine unlawful decisions and decision-making. In the managerial analysis, analytical outcomes use legal rules and business concepts to determine the legality and utility of the actual business situation at the beginning of the process of business decision-making. In legal-managerial analysis, analytical tools use legal information, findings and conclusions to determine the legality and utility of business and other information, findings and conclusions to complete other steps in the process of the decision-making. Thus, lawful situations and business information, findings and conclusions must be used to begin and complete the process of business decision-making.