Faculty Development Plan

BYU Law School

10 June 2014

Overview

This plan outlines my intentions for developing as a faculty member at BYU Law School. My overall goal is to serve my communities, both in society at large and here at the law school, by creating and presenting new ideas regarding institutional design, particularly at the intersection of private law and economic organization. That goal is pursued by advancing within the three traditional responsibilities of faculty membership—scholarship, teaching, and citizenship—discussed in detail below.

Scholarship

Purpose

My research focuses upon the legal determinants of transactional structure, with mergers & acquisitions and strategic alliances as common topics. Over the long term, this scholarly agenda is meant to illuminate new insights into the role private law plays in innovation and economic growth, not solely to explore the market for corporate control. In that respect, I consider my research as coterminous with my citizenship goals, discussed below, and also with my teaching responsibilities. Each prong is an opportunity to serve.

Self-Assessment

My academic training and practice experience are strengths providing a platform for future growth. I do not think I have difficulty formulating new research ideas, building relationships within the academy, or dedicating sustained effort to my research. I feel my largest challenge at the moment is getting a number of projects moving along, so as to establish a steady stream of output. A secondary challenge related to that is project selection—i.e., anticipating where the biggest potential payoff lies and focusing effort accordingly.

Development Goals

I divide my scholarly development goals into three categories according to time horizon:
1. Best Practices to Adopt
   a. Maintain an active ideas journal, where I keep track of all research ideas and do formative outlining;
   b. Write at least five hours per day (summer);
   c. Catalog recent research in my field by topic and author; create tracking system to stay up to date during the school year;

2. Goals
   a. Summer 2014
      i. Complete two draft articles: *Contract and Multidimensional Innovation Problems* and *Fragmented Contract Enforcement*;
      ii. Progress research on two additional projects, at least one related to mergers & acquisitions, so that drafting can begin in the 2014-2015 academic year;
   b. Academic Year 2014-2015
      i. Present at three academic conferences;
      ii. Submit two manuscripts for publication;
      iii. Develop my ability to use complex data analysis.
   c. Summer 2015 & Academic Year 2015-2016
      i. Have an article accepted at a top 20 law review;
      ii. Build relationships with two media outlets appropriate for my field;
      iii. Put together a grant proposal and assemble co-authors for empirical research.

Teaching

Purpose

In my teaching, I attempt to combine three complementary objectives: (1) creating an environment of intellectual curiosity, where ideas are developed and explored so as to show students how law can be shaped to respond to real problems; (2) teaching my students not only the structure of the law we are studying but also how to navigate and affect that structure; and (3) inspiring my students to pursue not only worthwhile social change but also a life of the mind.

Self-Assessment

My teaching evaluations suggest that I have a good start in pursuing the broad objectives above but that there is room for improvement. I think my primary challenge is organizing
my classes, deciding what is necessary to discuss, and combining traditional law school pedagogy with new methods to help students learning at different paces better achieve learning outcomes.

**Development Goals**

My discrete goals are as follows:

1. Revise my first-year contracts course to allow small group discussion, which proved effective when I used it in my business associations course last semester;
2. Create a framework for my first year contracts students to use when creating their outlines, including high-level questions they should be able to answer at the end of each module;
3. Use a mid-semester evaluation survey tool in my first year contracts class, and incorporate that feedback into my teaching in order to make any necessary course corrections;
4. Ask a few 3L law students to sit in on my first year contracts class and provide feedback; also ask a few faculty members to do the same.

**Citizenship**

**Purpose**

One of the reasons I came to BYU Law was the opportunity to contribute to building an organization that has made a tremendous difference in my personal life. While I consider my scholarship and my teaching as ways to making that contribution, I also hope to also add to the university’s intellectual and spiritual vibrancy through meaningful service.

**Self-Assessment**

I have made an effort to contribute consistently in both my committee assignments and in faculty governance decisions over the past year. My hope is to continue that level of service, to spend time thinking of and suggesting new measures which may improve the law school, and to build my professional network to increase BYU’s profile.

**Development Goals**

My citizenship goals are as follows:

1. By September 2014, propose ways to wring efficiencies from the admissions committee’s deliberation process, so that committee time can be more focused earlier in the process on identifying, attracting, and retaining high-quality applicants;
2. Create a consolidated applicant data tracking spreadsheet so that committee members (and law school administration) can readily see the applicants and admitted students pools’ characteristics and manipulate the data in order to anticipate how an admissions decision will affect a pool;
3. Provide three targeted comments on the manuscript presented at a Works In Progress meeting;
4. Participate in bringing scholars to the law school through the Law & Innovation colloquium.
5. In the 2015-2016 academic year, join the governance committee of a relevant scholarly organization, such as an AALS section.
My research focuses upon the legal determinants of transactional structure, with mergers & acquisitions and strategic alliances as common topics. Over the long term, this scholarly agenda is meant to illuminate new insights into the role private law plays in innovation and economic growth, not solely to explore the market for corporate control. In that respect, I consider my research as coterminous with my citizenship goals, discussed below, and also with my teaching responsibilities.

Goals to Accomplish by February 2015:
1. Submit *Contract and Multidimensional Innovation Problems* and *Fragmented Contract Enforcement* to journals;
2. Present at two academic conferences;
3. Have drafting well underway on two additional projects.

Productivity Strategies:
1. Keeping an ideas journal;
2. writing five hours a day during the summer, two hours during the academic year; and
3. creating a tracking system for related researchers whose work I am interested in.

Measuring Progress:
1. My publications goals will be measured by placement at respected journals within my field;
2. My presentation goals will be measured by acceptances to present work at conferences within my field;
3. My drafting goal will be measured by having over 50% of each paper drafted by February 2015.
Towards the goals of increasing collegiality at BYU and raising BYU’s profile nationally, I propose undertaking the following two projects:

1. Reaching out on a monthly basis to a colleague at the business school or in the economics department to have lunch, so as to build connections between faculty members working on similar topics. This would also include:
   a. Attending the business school’s case study boot camp;
   b. Attending business school conferences, such as the annual accounting conference.

2. Participating in the organization of the Law & Innovation colloquium at BYU Law, which brings external scholars to the law school to present papers. This project will include inviting scholars in my field of interest to the school, reviewing their manuscripts, taking them to dinner, etc.
Course Description

This is an introductory course on the legal rules relating to the enforcement of contracts. The institution of contract plays a central role in modern capitalism, and this course provides an overview of the formal doctrines by which that role is made manifest most publicly. In other words, there are a number of aspects of contract that are not considered here in depth, such as designing and negotiating agreements, informal enforcement mechanisms, comparative perspectives on enforcement institutions, etc. Our narrow focus on the core doctrines of American contract law will serve as a groundwork for further analysis in later courses of those and related issues, many of which carry as much practical weight as statutes and judicial opinions in the day-to-day functioning of the modern economy.

It is important to bear in mind that this course is above all a conceptual exercise focused upon teaching you legal analysis. One way to think about the class is that it teaches legal methods in the context of contract law. The corpus of American contract law comprises volumes, and therefore no attempt is made to familiarize the student with it in its entirety. Rather, a framework is provided by which you may navigate through more detailed contractual issues encountered during practice.

Texts

Our casebook will be Ayres & Klass, Studies in Contract Law (8th ed. 2012) ("Ayres & Klass"). We will also often reference the Uniform Commercial Code ("UCC") and the Restatement (Second) of Contracts ("Restatement"); links to electronic versions of each are available through the class TWEN site.

Learning Outcomes

By the end of the course, you should have developed the following substantive competences:

1. Identify and apply the requirements for creating an enforceable agreement;
2. Interpret the obligations set forth in a contract;
3. Identify a breach of a contract provision;
4. Determine the steps for enforcing a contract;
5. Understand the basic defenses to contract formation and enforcement; and
6. Calculate damages and/or determine what is required to obtain an equitable remedy.

While accomplishing those substantive goals, you will also build intuition regarding a number of additional topics, which relate more broadly to the legal enterprise, such as:

1. How a judicial opinion has precedential effect, and how precedent develops over time;
2. How to craft persuasive legal arguments; and
3. How trial courts and appellate courts interact.

Evaluation

Your final grade in this course will be based primarily upon a 3-hour, limited open-book essay examination, which is scheduled for [x].

Classroom Participation and Dynamics

The practice of law remains an in-person, oral experience in many respects. Boards of directors bring in counsel to consult with them during a board meeting. Lawyers appear before a judge to argue a motion. A judge consults with her clerks in chambers to work through a difficult issue. A partner meets with her team to discuss ways to structure a transaction. These are all situations where an attorney must participate in legal analysis orally, and one is often put on the spot to answer a tricky question. Our classroom provides a way for us to simulate these discussions in a safe environment.

For that simulation to be meaningful, it has to be (1) rigorous and (2) shared. Part of the professor’s job is ensuring the rigor. But the burden of making our class a shared experience largely falls on the students’ shoulders. Therefore, it is not enough for you only to be physically present in class. You have to be an active participant, engaged in our discussions on a daily basis. Engagement involves: (1) preparing for class by reading the assigned materials and formulating comments/questions; (2) answering and asking questions during class time; and (3) discussing concepts in your assigned small groups when the opportunity arises. In-class small groups will be used throughout the semester as a method for consolidating student learning after key concepts are introduced and discussed. There will be no direct assessment of small group participation, but those who actively contribute to their groups will likely find that they will be more prepared when called upon in class.
In accordance with the Law School’s Policies and Procedures, students with irregular attendance and/or poor participation may earn themselves a reduction in their final grade for the class.

**Recommended Study Habits**

Mastering law school is in many respects a personal journey, and what worked for me as a student may not necessarily work for you. Also, the practice of law is subjective. When you argue before a judge or counsel a client, *what you are doing is trying to convince them that you know what you’re talking about.* I’m afraid there is no formula for accomplishing that, but there are some basic guidelines:

1. You will not be able to convince anyone you know your stuff if you haven’t done the hard work of preparation. Great lawyering is all about preparation, coupled with some quick wits. So, you need to bear down in the library until you fully understand the cases you’re to work with. My sense is that a significant number of you have little idea of just how much effort this will involve, and you did not build strong study habits in undergrad. This is your wake-up call.

2. You hurt your chances of convincing someone you know your stuff if you do not take opportunities to practice. Our classroom is a laboratory in which you have the chance to practice your arguments before me and the rest of the class. It is a feedback mechanism.

3. You should start putting together an outline of the course early in the semester. I would recommend outlining the cases before class, and then revise afterwards in order to incorporate insights from class discussion.

4. You should do practice exams in order to get accustomed to the 3-hour in class format. Do not wait until the day before the test to take a practice exam for the first time.

5. You should take advantage of office hours. They are there for you. When you come to office hours, have a targeted question in mind. It is not the professor’s job to do your thinking for you. Questions like “I just don’t get X” or “could you explain Y” do not reflect careful thinking.

**Technology**

Consistent with Section I.P of the Law School’s Policies and Procedures, laptops, tablets, and other devices are allowed in class so long as their use pertains to classwork (e.g., taking notes). There may be times during class when I will ask the class to “unplug” by closing your laptops. Please remember that you have an ethical responsibility to your fellow classmates not to be a distraction through the use of such equipment. If a member of the class has a problem fulfilling that responsibility, I may ask him/her not to use electronics in the classroom.

No audio or video recording of the class is permitted. The class will not be recorded by the law school IT staff either.
Please remember to turn off your phones when you are in class.

*Children*

As fun as they are, children are not permitted in class. Please make adequate childcare arrangements.

*University Policies*

1. Preventing Sexual Harassment

Title IX of the Education Amendments of 1972 prohibits sex discrimination against any participant in an educational program or activity receiving federal funds. The act is intended to eliminate sex discrimination in education. Title IX covers discrimination in programs, admissions, activities, and student-to-student sexual harassment. BYU’s policy against sexual harassment extends not only to employees of the university but to students as well. If you encounter unlawful sexual harassment or gender-based discrimination, please talk to your professor, a law school dean, or contact the Equal Employment Office at 801.422.5895 or 801.367.5689 (24 hours).

2. Students with Disabilities

If you suspect or are aware you have a disability, I strongly encourage you to contact Dean Archibald as soon as possible. She can advise you regarding the accommodation process at the law school and the University Accessibility Center (UAC). It is located at 2170 WSC (801-422-2767).

A disability is a physical or mental impairment that substantially limits one or more major life activities. Examples include vision or hearing impairments, physical disabilities, chronic illnesses, emotional disorders (e.g., depression, anxiety), learning disorders, and attention disorders (e.g., ADHD). The UAC will evaluate the disability and eligible students will receive assistance in obtaining reasonable University approved accommodations. Dean Archibald facilitates implementation of the approved accommodations for the law school.

*Reading Assignments*

Readings for class will be distributed every few weeks through the TWEN platform. The materials you are to study in preparation for each class are listed by reference to page numbers in Ayres & Klass, relevant UCC and Restatement provisions, or any miscellaneous material that may be assigned. In addition to the primary cases assigned, you should also read the discussion notes following the cases, some of which will be discussed in class.
<table>
<thead>
<tr>
<th>Class No.</th>
<th>Topic</th>
<th>Ayres &amp; Class Assignment</th>
<th>Primary Cases for Discussion</th>
<th>UCC Provisions</th>
<th>Restatement Sections</th>
<th>Miscellaneous</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Introduction to Contract</td>
<td>--</td>
<td>RR v. MH; In re FTR</td>
<td>--</td>
<td>--</td>
<td>In re FTR, 833 N.W.2d 634 (2013)</td>
</tr>
<tr>
<td>3</td>
<td>Introduction to Contract</td>
<td>1-11, 21-36</td>
<td>Williams v. Walker-Thomas; Sullivan v. O’Conner</td>
<td>2-102 to 2-106; 2-703 to 2-710</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Bases of Contract Liability</td>
<td>79-100</td>
<td>In re Greene; Cohen; Thomas v. Thomas; Browning v. Johnson</td>
<td>110-124</td>
<td>Levine; Alaska Packers; Angel v. Murray</td>
<td>73, 89</td>
</tr>
<tr>
<td>6</td>
<td>Bases of Contract Liability</td>
<td>124-134</td>
<td>Rehn-Zeiger; McMichael; Wood v. Duff-Gordon</td>
<td>140-160</td>
<td>Rickett; Langer; Allegheny College; DeLeo</td>
<td>90</td>
</tr>
<tr>
<td>7</td>
<td>Formation</td>
<td>176-191</td>
<td>Embry; Lucy v. Zehmer; Raffles v. Wichelhaus</td>
<td>199-212; 222-224</td>
<td>Loner; Southworth; Lefkowitz</td>
<td>2-204</td>
</tr>
<tr>
<td>8</td>
<td>Formation</td>
<td>224-239</td>
<td>Bretz; La Saile; Carll v. Carboil; Smoke Ball Co.</td>
<td>224-306; 325-328</td>
<td>Drennan; Adams; Hill v. Gateway 2000</td>
<td>220-203</td>
</tr>
<tr>
<td>9</td>
<td>Formation</td>
<td>255-259; 269-274; 292-294</td>
<td>Russel; Dickinson v. Dodds; Baird v. Gimbel</td>
<td>255-299</td>
<td>In re Katrina; Centronics</td>
<td>220-206</td>
</tr>
<tr>
<td>12</td>
<td>Formation</td>
<td>405-406; 439-443; 467-470; 491-499</td>
<td>Bowling; Hiram Walker; Vokes;</td>
<td>405-406; 439-443; 467-470; 491-499</td>
<td>Varney v. Ditmars; Lefkowitz; Oglebay Norton</td>
<td>220-209</td>
</tr>
<tr>
<td>13</td>
<td>Formation</td>
<td>514-518; 525-528; 549-555</td>
<td>Rubenstein; Williams v. Walker-Thomas; Zapha</td>
<td>549-555</td>
<td>Varney v. Ditmars; Lefkowitz; Oglebay Norton</td>
<td>220-210</td>
</tr>
<tr>
<td>14</td>
<td>Formation</td>
<td>595-607</td>
<td>Kass; AZ v. BZ</td>
<td>595-607</td>
<td>Varney v. Ditmars; Lefkowitz; Oglebay Norton</td>
<td>220-211</td>
</tr>
<tr>
<td>15</td>
<td>Formation</td>
<td>612-627; 632-634</td>
<td>Mitchell; Masterson v. Sine; Alyeska Pipeline</td>
<td>612-627; 632-634</td>
<td>Varney v. Ditmars; Lefkowitz; Oglebay Norton</td>
<td>220-212</td>
</tr>
<tr>
<td>16</td>
<td>Formation</td>
<td>653-660; 669-677</td>
<td>In re Katrina; Centronics</td>
<td>653-660; 669-677</td>
<td>Varney v. Ditmars; Lefkowitz; Oglebay Norton</td>
<td>220-213</td>
</tr>
<tr>
<td>17</td>
<td>Formation</td>
<td>709-718</td>
<td>Angel v. Murray; Roth Steel; Zapha</td>
<td>709-718</td>
<td>Varney v. Ditmars; Lefkowitz; Oglebay Norton</td>
<td>220-214</td>
</tr>
<tr>
<td>18</td>
<td>Formation</td>
<td>729-752</td>
<td>All-Tech; Mark Dove; In re Carter</td>
<td>729-752</td>
<td>Varney v. Ditmars; Lefkowitz; Oglebay Norton</td>
<td>220-215</td>
</tr>
<tr>
<td>19</td>
<td>Formations</td>
<td>772-786</td>
<td>Palmer; Jacob &amp; Youngs</td>
<td>772-786</td>
<td>Varney v. Ditmars; Lefkowitz; Oglebay Norton</td>
<td>220-216</td>
</tr>
<tr>
<td>20</td>
<td>Formations</td>
<td>799-814; 832-838</td>
<td>Wegematic; Taylor; Canadian Industrial; Paradine; Kreil</td>
<td>799-814; 832-838</td>
<td>Varney v. Ditmars; Lefkowitz; Oglebay Norton</td>
<td>220-217</td>
</tr>
<tr>
<td>21</td>
<td>Remedial Responses</td>
<td>859-865; 867-870; 876-880</td>
<td>Taylor; McDonalds; Sullivan; John Hancock Mutual</td>
<td>859-865; 867-870; 876-880</td>
<td>Varney v. Ditmars; Lefkowitz; Oglebay Norton</td>
<td>220-218</td>
</tr>
<tr>
<td>22</td>
<td>Remedial Responses</td>
<td>883-886; 888-897</td>
<td>American Mechanical; New Era Homes; Nemeyer</td>
<td>883-886; 888-897</td>
<td>Varney v. Ditmars; Lefkowitz; Oglebay Norton</td>
<td>220-219</td>
</tr>
<tr>
<td>23</td>
<td>Remedial Responses</td>
<td>939-949; 957-966</td>
<td>Hadley; Spang; Bohac; Angel</td>
<td>939-949; 957-966</td>
<td>Varney v. Ditmars; Lefkowitz; Oglebay Norton</td>
<td>220-220</td>
</tr>
<tr>
<td>24</td>
<td>Remedial Responses</td>
<td>979-987; 988-996; 1010-1016</td>
<td>Curtice; Northern Indiana; Walgreen; Sw. Eng'g</td>
<td>979-987; 988-996; 1010-1016</td>
<td>Varney v. Ditmars; Lefkowitz; Oglebay Norton</td>
<td>220-221</td>
</tr>
</tbody>
</table>