

LEGAL INBOX

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I. INTRODUCTION

A general counsel is the ultimate business lawyer: they are, at once, a company employee, the company's top legal advisor, and an ethical standard-bearer. A strong relationship between the legal department and other business units is vital, and effective communication is one key to that relationship. The Legal Inbox is a pedagogical tool by which students practice this communication by stepping into the shoes of a general counsel responding via e-memo to various legal issues within the company.

Part II of this paper presents the defining characteristics of the e-mail memo or “e-memo,” as well as its pedagogical value. Part III discusses the role of the corporate general counsel, the value of teaching business students about the role, and how the general counsel role has been used pedagogically in the past. Part IV presents the Legal Inbox assignment, including teaching tips.

II. E-MEMO

As traditionally taught in law schools, the memorandum of law consisted of the following components: Question Presented, Brief Answer, Facts, Discussion, and Conclusion.¹ Since the 1950s, this format has been a cornerstone of legal writing.² However, e-mail and smartphones have led to a new genre of legal writing (or, depending on one's view, a new iteration of the established genre): the e-mail memo or “e-memo.”³

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¹ Katrina June Lee, *Process Over Product: A Pedagogical Focus on Email as a Means of Refining Legal Analysis*, 44 CAP. U. L. REV. 655, 668 (2016)

² Ellie Margolis, *Is the Medium the Message?*, 12 LEGAL COMM. & RHETORIC 1, 14 (2015).

³ Katie Rose Guest Pryal, *The Genre Discovery Approach: Preparing Law Students to Write Any Legal Document*, 59 WAYNE L. REV. 351, n. 98 (2013); see also Joe Fore, *The*

While the traditional memo follows a lockstep format, regardless of the issue at hand, a key benefit of the e-memo is its flexibility.⁴ Typically, an e-memo scraps the Brief Answer, Facts, and Conclusion sections in favor of a statement of the issue or a recommendation, followed by analysis; however, there is give in its organization.⁵ To be clear, an e-memo's format is distinct from a traditional memo's format: it is not a traditional memo copied into the body of an e-mail, nor is it an e-mail with an attached memo.⁶ In addition to its flexibility, the efficiency of this modern format allows its users to write more directly and accomplish more.⁷ Thus, it is no surprise that “email is now the most popular way for lawyers to provide legal advice.”⁸

Several studies speak to the e-memo's prevalence. A three-year ethnographic study found that attorneys used e-mail as their primary

Comparative Benefits of Standalone E-Mail Assignments in the First-Year Legal Writing Curriculum, 22 *LEGAL WRITING: J. LEGAL WRITING INST.* 151, 156-57 (2018) (discussing the academic debate of whether e-memos are a distinct genre or an iteration of the traditional memo).

⁴ Kristen K. Robbins-Tiscione, *From Snail Mail to E-Mail: The Traditional Legal Memorandum in the Twenty-First Century*, 58 *J. LEGAL EDUC.* 32, 33 (2008); Kristen K. Tiscione, *The Rhetoric of E-Mail in Law Practice*, 92 *Or. L. Rev.* 525, 532 (2013).

⁵ Kristen K. Robbins-Tiscione, *From Snail Mail to E-Mail: The Traditional Legal Memorandum in the Twenty-First Century*, 58 *J. Legal Educ.* 32, 48-49 (2008); Kristen K. Tiscione, *The Rhetoric of E-Mail in Law Practice*, 92 *Or. L. Rev.* 525, 532 (2013).

⁶ Margolis, *supra* note 2, at 9; Tiscione, *supra* note 4, at 532.

⁷ Robbins-Tiscione, *supra* note 4, at 48; Tiscione, *supra* note 4, at 531.

⁸ Fore, *supra* note 3, at 152.

form of communication.⁹ Likewise, a 2006 survey of Georgetown University Law Center graduates found that these young attorneys preferred to communicate research results and advice to clients by e-mail, as opposed to letters, phone calls, or face-to-face communication.¹⁰ The trend is only likely to continue, as many law school legal writing programs now incorporate e-mail assignments.¹¹ Thus, business schools must stay attuned to new pedagogies in law schools and trends in the legal profession as business students will be the future client-recipients of these e-memos. Indeed, business law professors set expectations for students regarding how their attorneys will communicate with and interact with them in their future professional roles.

The pedagogical use of e-memos connects directly with the learning persuasion of the Generation Z student.¹² Much has been said regarding Generation Z'ers' fondness for technology and creativity¹³, and an e-memo assignment taps into both by allowing students to create a digital writing. Though it may not often be thought of in this way, “[r]esearch shows that teenagers ‘write more than any generation

⁹ Ann Sinsheimer & David J. Herring, *Lawyers at Work: A Study of the Reading, Writing, and Communication Practices of Legal Professionals*, 21 *LEGAL WRITING: J. LEGAL WRITING INST.* 63, 63, 101 (2016).

¹⁰ Robbins-Tiscione, *supra* note 4, at 32, 48.

¹¹ Fore, *supra* note 3, at 182; *see also id.* at 157 (noting that “[s]ome commentators have even questioned the ongoing relevance of teaching the traditional, formal memorandum in light of its relative scarceness in modern practice.”).

¹² *See generally* Marisa A. Pagnattaro & Elizabeth A. Cameron, *Beyond Millennials: Engaging Generation Z in Business Law Classes*, 34 *J. LEGAL STUD. EDUC.* 317, 319-20 (2017). The author acknowledges that while Generation Z students represent “traditional” college students, Business Law classes must meet the needs of both “traditional” and “non-traditional” students, who may not be members of Generation Z.

¹³ *See, e.g., id.* at 319.

has since the days when telephone calls were rare and the mailman rounded more than once a day.”¹⁴ The prevalence of that writing may be overlooked, however, as it occurs in short formats, such as texting, e-mailing, and tweeting.¹⁵ The great benefit of an e-memo assignment is that because students are familiar with and comfortable with the format, they can give greater attention to the e-memo’s content, i.e. the business law topic on which the class is focused.¹⁶ In fact, one law school legal writing professor reflecting on an e-memo assignment noted that “[o]ne of the most interesting things that struck me about the experience was the fact that many students in the class did their best writing of the semester on the final e-mail assignment.”¹⁷ If a goal in a business law course is to impart future business people with legal knowledge to guide their business decisions, an e-memo allows students to focus solely on content and analysis without spending precious class time learning legal writing formats, such as case briefs, traditional legal memos, or even, overtly, IRAC. The e-memo method is familiar, tailored, and productive to business students.¹⁸

¹⁴ Margolis, *supra* note 2, at 8 (citing Mary Whisner, *Harvesting Relevant Cases on Lexis and Westlaw: Comparing Results*, 20 PERSPECTIVES: TEACHING LEGAL RESEARCH & WRITING 31 (2011)).

¹⁵ Margolis, *supra* note 2, at 8.

¹⁶ Tiscione, *supra* note 4, at 542-43 (stating that “[p]erhaps with e-mail, they can focus more on content because they are so familiar with electronic communications.”).

¹⁷ Ellie Margolis, *Incorporating Electronic Communication in the LRW Classroom*, 19 PERSPECTIVES: TEACHING LEGAL RESEARCH & WRITING 121, 124 (2011).

¹⁸ Lee, *supra* note 1, at 663 (writing that “[o]ral presentations and freewriting help strengthen legal analysis by removing some of the strictures of formal legal writing that can limit

An additional learning goal of the e-memo assignment is to promote and develop professional communication skills.¹⁹ An article discussing e-memos as law school assignments noted that “[j]ust as it is unfair to stereotype all law students as totally ignorant of professional norms regarding e-mail, it is also unfair to assume that writing professional e-mail is an inherent skill that law students possess.”²⁰ In this regard, business students may be better prepared for the assignment than the bulk of non-business major law students, as an undergraduate business student typically takes a business communications course as part of their major requirements. Thus, the e-memo assignment can build upon and reinforce lessons regarding professional e-mails learned in the business students’ previous coursework. As an additional learning opportunity, the assignment allows the business law professor to introduce a discussion of attorney-client privilege and confidentiality related to e-mail communications and forwarding or otherwise sharing those communications.²¹

students’ abilities to focus on legal analysis. Writing emails similarly removes some of those strictures. Thus, like oral presentations and freewriting, writing emails can help students focus on legal analysis.”).

¹⁹ Fore, *supra* note 3, at 174.

²⁰ Kendra H. Fershee, *The New Legal Writing: The Importance of Teaching Law Students How to Use E-Mail Professionally*, 77 MD. L. REV. ENDNOTES 1, 10 (2011).

²¹ Fore, *supra* note 3, at 174; Robbins-Tiscione, *supra* note 4, at 49; see also Robert Draba & Brent Marshall, *What Business Students Should Know About Attorney-Client Privilege*, 29 J. OF LEGAL STUD. EDUC. 297, 298 (discussing “three practical and easy-to-remember principles of attorney-client privilege that every business student should know”).

III. GENERAL COUNSEL

A. THE GENERAL COUNSEL ROLE'S SUITABILITY FOR THE ASSIGNMENT

As the ultimate business lawyer, a general counsel serves as the perfect lawyer for the e-memo assignment.²² First, a general counsel has been described both as “a jack-of-all-trades”²³ and as a “Swiss army knife.”²⁴ In other words, a general counsel must have abilities on a wide range of legal issues.²⁵ Thus, having a course narrative with a general counsel as its main character is a realistic way of having one attorney confront the wide-ranging legal topics encountered in a survey course such as business law.

Second, cultivating familiarity with the role of corporate counsel can carry benefits from the business school into the

²² Christian C. Day, *Teaching Students How to Become In-House Counsel*, 51 J. OF LEGAL EDUC. 503, 505 (2001); Steven L. Lovett, *The Employee-Lawyer: A Candid Reflection on the True Roles and Responsibilities of In-House Counsel*, 34 J. OF L. & COM. 113, 121 (2015); see also John D. Donnell, *The Corporate Counsel: A Growing Segment of Legal Practice*, 5 AM. BUS. L. J. 163, 165 (1967) (explaining that the first corporate lawyers were those working for railroads and insurance companies. *Id.* at 165. Those industries were first-movers due to government regulation and much routine legal work. *Id.* The article explains that New Deal legislation and war regulations drove up the need for legal advice for businesses. *Id.* The big push by companies to establish a legal department, however, took place after World War II. *Id.*).

²³ Day, *supra* note 22, at n.1

²⁴ Lovett, *supra* note 22, at 138.

²⁵ Day, *supra* note 22, at 505.

workplace. Multiple studies have queried businesspeople and corporate counsel alike about the appropriate topics to study in a non-law school business law course.²⁶ The results of those studies consistently indicate a need to emphasize and develop an understanding of the attorney-client relationship.²⁷

A 1968 article by John Donnell reports the results of the first such study,²⁸ which sampled “[t]he curriculum preferences of businessmen.”²⁹ The study’s results showed that the topic of “how businessmen can work most effectively with lawyers” ranked first to the respondents in terms of importance of topic emphasis in the course.³⁰ Likewise, a 1985 article reports the results of a survey of corporate counsel regarding the components of an appropriate business law curriculum.³¹ As for the most important topic of instruction, survey respondents ranked “Does a particular action or set of words constitute a binding offer to contract or an acceptance of an offer to contract?”³² As for the second most important topic of instruction, survey respondents ranked “When should an attorney be consulted and how should a manager prepare for such a consultation?”³³ A 1995 study further emphasizes the importance of educating business

²⁶ See, e.g., Donnell, *supra* note 22, at 165; Michael W. Little & William H. Daughtrey, Jr., *Survey of Virginia Corporate Executives on the Role of Law in Business Curricula*, 13 J. OF LEGAL STUD. EDUC. 147, 154 (1995).

²⁷ See, e.g., John D. Donnell, *The Businessman and the Business Law Curriculum*, 6 AM. BUS. L. J. 451, 454 (1968); Little & Daughtrey, *supra* note 26, at 154.

²⁸ Gary A. Moore & Stephen E. Gillen, *Managerial Competence in Law and the Business Law Curriculum: The Corporate Counsel Perspective*, 23 AM. BUS. L. J. 351, 354 (1985).

²⁹ Donnell, *supra* note 27, at 451.

³⁰ *Id.* at 454.

³¹ Moore & Gillen, *supra* note 28, at 387.

³² *Id.* at 377.

³³ *Id.*

students about the role of corporate counsel and then explains that this education can provide the grounds for a strong working relationship between the two.³⁴ That study, by Little and Daughtrey, found that executives believed that the learning outcome “Law courses help non-legal personnel work better with in-house legal counsel and law firms employed by the company” was second in priority only to the learning outcome “Law courses improve skills in handling contractual relationships.”³⁵

Third, focusing on the role of general counsel helps students connect their study of law with their study of business. The general counsel is “a core member of top management,” participating in both legal and business decisions.³⁶ By studying the work of this one corporate employee, students are able to see the weaving together of both law and business. As one scholar writes, “[b]ecause a legal problem is never just a legal problem, but rather arises out of a business problem, it is difficult in practice to draw a clear line between legal and non-legal [realms].”³⁷ He continues that, “almost every act of a corporation has some legal implication....”³⁸ Thus, scholars are increasingly finding that, for an in-house legal team to be successful,

³⁴ Little & Daughtrey, *supra* note 26, at 154.

³⁵ *Id.*

³⁶ Ben W. Heineman, Jr., *How the CFO and General Counsel Can Partner More Effectively*, HARV. BUS. REV., (July 25, 2016, <https://hbr.org/2016/07/how-the-cfo-and-general-counsel-can-partner-more-effectively>).

³⁷ Donnell, *supra* note 22, at 168.

³⁸ *Id.* at 169.

there must be collaboration between corporate counsel and managers.³⁹ One method of promoting this collaboration is perspective-swapping.⁴⁰ “Taking the perspective of the other person (or at the very least, learning more about the thought process behind legal or business decision-making) can help build a mutually complementary understanding that combines the best expertise from both the legal and the business sides.”⁴¹ For instance, Bird and Orozco describe one company’s use of job rotations to promote inter-departmental learning between the legal department and other business units.⁴² In fact, participation in these job rotations is viewed as necessary for the corporate counsel’s advancement within that company.⁴³

In this Legal Inbox exercise, students are able to step into the shoes of legal counsel, an exercise that will hopefully lay the foundation for the student to do the same once a member of a business team. As effective communication is key to building a strong relationship between the legal department and other departments, this exercise allows students to practice literally such communication.⁴⁴

³⁹ Evan A. Peterson, *Displaying the Value of In-House Lawyers to Management-Level Teams*, 6 ROCKY MOUNTAIN L. J. 38, 41 (2016-17).

⁴⁰ CONSTANCE BAGLEY, WINNING LEGALLY: HOW TO USE THE LAW TO CREATE VALUE, MARSHAL RESOURCES, AND MANAGE RISK 229 (2005).

⁴¹ *Id.*

⁴² Robert C. Bird & David Orozco, *Finding the Right Corporate Legal Strategy*, 56 MIT SLOAN MGMT. REV. 81, 87 (2014).

⁴³ *Id.*

⁴⁴ See Evan Peterson, *Techniques for Integrating Legal Considerations with Business Processes*, 9 S. J. OF BUS. & ETHICS 34, 50 (2017).

Finally, a general counsel as a main character forces the student to translate course material into specific guidance that managers can use to direct their steps. As opposed to a writing assignment couched as from an associate to a partner, a distinctly legal audience, a businessperson as recipient forces students to clearly state the law and provide a direct response to the query with actionable steps.⁴⁵

B. PEDAGOGY RELATED TO THE GENERAL COUNSEL

In the law school realm, pedagogy related to the corporate counsel role is sparse and generally focused on law school courses designed to prepare students for future in-house practice.⁴⁶ Even so, scholars have still called on law schools to offer increased coursework on in-house practice.⁴⁷

In the business law literature, however, pedagogy has incorporated the general counsel's role, either directly or indirectly, more liberally. For instance, one 2008 *Journal of Legal Studies Education* article presented a method of teaching about employment discrimination by using a matrix populated with *prima facie* elements.⁴⁸ As part of the activity, the author included a script

⁴⁵ Day, *supra* note 22, at 516.

⁴⁶ See, e.g., *id.* (describing a course at Syracuse University College of Law); Lovett, *supra* note 22, at 117.

⁴⁷ Lovett, *supra* note 22, at 117.

⁴⁸ Roger J. Johns, *The Matrix: A Pedagogical Tool for Teaching Employment Discrimination*

between corporate employees discussing a reduction in force.⁴⁹ In that script, the human resources director and general counsel discuss that over ninety-six percent of employees slated for lay-off are over age forty.⁵⁰ While the general counsel only takes a small role in the overall script, students are still introduced to the position and how that role might interact with other corporate employees.⁵¹ Likewise, in *Case Study of a Coffee War*, students are introduced to the role of general counsel as an ancillary character in the case.⁵² The case describes small business owners learning of potential trademark infringement via a “phone call from an insistent in-house lawyer at coffee giant Starbucks that threatened the very existence of their company.”⁵³ While the general counsel has only a bit part in those cases, the general counsel’s inclusion gives the instructor a launchpad for discussing and explaining the role to students. Furthermore, another article incorporated the role of general counsel in describing an exercise by which students could learn about decision tree analysis in ADR decision-making.⁵⁴ That article included a memorandum discussing a potential settlement from the company’s vice president and general counsel to its executive vice president.⁵⁵ In that exercise, students

Law, 25 J. OF LEGAL STUD. EDUC. 75, 79 (2008).

⁴⁹ *Id.* at 97.

⁵⁰ *Id.* at 104.

⁵¹ *Id.*

⁵² Sean P. Melvin, *Case Study of a Coffee War: Using the Starbucks v. Charbucks Dispute to Teach Trademark Dilution, Business Ethics, and the Strategic Value of Legal Acumen*, 29 J. OF LEGAL STUD. EDUC. 27, 27 (2012).

⁵³ *Id.*

⁵⁴ George Siedel, *Interdisciplinary Approaches to Alternative Dispute Resolution*, 10 J. OF LEGAL STUD. EDUC. 141, 155 (1992).

⁵⁵ *Id.* at 164-65.

responded to questions raised by the general counsel.⁵⁶ Thus, again, students are introduced to the role of the general counsel, but do not assume the role of the general counsel.⁵⁷ As another example, *The Attorney-Client Relationship as a Business Law-Legal Environment Topic* discusses an exercise whereby students are asked to advise a company president as to whether to hire an attorney to serve as in-house counsel for his company.⁵⁸ The exercise is designed to help students further an overall goal of the course that students gain understanding of the legal profession and how the businessperson and lawyer might interact.⁵⁹ Finally, an additional article introduces the role of in-house counsel in the context of an assignment demonstrating the use of a flipped classroom in a business law course.⁶⁰ That assignment describes an employee providing documents to inside and outside counsel in response to a Request for Production of Documents and discusses ethical issues involved.⁶¹

In all of the previous examples, students have taken the role or perspective of a member of a non-legal business unit; however, one

⁵⁶ *Id.* at 166.

⁵⁷ See also Robert J. Aalberts et al., *Terms of Engagement: What Does All That Contract Legalese Really Mean and How Can We Better Teach It To Our Students*, 26 MIDWEST L. J. 75, 90 (2012) (referencing the in-house counsel role in the context of a contract negotiation).

⁵⁸ Murray S. Levin, *The Attorney-Client Relationship as a Business Law-Legal Environment Topic*, 21 J. OF LEGAL STUD. EDUC. 241, 257, 264 (2004).

⁵⁹ *Id.* at 242-43.

⁶⁰ Perry Binder, *Flipping a Law Class Session: Creating Effective Online Content and Real World In-Class Team Modules*, 17 ATLANTIC L. J. 34, 34, 65-68 (2015).

⁶¹ *Id.* at 34, 67.

article describes students role-playing the company's general counsel.⁶² *The Social Network and the Legal Environment of Business: An Opportunity for Student-Centered Learning*, a 2013 article, discusses a course built around the film *The Social Network*.⁶³ As one course component, students role-play legal teams representing parties from the film, including a team role-playing Facebook's corporate counsel.⁶⁴ In that capacity, students submit "retainer agreements, forum [s]election, claims and defenses, discovery demands, legal arguments, and settlement offers," as well as a legal brief.⁶⁵

Other articles describe introducing students to the role of corporate counsel outside of the case or exercise context.⁶⁶ For instance, in *A Legal Studies Major: The Miami Model*, the authors describe a course module whereby students discuss "the benefits and problems encountered with both 'inside' and 'outside' counsel...."⁶⁷ To supplement the class, students hear a guest lecture by a local attorney working as in-house counsel.⁶⁸ As another example, in *New Top-Level Domain Names Add .xxxtra Company Burden*, the author describes a class activity in which students interview an in-house

⁶² See, e.g., Johns, *supra* note 48. But see Shelley McGill, *The Social Network and the Legal Environment of Business: An Opportunity for Student-Centered Learning*, 30 J. OF LEGAL STUD. EDUC. 45, 80 (2013).

⁶³ McGill, *supra* note 62, at 47-48.

⁶⁴ *Id.* at 80.

⁶⁵ *Id.*

⁶⁶ See Rene Sacasas & Anita Cava, *A Legal Studies Major: The Miami Model*, 9 J. OF LEGAL STUD. EDUC. 339, 341-42 (1991).

⁶⁷ *Id.*

⁶⁸ *Id.* at 347.

counsel regarding the company's IP portfolio.⁶⁹

As the foregoing shows, the role of general counsel and the relationship of corporate counsel to business units is a highly relevant topic in business law courses.⁷⁰ While this article is not unique in calling for the topic's inclusion, it is one of the few exercises allowing students to take the role of corporate counsel, an exercise with meaningful benefits. Further, it incorporates a trending law school legal writing method into the exercise. Finally, because of its characteristic brevity, it allows business law instructors to implement a series of writing assignments, even in large class sections or time-condensed courses.

IV. THE LEGAL INBOX ASSIGNMENT

A. ASSIGNMENT DESIGN AND OBJECTIVES

The Legal Inbox is structured as an e-mail from a company employee to the company's general counsel in which the employee is asking a legal question. Students take the role of the general counsel in responding via e-memo to the employee's question. While this article presents three Legal Inbox queries, a key benefit of the assignment is

⁶⁹ Perry Binder, *New Top-Level Domain Names Add .xxxtra Company Burden* 14 ATLANTIC L. J. 114, 144 (2012).

⁷⁰ See also *Results*, HARVARD BUSINESS PUBLISHING, <https://hbsp.harvard.edu/search?N=30000370&&Nrpp=10&Ntt=general+counsel&action=refined> (last visited July 20, 2019) (presenting HBS case studies incorporating a general counsel).

that the Legal Inbox format can be used as a teaching tool for any business law concept.⁷¹ In addition to its function as an application activity, this exercise has the goal of advancing two additional concepts: (1) to reinforce and develop professional communication skills and (2) to promote an understanding of the role of a corporate counsel among future businesspeople.

Prior to introducing the assignment to the students, the instructor will lecture on the Legal Inbox topic. For undergraduate courses, the instructor ensures that the lecture materials contain all of the case citations that the students will need to complete the assignment.⁷² Typically, the instructor will assign the Legal Inbox during the last course meeting in the week, grade the submissions over the weekend, and return the grades (or otherwise “open” them via the course management system) to the students in the first course meeting in the following week. This allows the class to discuss the topic seamlessly. As part of the debriefing exercise, the instructor will discuss the actual case on which the Legal Inbox is based. Thus, the debriefing session functions as assignment feedback and a review of the previous class’s material.

Assessment Methods

⁷¹ While the author has developed the three Legal Inbox scenarios in this article, among others, the author notes that the format serves as an excellent vehicle for incorporating fact patterns written by other instructors. For instance, the author has adapted successfully as a Legal Inbox assignment an exercise by Lawlor and Willey based on an independent contractor misclassification case. See Leila G. Lawlor & Susan L. Willey, *Are Your Workers Employees or Independent Contractors? Three Exercise to Help Students Accurately Classify Workers*, 34 J. LEGAL STUD. EDUC. 167 (2017).

⁷² As a variation for graduate courses, students could pursue their own case research.

The learning outcomes are measured via a rubric, a copy of which is included in the Appendix. The assignment is typically incorporated as an “application activity” for grading purposes. For a traditional, instructor-graded assessment, the Legal Inbox is an excellent tool because, as an e-memo, it is an inherently shorter format. It exemplifies substance over form. An advantage of this assignment is that an instructor may be able to assign multiple writing assignments testing different course topics. Furthermore, in class sections in which it may not be feasible to grade lengthy memos or case study responses (for instance, an online course on a condensed timeline), it may be feasible to grade a series of one page e-memo responses. This is a key benefit of the Legal Inbox assignment. Beyond its practical benefits, it is also important to note that it offers an alternative to graded exams for assessing students. Thus, this variation in assessment activities could benefit students who may perform better without the time pressure and stress associated with a graded exam.

One variation of the assignment that has been used successfully is to complete the response as an in-class, group activity. For this version of the activity, students take fifteen minutes to read and discuss the scenario. During that time, the instructor is able to walk around the classroom to answer any questions about the law that students may have. Once the groups have reached a consensus among members, the class comes together and discusses the agreement (or disagreement) among the groups’ responses.

C. THE VALUE OF A CLASS NARRATIVE

Of the general counsel role, one scholar wrote that “[t]he time of corporate executives in explaining the facts to the lawyer is also conserved by the corporate counsel because his [or her] broader and more intimate knowledge of the company ordinarily permit him [or her] to identify legal issues and to ferret out the pertinent facts more quickly than a lawyer from outside the organization.”⁷³ Interestingly, having a consistent narrative throughout a business law course has the same rationale: the roles and background are established, directing time and focus to the legal issue at hand. Of explaining the benefits of a common narrative for this type of law course, authors of a case wrote that it

provides a *contextual* setting to which the law can be applied, which can be referenced throughout the semester when chapters on relevant material are discussed. By using this one business setting, or *context*, to reinforce principles throughout a course, the focus subtly shifts from the legal environment of business to *business in its legal environment*, a very important distinction for learning because the relevancy of the material will become more obvious and less attenuated.⁷⁴

Certainly, such a shift is important. Likewise, another scholar recommended a common course narrative, citing the alternative of instructors seeking media clips and news stories on a variety of topics, “requiring factual foundation and student familiarity.”⁷⁵

⁷³ Donnell, *supra* note 22, at 165.

⁷⁴ Debra D. Burke & Carroll A. Brown, *Transitioning a River Outfitter to the Next Generation*, 31 J. LEGAL STUD. EDUC. 107, 107 (2014).

⁷⁵ McGill, *supra* note 62, at 47-48.

Just as those professors recommended a common narrative, so, too, does this article. In the initial introduction of the Legal Inbox assignment, the instructor explains the role of the general counsel to students and also explains the relationship between the general counsel's office and other business units. While the initial introduction of the Legal Inbox assignment calls for more time and detail, the subsequent assignments require little time for on-boarding, saving time for students to focus on legal analysis.

In large part to these benefits, the Legal Inbox assignments have been incorporated successfully by the author for ten semesters. The author has used the activity with success in both online and traditional class formats and in undergraduate and graduate courses. During those ten semesters, the Legal Inbox assignments have appeared cloaked in different industry iterations. Here, however, this article presents the Legal Inbox assignments in the context of ABC Manufacturing, Inc. The author has found that a generic company allows for maximum flexibility in terms of the legal issues that confront the company's employees.

V. CONCLUSION

Studies show that workers send and receive, on average, more than 120 business-related e-mails each day,⁷⁶ and a general counsel's

⁷⁶ Rob Asghar, *The Art of the Effective Business Email*, FORBES, June 12, 2014, <https://www.forbes.com/sites/robasghar/2014/06/12/the-art-of-the-effective-business-email/#690289a27875> (last visited June 30, 2019).

inbox is not exempt. Just as law schools are increasingly teaching future attorneys to communicate legal advice via e-mail, business schools should prepare the future recipients of those e-memos.⁷⁷ The Legal Inbox assignment provides that opportunity for business students with the goal that they gain an understanding of the general counsel role, all while deepening their knowledge of business law concepts.

⁷⁷ Fore, *supra* note 3, at 182.

APPENDIX A: LEGAL INBOX – TITLE VII

A. TEACHING NOTE – TITLE VII

The first Legal Inbox exercise concerns sex discrimination under Title VII of the Civil Rights Act. This assignment has the following objectives: (1) At the conclusion of this assignment, students will be able to identify the applicable employment statute; (2) At the conclusion of this assignment, students will be able to identify and distinguish between protected classes under Title VII; and (3) At the conclusion of this assignment, students will be able to analyze compliance with the applicable employment statute. The inspiration for the assignment comes from a Charge of Discrimination filed with the EEOC by a female job applicant who alleged that a pre-employment strength test implemented by her prospective employer violated Title VII of the Civil Rights Act by having a disparate impact on the basis of sex.⁷⁸

Paula Liles (the “Applicant”) applied for a position in the sausage packing area of Dial Corporation (the “Company”), a company that produces canned meats.⁷⁹ This position was physically-demanding, requiring workers to walk four miles during a shift and to lift approximately thirty-five pounds to a height of thirty to sixty inches above the floor.⁸⁰ Because of the position’s historic

⁷⁸ E.E.O.C. v. Dial Corp., 469 F.3d 735, 738-39 (8th Cir. 2006).

⁷⁹ *Id.*

⁸⁰ *Id.*

disproportionate number of injuries, the Company had implemented a number of injury-reducing measures including “an ergonomic job rotation, institution of a team approach, lowering the height of machines to decrease lifting pressure for the employees, and conducting periodic safety audits.”⁸¹ Two years after implementing the aforementioned measures, the Company also implemented a Work Tolerance Screen, a strength test required of potential employees.⁸²

Although the Applicant passed the Work Tolerance Screen, the Company denied her employment.⁸³ Subsequently, the Applicant filed a Charge of Discrimination with the EEOC and with the Iowa Civil Rights Commission.⁸⁴ Two years later, the EEOC filed suit on behalf of the Applicant and fifty-three other female applicants who were denied employment after taking the Work Tolerance Screen.⁸⁵ In its opinion, the U.S. Court of Appeals for the Eighth Circuit considered the district court’s finding that the Work Tolerance Screen had a discriminatory effect and that the Company had failed to prove that the Work Tolerance Screen was a business necessity.⁸⁶ The Eighth Circuit set out the rule that “[i]n a disparate impact case, once the plaintiff establishes a *prima facie* case the employer must show the practice at issue is ‘related to safe and efficient job performance and is consistent with business necessity.’”⁸⁷ The court continued to explain that the business necessity defense must “prove that the practice was related to

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.* at 740.

⁸⁷ *Id.* at 742 (citing *Firefighters Inst. for Racial Equality v. City of Saint Louis*, 220 F.3d 898, 904 (8th Cir. 2000)).

the specific job and the required skills and physical requirements of the position.”⁸⁸

In this case, the district court was persuaded by the EEOC’s expert that the Work Tolerance Screen was more difficult than the job.⁸⁹ Specifically, the Work Tolerance Screen had no rest breaks and an average of four times as many lifts as the actual job for which it was used.⁹⁰ The result of the Work Tolerance Screen’s implementation was a decline of females passing the test.⁹¹ In the three years prior to the test’s implementation, forty-six percent of the workers in this position were females.⁹² Post-implementation, female hires in this position dropped to fifteen percent.⁹³ Noteworthy to the court was that in two of the three years prior to the Work Tolerance Screen’s implementation, female workers experienced a lower injury rate than male workers.⁹⁴ Ultimately, the Eighth Circuit affirmed the district court’s judgment that the Company’s Work Tolerance Screen constituted disparate impact discrimination in violation of Title VII, though it did remand one claimant’s claim for back pay.⁹⁵

⁸⁸ *Id.* at 742.

⁸⁹ *Id.*

⁹⁰ *Id.* at 742-43.

⁹¹ *Id.* at 741-42.

⁹² *Id.* at 739.

⁹³ *Id.*

⁹⁴ *Id.* at 743.

⁹⁵ *Id.* at 745.

B. STUDENT HANDOUT – TITLE VII**ASSIGNMENT OVERVIEW:**

You are the general counsel (top in-house attorney) for the manufacturing company ABC Manufacturing, Inc. As the general counsel, you regularly receive e-mails and calls from company employees who want to ask you legal questions. The following e-mail has landed in your inbox. Using the knowledge that you have gained, please respond to this e-mail from Greg Davis, Logistics Manager.

ASSIGNMENT AND FORMATTING GUIDELINES:

Your response should be no longer than one page (double-spaced). Please submit your response via Canvas. The response is due on [date]. Please note our course policy that **no late work is accepted**. You are welcome to submit the assignment early, if you wish. Remember that if you obtain information from an outside source, you need to cite that information (this includes your textbook). Your response should be in the style of a professional e-mail. This means that you should have a greeting, a professional tone, complete sentences, a closing (such as, “Sincerely”), and an e-mail signature.

To receive full credit for the assignment, your response needs to address the following questions/issues:

1. Your response needs to clearly identify the applicable employment law-related statute. (*Example: “This case concerns the application of the Fair Labor Standards Act.”*).
2. Your response must clearly and correctly identify the protected class at issue. (*Example: “Title VII of the Civil Rights Act*

prohibits discrimination on the basis of race, religion, color, national origin, and sex in employment.⁹⁶ Joe Smith asserts that he was discriminated against by his employer on the basis of his national origin, a protected class. ”).

3. Your response must provide support for why the specific employment law at issue was or was not violated. An effective response will cite legal principles (from cases, your textbook, agency websites, etc.) in its analysis. *Example:*

A key goal of the Occupational Safety and Health Act is to keep workplaces safe.⁹⁷ To that end, the Occupational Safety and Health Administration requires certain employees to wear personal protective equipment. ⁹⁸ Personal protective equipment includes items such as “protective clothing, respiratory devices, and protective shields....”⁹⁹ Safety nets are another example of personal protective equipment and are required “when workplaces are more than twenty-five feet above the ground or water surface, or other surfaces where the use of ladders, scaffolds, catch platforms, temporary floors, safety lines, or safety belts is impractical.”¹⁰⁰ In your e-mail, you describe employees working thirty feet above the ground when Mr. Taylor fell and was severely injured. If the site had used a safety net in compliance with OSHA regulations, this injury likely would have been prevented.).

⁹⁶ Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e, et seq. (2018).

⁹⁷ About OSHA, DEPT. OF LABOR, <https://www.osha.gov/about.html> (last visited Nov. 9, 2018).

⁹⁸ 29 C.F.R. §1926.95 (2018).

⁹⁹ *Id.*

¹⁰⁰ 29 C.F.R. §1926.105 (2018).

4. Your response needs to directly answer the question asked of you. (*Example: "You are correct, Maurice. Allowing cashiers to work before they clock-in violates the Fair Labor Standards Act."*).

E-MAIL CORRESPONDENCE:

To: Maria Cruz, General Counsel
From: Greg Davis, Logistics Manager
Date: March 20, 2019 10:15 a.m.
RE: Warehouse Workers

Maria:

As I am sure you know, employees in our warehouse have a physically-demanding job. During the workday, they walk about four miles and transfer heavy metal racks that weigh about thirty pounds between two frames that are roughly three feet high. Because it is such a tough job, we have had a string of injuries in our warehouse. Most of the injured workers have been male workers, but a few female workers have been injured, too. For the past two years, we have been trying to introduce a range of initiatives to reduce the injury rate. This year, we have started doing a strength test for our job applicants. Basically, the strength test requires the applicants to lift a forty pound metal rack and transfer it between two frames that are five feet high. For seven minutes, the applicants are instructed to do as many lifts as they can. We purposefully designed the strength test to be harder than the actual job because we want to avoid more injuries.

Prior to this year, roughly fifty percent of workers in this position were male and fifty percent were female. We are noticing, however, that around ninety-seventy percent of male applicants pass the strength test, whereas only around ten percent of female applicants pass the strength test.

Do you see any problems with our strength test? Our hope is to make the warehouse a safer working environment.

Thanks, Greg

C. RUBRIC – TITLE VII

Criteria	Exceeds Expectations (3 points)	Meets Expectations (2 points)	Below Expectations (1 point)	Significantly Below Expectations (0 points)
Applicable Statute	Correctly identified the applicable statute.	-	-	Failed to correctly identify the applicable statute.
Protected Class	Correctly identified the protected class.	-	-	Failed to correctly identify the protected class.
Legal Analysis and Reasoning	Demonstrated compelling analysis and reasoning. Supported with outside sources.	Demonstrated an adequate understanding of the legal issue. Supported with outside sources.	Demonstrated a limited understanding of the legal issue. Could use additional citation to outside resources.	Analysis and reasoning did not show student understood the relevant legal issue.
Professional Standards	Fully complied with guidelines. Demonstrated proofreading.	Largely complied with guidelines. Largely demonstrated proofreading.	Somewhat complied with guidelines. Somewhat demonstrated proofreading.	Failed to comply with guidelines. Failed to demonstrate proofreading.

D. SAMPLE STUDENT RESPONSE

The following is intended to demonstrate a sample student response to the assignment. The response will vary depending on the level of the course and the depth of content coverage.

To: Greg Davis, Logistics Manager
From: Maria Cruz, General Counsel
Date: March 20, 2019 11:58 a.m.
RE: Warehouse Workers

Greg:

Thanks for your e-mail. As I am sure you know, Title VII of the Civil Rights Act prohibits discrimination on the basis of race, religion, color, national origin, and sex in employment.¹⁰¹ One theory of discrimination under Title VII is disparate impact discrimination. Under a disparate impact theory of discrimination, the employee does not need to show that we as a company intended to discriminate.¹⁰² Instead, the employee must demonstrate “statistically that the employer’s practices, procedures, or tests are discriminatory in effect.”¹⁰³ For any pre-employment test that we implement, we should

¹⁰¹ Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e, et seq. (2018).

¹⁰² ROGER LEROY MILLER, BUSINESS LAW TODAY: THE ESSENTIALS 500 (12th ed. 2020).

¹⁰³ *Id.*

be able to show that the test is consistent with business necessity.¹⁰⁴ In other words, we should be able to show that the skills that we test are consistent with the skills used in the actual job.¹⁰⁵ If we can do that, the employee still has the opportunity to show that a less discriminatory alternative to the test is available.¹⁰⁶

Here, you are correct that we want to have a safe workplace. However, the strength test that you describe appears to be much more difficult than the job itself. If you choose to retain the strength test, you should redesign it so that it is no more difficult than the actual job. However, my advice would be to eliminate the strength test. Given the success of the other safety measures that you have implemented, eliminating the strength test could avoid the potential for disparate impact discrimination against female job applicants.

Best regards,

Maria

¹⁰⁴ *Employment Tests and Selection Procedures*, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, https://www.eeoc.gov/policy/docs/factemployment_procedures.htm (last visited Nov. 9, 2019).

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

APPENDIX B: LEGAL INBOX – PERSONAL PROPERTY

A. TEACHING NOTE – PERSONAL PROPERTY

This assignment has the following objectives: (1) At the conclusion of this assignment, students will be able to distinguish between lost and abandoned property; (2) At the conclusion of this assignment, students will be able to explain the rule for finding lost property and the rule for finding abandoned property; and (3) At the conclusion of this assignment, students will be able to classify property as real property or personal property.

This Legal Inbox exercise comes from the case *Long v. Dilling Mechanical Contractors, Inc.*¹⁰⁷ In *Long*, the Indiana Court of Appeals found that bags of trash located in a company’s dumpster were, in fact, abandoned property.¹⁰⁸ In that case, a union employee who sought to organize the company’s employees for union membership removed trash bags from the company’s dumpster, hoping that the trash would contain employees’ names and telephone numbers.¹⁰⁹ The dumpster was located on the company’s property just two feet from a public sidewalk.¹¹⁰ There were two walls surrounding the dumpster, but it was open in the front to public access.¹¹¹ The company filed suit against the

¹⁰⁷ *Long v. Dilling Mech. Contractors, Inc.*, 705 N.E.2d 1022 (Ind. Ct. App. 1999).

¹⁰⁸ *Id.* at 1023.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

union and its employee, alleging theft, receiving stolen property, criminal trespass, burglary, and corrupt business influence.¹¹² The trial court granted the company's motion for summary judgment.¹¹³

On appeal, the union and its employee argued that the trash was abandoned property.¹¹⁴ For its part, the company maintained that the contents of the trash bags were not abandoned.¹¹⁵ The Indiana Court of Appeals reversed the trial court's grant of summary judgment and, instead, granted the union and its employee's Motion to Dismiss and/or Motion for Summary Judgment.¹¹⁶ The court noted the "widely held and long-standing doctrine that personality discarded as waste is considered abandoned."¹¹⁷ Abandoned property is that which has been relinquished, "with no purpose of again claiming it, and without concern as to whom may subsequently take possession...."¹¹⁸ Because the company could not show that it had a property right in the trash, then the company could not establish the union or its employee's liability.¹¹⁹ The court continued to point out ways in which the company could have protected the trash from abandonment, such as shredding the documents, placing the trash in locked containers, or placing the trash in an area not readily accessible to passersby.¹²⁰

¹¹² *Id.*

¹¹³ *Id.* at 1024.

¹¹⁴ *Id.*

¹¹⁵ *Id.* at 1025.

¹¹⁶ *Id.* at 1027.

¹¹⁷ *Id.* at 1025.

¹¹⁸ *Id.* (citing *Schaffner v. Benson*, 166 N.E. 881, 883 (Ind. Ct. App. 1929)).

¹¹⁹ *Id.* at 1026.

¹²⁰ *Id.*

As a point of contrast, the safeguards highlighted by the Court of Appeals in the *Long* case saved the day for a company in the 2019 case *Smith v. State*, a case that was also heard by the Indiana Court of Appeals.¹²¹ Those facts describe a car dealership whose company policy was to refuse to give away or sell old tires.¹²² The policy was intended to prevent legal exposure.¹²³ To that end, the company's premises were monitored by electronic surveillance and the used tires were stored in a fenced-in dumpster area that was typically locked.¹²⁴ A contractor disposed of the used tires.¹²⁵

The 2019 case arose after a woman and her accomplice entered the tire area when it was inadvertently unlocked and then drove away with several used tires.¹²⁶ After a misdemeanor theft conviction at trial, the defendant argued that the tires, as trash, were not "property" within the meaning of the statute as they had no value.¹²⁷ Interestingly, however, the defendant never argued that the used tires, though in a dumpster, were abandoned property.¹²⁸ Though the court in *Long* wrote, "trash is trash,"¹²⁹ trash that is monitored by video surveillance, overseen by employees, enclosed, and typically locked is different: the

¹²¹ *Smith v. State*, 2019 WL 510378 (Ind. Ct. App. 2019).

¹²² *Id.* at *1.

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.* at *2, *3

¹²⁸ *Id.* at *2.

¹²⁹ *Long*, 705 N.E.2d at 1026.

latter is not abandoned.¹³⁰ The appellate court affirmed the theft conviction.¹³¹

Lost and abandoned property can be a topic that initially receives a questioning look from students. Typically, an introduction of the topic will begin with a class discussion regarding the lost or abandoned items found by students, which can lead to a robust discussion regarding situational ethics. From there, the class proceeds to discuss legal principles and cases before using this Legal Inbox as an in-class group discussion prompt to allow students an opportunity to apply their knowledge.

B. STUDENT HANDOUT – PERSONAL PROPERTY

ASSIGNMENT OVERVIEW:

You are the general counsel (top in-house attorney) for the manufacturing company ABC Manufacturing, Inc. As the general counsel, you regularly receive e-mails and calls from company employees who want to ask you legal questions. The following e-mail has landed in your inbox. Using the knowledge that you have gained, please respond to this e-mail from Jason Pegg, Facilities Manager.

ASSIGNMENT AND FORMATTING GUIDELINES:

Your response should be no longer than one page (double-spaced). Please submit your response via Canvas. The response is due on [date]. Please note our course policy that **no late work is accepted**.

¹³⁰ *Smith*, 2019 WL 510378, at *2.

¹³¹ *Id.* at *3.

You are welcome to submit the assignment early, if you wish. Remember that if you obtain information from an outside source, you need to cite that information (this includes your textbook). Your response should be in the style of a professional e-mail. This means that you should have a greeting, a professional tone, complete sentences, a closing (such as, "Sincerely"), and an e-mail signature.

To receive full credit for the assignment, your response needs to address the following questions/issues:

1. Your response needs to classify the property as personal property or real property.
2. Your response must classify the trash taken by Mr. Greene as lost property, mislaid property, or abandoned property.
3. You must clearly and correctly state the legal rules that govern the outcome of this case. Your response must provide support for your answers for #1 and #2. Your response must analyze how those rules from #3 determine the outcome of the case. An effective response will cite legal principles (from cases, your textbook, etc.) in its analysis.
4. Your response needs to directly answer the question asked of you.

E-MAIL CORRESPONDENCE:

To: Maria Cruz, General Counsel
From: Jason Pegg, Facilities
Date: June 30, 2019 10:15 a.m.
RE: Back Dumpster

Maria:

We had a strange thing happen Monday night. The city picks up trash on Tuesday morning, so we make sure that all of the trash is out in the back dumpster before we leave on Monday. On Tuesday morning, one of the custodians who arrives at 6 a.m. noticed quite a bit of trash on the ground by the dumpster. She said that this had been going on for a couple of weeks. We pulled the security video, thinking that we might see an animal, but we were surprised to see that it was a person going through our dumpster.

We have contacted a company to come out this week and build a fence, but is there anything that we can do about the guy? The video shows him leaving with some papers. One of the maintenance workers says that he recognizes our dumpster diver as Donnie Greene. Donnie works for a union and has been trying to recruit some of our employees during the past month. We assume that he was trying to find employee contact information in the trash.

Regards,
Jason

C. RUBRIC – PERSONAL PROPERTY

Criteria	Exceeds Expectations (3 points)	Meets Expectations (2 points)	Below Expectations (1 point)	Significantly Below Expectations (0 points)
Personal or Real Property	Correctly classified the property.	-	-	Failed to correctly classify the property.
Lost, Mislaid, or Abandoned Property	Correctly classified the trash as lost, mislaid, or abandoned property. Provided support for response.	-	-	Failed to correctly classify the trash as lost, mislaid, or abandoned property. Failed to provide support for response.
Legal Analysis and Reasoning	Demonstrated compelling analysis and reasoning. Supported with outside sources.	Demonstrated an adequate understanding of the legal issue. Supported with outside sources.	Demonstrated a limited understanding of the legal issue. Could use additional citation to outside resources.	Analysis and reasoning did not show student understood the relevant legal issue.
Professional Standards	Fully complied with guidelines. Demonstrated proofreading.	Largely complied with guidelines. Largely demonstrated proofreading.	Somewhat complied with guidelines. Somewhat demonstrated proofreading.	Failed to comply with guidelines. Failed to demonstrate proofreading.

D. SAMPLE STUDENT ANSWER – PERSONAL PROPERTY

The following is intended to demonstrate a sample student response to the assignment. The response will vary depending on the level of the course and the depth of content coverage.

To: Jason Pegg, Facilities
From: Maria Cruz, General Counsel
Date: June 30, 2019 11:18 a.m.
RE: Back Dumpster

Jason:

Thanks for your e-mail. To address your question, we must first identify whether the items in the trash were real property or personal property. To make that distinction, we assess the items using the following three factors: (1) whether the items are attached to the land; (2) whether the items were intended to be considered part of the realty; and (3) whether the items are necessary to and adapted to the purposes of the premises.¹³² Based on the information that you provided, it is certain that the items in the trash are personal property.

Next, we must identify whether the garbage should be classified as lost, mislaid, or abandoned property. Lost property is property that “the owner has involuntarily parted with through neglect, carelessness, or inadvertence.”¹³³ Mislaid property is property that the owner intentionally places somewhere; however, the owner later

¹³² 73 C.J.S. *Property* § 17 (2019).

¹³³ 1 AM. JUR. 2D *Abandoned, Lost, and Unclaimed Property* § 13 (2019).

forgets where he or she placed it.¹³⁴ Abandoned property is property to which the owner has relinquished all rights and that is free to be possessed by another person.¹³⁵ In the case of personal property that the owner has abandoned, it becomes the property of the first person who later possesses it.¹³⁶

In this case, there is no suggestion that an ABC employee inadvertently placed any item in the trash or intentionally placed an item in the trash only to forget later where he or she placed it. Thus, the proper analysis turns on whether the garbage constitutes abandoned property. This will dictate whether the dumpster diver had a right to the items that he found in the trash.¹³⁷

In your e-mail, you mention one key fact: you are preparing to install a fence in the trash area. It should be noted that the location of the dumpster will influence the outcome of the analysis. If the dumpster is located on the curb, unlocked, and readily accessible to passersby, you would have a weak argument that the trash is not abandoned.¹³⁸ However, if the dumpster is located in a secure, locked location on private property, it would be clear that the trash was not yet abandoned (and, also, you would have a strong argument that the

¹³⁴ 1 AM. JUR. 2D *Abandoned, Lost, and Unclaimed Property* § 15 (2019).

¹³⁵ 1 C.J.S. *Abandonment* § 1 (2019).

¹³⁶ *Id.*

¹³⁷ 1 AM. JUR. 2D *Abandoned, Lost, and Unclaimed Property* § 1 (2019).

¹³⁸ See *Long v. Dilling Mech. Contractors, Inc.*, 705 N.E.2d 1022, 1026 (Ind. Ct. App. 1999).

dumpster diver was, in fact, a trespasser).¹³⁹ If you would like, we can discuss further regarding the location of the dumpster, the potential trespass of ABC's property, and any other potential claims.

Best,

Maria

¹³⁹ See *Smith v. State*, 2019 WL 510378, at *2 (Ind. Ct. App. 2019).

APPENDIX C: LEGAL INBOX – AGENCY

A. TEACHING NOTE – AGENCY

The third Legal Inbox exercise concerns agency law principles of apparent and actual authority. This assignment has the following objectives: (1) At the conclusion of this assignment, students will be able to distinguish between actual and apparent authority; (2) At the conclusion of this assignment, students will be able to analyze whether an employee had authority to bind the principal to a contract; and (3) At the conclusion of the assignment, students will be able to categorize a person as an agent or principal. The inspiration for the assignment comes from the Tennessee Court of Appeals case *Milliken Group, Inc. v. Hays Nissan, Inc.*¹⁴⁰

In *Milliken Group*, the facts describe a Nissan dealership's general manager entering into an oral contract with Milliken for site work.¹⁴¹ Milliken submitted a three-part bid.¹⁴² While the first part of the bid quoted a set \$35,000 price for certain work, parts two and three quoted prices that varied by yardage and tonnage.¹⁴³ At the project's conclusion, the final bill was \$130,000.¹⁴⁴

¹⁴⁰ *Milliken Group, Inc. v. Hays Nissan, Inc.*, 86 S.W.3d 564 (Tn. Ct. App. 2001).

¹⁴¹ *Id.* at 566.

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.*

On appeal, the issues were (1) whether the general manager had the authority to bind the dealership and (2) whether the trial court erred in the damages that it awarded to Milliken.¹⁴⁵ While the trial court found that the general manager had apparent authority to enter into the contract, the appellate court found that the general manager acted with both apparent and actual authority.¹⁴⁶ The court found that while, typically, a general manager did not have authority to enter into a contract for more than \$10,000, the general manager's conversations with the corporate secretary of the dealership made it clear that he had the authority to bind the dealership to the contract.¹⁴⁷ For instance, the court noted that the corporate secretary said to the general manager, “[q]uit trying to sell me, just get it done.”¹⁴⁸

Later, the corporate secretary selected Milliken as the company to perform the job out of three companies that placed bids on the project.¹⁴⁹ The question for the court, however, was how far that authority extended (to \$35,000 or to the full \$130,000).¹⁵⁰ Thus, the general manager had actual authority to bind the company to the \$35,000 bid, leaving the court to “determine whether [the general manager] was cloaked with apparent authority to approve the work as performed.”¹⁵¹

Milliken testified at trial that they knew that the general

¹⁴⁵ *Id.*

¹⁴⁶ *Id.* at 571.

¹⁴⁷ *Id.* at 567-68.

¹⁴⁸ *Id.* at 568.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.* at 569.

¹⁵¹ *Id.*

manager had to have corporate approval to enter into the contract, but they did not know that the general manager lacked authority to approve the continuation of the project (which, admittedly, was more extensive than the parties anticipated).¹⁵² Milliken also testified that they had done work for another dealership owned by the same group where they dealt exclusively with the site's general manager.¹⁵³ Furthermore, Milliken notified the general manager when project costs reached \$50,000 and also when costs reached \$80,000.¹⁵⁴ At both junctures, the general manager told Milliken to continue work.¹⁵⁵ Based on these facts, the Court of Appeals found that "in endowing [the general manager] with actual authority to contract with Milliken based upon a per unit price bid, and in failing to communicate any limitations to either [the general manager] or Milliken, [the corporate secretary] cloaked [the general manager] with the apparent authority to authorize Milliken to continue the work necessary to complete the project."¹⁵⁶

The facts presented in the Legal Inbox assignment are a simplified version of the facts described above. While students may not be able to definitively answer whether the site manager had apparent authority to enter into the contract, the students can clearly conclude that the site manager lacked actual authority for the full

¹⁵² *Id.* at 570.

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.* at 572.

\$130,000 and deduce that a court might find that the site manager had apparent authority. Thus, the instructor can prime the students by explaining that the general counsel may need additional facts from the district manager and should feel free to include the needed details in her e-memo.

B. STUDENT HANDOUT – AGENCY

ASSIGNMENT OVERVIEW:

You are the general counsel (top in-house attorney) for the manufacturing company ABC Manufacturing, Inc. As the general counsel, you regularly receive e-mails and calls from company employees who want to ask you legal questions. The following e-mail has landed in your inbox. Using the knowledge that you have gained, please respond to this e-mail from Fran Bruni, District 12 Manager.

ASSIGNMENT AND FORMATTING GUIDELINES:

Your response should be no longer than one page (double-spaced). Please submit your response via Canvas. The response is due on [date]. Please note our course policy that no late work is accepted. You are welcome to submit the assignment early, if you wish. Remember that if you obtain information from an outside source, you need to cite that information (this includes your textbook). Your response should be in the style of a professional e-mail. This means that you should have a greeting, a professional tone, complete sentences, a closing (such as, “Sincerely”), and an e-mail signature.

To receive full credit for the assignment, your response needs to address the following questions/issues:

1. Your response needs to clearly identify the legal issue.
2. Your response must clearly and correctly state the legal rules that govern the outcome of this case.
3. Your response must analyze how those rules determine the outcome of the case. An effective response will cite legal principles (from cases, your textbook, etc.) in its analysis.
4. Your response needs to directly answer the question asked of you.

E-MAIL CORRESPONDENCE:

To: Maria Cruz, General Counsel
From: Fran Bruni, District 12 Manager
Date: April 3, 2019 8:38 p.m.
RE: Contract

Maria:

We have a problem at the Shelby warehouse site. Julius Barry is the site manager there. There is an area behind the warehouse that Julius calls the “rainforest” because it is incredibly overgrown with vines and weeds. A few months ago, he asked if he could hire a company to clean it up so that employees could park there. I suggested that he reach out to the same company that ABC worked with last summer at the Greenville warehouse site. The bid that he showed me was for \$25,000, so I told him to move forward. I said something like,

“Just get the job done.” Yesterday, I saw that the final bill was \$130,000. There is no way that Julius could have thought that he had the authority to do this.

Here is the line from page 12 of the employee handbook:

ABC Manufacturing, Inc. expressly prohibits ABC Manufacturing, Inc. employees from signing contracts not approved by ABC's legal counsel.

Also, here is the line from the memo that we sent to all site managers last April:

Corporate policy expressly limits expenditures that can be authorized by site managers to under \$10,000. Any expenditure costing \$10,000 or more must be authorized by the District Manager. Failure to comply with this policy can result in discipline up to and including termination.

Are we stuck with this bill?

Thanks,

Fran

C. RUBRIC – AGENCY

Criteria	Exceeds Expectations (3 points)	Meets Expectations (2 points)	Below Expectations (1 point)	Significantly Below Expectations (0 points)
Apparent and Actual Authority	Correctly identified the applicable legal issue.	-	-	Failed to correctly identify the applicable legal issue.
Legal Analysis and Reasoning	Demonstrated compelling analysis and reasoning. Supported with outside sources.	Demonstrated an adequate understanding of the legal issue. Supported with outside sources.	Demonstrated a limited understanding of the legal issue. Could use additional citation to outside resources.	Analysis and reasoning did not show student understood the relevant legal issue.
Professional Standards	Fully complied with guidelines. Demonstrated proofreading.	Largely complied with guidelines. Largely demonstrated proofreading.	Somewhat complied with guidelines. Somewhat demonstrated proofreading.	Failed to comply with guidelines. Failed to demonstrate proofreading.

D. SAMPLE STUDENT RESPONSE

The following is intended to demonstrate a sample student response to the assignment. The response will vary depending on the level of the course and the depth of content coverage.

To: Fran Bruni, District 12 Manager
From: Maria Cruz, General Counsel
Date: April 3, 2019 9:22 p.m.
RE: Contract

Fran:

Thank you for reaching out. Your question concerns whether Mr. Barry had the authority to bind ABC to the \$130,000 contract for site work. ABC, the principal, will be bound on the contract made by its agent Mr. Barry if he had either the actual or apparent authority to enter into the agreement.¹⁵⁷

Actual authority consists of express authority and implied authority.¹⁵⁸ Express authority is granted “when the principal explicitly tells the agent what to do.”¹⁵⁹ Implied authority is the agent’s authority to do that which is “necessary to carrying the express powers into effect....”¹⁶⁰ Implied authority can also arise from the agent and

¹⁵⁷ 2A C.J.S. *Agency* § 175 (2019).

¹⁵⁸ 3 AM. JUR. 2D *Agency* § 66 (2019).

¹⁵⁹ *Id.*

¹⁶⁰ 2A C.J.S. *Agency* § 150 (2019).

principal's conduct or customs.¹⁶¹ Even if an agent does not have actual authority, the agent may have apparent authority.¹⁶² Apparent authority is when a third party reasonably relies "on an agent's alleged appearance of authority" or is "justified in assuming that [the] agent is authorized to perform on behalf of the principal the act in question."¹⁶³ Apparent authority can also arise when an agent goes beyond the scope of the actual authority granted to him or her by the principal.¹⁶⁴

In your e-mail, you describe Mr. Barry presenting you with a bid for \$25,000. Because you verbally told Mr. Barry to proceed with the project, he had the express authority to enter into a contract for \$25,000. The question, then, is whether Mr. Barry also had the authority to approve the entire \$130,000. Because corporate policy is clear regarding the approval necessary for contracts exceeding \$10,000 and is clear that contracts should be reviewed by the legal department, Mr. Barry did not have the express authority to authorize the additional \$105,000 expenditure. Likewise, he lacked the implied authority to approve this expenditure. Although he has the implied authority to carry out the functions of a site manager, corporate policy is clear that he needed additional approval before binding the company to the additional \$105,000. As to whether Mr. Barry had the apparent authority to bind the company, we must consider whether the company performing the site work could reasonably believe, based on ABC's

¹⁶¹ 2A C.J.S. *Agency* § 151 (2019).

¹⁶² 3 AM. JUR. 2D *Agency* § 71 (2019).

¹⁶³ *Id.*

¹⁶⁴ *Id.*

conduct, that Mr. Barry had the authority to approve this amount. Based on the information in your e-mail, we would want additional information regarding the contract with the company at the Greenville warehouse site and any facts that would suggest that the site work company could have believed, based on ABC's interactions with them during that experience, that Mr. Barry had the authority to do this.

I should also mention that if it is determined that Mr. Barry lacked actual and apparent authority to enter into the contract, ABC could ratify the contract. Ratification of the contract would bind ABC to the agreement by functioning "as a substitute for prior authority."¹⁶⁵

To summarize, Mr. Barry had the actual authority to approve the \$25,000 expenditure; however, he did not have the actual (express or implied) authority to enter into the agreement for the additional \$105,000. However, it is possible that Mr. Barry had the apparent authority to enter into this agreement. To make that determination, we will need additional facts about what the site work company could have believed, based on ABC's actions, that Mr. Barry had the authority to do.

Best,

Maria

¹⁶⁵ 3 AM. JUR. 2D *Agency* § 167 (2019).