1. ASSIGNMENT: Read pp. 475-92 in the text, this memo, and the attached balance sheet.

2. FACTS: At the time of the divorce, Tom’s company has rebounded from the efforts of his competitors to drive him out of business, and the business is worth somewhat more than it was at the time of the marriage. Tom has recently patented two new chemical compounds and, while it is still too early to tell, he expects that they will be very profitable in the future. Tom continues to work 60 hours or more a week, and to draw the same $150,000 salary he has throughout the seven year marriage. He has also retained his 80% interest in the company, which is closely held. Suzanne, who worked as Tom’s company’s business manager for two and a half years at the height of the company’s financial crisis, is now happily settled in a new job. She had a reported salary of $75,000 per year with Tom’s company, though she never collected more than two-thirds of the stated amount. The previous manager, who earned $45,000 per year, had been better trained for the position and had more experience than Suzanne. Suzanne’s new job pays $98,000 per year.

   In addition to the company, Tom owns a stock portfolio, which was worth $2 million at the time of the marriage, and has doubled in value (though it was worth a million more a few months ago). Both Tom and Suzanne have separate IRA’s, each in their own names. They own their home in joint tenancy, and each has a separate checking account. Suzanne still has approximately $35,000 in student loans outstanding. The trial court has declared the premarital agreement the parties signed invalid.

4. CLASS EXERCISE: Professor Robert Downs will come to class as a prospective expert witness. The two student volunteers will interview him to determine whether they wish to retain him as an expert in the case. It is appropriate in such an interview to ask him about his background, education, and experience in conducting valuations, including the method he would recommend for the valuation and how it might be applied to Tom’s company. Professor Downs will have seen this fact pattern, and the attached balance sheet before the interview.
### TOM'S CORPORATION
#### Balance Sheet
December 31, 2007

<table>
<thead>
<tr>
<th>Assets</th>
<th>Liabilities</th>
<th>Net Worth</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash $2,475,000</td>
<td>Current Liabilities $200,000</td>
<td>Capital Stock $4,000,000</td>
</tr>
<tr>
<td>U.S. Gov't Bonds 750,000</td>
<td>Mortg. Note Payable $300,000</td>
<td>$1.00 par value $4,000,000</td>
</tr>
<tr>
<td>Accounts Receivable (after reserve of 10%)</td>
<td>Total Liabilities $500,000</td>
<td>Paid In Capital $5,000,000</td>
</tr>
<tr>
<td>775,000</td>
<td></td>
<td>Retained Earnings $15,000,000</td>
</tr>
<tr>
<td>Inventory 5,450,000</td>
<td></td>
<td>$24,000,000</td>
</tr>
<tr>
<td>Plant (net after depreciation) 4,250,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Research, Development &amp; Patents 10,800,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Assets $24,500,000</td>
<td></td>
<td>Total Networth &amp; Liabilities $24,500,000</td>
</tr>
</tbody>
</table>
Curriculum Vitae

ROBERT CARL DOWNS

Home: 12403 Overbrook Rd.
Leawood, Kansas 66209
913-469-6847

Office: University of Missouri-Kansas City
School of Law
Kansas City, Missouri 64110
816-235-2392

Professional Experience

1978-Present  Law Professor
UMKC School of Law

1977-78  Adjunct Professor of Law
UMKC School of Law

1977  Adjunct Professor
Central Michigan University

Kansas City, Missouri

1968-1971  Associate - Linde, Thomson, VanDyke, Fairchild & Kohn

Representative Honors and Awards


Daniel L. Brenner Publishing Award recipient for the 1996-97 academic year, for the best faculty publication of the year. The award was received for the article, “Law and Economics: Nexus of Science and Belief”, 27 Pac. L. J. (1995).

The ROBERT C. DOWNS - UMKC School of Law Scholarship.
Class of 1997 created and funded (through donations from students, faculty, alumni and friends) an endowed scholarship in my name. Students, alumni and friends conducted the 1st Annual Bob Downs Golf Tournament to raise funds for the UMKC Law Foundation. Since that time, the golf tournament has become an annual event and has caused the endowment to reach approximately $200,000. The original scholarship has been awarded to students who have contributed to the life of the law school community through their service to the school. Recipients have coincidentally also been students of high academic standing. That scholarship will continue, with the endowment of $50,000. All future funding will be utilized to fund the Bob Downs Academic Scholarship, as a part of the new “Scholars Program”, and is intended to attract exceptional applicants to the law school.
Outstanding Professor Award - 1995-96; 1999-2000
Selected by the Senior Classes of 1996 and 2000 and awarded by the UMKC Law Alumni association.

The Elmer P. Pierson Good Teaching Award - 1988
Recommended by the Dean of the Law School and selected by action of the UMKC administration.

Outstanding Individual Contribution Award - 1978
From Renaissance West, Inc., a local United Way sponsored drug rehabilitation organization which I co-founded and assisted during most of the 1970's.

Various scholastic and leadership awards and selections in undergraduate and law school, including:

- Rocky Mountain Mineral Law Foundation Award, 1966
- Jurisprudence Scholastic Awards and Prizes for the highest class grades in Evidence, Labor Law, Jurisprudence, Legal Accounting, Securities, Trusts, Wills and Estates, and Natural Resources Law.
- University of Nebraska Law Scholarship - 1963-1966
- Roscoe Pound Law Scholarship - 1963-1966
- Outstanding Senior Scholastic Award - 1966
- President - Nebraska Law Student Association - 1966
- President - Law School Class - 1965
- Founder & Chair - Nebraska Criminal Law Project - 1965-1966
- Semi-finalist- University of Nebraska School of Law Thomas Stinson Allen Moot Court Competition, (1966)
- President - Junior Class of Mechanical Engineers - 1962
- President - Sigma Phi Epsilon Social Fraternity - 1962-63

Publications

A History of Women at UMKC School of Law, 72 UMKC L. Rev. 1011 (2004)

A History of Minority Students at UMKC School of Law, 68 UMKC L. Rev. 511 (2000)


Derivative Securities: Governmental Entities As End Users, Bankrupts And Other Big Losers, 65 UMKC L. Rev. 483 (1997) (with Lenora Fowler).

The First 100 Years, UMKC School of Law: An Abridged History, 64 UMKC L. Rev.
Law and Economics: Nexus of Science and Belief, 27 Pac. L. J. 1 (1995) (Lead Article)
Winner of the Daniel L. Brenner Publishing Award as the best faculty publication of the 1996-97 academic year.


Missouri Corporation Law with Forms, co-authored with Judge Pasco Bowman, 8th Circuit Court of Appeals. The Harrison Company, 1983.

Franchise Regulation: Comprehensive State Regulation Now Unnecessary, 49 UMKC L. Rev. 292 (1981)

There are also teaching and other materials published in the areas of Partnership Taxation and Mergers & Acquisitions, various Continuing Legal Education program materials, and several contributions to ABA Central And East European Law Initiative (CEELI) legislation projects for east European countries.

Education

Kansas State University, B.A. 1964

University of Nebraska, College of Law, J.D. 1966
See Honors & Awards listed above.

UMKC School of Law, LLM 1976

Courses Currently Taught

Business Organizations
A four hour required course which covers partnerships, limited partnerships, limited liability companies, corporations (private & public) with materials on agency, administrative law, tax law and securities regulation.

Mergers & Acquisitions
A three hour elective course which covers the state and federal law pertaining to business sales and combinations, including the tax of corporate reorganizations and securities regulatory issues. A significant component of this course is graded student negotiating exercises in which students (in paired teams) negotiate the purchase, sale or combination of hypothetical businesses.
Contracts I & II
Three hour courses in basic contract law. This is the traditional first year contracts course and includes most basic contract issues such as formation, operation, default, termination, damages, etc, with attention to case law, the Restatement Second of Contracts and the Uniform Commercial Code.

Courses Previously Taught

Securities Regulation (Taught for 13 years)
A three hour elective course covering selected issues of federal and state regulation of the sale and trading of investment securities. Particular attention is devoted to the registration of securities with regulatory agencies, the available exemptions from such registration, and civil (some criminal) litigation connected with the sale or trading in securities.

Tax of Corporate Reorganizations
An elective course covering the federal income tax implications of corporate reorganizations through mergers, purchases of stock or asset purchases.

Jurisprudence
Typically a three hour course which I have taught several times either alone or in collaboration with one or more faculty colleagues. The course covers (in various combinations) basic theories and topics about the nature and sources of Law, such as natural law, positive law, the regulatory state, law and economics, critical legal studies, critical race theory, feminist legal studies, and other modern and ancient ideas about law and society.

Law School Activities

Advisor & Coach - UMKC Negotiating Teams who compete in the National ABA Negotiating Competitions annually. Each year since about 1986. Served as primary leader/organizer, of Regional competition in years when UMKC hosted the regionals, in 1987-88, 1995-96, and 1996-97. Our teams have advanced from the regionals to the national finals 16 of the past 21 years and have reached the “final four” in the nation three times.


“Christmas In October” - Co-Leader and Straw-Boss for the UMKC School of Law student participation in this public service program. Since 1993
Chair of the Business Law Faculty Committee to administer, judge and award the Patricia and Marvin Rich Corporate Law Prize, established in 1995. This includes advertising the competition, evaluating the scholarly articles submitted by the applicants, helping select the winners, and making the arrangements with ACCA for the awards luncheon and presentation of awards and prizes.

All Student Functions: Regular and active participant in all student activities and functions, such as new student orientation, student recruiting, student placement, BALSA auction, moot court arguments judge, open house, $1.98 variety show, and many others.

Selected Presentations

Since 1997, there have been various annual MOBar update presentations, as well as presentations to CFO groups regarding fiduciary duties of officers and directors of public and private corporations, the most recent of which deal with Enron/Worldcom kinds of disclosure issues and corporate governance issues.

“Mergers and Acquisitions of Real Estate Companies” at Annual Conference sponsored by Genesis Realty Network, Inc., held in Tucson, AR, (March, 1997)
“Insider Trading” at College of Arts & Sciences, UMKC, for educational television program led by Professor Gil Shoham, (November, 1996)

“Who’s the Boss? - Advising the Board in a World of Activist Shareholders” at 10th Annual KCMBBA Corporate Counsel Conference, (October, 1996)

“Annual Survey of Business Law” at Missouri Bar Association’s 1996 Annual Survey of the Law, (September, 1996)

“Choice of Entity and Classification Problems” at the UMKC CLE & Graduate Tax Program on Taxation of Limited Liability Companies & Partnerships, (April, 1995)

“Capitalism and the Legal System In America” at Hangzhou University Law School, The People’s Republic of China, (May, 1995)

“Annual Survey of Business Law” at Missouri Bar Annual Meeting/Missouri Judicial Conference, (September, 1994)

“Women and the Law” at American Cablevision television program (August, 1991)

“Distributive Justice” at UMKC Department of Philosophy course entitled “Ethics in America: A View from the Heartland” taught by Professor Hans W. Uffelmann, Ph.D. (June, 1991)

“Taxation of Business Combinations” at The Annual Conference of Members of The Travelers Realty Network (a Division of Travelers Insurance Company) (May, 1990)

“Ivan Boesky and Securities Fraud” at the UMKC Honor Colloquium taught by Professor and Co-Director of Honors, Joan F. Dean (October, 1988)

“The Risks and Rewards of Acquiring Businesses” at the Equitable Realty Network Annual Conference (Sponsored by Equitable Insurance Company) (March, 1987)

“Recent Developments In Corporate Law – Directors’ Duties” at the KCMBBA Corporate House Counsel Committee seminar, (October, 1987)

“Corporate Director Liability” at the Government Employees Hospital Association, Board of Directors meeting, (November, 1985) (Stipend)

“Regulation & Choice of Investments” and “Choice of Business Structures” at two programs presented by Missouri Southern State College, (October, 1983)
Expert Witness Matters (Dates are approximate)


c. **Mead v. Mead & Sons, Inc., et. al.,** Circuit Court of Clay County, Missouri, Circuit Court Division, case number CV 197-2837-CC. Deposition testimony, 1998. (Atty: Tom Bender)


e. **Teleconnect of Kansas, Inc. vs. Laner.** Deposition testimony on behalf of plaintiff on September, 1998. Legal malpractice suit. Involves representation regarding business matters, conflicts of interest, etc. (Atty: McLaughlin?)


h. **Gold Bank Takeover Litigation.** Jackson County Circuit Court. Affidavit and Deposition. Fall, 2001. (Atty: Mike Waldeck)

i. **Scott & Asso. v. Troy Robert, et. al. (Dan Peters)** District Court of Wyandotte County, Kansas, #99C4845. Deposition testimony February, 2002. (Atty: John Campbell)

j. **Barber v. Barber.** Circuit Court, Jackson County, Missouri. Deposition and trial testimony. April/May, 2002. (Attorney: Thomas Bender)

k. **Black Box Securities Arbitration.** Testimony in arbitration hearing, June, 2002, Pittsburgh, PA. (Attorney: Michael Parrish)

l. **H & R Bloch v. America Online, Inc.** Circuit Court of Jackson County, Missouri, # 00-CV-219001. Deposition testimony, June, 2002. (Attorney: John Brady and Jennifer Bacon)

m. **Cowan v. PTEK, et. al.** Circuit Court of Jackson County, Missouri,
Case No. 00-CV-209715. Deposition testimony, August 1, 2002. (Attorney: Mike Waldeck)


o. Union Electric Company (d/b/a Ameren UE) Rate Case, before the Missouri Public Service Commission. Written testimony: Direct, Rebuttal & Surrebuttal, and deposition. (Attorneys: Jim Lower at Ameren, and Robert Cynkar, outside counsel.)