

## UMKC SCHOOL OF LAW

FAMILY LAW

PROFESSOR CARBONE

### VALUATION EXERCISE

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

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

## 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
1971-1978	Partner -	Linde, Thomson, VanDyke, Fairchild & Kohn Kansas City, Missouri
1968-1971	Associate -	Linde, Thomson, VanDyke, Fairchild & Kohn

### Representative Honors and Awards

Named a UMKC Law Foundation Scholar, with stipend, 2001.

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)

If It Can't Be Lake Wobegone. . . A Nationwide Survey of Law School Grading and Grade Normalization Practices, 65 UMKC L. Rev. 819 (1997) (with Nancy Levit).

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.

669 (1996)

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.

Piercing the Corporate Veil -- Do Corporations Provide Limited Personal Liability? 53  
UMKC L. Rev. 197 (1985)

Missouri Corporation Law with Forms, co-authored with Judge Pasco Bowman, 8<sup>th</sup>  
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.

Advisor & Sponsor - Law Student Chapter of Public Interest Law Association. Helped students organize and formalize its chapter. About 1992.

"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, BALSAs 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 KCMBA 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 KCMBA 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)

- a. ***APU v. Smith, Gill, et. al.***, United States District Court, Western District of Missouri, case number 95-0828-cv-w-1. Deposition testimony in 1997. (Atty: Spencer)
- b. ***Rack, et. al. v. Paul, et. al.***, United States District Court, for the District of Kansas. Deposition and trial testimony, 1997. (Atty: Tom Bender)
- 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)
- d. ***Rheuark v. Helt, et. Al.***, in the District Court of Johnson County, Kansas. Deposition testimony August 25, 1998. Legal malpractice case.
- 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?)
- f. ***Super Party, Inc., et. al. vs. National Football League Players Association, et. al.***, in the United States District Court for the District of Washington, D.C. Deposition testimony in 1999. (Attorney: Steve Gorby)
- g. ***Albers, et. al. v BG plc and Rudman***, in the American Arbitration Association at Phoenix, Arizona. Hearing testimony, 2000. (Attorney: John Brady)
- 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)

n. **United States v. David Wittig**, et. al. (2004/2005) U.S. District Court, Kansas City, Kansas.

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.)