

TSILLY DAGAN: And welcome to the second session of the Oxford Virginia Legal Dialogue workshop. I'm Tsilly Dagan, professor of taxation law at the Oxford University. And my co-convenor for this workshop series is Ruth Mason. She's the Edwin S. Cohen Distinguished Professor of Law and Taxation at the University of Virginia and an affiliate faculty member of the Virginia Center for Tax Law. And we're both very happy to welcome you here today.

So as you may know, the goal of this workshop is to facilitate dialogue across legal areas by bringing tax academics together with non-tax academics. And the concept is quite simple. Ruth and I invite tax academics that we admire to choose a work by a non-tax academic that they admire and discuss it with the author and with us.

So it's a really special treat for us to have here with us today Ron Gilson and Michael Knoll to discuss the Ron's classic piece on value creation by business lawyers, legal skills and asset pricing.

Ron Gilson probably needs no introduction to this audience. A member of the law school faculty at Columbia and an emeritus Professor of law at Stanford, Ron is one of the most prominent voices in corporate governance law and economics and corporate finance. He is an expert on capital markets, complex contracting, mergers and acquisitions, as well as securities regulation.

Ron is the author of two major casebooks on corporate finance and corporate acquisitions, as well as over 90 articles on US and corporate governance and on venture capital. Ron was a reporter of the American Law Institute's Corporate Governance Project. He's a fellow of the American Academy of Arts and Sciences and the European Corporate Governance Institute and is an independent board chair for the American Century Investments in the Mountain View family of mutual funds, managing over \$40 billion in assets. So thank you very much, Ron, for joining us today.

RONALD GILSON: I appreciate-- it's the it was one of the first things I wrote, frankly. And I think, frankly, it remains my favorite. So I'm delighted to have this chance.

TSILLY DAGAN: It's a humbling lesson for aspiring academics if this is the first one you've written. But we'll have to cope with that, I guess.

RONALD GILSON: [CHUCKLES]

TSILLY DAGAN: Ruth, to you.

RUTH MASON: OK, so it is my great pleasure to introduce my brilliant and wonderful friend and frequent co-author Michael Knoll. Michael is the Theodore Warner Professor and Director of the Center for Tax Law and Policy at the University of Pennsylvania Carey School of Law. He's also a Professor of Real Estate at the University of Pennsylvania's Wharton School. Michael writes about tax discrimination, sovereign wealth funds, private equity, international tax arbitrage, taxes and competitiveness, including the differences between what economists mean and what tax lawyers mean when they talk about competitiveness.

Michael comes at all of these topics from economics, which is why I love thinking things through with Michael. And I've been lucky to be able to do that frequently over the last, I don't know, 10 years or so, and a dozen articles. So there's no one better to start our discussion on Ron's piece, especially since Michael is both an economist and a professor of tax law.

So I know everybody is really excited to have Michael and Ron here today. But before we start, I just want to mention a couple of items of housekeeping. First, Michael will make some comments. And then Ron will respond. And then we will open it up to a Q&A.

So if you'd like to be in the queue, please use the Raise Hand function to access that. Just click Participants and then the Raise Hand button. You'll be able to see the queue. And you see there's a lot of people here today. So if the queue starts getting long, just be mindful of that and try to keep your questions short. And please also convey your name and your institutional affiliation in the chat so that we can give that information to our speakers today after the session.

For future sessions, There's a separate sign-up link which you can find on the web. And you can also sign up for our newsletter that will get you all of the invitations to all of the sessions. OK, so Michael.

MICHAEL KNOLL: Yes, it's to me, then, right.

TSILLY DAGAN: To you.

MICHAEL KNOLL: To me. Terrific. All right, well, thank you, Tsilly, for the invitation. Thank you, Ruth, for the invitation, for being my incredible full partner this last 10 years on our study of cross-border taxation. And I'm looking forward to more to come. I want to thank Oxford and the University of Virginia for sponsoring this series and Ron Gilson, who's been such an inspiration for agreeing to join in this new

and exciting format. And of course to everyone, both familiar faces and new faces, for your attendance today.

When I was asked to participate in this series and choose a classic nontax law review article that I thought tax scholars and practitioners would find valuable and interesting to read and discuss, my attention immediately went to Ron's highly imaginative and pathbreaking 1984 Yale Law Journal article, Value Creation by Business Lawyers-- Legal Skills and Asset Prices. That article not only began a theoretical and empirical literature to understand the work of transactional lawyers-- and many tax lawyers think of themselves as transactional lawyers-- it also gave rise to a new course, Deals, that is offered at law schools and some business schools in the United States and around the world.

Ron begins value creation by asking a pair of questions that is simultaneously both simple and profound-- what do transactional lawyers do? And why do sophisticated clients hire them? Ron starts by noting that clients and the public at large generally have a very uncharitable view of lawyers and the work they do, and that business lawyers themselves do not have a clear picture either.

Nonetheless, sophisticated, hard-nosed, money-conscious repeat players frequently and regularly hire lawyers, even if they complain about the cost of doing so. Thus, Ron concludes, lawyers must add value to the transaction. Otherwise, those bottom line-focused clients would not hire them.

Thus the question becomes, how do transactional lawyers create value for their clients? It cannot simply be by protecting their clients from their counterparties and their lawyers. Such distributive bargaining does not create value, it merely distributes it, but at a cost. If all lawyers did, to use the standard metaphor, was to divide the pie, sophisticated repeat players would eschew legal representation or at least rein in their lawyers.

No, instead, lawyers must actually increase the value of the transactions in which they participate. That is to say transactional lawyers must increase the size of the pie in order for their clients to justify the expense of hiring them. Thus Ron turns his attention to the question, how do lawyers increase the value of the transactions on which they work?

Ron addresses that question not as one might think, by examining what transactional lawyers do-- and Ron spent more time in practice than most of us academics-- but instead through economic theory. Using the paradigm of a sale-- think a substantial merger or acquisition-- Ron observes that basic finance theory implies that lawyers cannot add value. Ron draws on capital asset pricing theory, the main conclusion of which is that asset values are a simple, linear function of expected return and systematic or non-diversifiable viable risk.

In such a world, assets are valued based solely on their own characteristics. And hence there is little or no role for business lawyers to play in those transactions. At most, lawyers can document or execute an agreed-upon sale at an agreed-upon price, as there is nothing that they can do to increase the value of the transaction.

Ron's next step-- and this was a powerful insight-- is as follows. First, Ron recognizes that capital asset pricing theory is based on assumptions, including perfect information, which is to say all information is costlessly available to all market participants, and the absence of transactions costs, which is to say no agency, bankruptcy, and contracting costs.

It thus follows that either clients are wasting their money or the theory is wrong. Ron rejects the idea that clients are foolishly throwing away money. And so the theory must be wrong in the sense that some or all of the theory's assumptions are not accurate or even a fairly close depiction of reality. Because business lawyers are regularly being hired and paid handsomely, Ron then flips asset pricing theory's assumptions upside down and recognizes that business lawyers create value by compensating for the theory's failure, reducing the divergence between theory and the actual world.

For example, one assumption that does not hold in the real world is that the parties have perfect information. But lawyers can bring the parties closer to that condition, either by uncovering information or writing contract terms that reduce the risks raised by information gaps.

That insight, in turn, allows Ron to advance a view of the business lawyer that is very different from the traditional view of a lawyer, typically a litigator, either, depending upon your perspective, as a golden-tongued oral advocate seeking truth and justice, or a sophist protecting a dangerous and ill-willed client who is nonetheless entitled to vigorous legal representation.

Ron's view of the business lawyer is simpler and more technocratic. The business lawyer is an engineer. In Ron's terminology, a business lawyer is a transactions cost engineer, or more simply, a transactions engineer. Choosing a deal structure or drafting an agreement is thus an exercise in transactional engineering. The lawyer and her client are designing and building a legal framework that will memorialize and execute the transaction that the parties are planning and set the ground rules that will govern the parties' interactions for the duration of the agreement.

Structuring is a value creation exercise. And this is key for Ron-- it is not competitive between the parties, but cooperative. In many cases, lawyers make possible an attractive deal that otherwise might not be feasible because of asymmetric information and transaction costs. The view of transactional

lawyering has been referred to as the pie expansion to distinguish it from the pie division view of transactional lawyering.

Ron's next step, which accounts for much of the article's length, is to provide several examples from M&A agreements that illustrate how business lawyers create value for their clients. As Ron demonstrates, the provisions of the agreement work, which is to say add value, by overcoming failures in the capital asset pricing theory's assumption, which is to say much of the work that transactional lawyers do who compensates for asymmetric information or high transactions costs.

Ron's examples range from the straightforward and simple to the subtle and complex. Consider, for example, an earn-out. As Ron points out, buyer and seller will often have access to different information about an asset, such as a business. A seller might believe that the asset is highly valuable, confident that sales will be high, whereas a buyer might be skeptical of such claims. An earn-out, a contingent payment in whole or part, by allowing the price to be determined ex-post as events unfold, eliminates disagreement over the extent of future sales, an important source of asymmetric information.

A more subtle example involves the role of third-party opinions such as regards the tax treatment of a transaction or whether a leasehold is assignable. Such opinions typically require access to non-public information as well as legal analysis. Seller's counsel is often in the best position to obtain the information and to undertake the analysis.

Moreover, in contrast to the seller, who might have no interest or concern about his reputation beyond the current transaction except as a good tipper and genial person at the bars, beaches, and golf clubs to be frequent in an affluent retirement, an intermediary, such as the law firm that is regularly engaged in transactions with other intermediaries and acquirers, does have a reputation to protect. Maintaining that reputation can and often will constrain an intermediary from doing what even a paying client asks for. Not always-- and there are some famous cautionary tales here, such as Enron and Arthur Andersen, its auditors.

Having described the business lawyer as a transactions cost engineer and having provided some vivid examples of the valuable work such lawyers do, Ron underscores that transactional legal practice is substantially different than the content of courses that constitute the heart of the Business Law curriculum at most US law schools, courses such as Contracts in Business Associations and the more advanced courses that build upon them, including Bankruptcy, Mergers and Acquisitions, Secure Transactions, and others would suggest.

This leaves Ron to ask the question, why lawyers? That is, why do lawyers seem to have principal responsibility for transaction structuring, negotiation, and execution, as that work seems poorly connected to legal education, an issue he returns to. And so will I, shortly.

Ron's answer is twofold. First, the work of negotiating, drafting, and structuring transactions is closely connected with questions of regulatory treatment, where lawyers have an obvious and largely protected advantage over competitors, which Ron identifies as accounting firms and investment banks. And second, there are economies of scope that come from responsibility for the paperwork executing the transaction.

Nonetheless, Ron argues that such advantages are not a guarantee, especially given the nature of the work being largely orthogonal to a traditional legal education. And so lawyers need to be careful not to lose their comparative advantage. And in the intervening 35 to 40 years, both groups of competitors Ron identifies, accounting firms and investment banks, have come to play a larger role, with lawyers having less responsibility for structuring and more for execution in Mergers and Acquisitions and other practice areas as well.

That leads Ron into a critique of business law education, which he argues does not adequately prepare business lawyers for transactional work. That is because many of the skills the successful business lawyer employs are neither inherently legal nor are they acquired through a traditional legal training. Ron argues that business lawyers first need to consciously recognize that many of the functions they perform are not inherently legal and acknowledge that much of their transactional work product involves responding to situations of asymmetric information and high transactions costs.

Accordingly, Ron argues for refocusing business law education away from doctrinal, siloed classes and more towards theory. The theory Ron advocates law schools teach is transactions cost economics and finance. Moreover, Ron advocates teaching theory not in the way it has come to be taught, as relevant for understanding or criticizing the policy and logic behind the doctrinal laws, but rather as a basis for facilitating practice.

As Ron points out, theory is an extremely effective, efficient, and powerful way of conveying, storing, and organizing information. Also, a deep theoretical understanding as opposed to a siloed understanding based on traditional practice areas, should allow one to be more creative in designing solutions to novel and challenging problems.

The details of that theory and how to teach it go beyond the scope we have time for. And the latter has been substantially developed since Ron published Value Creation. However, the foundation is still the same. Much of what business lawyers do is transactional engineering, which is in turn an application of

transactions cost economics. Moreover, the set of underlying problems that lawyers address is, at a general and abstract level, fairly small, as are their class of solutions. Although those problems and their solutions present in a wide variety of forms that can differ sharply across practice areas, they are, in terms of their underlying structure, limited and constant across areas.

Accordingly, rather than having lawyers develop that understanding slowly, over time, through experience, working with more-senior lawyers, often through the legal apprentice system, commonly referred to as the Cravath system, Ron urges law schools to accelerate their students' learning by teaching the relevant theory to students and cementing that knowledge by showing them how it plays out.

Since this publication, Ron's Value Creation by Business Lawyers has had a large impact in academia. Ron's approach has been widely followed by other academics. In Ron's hands and in the hands of those who have followed him, the study of business lawyers as transactional engineers has provided many new insights and rich details about how deals are negotiated, structured, and executed, the work transactional lawyers and other transaction professionals do, and why many transactions take the form they do.

And indeed, from a quick glance at the people here, I see a number of people who've contributed to that literature are here today. Accordingly, Ron's view of the business lawyer, at least in part, as a transactional engineer, has become well-established and widely recognized. The widespread claim, a cliché, practically, that a business lawyer is a problem-solver, is a simplified version of Ron's transactional engineer. The irony is that many lawyers do not know, and few know at a deep level, how to problem-solve as Ron understands it.

Furthermore, Ron's article, especially his call for modernizing the pedagogy of business law teaching, has also had a substantial impact. In the mid-1990s, Ron, along with Victor Goldberg of Columbia Law School and Dan Raff, then of Columbia Business School, offered the first Deals course.

That course, which teaches the theory underlying the structure behind contracts and transactions, has been widely picked up at law and business schools in the United States and abroad. And Dan and I teach it together now at Penn. That offering, however, has not replaced nor does it attract as many students as the more traditional doctrinal courses.

What about tax? Ron spends only a small portion of value creation discussing tax. He sees the work of tax lawyers as fundamentally different from the private law work of other transactional lawyers and more in common with public law fields.

According to Ron, the tax lawyer, like the Securities lawyer is engaged in regulatory arbitrage, navigating the complex legal system in such a way as to reduce the burden of that system on private parties. And although that is so, it is not clear that such work is the limit of the tax lawyer's job or that her job is independent of the many other considerations that apply to business lawyers that Ron discusses.

Thus, practitioners and academics can benefit from the ideas in value creation. Consider, for example, frictions, a concept tax academics regularly invoke and practitioners have to regularly confront. Although nearly 40 years old, Ron's description and discussion of frictions is very sophisticated. It also relates very closely to the work tax lawyers do or that is directly impacted by their work.

For example, if a tax lawyer says that, in order to achieve a particular desirable tax result, a transaction cannot be structured as an asset sale, that is likely to have implications for the transfer of assets and liabilities and the extent of representations and warranties.

Or consider aircraft leases. Safe harbor leasing in the early 1980s produced simple lease contracts. Because all of the economic risk from the aircraft could be allocated to the lessee, the airline which controlled and operated the aircraft, while the tax benefits were transferred to the lessor, who did not. The end of safe harbor leasing meant that, in order for the lease to be respected and for the tax benefits to transfer from lessee to lessor, some of the risk had to remain with the lessor, which still did not control the aircraft.

Accordingly, these contracts got longer and more complicated to address the information and agency issues that were created. Or consider earnouts, which are used to bridge information gaps, but also have incentive effects that can be good or bad. While a business lawyer or other advisor might tell a seller, you'll pay tax when you receive payment, that statement covers and hides a lot of complexity. And sellers who do not understand the tax treatment of earnouts and are not adequately advised can miss opportunities to improve their after-tax results or may be surprised by the tax consequences of the deals they strike.

More generally, tax and nontax considerations interact they do not exist and separate independent realms. And understanding how they interact, which seemed to be helpful in practice and for scholars. Expressed somewhat differently, business lawyers need to understand some tax. But tax lawyers really need to understand business.

That leads me to my last point, which is more a question. What are the implications of Ron's ideas for tax pedagogy? And where should they lead us as tax teachers?

It is common to refer to transactional tax work, as Ron does, as engaging in regulatory arbitrage. Although some tax planning involves arbitrage, for example, borrowing against a business and investing in an IRA, most tax planning does not involve arbitrage, which is the simultaneous purchase and sale of offsetting positions.

Instead, most tax planning involves choosing among inexact alternatives that can produce significantly different tax consequences. Moreover, tax planning frequently occurs in situations involving multiple parties. Consider, for example, a business acquisition and the decisions whether to use cash or stock as consideration and whether to structure the acquisition as an asset sale, a stock sale, or a merger.

And if a merger, then what kind of merger? To advise the parties, one not only needs to understand the legal and tax doctrine, but also the impact of each option on both target and acquirer.

In recent decades, tax enrollments have declined. Should tax teaching focus more on tax planning? If so, how should we teach it? And how much attention should planning get? Also is there a theory of taxation that can be usefully incorporated into our pedagogy? And should we strive to connect tax with subjects outside of tax, and particularly with the work that transactional lawyers do?

These questions and more are among those that Ron's excellent 1984 article raises for tax practitioners and academics today. Thank you.

Ron, do you want to respond? I know it's a lot. [CHUCKLES]

No, what I initially want to do is thank Michael for that enormously kind summary of the thought behind the paper. Maybe the most useful thing I can do is talk a little bit about the relationship between the approach that's reflected in the old article and tax law, tax practice, and tax recognition, which I've spent a lot of time worrying about. Because as I try and teach the Deals course, I've got time for maybe one or 1 and 1/2 sessions, classes, in which I've got to explain something that I think is critical for nontax lawyers to be extremely sophisticated purchasers of tax expertise.

And where I've come down is sort of two central points which apply to tax law and also apply to the interaction of regulatory systems with transactions as well. The first one, which is critical, initially grew out of some work that Myron Scholes and Mark Wolfson and I did, and then grew to a book that Myron and Mark wrote that I think is just absolutely wonderful.

It makes one point. And I made a joke. I was asked to do a blurb for the back cover on the book. And I sent them something which was a fake blurb, which is to say-- it was something along the lines of, this book only has one idea, but one idea is a lot, and this one is really good. I really would have liked to have kept that, but the publisher wouldn't let me.

The point that Scholes and Wolfson stress is that the goal of tax planning isn't to minimize tax, it's to maximize after-tax income, which makes the nontax costs of implementing a tax-minimization strategy absolutely central. So that what a good tax lawyer has got to do-- and you'll recognize my own bias. This is kind of a translation of value creation into a tax world. They have to deeply understand the nontax costs of what the tax strategy is. The transaction lawyers are going to need help from the tax lawyers in framing those issues. In turn, the tax lawyers have to be able to identify what the constraints are and how that influences the kinds of costs of trying to invest in tax strategies.

And in turn, there's an implication which doesn't-- and the same framework will work for almost any regulatory system, I hope. The other point that's worth mentioning-- and this goes to improving the application of the concept, and in particular as the completeness of the capital markets have grown over the last 35 years.

When we talk about tax arbitrage from the perspective of a regulator, where perhaps, if we're writing tax treaties, we want to avoid tax competition, we want to avoid moving income around in ways that policymakers won't like. The trick that comes out of that analysis is that you've got to tie the cost of arbitrage to real nontax costs. It's got to basically be tethered to something that is very expensive in nontax costs in order to change. And that pushes you back to the same set of inquiries that I was trying to do with respect to business lawyers in the original article.

And also, I suppose, a second point, which for tax lawyers will come as no surprise, there's been an enormous amount of growth in both the nature of the applicable finance theory and a substantial growth in the range of economic and non-economic theory that needs to play the same role. And just to flag those as an example, there's a significant chunk in the Deals course now on option pricing.

And the reason for the inquiry is, one, there are embedded or what the financial economists will call real options in most transactions. Why is that important? The finance people will try and tell you that they can value real options.

My experience is I don't believe it. But that doesn't make it less important. What the option pricing theory that got the Nobel Prize in economics tells you is what factors drive the value of an option. If I

can identify-- if I can teach students to identify embedded options in a transaction, and then I just simply apply the five elements of option pricing without the math, into the analysis, it provides a really powerful heuristic to identify what it is the writer of the option or the holder of the option is likely to do in order to increase the value of what they hold.

They're going to try to extend the term. They're going to try and expose to increase the risk associated with the underlying cash flows. And it becomes a really nice way of getting across a bunch of concepts that otherwise-- good lawyers pick this up over time. And they end up to be very sophisticated even if they don't have a language to articulate it.

The other element of theory that has grown substantially since the original article is negotiation theory. I have people who come and they do a mock-- the ABA Negotiated Transactions group come. And they do a mock trial. They do a mock negotiation in the class. And they typically start out by laughing at me-- I don't mind the role-- in saying that ivory tower academic thinks everybody is cooperative. That's not the way acquisitions work. It's all tooth and claw. And it's a zero-sum game.

And I kind of respond by saying, look at the six people on the panel. You're all really good lawyers. In the city of New York or in every other major financial center, there are a bunch of really, really good transaction lawyers. You can't anticipate that you're going to be better than all of them in a predictable way. So treating it this way is just killing time and blowing money.

What one of the really nice things that's happened in negotiation theory is the recognition that, in the course of a negotiation, creating value and dividing value takes place simultaneously. And the strategies to get the most in the division, in the way of sharing information, that helped you create it in the first place.

So one of the things that still needs more work is how to create acoustic separation between the simultaneous process of creating value on the one hand and dividing it on the other. Behavioral finance is adding others. Amos Tversky and Danny Kahneman's work enlightens things. So there's a great deal more theory that can be applied than either existed in '84 or which I recognized in '84. But the framework still ends up being the same. The theory illuminates what it is the lawyer or the transaction specialist or the tax lawyer needs to do-- or the tax regulator-- in order to affect the value of the transaction.

And I suppose the closing point is really that, at the center of the transactional galaxy, the black hole is value. In the end, we need to be able to tie what we're doing to the value of the transaction to the client. If we're the regulator, we have to be able to tie the same theories into our regulatory strategy to

avoid efforts to arbitrage out of it or undercut it. And that, in turn, implies what Michael kindly referred to as we've got to do a better job of teaching what's important to what they're going to do.

And I'll close with the sense that legal practice has changed since I spent time in practice. It's faster. And my sense-- and people in the room will have a better view of it than I do-- that young associates don't get as many chances to figure things out as they did when I started practice, that the ability to be useful, to be given a document and have a framework for going through it and understanding what they should look for, makes them useful. And being useful is a really, really powerful way to identify what's necessary to be successful in very competitive law firms in the world that we all live in.

And I do think we have to do a better job at causing our students to be useful when they start. And the twist, which Michael did a better job of describing it than I did, that's not practitioner work in the negative way it tends to get talked about in the academy. It's deeply theoretical work. Because the theory is a way of transmitting information efficiently and quickly.

So I don't want Accounting for Lawyers. I don't want Finance for Lawyers. I want straight-- I want them to know accounting. I want to teach them that.

And for those of us who are worried about sustainability, about green finance, about quality, we damn well better be as sophisticated in finance theory and economics as the people on the other side of the table. Because otherwise, the issues we care about, we will systematically lose them. OK, I'm done.

RUTH MASON: Thank you so much. We're getting deeply into these issues. It's already a really great discussion.

Before we get to the queue, I just wanted to, Michael, give you a chance to respond if you wanted to respond to any of that.

MICHAEL KNOLL: I would very quickly-- thank you, Ron. I just want to pick up on a couple of points. There are a lot of great points there.

I often will use negotiations in class. And what I think might be the most useful in the context of Ron's article and that way of thinking is it shows, in some sense, the conflict between cooperative and competitive aspects of negotiation. And in addition, I believe, because the competitive can take so much time and take so much energy, it tends to overshadow the cooperative, both for the young lawyer who's

learning that both are happening, and it tends to cause people not to recognize and overlook what, in fact, Ron, you've exposed, which is the important cooperative side of it.

The other point I just want to briefly mention is that I think, in many ways, Ron foreshadowed the Carnegie report of 2007 on legal education, about the role of theory and how we should be teaching lawyers, law students, the real theory behind so much of what they are doing. I don't know that they gave much in the way of examples. But I think Ron really gave a great example in the article.

And there are a lot more ideas. But let me turn it over to the queue. So thank you.

RUTH MASON: All right, great. So we will start with Rick, Rick Reinhold.

RICK REINHOLD: Thanks, Ruth. Ron, this is a terrific paper. I'm really grateful for the panel, for the program to bring it to my attention. I read the article, and I really could not find anything I disagreed with.

And moreover, it echoed very strongly with the way I've thought about law practice. I've spent a while in law practice. I was trying to decide, recently, to answer one of my kids' questions how many merger agreements I've read. And I decided it was not a three-digit number, but probably not a five-digit number.

So I have seen this movie. And I strongly agree with what you say about value creation. If there were not value creation, the conversation with the client would be less than one minute long.

Regarding, the cooperative aspect, again, I strongly agree. I think business has gotten more sophisticated and lawyers have got more sophisticated. And people intuitively gravitate to a situation where there's more value. And then the interesting question is how to divvy it up.

And then, finally, I agree with your observation about the divide between the academy's perspective-- and I now teach full-time, but practiced law for a bunch of years-- the academy's perspective on what lawyers do and what actually happens in terms of law-firm practice and the interface with clients.

So again, I think you're really on to that one. In terms of tax, I guess my perspective is that tax has become perhaps even more important than it ever was. And it was always important.

When people ask me why they should take tax courses, I point out to them that, first of all, the government is your partner in these transactions to the extent of at least 40% and probably more. And wouldn't you like to know how much of that they're going to take and whether you could move that percentage down a little bit, or at least sort it out with the other side in order to get a split that works.

And then the other thing I say is that your client understands tax and the corporate lawyers need to understand tax. So if you're going to be a lawyer and practice, you really need to have a good understanding of tax. And the tax lawyers are not smart enough to come up with the best deal structures. And the corporate lawyers, working on their own, also aren't smart enough to figure out the best deal structures. They need to work together.

And therefore, the best corporate lawyers intuitively gravitate toward a deep understanding of the tax issues in the deal. And for the folks that want to say, I don't need to understand the analysis, just tell me the bottom line, that's not a good value solution for their client.

And then the last thing I'll say is, in terms of pedagogy-- and this is a subject I've actually come to think a lot about-- I think cases are a terrific way to teach. Really ripping apart cases and understanding, in detail, the underlying business transactions, the structures the parties used, the way it presents to the court, the way the court understood it, and then a post-mortem, what could have been done differently, is very much a real-world exercise that gets law students to think about how lawyers approach problems.

Because the doctrinal stuff is fine. But probably it's going to be changed. Or if it's really that straightforward, somebody else will have told them already.

But not the hard stuff is when new issues are presented are new opportunities are presented. And I think studying cases puts people in a situation where they begin to grasp the process of law practice. So I'll stop there. This is a subject I've actually thought a lot about. And I'd be happy to answer any questions.

RONALD GILSON: Let me just sign on to the teaching through cases. And by that, I don't necessarily mean judicial cases, I mean through transactions. A third of the Deals course, every year, is five new transactions, each one different from the other. Because the claim is this generalizes. And it consists of two days. A student team presents the transaction to the class. And the next day, the people who actually did the deal come in.

And I'll give you one current example, Steve Fraidin, who represented Pershing Square and Bill Ackman in the quite unusual SPAC transaction, basically reengineered the transaction to tie the promoter's interest to actual long-term performance. And walking through what they did, what they were thinking, and how to track that, as well as what that did for them on a competitive basis, is just as you suggested, an enormously powerful way to see how things fit together. And they've been a central feature of the way we do the Deals course from the beginning. I think your approach is exactly right.

RUTH MASON: That sounds like an amazing course.

MICHAEL KNOLL: Those of us who teach this course all have our favorite short case studies, a couple of pages that are designed to highlight some of these issues. And it's really about going from a passive form of learning to an active form of learning. And something which I don't know how much we do in the basic tax course-- I know we do it, often at the end, maybe, on an exam.

There one or two places I remember doing it, teaching basic tax. The Chamales case, the folks who bought the house next to OJ and took a loss deduction. I just asked the students the question, how much money is at stake, in essence, just to get them to start thinking through that the decision, today, to take a deduction is going to affect basis, and then how that relates to sales later on, and what the different rules are, just to try to make things a little more active, which I think is very much, Richard, the direction you're going in.

RUTH MASON: Thanks. And our next session is on June 11, where the featured work will be Building a Law and Political Economy Framework-- Beyond the 20th Century Synthesis. This work was chosen by Ann Alstott and one of the co-authors, Amy Kapczynski, both of Yale, will join us. You can register for that on the web.