

2023

The Foundation of the Theory of Law and Business

James E. Holloway Professor (Retired)
East Carolina University, hollowayj@ecu.edu

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Recommended Citation

Holloway, James E. Professor (Retired) "The Foundation of the Theory of Law and Business," *American University Business Law Review*, Vol. 12, No. 1 (2023) .

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THE FOUNDATION OF THE THEORY OF LAW AND BUSINESS

JAMES E. HOLLOWAY*

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I. INTRODUCTION

Government regulation, common law, and their applications and impact on American jurisprudence and business can no longer remain open questions. American legal and business education has given urgency to interpretations of using common law and government regulation. These interpretations include the making of lawful business decisions, plans, and operations recognizing the normative value of these lawful decisions, plans, and operations, and understanding the impact of law on business and its disciplines. The urgency of these questions is made most significant by the analytical and predictive skills, explanatory and applied knowledge, and methodological and analytical processes of modern legal and graduate business education that includes single and joint degrees such as JD/MBA, JD/MS, and JD/Ph.D., held by some lawyers and managers.¹ Other lawyers

* Professor (Retired), Business Law, College of Business, East Carolina University, Greenville, North Carolina 27858. B.S., North Carolina Agricultural & Technical State University, 1972; M.B.A., East Carolina University, 1984; J.D., University of North Carolina at Chapel Hill, 1983, jehs0626@aol.com or hollowayj@ecu.edu.

1. See, e.g., *Law & Business Curriculum*, VANDERBILT LAW SCHOOL, <https://law.vanderbilt.edu/academics/academic-programs/law-business-program/law-business-curriculum.php> (last visited Mar. 25, 2020) (“[O]ffer[ing] students interested in a career in corporate law a solid foundation in how businesses work”); *Business Law Curriculum*, BERKELEY LAW SCHOOL,

and managers do not possess joint law and business degrees but studied analytical tools and methods, explanatory and fact-sensitive principles, methodological order and sensitivity of law and business in one or more advanced undergraduate and graduate courses, such as the law school's quantitative business analysis and business school's government regulation of business.² In fact, who among us can say legal and business professionals do not knowingly or unknowingly integrate legal and business knowledge, analytics, or methodologies to recognize, address and manage legal and regulatory issues, concerns and risks arising in business decision-making, planning, and operations?³

The theory of law and business needs a jurisprudential foundation ensuring and enhancing fact sensitivity, analytical scrutiny, and methodological order in making lawful and examining unlawful decisions, plans and practices, recognizing unethical and other normative breaches of lawful decisions, and assessing the impact of law on business and its organizations and disciplines. This Article consists of eight parts explaining the explanatory, analytical, and methodological nature of the jurisprudential foundation and its ability to enable and support the theory of law and business in ascertaining and understanding legality, illegality, normative values, and the impact of law on business. Part II extends the introduction to explain the long-held response on, substance of earlier research on, and

<https://www.law.berkeley.edu/research/business/curriculum/> (last visited Mar. 25, 2020) (“[P]repar[ing] students for work in a range of disciplines, including business counseling, finance, litigation, entrepreneurship, academic research, government service and policy advocacy.”). Primarily, lawyers or attorneys-at-law who may also be managers or implanted in decision-making, planning, and operations give legal advice on the legality or illegality of transactions, circumstances, relationships, and other happenings. Many managers and executives cannot fully determine or ascertain legality or illegality but must emphatically know and understand legal advice on the legality of business ideas, happenings, findings, information, and conclusions. Most precisely, managers must know and understand legality or illegality at each stage of the processes of business decision-making and planning and on each practice or matter of conducting business operations. Simply, managers who cannot determine or ascertain legality must understand and use legal advice that is accompanied by relevant legal analytics, such as finding the legal issue or analyzing relevant facts, to aid in using legal advice. *See infra* note 2 and accompanying text.

2. *See, e.g.,* George Siedel, *Law and the Business School Curriculum*, BIZED AACSB INT’L (Mar. 15, 2017), <https://bized.aacsb.edu/articles/2017/03/law-and-business-school-curriculum> (explaining why common law and government regulation are essential courses in the curricula of colleges and schools of business); Howell E. Jackson, *Analytical Methods for Lawyers*, 53 J. LEGAL EDUC. 321, 321–22 (2003) (recognizing that law students need insight into qualitative and quantitative methods used by managers and executives to make business decisions).

3. *See* Michael J. Rizzo, *Navigating the Intersection of Law and Business*, 19 ELT 34, 35 (2007) (discussing the role of corporate counsels who practice corporate law at the intersection of law and business).

broad nature of the theory of law and business needing to rest on an active and stable jurisprudential foundation. Part III discusses the nature of the theory of law and business by explaining a taxonomy categorizing the impact of law on business of the integration of law and business combining legal and business knowledge, analytics, or methodologies. Part IV explains the need for a legal foundation consisting of jurisprudential or jural elements enabling integration of law and business by relying on common knowledge-, analytical-, and methodological-based properties to combine legal and business knowledge, analytics, or methodologies. Part V explains how the nature and role of jurisprudential elements of the foundation ensure and increase fact sensitivity, analytical scrutiny, and methodological order in ascertaining legality of business decision-making, planning, and operations.

The latter parts of the Article focus on the ability of the jurisprudential elements to enhance business knowledge, analytics, and methodology and support the use of a managerial analysis with law to ascertain and understand legality and illegality of business decision-making, planning, and operations. Part VI focuses on the effects of the legal foundation on business knowledge, analytics, and methodology. It explains that the jurisprudential elements complement and enhance uses of business knowledge, analytics, and methodology in making lawful and effective decisions, strategies, and practices to justify planned and unplanned business needs and advance legitimate and forward-looking business goals and objectives. Part VII focuses on the ability of the foundation to enable the integration of law and business by combining legal and business knowledge, legal and business analytics, and legal and business methodologies. It explains that the jurisprudential elements support a managerial analysis with law to form and create specific legal-managerial tools, methods and information in making the most effective and lawful end result at each stage of business decision-making and planning and each matter of business operations. Lastly, Part VIII concludes that the legal foundation consists of jural elements enabling the integration of law and business by combining amenable legal and business knowledge, analysis, and methods, examining the normative value of business decision-making, planning, and operations and lastly, assessing the impact of a legal rule or statutory provision on business and its disciplines and organizations.

II. LONG RESPONSE, EARLIER RESEARCH, AND BROAD NATURE OF THE FOUNDATION

The need for a jurisprudential or legal foundation is to enable the theory of law and business to explain and predict what could happen or had happened in making and implementing business decisions, plans, and

practices. These explanations and predictions are needed and useful to manage business organizations and their advantages and threats, using innovation and creativity to expand business markets and find advantages, as well as to relate business principles, analytics, and methods to address legal and regulatory issues, concerns, and risks.

A. A Long Response to the Question on the Need for School of Thought

The theory of law and business is a school of thought explaining and predicting uses of the integration of law and business to make unique explanatory, analytical and methodological combinations of legal and business principles, legal and business analyses, and legal and business decision-making methodologies in applications and uses of common law and regulation to make decisions, strategies, and plans.⁴ Practically, the theory of law and business is executed as a managerial analysis⁵ with law applying common law and government regulation accompanied by legal analytics in making business decisions, creating strategies, and assessing the impact of law on business and its disciplines and organizations. A managerial analysis

4. See generally James E. Holloway et al., *Law and Business as a School of Thought: A Pedagogy to Teach the Theory and Practice of the School*, 18 U.C. DAVIS BUS. L.J. 215 (2018) (detailing an integrated framework for the theory of law and business).

5. See generally ROBERT E. SCHELLENBERGER, *MANAGERIAL ANALYSIS* 8 (1969) (defining “[m]anagerial analysis . . . [as] the systematic investigation, compilation, manipulation, and presentation of information to a decision-maker in order to aid the decision-making process.”). The late Robert E. Schellenberger, Ph.D., occupied an office across the hall from my office in the College of Business at East Carolina University, Greenville, North Carolina. Robert’s academic area was operations research, and he explained that business decision-making was a methodology. He also listened to my thoughts on integrating legal and business analyses and decision-making methodologies. My interest in integrating law and business began with teaching prospective managers to know and understand the use of common law and regulation in business decision-making and the impact of law on business and its disciplines and organizations. See James E. Holloway, *The Nature of Teaching Legal Methodology as Managerial Analysis for Business Decision-Making*, 12 PROCEEDINGS OF THE MID-ATLANTIC ACADEMY OF LEGAL STUDIES IN BUSINESS 17 (Spr. 2001); James E. Holloway, *Management Education and Teaching Rational Judgment, Teaching Legal Methodology in the Middle Stages of Management Education*, 26 PROCEEDINGS OF THE MID-ATLANTIC ACADEMY OF LEGAL STUDIES IN BUSINESS 17 (Spr. 2000). However, Robert thought pedagogy was not the place to begin researching and writing on the integration of law and business. He also thought that research and writing should set forth a theory, explain how to use the theory, and then demonstrate how to teach the theory. Using Robert’s advice and guidance, I redirected my research and writing and eventually published a primer, concept, practicality, and pedagogy. See *infra* notes 6, 11 and accompanying text. Only recently did I see the need to place the school of thought on a jurisprudential foundation of jural and jurisprudential concepts and relations to add stability, continuity, and consistency to the theory of law and business and its application by a managerial analysis with law.

with law creates legal-business — or, preferably referred to as, legal-managerial⁶ — tools, methods, and information to aid in using common law and government regulation by combining legal and business knowledge, analytics, or methodologies to make lawful business recognize breaches of normative values,⁷ make lawful business decisions, plans and practices⁸ and describe the impact of law on business and its disciplines and organizations.⁹ Consequently, my solution for the need of a theory of law and business has

6. See James E. Holloway, *A Primer on The Theory, Practice and Pedagogy Underpinning a School of Thought of Law and Business*, 38 U. MICH. J.L. REFORM 587, 602–03 (2005) [hereinafter Holloway, *Primer*] (using finance theory and analysis to demonstrate the use of managerial analysis with law). In the theory of law and business, legal-managerial includes all of the diverse disciplines and areas of business and is not limited solely to management. Simply, the choice of legal-managerial is derived from the needs for and uses of business decision-making, planning and operations to make decisions, plans and practices within all business functions and areas, such as finance, marketing, real estate and management. Thus, a managerial analysis with law applies legal rules in the stages of business decision-making and planning and matters of operations involving the use of legal rules and principles in business and its disciplines and organizations. See Helena Haapio, *Introduction to Proactive Law: A Business Lawyer's View*, in 49 SCANDANAVIAN STUDIES IN LAW: A PROACTIVE APPROACH 21, 21 (Peter Wahlgren ed. 2010) (“Proactive law is based on a strong belief that legal knowledge is at its best when applied before things go wrong. In addition to avoiding disputes and litigation, proactive law seeks to promote and strengthen ways to use the law to create value, do what is right, and build a solid foundation for business. . . .”).

7. See Otto Spijkers, *What's Running the World: Global Values, International Law, and the United Nations*, 4 INTERDISC. J. HUM. RTS. L. 67, 68 (2010) (quoting MILTON ROKEACH, *THE NATURE OF HUMAN VALUES* 5 (1973)) (“A value is an enduring belief that a specific mode of conduct or end-state of existence is personally or socially preferable to an opposite or converse mode of conduct or end-state of existence.”); Robin Derry et al., *Nature's Place in Legal and Ethical Reasoning: An Interactive Commentary on William Frederick's Values, Nature and Culture in the American Corporation*, 36 AM. BUS. L.J. 633, 636 (1999) (stating that “[v]alues are standards or criteria for guiding behavior and conduct.”). One commentator has recognized a lack of normative values in a business curriculum relying heavily on theory of law and economics. See Reginald Shareef, *Want Better Business Theories? Maybe Karl Popper Has the Answer*, 6 ACAD. OF MGMT. LEARNING & EDUC. 272, 272 (2007) (arguing that some MBA students are led to believe business decision-making, planning and operations are value-free); see also *infra* Part III.B and accompanying notes (introducing the need to find normative values of lawful decisions, plans and practices and recognizing unlawful decisions, plans and practices lack both legal and normative values).

8. See *infra* Part III.B and C and accompanying notes (explaining the nature of the theory of law and business and its use of a managerial analysis with law to form and create legal-managerial tools, methods and information to determine the legality of each stage of decision-making and planning and each matter of business operations).

9. See *infra* Part III.A and accompanying notes (explaining how a theory of law and business uses a legal-business taxonomy to describe and explain the impact of common law and regulation on business and its disciplines and organizations by categorizing and explaining losses of managerial discretion or latitude, restrictions on discipline knowledge and analytics, and regulatory effects of continuous lines of harmful business decisions, strategies and practices).

always been positive for 38 years; the foundation of the theory of law in this article is not written on the proverbial clean slate.¹⁰

B. Earlier Research on the Theory of Law and Business

Earlier articles on this subject usually state and define concepts, practicality, and pedagogy that were originally introduced as a primer on a theory of law and business.¹¹ The integrated knowledge, analytical and methodological nature of the theory of law and business needs a jurisprudential foundation enabling the integration of law and business by underpinning the concept and giving support to the practicality and pedagogy. Foremost, the concept must possess an explanatory, analytical and methodological nature capable of explaining and evaluating legality and recognizing normative validity or usability of business situations,

10. James E. Holloway et al., *Law and Business as a School of Thought: A Pedagogy to Teach the Theory and Practice of the School*, 18 U.C. DAVIS BUS. L.J. 215 (2018) [hereinafter Holloway et al., *Pedagogy*]; James E. Holloway, *A Concept-Sensitive Managerial Analysis With Law: Applying a Business Concept to a Legal Rule to Identify the Domain of Business Situations*, 6 WM. & MARY BUS. L. REV. 137 (2015) [hereinafter Holloway, *Concept*]; James E. Holloway, *A Primer on The Theory, Practice and Pedagogy Underpinning a School of Thought of Law and Business*, 38 U. MICH. J.L. REFORM 587 (2005); James E. Holloway, *The Practical Entry and Utility of a Legal-Managerial Framework Without the Economic Analysis of Law*, 24 CAMPBELL L. REV. 131 (2002); James E. Holloway, *The Nature of Teaching Legal Methodology as Managerial Analysis for Business Decision-Making*, 12 PROC. OF THE MID-ATLANTIC ACAD. OF LEGAL STUD. IN BUS. 17 (2001); James E. Holloway, *Management Education and Teaching Rational Judgment with the Law: Teaching Legal Methodology in the Latter Stages of Management Education*, 2 ATL. L.J. 96 (1999).

American and European colleagues have proffered law and strategy or a proactive law approach to ascertain and explain how common law and regulation can be more beneficial and useful to gain lawful competitive advantages and other business benefits and opportunities. See, e.g., David Orozco, *Strategic Legal Bullying*, 13 N.Y.U.J.L. & BUS. 137 (2016); GEORGE J. SIEDEL & HELENA HAAPIO, *PROACTIVE LAW FOR MANAGERS: A HIDDEN SOURCE OF COMPETITIVE ADVANTAGE* (2011); Robert C. Bird, *Law, Strategy, and Competitive Advantage*, 44 CONN. L. REV. 61 (2011); George J. Siedel & Helena Haapio, *Using Proactive Law for Competitive Advantage*, 47 AM. BUS. L.J. 641 (2010); Constance E. Bagley, *What's Law Got to Do with It? Integrating Law and Strategy*, 47 AM. BUS. L.J. 587 (2010); David Silverstein & Daniel C. Hohler, *A Rule-of-Law Metric for Quantifying and Assessing the Changing Legal Environment of Business*, 47 AM. BUS. L.J. 795 (2010); Larry A. DiMatteo, *Strategic Contracting: Contract Law as a Source of Competitive Advantage*, 47 AM. BUS. L.J. 727 (2010); *PROACTIVE LAW IN A BUSINESS ENVIRONMENT* 13–31 (Gerlinde Berger-Walliser & Kim Østergaard eds., 2012); Constance E. Bagley, *Winning Legally: The Value of Legal Astuteness*, 33 ACAD. MGMT. REV. 378 (2008); Robert C. Bird, *Pathways of Legal Strategy*, 14 STAN. J.L. BUS. & FIN. 1 (2008); GEORGE J. SIEDEL, *USING THE LAW FOR COMPETITIVE ADVANTAGE* (2002); Helena Haapio & Annika Varjonen, *Quality Improvement Through Proactive Contracting: Contracts Are Too Important to be Left to Lawyers!*, ANN. QUALITY CONG. PROC., 243 (1998).

11. Holloway, *Primer*, *supra* note 6, at 587.

information, findings and conclusions in stages of the processes of business decision-making and planning and on matters of conducting continuing or ongoing business operations.¹² Next, the practicality lies in the application of a managerial analysis with law to ascertain legality and recognize the normative validity or usability of business situations, findings, information and conclusions to make a lawful end result¹³ at each stage of recursive business decision-making and planning, as well as on each matter of conducting ongoing business operations.¹⁴ Lastly, the pedagogy is teaching students and training professionals the nature of the conceptual framework and use of a managerial analysis with law to determine and understand legality and recognize normative validity or usability of an end result at the

12. See Holloway, *Concept*, *supra* note 10. The managerial analysis with law includes infinite combinations of legal and business knowledge, legal and business analyses, and judicial and business decision methods for use in business decision-making, planning and operations. These legal-managerial combinations add fact sensitivity, methodological order and analytical scrutiny to market situations, organizational opportunities, employment practices and business competition affecting or driving market, organizational, social, and other needs, objectives and goals of business and its organizations. Foremost, legal and business knowledge includes infinite combinations of legal rules and business principles to create an analytical method and information to evaluate situations and factual patterns. Next, legal and business analyses include finite single or joint uses of legal and business analytical tools and methods, such as means-ends analysis, factual analysis, and problem recognition, to make and analyze situations, findings and information and make and test findings and conclusions. Finally, judicial and business decision-making methodologies include finite combinations of judicial decision methods (parts) and business decision methods (stages), such as recognizing a legal issue in identifying feasible alternatives, to find, make or create lawful end results, such as one or more feasible alternatives. See *infra* Part III and accompanying notes (introducing the use of a managerial analysis with law supported by the jurisprudential foundation of a theory of law and business).

13. In the theory of law and business, the completion of each stage of decision-making and planning and each matter of operation is an end result, such as identifying feasible alternatives and implementation of the decision. An end result of a stage or matter may be made or created by using analytical tools and methods and rational thinking and judgment. See Herbert A. Simon, *Making Management Decisions: The Role of Intuition and Emotion*, 1 ACAD. OF MGMT. EXEC. 57, 63 (1987) (finding the use of rational judgment and intuition as well as logic and rationality in business decision-making). Analytical tools and methods recognize and evaluate the situation and need and find and analyze facts, information, data, findings and conclusions in making decisions, plans and practices. Rationally, once an end result is completed and found lawful without breach of a normative value, a manager or executive can use this end result to move to the next stage in making the next end result of completing decision-making and planning and another matter of continuing business operations. See S. Trevis Certo et al., *Managers and Their Not-So Rational Decisions*, 51 BUS. HORIZONS. 113, 114 (2008) (identifying a formal decision-making process that is rational with several steps or informal process with a few steps).

14. James E. Holloway, *The Practical Entry and Utility of a Legal-Managerial Framework without the Economic Analysis of Law*, 24 CAMPBELL L. REV. 131 (2002).

completion of a stage of business decision-making and in conducting ongoing business operations.¹⁵ Notwithstanding those ideas and thoughts, the concept, practicality and pedagogy of the theory of law and business must rest on a jurisprudential foundation enabling the integration of law and business and rendering business principles, analytical tools and decision-making more effective to make creative, innovative and thoughtful decisions.

On solidifying earlier research to integrate law and business, the foundation identifies jural concepts and relations of legal interests, text and rationality to be most consistent with innovation and creativity in business and its disciplines and organizations.¹⁶ These concepts and relations underpin legal rules to protect rights and enforce obligations and further the use of legal analysis and reasoning to recognize and address legal and regulatory issues and risks of business and its organizations. These concepts and relations complement the fundamental nature of legitimate business principles, analytical tools and rational thinking, which are researched, hypothesized and used solely to manage markets, organizations, transactions, activities and environments in advancing business needs and objectives. through making decisions and conducting day-to-day practices and activities. Consequently, the jurisprudential foundation supports ascertaining legal and regulatory issues, normative value concerns, and legal and regulatory impact of managing markets, organizations, transactions, activities, relationships and environments by using business principles, analytics and methodologies to make decisions, plans and matters solely to further business needs and objectives that must comply with law and should

15. See Holloway et al., *Pedagogy*, *supra* note 11. Schools and colleges of business teach students in the context of using marketing, financial and other principles and analytical tools and methods to find and solve problems, find and choose among courses of action, and recognize and perform day-to-day practices and procedures. See, e.g., ASSOCIATION TO ADVANCE COLLEGIATE SCHOOLS OF BUSINESS (AACSB), *Eligibility Procedures and Accreditation Standards for Business Accreditation*, 35–36 (2013 & Updates 2016 & 2018) (establishing undergraduate and graduate learning and curriculum standards that require colleges of business to teach finance, marketing and other business and general knowledge, recognize problems and make creative solutions), <https://www.aacsb.edu/-/media/aacsb/docs/accreditation/business/standards-and-tables/2018-business-standards-track-changes.ashx?la=en&hash=9C191B7B3A3A2E3E1DDC51A5C5275457092DADBB> (last visited Mar. 7, 2020) [hereinafter AACSB-Eligibility Standards]. Consequently, the theory of law and business is executed by a managerial analysis with law using business decision-making to solve current and prospective problem situations, see *infra* note 54, planning to create courses of actions for the future, see *infra* note 55, and operational practices and matters to conduct day-to-day activities, see *infra* note 56.

16. See generally Holloway – Primer, *supra* note 6, at 606–17 (discussing how the “integration gives business decision makers access to usable legal information and an integrated analysis to seek more exact and timely legal information”).

conform to normative values.

C. Nature and Corollary of Using the Theory of Law and Business

The jurisprudential foundation enables the theory of law and business to increase stability, continuity and predictability by integrating law and business in combining legal and business knowledge, analytics or methodologies. These combinations arise from making a lawful and examining an unlawful end result at the completion of each stage of recursive business decision-making and planning, and each matter of conducting ongoing business operations. The enabling abilities of the foundation are jurisprudential elements capable of supporting the integrated explanatory, analytical, and methodological nature of a theory of law and business. The explanatory, analytical, and methodological nature points out that an unlawful end result causes the implementation of an unlawful decision, strategy or practice. However, the implementation of a lawful decision, plan or practice may include a breach of a normative value, such as an ethical standard, and could cast dispersion on the character of the organization and its management.¹⁷ Thus, the corollary of using the theory of law and business is making a lawful end result with normative value that will move to the next stage to lawfully continue or complete the recursive processes of business decision-making and planning, and complete the matter or practice in moving to another related and unrelated matter or practice of continuous business operations.

The jurisprudential elements must also be capable of supporting the explanatory, analytical and methodological nature of the theory of law and business to describe, assess and predict the impact of a common law rule or government statute on doing business, managing organizations and advancing disciplines. On one hand, the explanatory and analytical natures are essential in recognizing and explaining the impact of law on business, where business organizations and disciplines are affected by legal risks and uncertainties of government policy-making and ethical decision-making in demanding business markets and regulatory and policy environments, such as climate change.¹⁸ On the other hand, the analytical and methodological

17. *See id.* at 606 (explaining the need for a theory of law and business that integrates or combines legal and business knowledge, analytics or methodologies in making and examining business decisions, plans and matters).

18. *See* Thomas A. Tsalis & Ioannis E. Nikolaou, *Assessing the Effects of Climate Change Regulations on the Business Community: A System Dynamic Approach*, 26 *BUS. STRATEGY & THE ENV'T* 826, 827 (2017) (recognizing the need to consider a proactive approach to managing government regulation caused by climate change and concluding that making business decisions, plans and operations to avoid regulatory risks may cause financial losses and other consequences); *see also* Shareef, *supra* note 8, at 272 (arguing

natures are quintessential to understanding business relationships, transactions and happenings under regulation and common law where executives must recognize and address disruptive business, social, economic, technological and natural conditions, such as climate change and its effects.¹⁹ These natures are needed to recognize and understand natural, economic and technological causes of public harm, business threats, and market opportunities. Thus, technological, natural and economic conditions may cause national governments to create new legal and regulatory risks and uncertainties²⁰ for executives who must manage the impact of climate change,²¹ technology and other threats for business organizations and their stakeholders.²²

III. THE NATURE OF THE THEORY OF LAW AND BUSINESS

The theory of law and business must rest on a legal foundation capable of enabling an integration of law and business and supporting a managerial analysis with law. The integration of law and business includes using common law and regulation in business decision-making, planning and operations, recognizing the normative value of lawful decisions, strategies and practices and assessing the impact of common law and regulation on business and its disciplines and organizations. The managerial analysis with

that some MBA students are led to believe business decision-making, planning and operations are value-free).

19. See Jeremy J. Hess et al., *Public Health and Climate Change Adaptation at the Federal Level: One Agency's Response to Executive Order 13514*, AM. J. OF PUB. HEALTH, 22, 22 (2014) (finding that climate change includes several adverse effects on the natural environments, such as precipitation, storms and sea level); see Eric Biber et al., *Regulating Business Innovation as Policy Disruption: From the Model T to Airbnb*, 70 VAND. L. REV. 1561, 1563 (2017) (explaining how disruptive technologies and business models can affect government regulation and public policy).

20. See Tsalis & Nikolaou, *supra* note 22, at 827 (finding that corporations and other organizations may “regard climate change and its implications as potential threats or risks to their financial value.”). A category of risk requiring business organizations to make new decisions and plans or change existing operations and plans is indirect risks that include litigation, reputational and regulatory risks. *Id.* New regulation increases regulatory risks that must be addressed with lawful, usable, innovative decisions, plans and operations. *Id.* Furthermore, litigation risks arise when managers and executives implement decisions, strategies and practices that raise legal issues requiring courts to determine legality or illegality. *Id.* at 828.

21. See *id.* (finding that business organizations must respond to climate change and may attempt to avoid legal and regulatory risks to remain competitive); see Biber et al., *supra* note 16, at 1563 (explaining how regulation and public policy are affected by disruptive technologies and business models).

22. See Holloway, *Primer*, *supra* note 6, at 592–93 (explaining the need for a theory of law and business that integrates or combines legal and business knowledge, analytics and methodologies in making and examining business decisions, plans and matters).

law assists in ascertaining the legality and normative validity of end results of each stage of business decision-making and planning and each practice or matter of conducting business operations.²³ The theory of law and business relies on knowledge-based properties of legal rules and business principles that state and explain happenings, analytical-based properties of legal and business analyses that analyze facts, findings and information, and legal and business methodological-based properties of judicial and business decision-making that uses logical and rational thinking in making conclusions.

A. Assessing and Categorizing the Impact of Law on Business

The theory of law and business must rest on a legal foundation enabling a legal-business taxonomy to state and describe the limits, losses and failures of business managers, organizations and disciplines operating under enforceable protections, restrictions and limitations of common law, legislative acts and administrative regulations.²⁴ The legal-business taxonomy uses managerial discretion theory to categorize the limits on the latitude of managers and organizations to exercise their rights and comply with their obligations and duties under common law and regulations.²⁵ Managerial discretion is a “continuous measure of the cumulative effects caused by legal rules on business powers and rights at any one time”²⁶ Next, the taxonomy uses managerial loss to classify unlawful business decisions, plans and matters, which violate common law and government regulation, causing a denial of or limit on use of a business principle, theory, analytics or method. A managerial loss is “[t]he elimination or decline of a business concept under a fact-sensitive managerial analysis of a legal rule”²⁷ Finally, the taxonomy uses a managerial failure to classify a line of unethical or conflictual decisions, strategies and practices, which are theory-less and lawless, triggering or causing an increasingly restrictive

23. Holloway, *Concept*, *supra* note 11, at 144-45.

24. *See id.* at 161-63 (introducing a taxonomy to describe and categorize limits, losses and failures that must be recognized and addressed in assessing the impact of law on business and its disciplines and organizations).

25. *See id.* at 154-57, 161 (recognizing that managerial discretion theory explains and identifies the latitude of managers, executives and organizations of business disciplines); *see also* Craig Crossland & Donald C. Hambrick, *Differences in Managerial Discretion Across Countries: How Nation-Level Institutions Affect the Degree to Which CEOs Matter*, 32 STRATEGIC MGMT. J. 797, 803 (2011) (explaining managerial discretion theory and its application to the latitude of national organizations responding to the law, regulation and other limitations of national governments).

26. *See* Holloway, *Concept*, *supra* note 11, at 161.

27. Holloway, *Concept*, *supra* note 11, at 161; *see also* SCHELLENBERGER, *supra* note 6, at 8 (defining the use of a managerial analysis as the use of analytical tools to aid the process of decision-making).

judicial precedent or legislative mandate. A managerial failure occurs when “managers . . . continuously define or analyze the same or similar situations and make the same or similar [unethical or socially irresponsible] decisions.”²⁸ Thus, the taxonomy classifies the limits of and kinds of theory-less and lawless decisions, plans and practices that do not comply with common law and regulation or that comply with common law and regulation but do not conform to public interests, ethical standards and organizations directives.

B. Enabling the Theory of Law and Business to Aid Managers

The jurisprudential foundation consists of legal interests, text and rationality to add predictability, continuity and consistency to the theory of law and business by broadly integrating law and business for more exact uses in business decision-making, planning and operations. The jurisprudential elements enable the theory of law and business to add text or fact sensitivity, legitimate public needs and rational thinking of legal rules, analysis and reasoning.²⁹ This sensitivity, combined with public needs, aid managers and executives in recognizing the impact of common law rules and government regulation on their business decisions, preferably that are given with legal advice accompanied by legal analytics. This legal advice accompanied by legal analytics provides managers, who do not possess sufficient legal skills, active legal findings and explanations.³⁰ Legal advice accompanied by legal analytics is more sensitive and responsive to significant differences in business when moving from one stage to another in decision-making and planning, and one matter to another in business operations.³¹ In using legal advice, these elements aid in ascertaining and understanding lawful business and other needs, situations, and conclusions, and in recognizing and addressing compliance with normative values in making lawful decisions. The legal interests, text and rationality enables combining legal and business knowledge, analytics or decision-making methodologies in decisional stages and operational matters to analyze and explain business situations, information, and conclusions. In various stages and matters, these analyses

28. *Id.*

29. See Holloway, *Primer*, *supra* note 6, at 587–89 (explaining the need for a theory of law and business that integrates or combines legal and business knowledge, analytics and methodologies in making and examining business decisions, plans and matters).

30. See *id.* at 628–29 (explaining the need for a theory of law and business that integrates or combines legal and business knowledge, analytics, and methodologies in making and examining business decisions, plans and matters).

31. See Holloway, *supra* note 7, at 608–09 (explaining the need for a theory of law and business that integrates or combines legal and business knowledge, analytics, and methodologies in making and examining business decisions, plans and matters).

and explanations take place precisely where business managers and executives need to know, understand, and use legal rules and advice accompanied by legal analytics and methods.³²

The fact sensitivity, analytical scrutiny and methodological order of the theory of law and business increase the usefulness or utility of common law rules and statutory provisions at each stage of recursive processes of business decision-making and planning and on each matter of ongoing business operations.³³ Each stage or matter requires a lawful business completion or end result, such as the best alternative.³⁴ Legality is essential. Notwithstanding legality, if a lawful end result lacks normative value, such as an unethical lawful alternative, this end result cannot move to the next stage or continue to the next practice. Normative value is therefore necessary. However, the quintessential requirement is an effective business end result, such as sales promotion alternatives, which justifies the decision need and furthers the decision objective, for example, to increase product sales.³⁵ This effective business end result justifies a current organizational need that exists in a market or organizational situation, environment or activity causing decision-making, planning and operations. Thus, the theory of law and business explains and ascertains the legality and recognizes the normative validity of each stage of business decision-making and planning and each matter of business operations to make effective business end results.

C. Using the Foundation to Enable a Theory of Law and Business

The jurisprudential foundation enables the theory of law and business to give explanations and predictions on using common law and government regulation with legal analysis and reasoning in making and examining business decisions, plans and practices. The legal foundation underpins a theoretical framework that explains and predicts the legality and illegality of the various stages of business decision-making and planning, matters of conducting business operations and impacts of law on business and its

32. See Nancy B. Rapoport & Joseph R. Tiano, Jr., *Legal Analytics, Social Science, and Legal Fees: Reimagining “Legal Spend” Decisions in an Evolving Industry*, 35 GA. ST. U. L. REV. 1269, 1291 (2019) (“The strength of what legal analytics can provide—predictability, accuracy, and consistency of service delivery—may, under many circumstances, matter more than the speed of delivery of those [legal] services.”).

33. Holloway, *Concept*, *supra* note 11, at 157–59.

34. Holloway, *et al.*, *Pedagogy*, *supra* note 16, at 242–43 (listing decision making steps, including evaluating alternatives).

35. *Id.* at 245 (providing an example of an alternative — providing tools to workers — to achieve a business objective of maintaining a flexible workforce through independent contractor status).

disciplines and organizations.³⁶ The theoretical framework also uses managerial discretion theory in analyzing whether each lawful end result conforms to ethical and other normative values within each stage of business decision-making, planning and operations.³⁷ Next, the legal foundation supports a managerial analysis with law as an analytical framework combining and using legal and business principles, analytics and methodologies to make lawful and examine unlawful business decisions, plans and matters and assess the impact of law on business and its organizations.³⁸ These combinations create and form legal-managerial tools, methods and information to determine and understand the legality and usability of defined business situations and needs, as well as to ascertain the legality and validity of business and other information, findings and conclusions of stages of recursive decision-making and planning and ongoing business operations.³⁹ Thus, the jurisprudential foundation consists of legal interests, text and rationality to explain and ascertain the legality, illegality and normative value of end results of stages of business decision-making and planning and matters of business operations and assess the impact of common law and regulation on business and its disciplines and organizations.

IV. NEED FOR THE FOUNDATION OF THE THEORY OF LAW AND BUSINESS

The legal foundation enables an integration of law and business to fuse the qualities of legal interests, texts and rationalities into stages of business decision-making and matters of business operations to recognize and address questions of legality and illegality of end results - often relying on finances, sales, accounting, as well as other findings, information and conclusions. Law as a discipline is more than legality. The foundation underpins the use of legal rules, analysis and reasoning to address the legality and illegality of business decision-making, planning and operations. The legal foundation recognizes business is not driven by law but is driven by market conditions and business advantages, opportunities and needs that must be lawfully gained and used to conduct successful business operations. The purpose of beginning and completing decision-making, planning and operations is to

36. See *supra* Parts III.A. and B. and accompanying notes (explaining how the legal foundation enables the theory of law and business to make lawful and examine unlawful and recognize the normative value of business decisions, plans and matters and assess the impact of law on business and its organizations and disciplines).

37. See *id.*

38. See *infra* Part IV.C (explaining how the legal foundation supports the use of a managerial analysis with law to make lawful and examine unlawful business decisions, plans and matters).

39. See *id.*

gain effective business benefits and advantages that further organizational goals and objectives in responding to or anticipating threats, opportunities and needs. These threats, opportunities and needs occur in or are treated as business situations, environments or day-to-day tasks and are informed by business, marketing, statistical and other findings, information and conclusions in making decisions, plans and practices.⁴⁰

A. Ensuring Relations and Thinking of an Integration of Law and Business

Legal interests, texts and rationalities are jurisprudential elements enabling the theory of law and business to actually integrate law and business. This integration supports a managerial analysis with law to combine legal and business knowledge, analytics or methodologies in recognizing and addressing legal issues and regulatory concerns of common law and regulation.⁴¹ Legal text, interests and rationality support and rely on a managerial analysis with law to combine and use common or shared legal and business knowledge-, analytical-, and methodological-based properties of the nature of legal and business principles, analytical tools and decision-making methods.⁴² The foundation supports managerial analysis with law by making certain each end result is consistent with legitimate public and private interests, complies with the legal rules and conforms to requisite normative values.

The foundation supports a managerial analysis with law by ensuring knowledge- and analytical-based properties are used to make functional combinations of legal and business principles, analytics or methodologies. These properties have unique uses in stages of decision-making and matters of operations to make lawful and usable plans, as well as examine unlawful end results through legal interests, text, and rationality.⁴³ Foremost, common analytical-based properties are analytical scrutiny provided by business and legal analytical tools and methods to scrutinize, review and analyze facts, data and information and make findings and conclusions in making judicial decisions and business decisions, plans and matters. For example, common analytical-based properties include, among others, recognizing a business situation (problem) and finding a legal issue (problem) to find the need for a

40. See Holloway, *et al.*, *Pedagogy*, *supra* note 16, at 245 (noting the use of “statistics and other information, findings and conclusions” when entering the decision-making steps).

41. See *id.* at 248, 250.

42. See *id.* at 239–40 (explaining how managerial analysis treats business and legal knowledge and stating “[t]hese kinds of knowledge tell much about the nature and use of a legal rule, business concept and their shared factual and predictive natures”).

43. See *id.* at 230 (discussing managerial analysis with law and business decision-making steps).

business decision and determine the presence of a legal issue, respectively. Next, methodological-based properties guide and control the informational and analytical qualities of business and judicial methods that are recursive stages and parts⁴⁴ of completing each stage of the processes of making business decisions and plans and conducting matters of ongoing business operations. For instance, the methodological-based properties ensure order to the entry of one or more judicial or legal methods, such as giving a rationale for a conclusion, or completing and reviewing an end result at a business decision stage, such as selecting one or more lawful feasible alternatives. Finally, knowledge-based properties are the fact-sensitive elements or statements of business principles and legal rules capable of explaining, identifying, and verifying comparable business situations and other factual patterns of decision-making, planning, and operations. For example, knowledge-based properties include the use of the status of an employer-employee relationship rule and organizational flexibility theory to identify and verify a flexible employment arrangement in creating a flexible workforce to build organizational flexibility.⁴⁵ Thus, the legal foundation enables the theory of law and business to use amenable knowledge-, analytical-, and knowledge-based properties of legal and business knowledge, analytics and methodologies to ascertain legality or illegality of end results at the end of each stage of business decision-making and planning and each matter of ongoing business operations.

1. Rational Purposes of Law Conforming to Normative Values

The foundation consists of legal text, interests and rationality to ensure use of legal rules, analytics and methodology in ascertaining and understanding lawful and usable recognized or defined situations and lawful and valid feasible alternatives and other end results. The theory of law and business posits that all lawful situations and end results may not conform to normative values that would make them usable and valid to make decisions, plans and practices.⁴⁶ Simply, lawful results may not always conform to ethical

44. See Richard B. Cappalli, *The Disappearance of Legal Method*, 70 TEMP. L. REV. 393, 398–399 (1997) (recognizing legal methodology learned by conducting an analysis of judicial decisions); Certo et al., *supra* note 13, at 114 (explaining the use of two kinds of decision-making processes that include a well-developed, uniquely human rational decision-making process with several steps and less developed decision-making process).

45. See, e.g., *Employment Law Issues for Startups, Entrepreneurs, and Growing Businesses: Overview*, Practical Law Labor & Employment (West) (last visited July 11, 2022) (laying out the business principles and legal rules considered when starting a business).

46. See Spijkers, *supra* note 8, at 78 (“A *value* is an enduring belief that a specific mode of conduct or end-state of existence is personally or socially preferable to an

standards, public interests and organizational directives. Legal text and rationality underpin legal analytics and methods to recognize end results that do not conform to ethical standards, public interests and organizational directives.⁴⁷ Next, legal interests and rationality are sensitive to legitimate public and private needs and wants that are rational legislative and common law purposes furthering protection and enforcement of social norms, public welfare, and societal needs.⁴⁸ The foundation ensures methodological order in recognizing ethical, organizational and public standards that affect the usability of lawful situations, environments and factual patterns⁴⁹. These standards affect the validity of lawful alternatives, matters, strategies and other end results as managers and executives move from one stage or matter to another stage or matter.⁵⁰ This usability and validity also demand analytical scrutiny of end results to weigh their potential conflicts with ethical standards, organizational directives and public interests that could cause an ethical dilemma, raise a public policy concern, or cause internal organizational conflict. This dilemma, concern, or conflict may cause lawful end results to be unusable and invalid at any stage of decision-making and planning, and on any matter or practice of business operations.⁵¹ Thus, legal interests, text and rationality enable the theory of law and business to recognize ethical dilemmas, public policy concerns and organizational conflicts limiting the usability of business situations (end results) at the beginning stage and validity of other end results at other stages of business decision-making and planning and in matters of business operations.

2. Need to Add Predictability and Safeguard Innovation

The foundation ensures more precise uses of legal and business knowledge, analytics, and methodologies by enabling the integration of law

opposite or converse mode of conduct or end-state of existence.” (quoting MILTON ROKEACH, *THE NATURE OF HUMAN VALUES* 5 (1973))).

47. See John Stanton-Ife, *The Limits of Law*, in *THE STANFORD ENCYCLOPEDIA OF PHILOSOPHY* 1 (2022) (“Law of its nature has an internal morality of its own, so it is claimed, with its own built-in limits (Section 8).”).

48. Cf. Karl T. Kurtz, *Legislatures and Citizens: Public Participation and Confidence in the Legislature*, NAT’L CONF. OF STATE LEGISLATURES (1997) (discussing why public participation is important to democracy and the importance of public engagement in the legislative process).

49. See *infra* Part VII.C and accompanying notes (explaining the methodological order performed by a managerial analysis with law to determine legality and examine illegality in business decisions, plans and practices).

50. Cf. Holloway, *Primer*, *supra* note 6, at 625 (discussing ethical and legal dilemmas arising from recognition of decision situations and best alternatives).

51. See Shareef, *supra* note 8, at 272 (arguing that some MBA students are led to believe business decision-making, planning and operations are value-free).

and business to form discrete matter- and stage-specific combinations of legal and business knowledge, analytics or methodologies. This precise use adds predictability, safeguards creativity, and recognizes amenability by forming and using discrete legal-managerial information, tools and methods to ascertain the legality and usability or validity of end results of business decision-making, planning and operations. This discrete information, in conjunction with the legal-managerial tools and methods, depends on common or shared knowledge- and analytical-based properties of amenable or agreeable legal and business knowledge, analytics and methodologies. These discrete matter- and stage-specific legal-managerial tools, methods and information are given support by jurisprudential elements underpinning legal rules, analytics, and rational thinking. For example, knowledge-based properties that include descriptive legal text and explanatory business principles are combined to form a unique legal-managerial method.⁵² This combination of this text and principle forms legal-managerial methods and information to evaluate the legality and usability and examine illegality of decision situations at the beginning stage of business decision-making and planning and in factual matters of ongoing business operations. Thus, legal text is used with a business principle to give predictability to a legal-managerial method and information that only identifies and verifies lawful and usable situations or end results at the beginning stage of decision-making and planning and in factual patterns, such as an employment dispute, in conducting business operations.

Other discrete legal-managerial tools and methods are supported by legal interests and rationality to recognize and address legal issues and regulatory concerns limiting decisions, strategies and practices of innovative and creative business models and disruptive technologies.⁵³ These tools and methods may need to recognize and address the conflict between an innovative business decision and a public interest of a common law rule or legislative act at one or more stages of decision-making and planning and matters of business operations. For instance, the use of independent contractors as drivers in the ridesharing business model creates conflict

52. See *infra* Part VII.A and accompanying notes (forming legal-managerial tools and information for use in the decisional situation or first stage of business decision-making and planning and factual matters of business operations).

53. See, e.g., Andre Andoyan, Comment, *Independent Contractor or Employee: I'm Uber Confused! Why California Should Create an Exception for Uber Drivers and the "On-Demand Economy,"* 47 GOLDEN GATE U. L. REV. 153, 154–55 (2017) (discussing legal concerns in under the rideshare business model and the classification of Uber drivers as independent contractors rather than employees); Biber et al., *supra* note 23, at 1563 (explaining the impact of regulation and public policy on disruptive technologies and innovative business models that affect our lives and change business operations).

between an innovative model and common law on whether these drivers can be employees under the common law principle applied to determine the employment status of contract workers.⁵⁴ Next, the foundation enables an integration of amenable legal and business principles, legal and business analytics, and judicial and business decision-making methodologies. For example, the texts of amenable legal rules and business principles share a similar textual nature of describing situations and other facts and explaining situations which exist at an intersection of law and business.⁵⁵ Thus, the foundation safeguards innovativeness and supports use of amenable properties in forming discrete tools and methods to recognize, analyze and use situations, information, findings and conclusions in making lawful and usable or valid decisions, plans and matters.

B. Increasing the Usefulness of Law and Regulation in Business

The theory of law and business rests on a legal foundation squarely within law and its institutions and academic discipline and directly complements business and its organizations and academic disciplines. Legal interests, text and rationality are jurisprudential elements that include purposes, substance and process of legal knowledge, analytics and methodology, respectively. These elements are relied on by courts, legislatures and administrative agencies to enact, interpret and promulgate, respectively, legal rules and principles.⁵⁶ These elements are also amenable to much business knowledge, analytics and methodology. Foremost, legal interests include legitimate business needs or private interests that are protected by common law and regulation. Next, the legal text of common law rules and regulatory provisions⁵⁷ can match the explanatory statements of business principles and theories⁵⁸ where both law and business principles may share similar factual

54. See Biber et al., *supra* note 23, at 1563 (recognizing that business innovation created legal issues, such as: “Should service providers [e.g., drivers] be considered employees of the firm [e.g., Uber, Lyft] managing the platform? Who bears liability for harm caused during service provision?”).

55. See Rizzo, *supra* note 3, at 35 (discussing the role of the corporate counsel who now needs to understand law and business in practicing corporate law at the dangerous intersection of law and business).

56. See Mark Greenberg, *Legal Interpretation*, in THE STANFORD ENCYCLOPEDIA OF PHILOSOPHY (Edward N. Zalta ed., 2021), <https://plato.stanford.edu/entries/legal-interpretation/#toc>.

57. Legal knowledge is legal rules, principles and doctrines of common law, legislative acts and administrative regulations to govern specific relationships, acts, transactions and other happenings. In addition, judicial precedents are also legal knowledge. See *Allegheny Gen. Hosp. v. NLRB*, 608 F.2d 965, 969–70 (3d Cir. 1979) (defining a legal precedent as a legal rule that describes a specific set of facts); Cappalli, *supra* note 45, at 399 (recognizing that a precedent has the quality of law).

58. See Jason Earl Thomas, *Scholarly Views on Theory: Its Nature, Practical*

patterns. Finally, the legal rationality of much of legal analytics⁵⁹ and judicial methodology share common analytical and methodological properties with business analytics⁶⁰ and decision-making methodology.⁶¹ These properties include recognizing and analyzing situations and using these findings to continue or complete decision-making, planning, and operations. Thus, the jurisprudential elements of the foundation permit the use of common and shared properties of legal and business knowledge,⁶² analytics,⁶³ and methodologies⁶⁴ in the application of legal rules and use of legal advice, which is accompanied by legal analytics, by business managers, executives and policymakers.⁶⁵

1. Needing to Respond to Regulation and Regulatory Risks

Both lawyers and managers must recognize and respond to regulatory and

Application, and Relation to World View in Business Research, 12 INT'L. J. BUS. & MGMT. 231, 232 (2017) (defining theory as “a description of a phenomenon and the interactions of its variables that are used to attempt to explain or predict.”); John G. Wacker, *A Definition Of Theory: Research Guidelines For Different Theory-Building Research Methods in Operations Management*, 16 J. OPERATIONS MGMT. 361, 363 (1998) (using operations research to define theory that includes a domain, variables, definitions, and predictions); *see also* AACSB-Eligibility Standards, *supra* note 16, at 35 (stating that general business knowledge includes legal, political, and regulatory knowledge and traditional business knowledge, such as finance, marketing, and accounting).

59. *See* Rapoport & Tiano, *supra* note 39, at 1283 (defining a legal analytics discipline that uses technology in the practice of law to benefit both lawyers and clients).

60. Zhaohao Sun et al., *Business Analytics-Based Enterprise Information Systems*, 57 J. COMPUT. INFO. SYS. 1, 7 (2016) (recognizing business analytics and its study cover various subject areas, such as management and finance).

61. Holloway et al., *Pedagogy*, *supra* note 16, at 230–32 (discussing the use of managerial analysis with law to create unique legal-managerial information and analytics that can be taught by professors in colleges and schools of business).

62. *See* AACSB-Eligibility Standards, *supra* note 16, at 34–36 (listing the areas of knowledge that should be taught in colleges of business to undergraduate and graduate students). The AACSB was established a century ago to establish curriculum, faculty and other standards for schools and colleges of business. The AACSB promotes and uses business education to improve our global society. *Id.* at 1. AACSB Eligibility Standard 9 sets forth “[c]urriculum content [that] is appropriate to general expectations for the degree program type and learning goals” *Id.* at 34. AACSB Eligibility Standard 9 lists the knowledge areas, skills areas and technological agility that should exist in graduate and undergraduate curricula of colleges of business. *Id.*

63. *See* Cappalli, *supra* note 45, at 398 (recognizing legal analysis and reasoning as legal methodology to analyze law and facts and is learned by analyzing judicial decisions).

64. *See id.*; *see also* Rizzo, *supra* note 3, at 34–35 (recognizing that lawyers eventually learn business knowledge and methods by education and experience).

65. *See* Rizzo, *supra* note 3, at 35 (recognizing that lawyers can learn by education and gain by experience business knowledge and methods).

legal risks and issues occurring at any stage of the process of business decision-making,⁶⁶ planning⁶⁷ and conducting business operations.⁶⁸ In recognizing legal issues, the theory of law and business expands the use of legal rules, analytics and methodology by using a managerial analysis with

66. See Certo et al., *supra* note 13, at 114 (explaining the use of two kinds of decision-making processes: (1) a well-developed, uniquely human rational decision-making process with several steps and (2) a less developed decision-making process); William F. O'Dell, *Effective Business Decision Making*, in SMALL BUSINESS REPORTS 68, 70–71 (1992) (setting forth a rational decision-making processes with several steps); Earnest R. Archer, *How to Make a Business Decision: An Analysis of Theory and Practice*, 69 MGMT. REV. 54, 54–55 (1980) (discussing management research that established managers need a rational and systematic decision-making process consisting of several stages).

67. UNIV. MINN. LIBR. PUBL'G, PRINCIPLES OF MANAGEMENT, § 1.5, (2010), <https://open.lib.umn.edu/principlesmanagement/chapter/1-5-planning-organizing-leading-and-controlling-2/> [hereinafter PRINCIPLES OF MANAGEMENT] (explaining the need for and use of various kinds of planning in business organizations). “Planning is the function of management that involves setting objectives and determining a course of action for achieving those objectives. Planning requires that managers be aware of environmental conditions facing their organization and forecast future conditions. It also requires that managers be good decision makers.” *Id.* There are three types of business plans that create tactical, operational and strategic courses of action. First, “[s]trategic planning involves analyzing competitive opportunities and threats, as well as the strengths and weaknesses of the organization, and then determining how to position the organization to compete effectively in their environment. Strategic planning has a long-time frame . . .” *Id.* Second, “[t]actical planning is intermediate-range (one to three years) planning that is designed to develop relatively concrete and specific means to implement the strategic plan. . . .” *Id.* Third, “[o]perational planning generally assumes the existence of organization-wide or subunit goals and objectives and specifies ways to achieve them. Operational planning is short-range (less than a year) planning that is designed to develop specific action steps that support the strategic and tactical plans.” *Id.* For case law applications, see, for example, *Earley v. Champion Int’l Corp.*, 907 F.2d 1077, 1082 (11th Cir. 1990) (“Evaluations of the age of the work force as part of a restructuring and reduction-in-force plan are indicative of thorough business planning and are not direct evidence of discriminatory intent.”); *United States v. Phila. Nat’l Bank*, 374 U.S. 321, 362 (1963) (citing *Crown Zellerbach Corp. v. F.T.C.*, 296 F.2d 800, 826–27 (9th Cir. 1961) (“And unless businessmen can assess the legal consequences of a merger with some confidence, sound business planning is retarded.”)).

68. See *Business Operations*, CORPORATE FINANCE INSTITUTE, <https://corporatefinanceinstitute.com/resources/knowledge/strategy/business-operations/> (last visited Sept. 15, 2020) (explaining specific actions that may be taken by business managers and specialists to carry out day-to-day financial, managerial, marketing and other functions). The end result of a practice or matter, such as hiring an employee, of business operations is evidence that business actions, transactions, and happenings do not always require a multi-stage process to address a problem, issue or concern. See Certo et al., *supra* note 13, at 114. The Corporate Finance Institute defines business operations as “activities that businesses engage in on a daily basis to increase the value of the enterprise and earn a profit. . . . Employees help accomplish the business’ goals by performing certain functions such as marketing, accounting, manufacturing, etc.” CORPORATE FINANCE INSTITUTE, *supra* note 69.

law to form discrete legal-managerial information, tools and methods.⁶⁹ The managerial analysis with law is needed by managers and executives to ascertain and examine the legality and usability of the recognition of the decision situation stage and thereafter, the legality and validity of finding alternatives, implementation of the decision and other stages of decision-making,⁷⁰ and planning and ongoing matters of banking, retail and other business operations.

The jurisprudential elements of the foundation give greater insight into the impact of common law and regulation on business and its disciplines and organizations. Greater insight is needed to manage the new legal and regulatory risks of more disruptive climate change and its effects on technological, political and social environments. One could easily believe that unrelenting climate change occurring alongside a devastating pandemic, fierce global economic competition and more damaging natural disasters are evidence that business organizations need more methodological order, fact sensitivity and analytical scrutiny to respond to novel legal issues and regulatory risks.⁷¹ Business organizations that may have relied on a retrenchment strategy to delay compliance with civil rights, employee retirement or another policy⁷² can now use the same strategy to oppose *nature and government*, though lawsuits and lobbying will not slow the devastation of climate change and its bad weather and rising seas.

2. Gaining Greater Insight into Recognizing Business Needs

Managing in a highly regulatory and global environment may eventually

69. *But see* Rizzo, *supra* note 3, at 34 (stating that “[i]n business, a potentially dangerous intersection is the crossing of legal and business interests. New legislation and court opinions may make even familiar intersections difficult to navigate . . .”).

70. *See* Certo, et al., *supra* note 13, at 114 (explaining that more formal business decision-making includes a well-developed process with several stages).

71. *See* Tsalis & Nikolaou, *supra* note 22, at 827-28 (referring to “the proactive reactions of businesses in response to future climate change regulations This approach recognizes [t]he main goal of this corporate behavior is to avoid new regulatory risks, which have direct consequences on operation and production costs and thus on corporate competitiveness.”); *see also* James E. Holloway & D. Tevis Noelting, *Takings Clause and Integrated Sustainability Policy and Regulation: The Proportionality of the Burdens of Exercising Property Rights and Paying Just Compensation*, 29 VILL. ENV’T. L.J. 1, 13–19 (2018) (discussing that property rights will be affected by global and national climate change policies to respond to development and environmental sustainability concerns).

72. *See, e.g.*, Civil Rights Act of 1964, 42 U.S.C. §§ 2000e-2(a), 2000e-3 (2022) (regulating discriminatory employment practices based on race, color, sex, national origin and religion in making employment decisions, plans and operations); Employee Retirement Income Security Act of 1974, 29 U.S.C.A. § 1003(a) (2022) (regulating employee benefit plans that are established and maintained by an employer and employee organization(s) engaged in interstate commerce).

be the business norm that requires different theoretical and analytical frameworks to manage organizations and their needs and objectives under new legal and regulatory issues and liabilities. New theoretical and analytical frameworks may require new and different business knowledge, analytics and methods and their most effective uses and applications by managers and executives to sustain domestic and global business growth of business organizations. Legal and regulatory risks will be created by federal and state policymakers responding to actual and potential harm to environmental and natural resources, such as forest fires and flooding, by expanding environmental, natural resources, land use and other regulation restricting economic and property rights.⁷³ The theory of law and business responds to greater policy, regulatory and legal risks and environmental, land use and other restrictions by offering a practical approach, namely a managerial analysis with law, to ascertain legality and normative value and avoid illegality in decision-making, planning and operations.

The theory of law and business is executed by a managerial analysis with law to aid managers and executives and perhaps lawyers, who want to know more about business analytical tools, in determining and understanding legality and recognizing normative values of end results, such as a decision, strategy or practice. The managerial analysis with law allows business financial, marketing and other managers, executives and specialists to pursue innovative, creative and forward-looking lawful end results.⁷⁴ These end results at each stage or matter are not bound by business precedents and permit more inclusive knowledge, analytics, and rational thinking under judicial precedents, common law rules and statutory provisions in stages of the process of decision-making,⁷⁵ and planning⁷⁶ and in matters of

73. See Holloway & Noelting, *supra* note 79, at 12–19 (explaining the need for an integrated business development and environmental policies that require federal and state policymakers to weigh the need for more restrictions on private property rights).

74. See Holloway, *Concept*, *supra* note 11, at 164.

75. See Archer, *supra* note 67, at 55–61 (explaining each stage of a nine-stage decision-making process that is interactive and recursive through monitoring the decision environment to implementing and monitoring the decision). The steps in a rational decision-making process are as follows: (1) identify the problem, (2) establish decision criteria, (3) weigh decision criteria, (4) generate alternatives, (5) evaluate the alternatives, (6) chose the best alternative, (7) implement the decision and (8) evaluate the decision. UNIV. OF MINN., MANAGEMENT, *supra* note 68, § 11.3 (using Figure 11.8 to list the steps in rational business decision-making).

76. UNIV. OF MINN., MANAGEMENT, *supra* note 68, § 1.5 (showing how different kinds of planning involves multiple steps or stages in conducting business operations). First, “[t]he process begins with environmental scanning which simply means that planners must be aware of the critical contingencies facing their organization in terms of economic conditions, their competitors, and their customers.” *Id.* Second, “[p]lanners must then attempt to forecast future conditions. These forecasts form the basis for

conducting business operations⁷⁷ in facing new and different regulatory environments. In addition, the managerial analysis with law offers colleges of business⁷⁸ and perhaps schools of law⁷⁹ a pedagogy for students needing to study and learn more sensitive and responsive legal-managerial information, tools and methods to recognize and address the legal and regulatory risks and issues and normative value⁸⁰ of global economic, environmental, social and business concerns confronting business organizations.⁸¹ Thus, the foundation supports a managerial analysis with law by ensuring broad use of law and regulation through fact sensitivity,

planning.” *Id.* Third, “[p]lanners must establish objectives, which are statements of what needs to be achieved and when.” *Id.* Fourth, “[p]lanners must then identify alternative courses of action for achieving objectives.” *Id.* Fifth, “[a]fter evaluating the various alternatives, planners must make decisions about the best courses of action for achieving objectives.” *Id.* Sixth, “[t]hey must then formulate necessary steps and ensure effective implementation of plans.” *Id.* Seventh “planners must constantly evaluate the success of their plans and take corrective action when necessary.” *Id.*

77. See Corporate Financial Institute, *supra* note 76 (defining various kinds of business operations as engaging in day-to-day activities of marketing, management, information systems and other functions to manage retail, service, and other industries).

78. See AACSB-Eligibility Standards, *supra* note 16, at 10 (recognizing that colleges and schools of business should teach business law, legal environment and government regulation courses to students needing to use legal advice and information in their business professions and work); Siedel, *supra* note 2 (“[E]ight questions and answers designed to demonstrate why law is such an integral part of business and how it is incorporated into business school programs . . .”).

79. See Jackson, *supra* note 2, at 321–22 (recognizing law school should teach and qualitative and quantitative analytical skills in preparing law students to practice corporate law). Another approach is “[t]he transactional perspective [that] demands that lawyers, and students as they learn this approach to practice, be well versed in “not only the legal aspects of a contract concept, but also its business purpose.” Celeste M. Hammond, *Borrowing from the B Schools: The Legal Case Study as Course Materials for Transaction Oriented Elective Courses: A Response to the Challenges of the MacCrate Report and the Carnegie Foundation for Advancement of Teaching Report on Legal Education*, 11 TRANSACTIONS: TENN. J. BUS. L. 9, 10 (2009) (citing Tina L. Stark, *Thinking Like a Deal Lawyer*, 54 J. LEGAL EDUC. 223, 226 (2004) (identifying a skill of transactional lawyers as “translating the business deal into contract concepts”).

80. See Tsalis & Nikolaou, *supra* note 22, at 827 (recognizing that a proactive approach to manage and rather than avoid regulatory risks and their impact on operations, costs and competitiveness); see also Holloway, *Concept*, *supra* note 13, at 151 (explaining the formation of legal-managerial tools, methods and information to make lawful end results at stages of the processes of business decision-making and planning); *supra* note 9 and accompanying text (listing American and European business law professors and their research urging the use of a proactive approach or law and strategy approach to recognize and manage legal and regulatory issues, risks and concerns by creating competitive advantages and other business opportunities and benefits for business organizations).

81. See Holloway, et al., *Pedagogy*, *supra* note 11, at 245–54 (explaining how a managerial analysis with law can be taught by professors in colleges and schools of business).

greater control over decision-making, planning and operations through methodological order and fuller analysis of situations, through analytical scrutiny of end results of the stages of business decision-making and planning and practices or matters of conducting business operations.

C. Using Legal Rules Accompanied by Legal Analytics and Methods

The elements of the legal foundation take on special need, textual and rational qualities in enabling the theory of law and business and supporting the managerial analysis with law. These qualities of legal text, interests and rationality are inherent in uses and applications of legal rules and statutory provisions accompanied by legal analytics. Legal advice or rules accompanied by legal analytics occurs when lawyers explain the nature of legal findings and conclusions and legal analytical tools and methods applied to determine legality or illegality of these findings and conclusions by recognizing and addressing legal issues and regulatory concerns. These qualities of legal interests, text and rationality play unique analytical, textual or rational thinking roles in recognizing common law and regulatory issues and concerns that are raised by business situations, findings and conclusions. These issues and concerns must be recognized and addressed to make lawful end results in completing stages of business decision-making and planning and completing matters of business operations. In recognizing these issues and concerns, the jurisprudential elements support the managerial analysis with law to combine business and legal principles that are accompanied by business and legal analytics and methods to make lawful end results, ascertain normative values of lawful end results, examine unlawful end results and assess the impact of law on business organizations.

1. Using the Foundation to Support Legal Rules and Business Principles

The foundation supports a managerial analysis with law by using legal interests, text and rationality to support making lawful and examining unlawful business decisions, plans and matters. Legal interests, text and rationality support a managerial analysis with law by ensuring the purposes of and statements of common law rules and statutory provisions are fully used or applied in creating and forming legal-managerial information, tools and methods in stages of business decision-making and planning and within matters of business operations. These purposes and statements are the substance of legal rules and business principles that can be used for explanatory statements, to further legitimate needs, or to rely on normative values. These jurisprudential elements support the managerial analysis with law to determine, in part, the legality of business situations and factual

patterns that are identified by detailed sets of facts of a legal rule and specific explanations of a business principle.⁸²

Under both legal rules and business principles, the jurisprudential elements support a managerial analysis with law to identify and verify the legality of the manager's recognized situation and other similar situations in beginning business decision-making and planning and weighing factual patterns of business operations. Managers and executives recognize or define the pertinent situation or need and the use of factual patterns in matters of business operations. In applying business principles to legal rules, the managerial analysis with law identifies similar situations in determining the legality of a defined situation or need that will be used in the beginning stage of decision-making and planning. Managers can compare one or more lawful situations of a managerial analysis with law to their recognized or defined situation or need. The comparison of a defined situation with other lawful situations allows these managers to consider other effective situations similar to the defined situation to begin this process of decision-making and planning. Managers and executives should consider or weigh other situations or factual matters that are both lawful and more effective in furthering the same decision or organizational need and objective, such as a business competition creating a need for a flexible workforce. Moreover, the consideration of a more effective situation includes considering private and public needs, rational thinking and legal text to ensure innovation, creativity and consistency. Thus, the jurisprudential foundation supports a managerial analysis with law to aid in verifying and using a lawful situation to begin decision-making, or recognizing a lawful business environment to begin the planning process, or using a lawful pattern to continue business operations.⁸³

The jurisprudential elements play substantial roles in recognizing and addressing normative values by increasing methodological order and analytical scrutiny of lawful end results. This order and sensitivity are most significant in recognizing dilemma and conflict of normative values in making and using gray-area end results at all stages of business decision-making and planning and matters of business operations. These elements support the managerial analysis with law to create a legal-managerial method

82. See *infra* Part VII and accompanying notes (explaining how each jurisprudential element supports the use of each level of a managerial analysis with law that consists of analytical tools, methods and information).

83. See *infra* Part VII.A and accompanying notes (explaining how specific jurisprudential elements affect the use of a managerial evaluation that applies a business principle to a legal rule to determine the legality of business situations at the beginning stage of decision-making and planning and factual matters of ongoing business operations).

which recognizes and tests legitimate business interests and decision needs of lawful situations and other end results. These elements fuse or ensure more order and scrutiny through a managerial analysis with law to recognize the dilemma and conflict of normative value of lawful end results. This order and scrutiny are provided by a legal-managerial method and information to timely evaluate and weigh lawful end results that can be undermined by an ethical dilemma, organizational breach or public policy conflict. The jurisprudential elements are qualities of public needs, rational thinking and legal mandates on harmful conduct. These dilemmas, conflicts and breaches are not covered by enforceable mandates, but their societal impact on social norms, business trust and public needs can still limit or diminish the normative value of lawful situations and other end results which may be harmful to society.⁸⁴

Jurisprudential elements and their qualities support the managerial analysis with law to use another business theory or principle, managerial discretion theory, to recognize and analyze the latitude of managers and organizations to use lawful end results to move to the next stage in completing decision-making and planning and to the next matter of continuing business operations.⁸⁵ Managerial discretion theory depends on methodological sensitivity and analytical scrutiny to determine whether a lawful situation or other end result would not be usable and valid, respectively, or simply impermissible as lacking normative value within the latitude of managers and organizations under ethics, public policy and organizational policies. Ascertaining usability or validity is a necessary measure or test of normative value by determining whether each end result knowingly conforms to or breaches an ethical standard and organizational directive, or furthers or undermines a public interest in moving to the next stage of decision-making and planning and next matter of ongoing business operations. Thus, a managerial analysis with law relies on legal interests, texts and rationalities to form and create a legal-managerial method which uses managerial discretion theory to recognize usable or valid lawful end results conforming to normative values within business organizations.⁸⁶

84. See *infra* Part VI.A and accompanying notes (explaining how public and private interests, which are needs and wants, are protected by common law rules and statutory provisions).

85. See Crossland & Hambrick, *supra* note 30, at 803 (explaining managerial discretion theory and the latitude of business organizations under regulation and common law imposing restrictions on business decision-making, planning and operations).

86. See *infra* Part VI.B and accompanying notes (explaining how specific jurisprudential elements affect the use of a managerial evaluation that uses managerial discretion theory to determine the usability and validity of lawful end results, such as recognition of the business situation and finding feasible alternatives).

2. *Using the Foundation to Support Legal-Managerial Analytics*

The foundation supports a managerial analysis with law to use legal interests, text and rationality of legal rules and advice accompanied by legal analytics and methods to form and create discrete legal-managerial tools and methods. Legal interests, texts and rationalities possess unique analytical, textual and need qualities that support a managerial analysis with law to aid in recognizing and addressing common law and regulatory issues and concerns.⁸⁷ The managerial analysis with law uses these qualities to form legal-managerial tools and methods to address legal and regulatory issues and concerns. Such issues and concerns are raised by marketing, finance and other information, findings and conclusions needed and used in completing other stages of business decision-making and planning and nonfactual matters of business operations. One discrete legal-managerial tool uses a combination of judicial factual analysis and business feasible alternatives to recognize and analyze factual issues under a legal rule, such as fraud or wrongful discharge, governing one or more feasible alternatives. This factual analysis-feasible alternative tool ascertains the legality of feasible alternatives by analyzing business information or findings to determine whether an alternative is lawfully feasible to advance the objective and capable of moving to or being included in the next stage, which is the selection of the decision or best alternative. Business managers always need and must use lawful findings, information and conclusions to make lawful end results, such as feasible alternatives, at the end of a stage and matter. Legal-managerial tools and methods use legal interests, text and rational thinking to make lawful end results that must also address the situation and its decision need and objective, conform to normative values, and move to and advance the next stage in making another end result.⁸⁸

Legal interests, text and rationality support the managerial analysis with law to aid managers and executives in determining the legality of each practice or matter by using legal-managerial tools and methods in moving to

87. See Binyamin Appelbaum & Jim Tankersley, *The Trump Effect: Business, Anticipating Less Regulation, Loosens Purse Strings*, N.Y. TIMES (Jan. 1, 2018), <https://www.nytimes.com/2018/01/01/us/politics/trump-businesses-regulation-economic-growth.html> (stating that “[t]he evidence is weak that regulation actually reduces economic activity or that deregulation stimulates it. But business executives are largely convinced that the cost of complying with rules diverts money that could be invested elsewhere.”). *But see* Tsalis & Nikolaou, *supra* note 21, at 827 (recognizing that “[t]he outcomes of such strategies show that corporate regulatory compliance is connected with an additional cost and loss of competitiveness”).

88. See *infra* Part VII.C and accompanying notes (explaining how specific jurisprudential elements affect the use of legal-managerial tools and methods to determine the legality of business and other findings, conclusions and information and end results of stages of decision-making and planning).

the next matter of ongoing business operations. A managerial analysis with law is supported by legal interests, texts and rationalities to make legal-managerial methods and tools that are used in making lawful business practices or matters to continue effective ongoing business operations, such as retail sales and banking. For example, a legal-managerial tool is created by applying the recognition of a legal issue in making a workforce practice. This tool is an *issue recognition-workforce matter* used to recognize any legal issues and regulatory concerns under a known legal rule, namely determination of the status of workers in employment relationships, in ascertaining the legality of this workforce practice. The legal-managerial tool is applied to a newly designed workforce practice which imposes more forceful workforce standards on contract workers, for example, prohibiting flexible work schedules by drivers of personally owned vehicles in ride-sharing arrangements.⁸⁹ Thus, the managerial analysis with law is supported by legal interests, text and rationality to make lawful and examine unlawful matters or practices of ongoing business operations of organizations, such as banks and retail stores.⁹⁰

V. NATURE OF LEGAL INTERESTS, TEXT, AND RATIONALITY

The theory of law and business rests on a foundation of legal interests, text, and rationality that are jurisprudential elements exhibited by legal rules and their application using legal analysis and reasoning in judicial decision-making as well as supporting legislative decision-making. Nevertheless, legal interests, text and rationality share some common properties with business interests and rational thinking to advance organizational goals and objectives. The foundation enables the theory of law and business to make legal-managerial tools and methods to recognize public and business needs, use fact-sensitive statements and explanations, and make logical and rational end results in decision-making, planning and operations.

A. Understanding Interests as Needs of Public and Private Sectors

Legal interests are a jurisprudential element that consists of legitimate personal, organizational, economic and public needs and wants that may be recognized and protected under common law and regulation. Often, harmful or injurious human behavior and business development can create

89. Andoyan, *supra* note 54, at 171–73 (discussing the use of drivers of their own vehicles as independent contractors by Uber under California law and regulation).

90. See *infra* Part VII.C and accompanying notes (explaining how specific jurisprudential elements affect the use of legal-managerial tools and methods to determine the legality of business and other findings, conclusions and information and end results of matters of business operations).

environmental, social or political tension between public interests and private interests, such as between environmental protection and real estate development. This tension may rise to the level of a public policy conflict regarding the earth's existence, the world's people and nation's economy.⁹¹ Of the foundation, legal interests recognize and weigh legitimate public and private needs and wants of business, persons, and society. Legal interests show why legal rules prohibit particular harmful and injurious behavior, conduct and acts to protect the public, markets and organizations.⁹² Moreover, public and private interests are recognized, protected and advanced by legal rules and principles granting rights, imposing obligations and establishing other legal relations, such as privileges and immunities.⁹³ These interests enable the theory of law and business to show how common law and regulation protect rights and enforce duties⁹⁴ to further public purposes and needs by regulating harmful and injurious conduct and behavior.⁹⁵ Thus, legal interests are protected by legal rules and principles that impose obligations on managers and organizations to prevent or restrict unlawful business decisions, plans and matters.

91. Holloway & Noelting, *supra* note 51, at 5–11 (discussing impact of climate change on environmental, land use and other policies subject to the limitations of the Takings Clause).

92. The theory of law and business is not meant to replace, diminish or undermine an economic analysis of the law. Scholarly articles and books have been written regarding an economic analysis of the law. *See, e.g.*, RICHARD POSNER, *ECONOMIC ANALYSIS OF LAW 1* (9th ed. 2014) (explaining the application of economic theory to statutory and common law principles to create efficiencies in markets and transactions). The theory of law and business states how well-educated business managers, executives and policymakers knowingly or unknowingly use legal rules accompanied by legal analysis and reasoning, as provided legal education or lawyers, in making business decisions and plans, conducting business operations and assessing the impact of law on business and its disciplines and organizations. *See* Holloway, *Concept, supra* note 11, at 152. The theory of law and business sets forth a theoretical framework and analytical framework based solely on the dominant knowledge, analytics and methodology of the business curriculum in schools and colleges of business. *Id.*

93. *See* Wesley Newcomb Hohfeld, *Fundamental Legal Conceptions as Applied in Judicial Reasoning*, 26 *YALE L.J.* 710, 711–12 (1917) (discussing the use of juristic concepts, such as rights and privileges, to describe legal relations and disputes).

94. *See* Guido Calabresi & A. Douglas Melamed, *Property Rules, Liability Rules, and Inalienability: One View of the Cathedral*, 85 *HARV. L. REV.* 1089, 1090 (1972) (recognizing that states must decide the public and private interests to protect with legal rules).

95. *See id.* at 1090–91 (explaining that legal rules and principles protect public and private interests by making and applying property, liability, and inalienability rules).

1. *Legal Interests of Legal Rules to Further Public and Business Needs*

Legal interests can both protect and limit business needs and wants, such as laying off employees, which may conflict with public needs, namely employee welfare. Legal rules are legal knowledge that includes common law rules,⁹⁶ statutory provisions,⁹⁷ and administrative regulations.⁹⁸ These rules, provisions and regulations establish legal duties, rights, privileges and other jural relations to recognize and protect important public and private needs.⁹⁹ Jural relations include, among others, legal rights, duties, immunities privileges,¹⁰⁰ and legal rights are set forth under liability, property and inalienability rules.¹⁰¹ Common law rules and government regulation can restrict business matters, decisions and plans by limiting organizational and managerial control and decisional uses of findings, information and conclusions.¹⁰² Legal rights are not opposites but correlatives of legal duties and obligations that mandate business matters, decisions and plans to comply with or conform to common law norms and regulatory standards in completing transactions, establishing relationships

96. See RESTATEMENT (SECOND) OF CONTRACTS INTRO. (AM. L. INST. 1981); see also *Allegheny Gen. Hosp. v. N.L.R.B.*, 608 F.2d 965, 969–70 (recognizing a legal rule as a precedent setting forth a specific set of facts describing specific acts, transactions, behavior and other happenings).

97. See, e.g., 29 U.S.C. §§ 1001 *et seq.* (2020) (regulating the administration of employee benefit plans of the private sector).

98. See, e.g., 29 C.F.R. §§ 2509 *et seq.* (2020) (detailing federal labor regulations promulgated to implement the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001 *et seq.* (2020), by the United States Department of Labor).

99. See Calabresi & Melamed, *supra* note 95, at 1090-91; see also Hohfeld, *supra* note 94, at 710 (explaining a set of eight jural conceptions that are composed of opposites and correlatives to identify and explain legal relations and demonstrate judicial reasoning in solving legal issues). *But see* Jules L. Coleman & Jody Krause, *Rethinking the Theory of Legal Rights*, 95 YALE L.J. 1335, 1340 (1986) (arguing that “[t]he tension between the two frameworks [Coasem Theorem and Calabresi-Melamed framework] appears to require that we give up one or another plausible claim: either that a right is a domain of protected control, or that liability rules protect rights. Both claims are plausible, but apparently incompatible . . .”).

100. Calabresi & Melamed, *supra* note 95, at 1090–91. *But see* Max McCann, *The True Cost of Economic Rights Jurisprudence*, 6 J. JURIS. 149, 150 (2010) (arguing that “due to an inextricable link between the two [kinds of rights], the very attempt to distinguish and adjudicate the two spheres separately has had pronounced, unintended consequences on individual rights . . .”).

101. Calabresi & Melamed, *supra* note 95, at 1092 (identifying the kinds of rules that can be used to protect entitlements that were given to address conflicting interests).

102. *Id.* at 1091–92 (recognizing the use of liability, property and inalienability rules to limit the actions of persons and organizations exercising economic rights).

and taking part in business practices.¹⁰³ Thus, rights, duties and other relations are established by liability, property and inalienability rules to protect the public, organizations and persons.

B. Understanding of the Nature of the Text of Legal Rules

Legal text is a jurisprudential element that includes fact-sensitive legal rules and principles protecting and furthering specific public needs and purposes. The legal rules consist of fact-sensitive statements that are words and phrases describing situations, factual patterns and other sets of facts occurring in business, personal and organizational relationships, transactions and happenings, such as employee-employer relationships. Legal texts state the substance of common law rules, judicial precedents, legislative provisions and administrative regulations. These statements of common law rules,¹⁰⁴ statutory provisions,¹⁰⁵ and administrative regulations¹⁰⁶ are fact-sensitive words and phrases describing happenings and other factual patterns, such as employer-employee relationships.¹⁰⁷ These descriptive statements of legal rules and principles recognize and protect underlying public and private interests¹⁰⁸ by establishing rights, duties, privileges and other legal relations.¹⁰⁹ These statements are text of liability rules, property

103. *See id.* at 1092 (stating that the state must decide how to protect legal interests or entitlements by creating rules and imposing duties or obligations).

104. *See, e.g.,* Restatement (Second) of Contracts (1981), <https://luatcanhtranhvabaovenguoitiedung.wordpress.com/2011/06/08/the-us-restatement-second-of-contracts-of-1981/> (retrieved on Mar. 25, 2020); *Allegheny Gen. Hosp.*, 608 F.2d at 969–70 (recognizing that a legal rule is a precedent that sets forth a set of facts identifying unlawful conduct or behavior).

105. *See, e.g.,* 29 U.S.C. §§ 1001. *et seq.* (regulating the administration of employee benefits plan of the private sector).

106. *See, e.g.,* 29 C.F.R. §§ 2500 *et seq.* (2020) (federal labor regulations promulgated by the United States Department of Labor to implement the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001 *et seq.* (2020)).

107. Calabresi & Melamed, *supra* note 95, at 1092 (finding that states protect legal interests or entitlements by creating rules and imposing duties or obligations).

108. *Id.* at 1090 (recognizing conflicting interests can cause government to grant entitlements to protect legal rights).

109. *See* Hohfeld, *supra* note 94, at 711 (listing jural conceptions and relations that include jural correlatives and opposites and finding that duties are correlatives and not opposites of rights). Courts interpret common law rules and legislative acts to decide whether these rules and acts apply to facts, transactions, and relationships. *See* Int'l Union, UAW v. Yard-Man, Inc., 716 F.2d 1476 (6th Cir. 1983), *cert denied.*, 104 S. Ct. 1002 (1984), *abrogated by*, M&G Polymers USA, LLC v. Tackett, 135 S. Ct. 926 (2015). In *Tackett*, the Court rejected the Sixth Circuit's interpretation of the postretirement provisions of the collective bargaining agreement and instructed the Sixth Circuit to apply traditional common law rules governing the interpretation of contracts. The Court concluded that *Yard-Man* was inconsistent with common law principles of interpreting contracts and stated that “[w]e interpret collective-bargaining agreements, including

rules and inalienability rules protecting and obligating persons and organizations.¹¹⁰

1. Legal Text as Legal Rules to State Claims and Defenses

The textual statements of rules include substantive claims and defenses imposing limits on and creating benefits for persons, corporations and other business organizations. These statements permit business organizations and their managers to exercise discretion in their authority over employment, other relationships, and other happenings. For example, the text or statement of the employment-at-will doctrine protects the managerial discretion of employers¹¹¹ by permitting them to unilaterally discharge employees for no reason or cause, except when a federal or state regulation or state common law prohibits discharging employees without cause.¹¹² The employment-at-will doctrine permits managers to freely allocate or reallocate labor, financial or other resources by using business decision-making, planning and

those establishing ERISA plans, according to ordinary principles of contract law, at least when those principles are not inconsistent with federal labor policy.” *Tackett*, 574 U.S. at 435 (citing *Textile Workers v. Lincoln Mills of Ala.*, 353 U.S. 448, 456–457 (1957)).

The United States Constitution is subject to competing theories of interpreting the text of constitutional clauses and principles, such as the Takings Clause and just compensation. See Wyatt G. Sassman, *Applying Originalism*, 63 UCLA L. REV. DISCOURSE 154, 157–58 (2015) (“An essay reviewing the inaugural Justice Antonin Scalia Lecture, titled “Interpreting the Unwritten Constitution,” presented at Harvard Law School by Judge Frank H. Easterbrook on Nov. 14, 2014.”). Professor Sassman explains competing theories of interpreting constitutional text by stating that “[o]riginalists believe that judges must interpret the Constitution to mean what the Framers believed it to mean at the time of drafting, rather than any more modern interpretation.” *Id.* at 157. “In contrast, the legal thinkers on the other side think of the Constitution (and laws, to a lesser extent) as a living document. The idea is that the Framers could not have considered the challenges we face today.” *Id.* at 157–58.

110. See Andrew P. Morriss, *Exploding Myths: An Empirical and Economic Reassessment of the Rise of Employment At-Will*, 59 MO. L. REV. 679, 681 (1994) (explaining the development of the employment-at-will doctrine).

111. See *id.*; see also Crossland & Hambrick, *supra* note 30, at 803 (analyzing and hypothesizing the impact of law and other institutions and conditions on managerial discretion of national organizations).

Crossland and Hambrick set forth “Hypothesis 7: The greater the level of employer flexibility in a country, the greater the discretion available to CEOs of firms headquartered in that country.” *Id.* at 803. Crossland and Hambrick found that executives can create flexibility by altering the composition and deployment of their workforces when they are not limited by government policies and private contracts. *Id.*; see also Holloway, *Concept*, *supra* note 13, at 164–68 (conducting a managerial analysis with law by applying organizational flexibility theory to factors or criteria for determining employee status to identify and verify a domain of workforce or employment situations to begin decision-making in establishing a flexible workforce).

112. See Morriss, *supra* note 111, at 681.

operations to make lawful decisions, strategies and practices.¹¹³ Another example of a prohibition is the text of Title VII of the Civil Rights Act of 1964¹¹⁴ that prohibits the use of race, color, religion, national origin and sex in employment practices and decisions to hire, promote, compensate and discharge employees.¹¹⁵ Fact-sensitive statements of employment, labor, workplace safety and other statutory provisions prohibit employers and their organizations from making harmful or injurious employment and labor decisions, as well as other potentially problematic strategies and practices, such as discriminatory employment practices.¹¹⁶ Thus, fact-sensitive statements of legal knowledge, which include common law rules and government statutes and regulations, describe sets of facts granting and protecting legal rights by imposing and enforcing duties of persons and organizations.

C. Understanding Rationality of Legal Analytics and Methods

Legal rationality is a jurisprudential element using logic and rationality of judicial and legislative decision-making methodologies. This element underpins the rational thinking and judgment of managers and executives in making decisions, strategies and practices to advance tactical, operational and strategic goals and objectives of business organizations. On one hand, legislative decision-making relies on rational thinking to enact statutes advancing legitimate public objectives and justifying public needs and demonstrates basic rationality between statutes and their public needs and objectives.¹¹⁷ On the other hand, judicial decision-making uses legal analysis and reasoning to apply legal rules to the facts of disputes to solve legal issues in making judicial decisions that are based on factual and public policy grounds and possess decision rationales demonstrating legal rationality and logic.¹¹⁸ A legal or judicial decision must also be consistent

113. *Id.*

114. See 42 U.S.C. §§ 2000e *et. seq.* (prohibiting employment discrimination based on race, color, national origin and religion in hiring, training and other employment practices of employers engaged in interstate commerce).

115. See *id.* at § 2000e 2(a)(1), (2).

116. See *id.* (prohibiting employment discrimination based on race, color, national origin, sex, and religion).

117. See Russell W. Galloway, *Means-End Scrutiny in American Constitutional Law*, 21 LOY. L.A. L. REV. 449, 451–52 (1988) (explaining a means-ends analysis that tests whether a government statute is rational by justifying a public need and furthering a legitimate public objective).

118. See Thomas R. Haggad, *A Selective Bibliography On The Use Of Logic In Law*, 20 JURIMETICS J. 102, 102–04 (1979) (including a bibliography of articles on the logic of judicial decision-making); Lee Loevinger, *An Introduction To Legal Logic*, 27 IND. L.J. 471, 472–75 (1952) (examining the logic of judicial decision-making and explaining thoughts and

with the purposes of the legal rules, and the legislative decision or statute must relate to and justify its public need and objective. Thus, legal rationality and logic are inherent in legal analytics and methodology making judicial decisions to decide disputes under legal rules and their purposes and enacting legislation establishing and responding to employee, environmental and other public needs by setting and furthering public objectives.

Allegedly irrational and illogical decisions of administrative regulations and legislative acts may be challenged under constitutional provisions for lacking a sufficient connection between the legislation and its public need and objective. Federal statutes require a degree of rationality by furthering a desired public objective and justifying a given public need, especially when these statutes are challenged under a constitutional provision, such as the Equal Protection Clause.¹¹⁹ This degree of rationality is the level of connection between a federal statute and its need and objective, and this requisite level of the connection or relationship may vary from a deferential test or loose connection favoring government, or a test permitting little or no deference, or requiring a direct connection.¹²⁰ When little or no deference is given to government policymakers, federal and state legislative acts must demonstrate a very close connection with either a compelling state interest or an important public objective under the Equal Protection Clause.¹²¹ Legal rationality and logic impose rational or logical thinking on the use of judicial and legislative powers to make government decisions governing persons and organizations. As a requirement of or limit on government decision-making, legal rationality can expand the rational thinking of business decision-making, planning and operations by ensuring end results further the decision objective and justify the need for the decision in the recognized business situation or other stages and matters.

comments of legal scholars, such as Justice Wendell O. Holmes and Roscoe Pound, and stating that “Holmes did not mean to minimize the importance of rational thinking in the law, but, quite on the contrary, to urge a more conscious and rational recognition of the grounds of judicial decision”).

119. U.S. CONST. amend. XIV, § 1.

120. *See id.* (recognizing that the Due Process Clause and Equal Protection Clause require at least a minimum amount of rationality under a rational basis test connecting a legislative act to its public objective and need).

121. *See id.* Government needs only show a legitimate interest under a rational basis test to use socioeconomic classifications but must show a compelling state interest under a strict scrutiny test for classifications based on suspect traits, and an important governmental objective under an intermediate scrutiny test for classifications based on sex under the Equal Protection Clause. *See generally* Brendan T. Beery & Daniel R. Ray, *Five Different Species of Legal Tests-and What They All Have in Common*, 37 QUINNIPIAC L. REV. 501, 504–19 (2019) (explaining the use of legal factors, factors, means-ends tests, balancing tests and categorical tests to justify government regulatory classifications and mandates).

1. Legal Rationality of Legal Analytics and Methods for Thinking

Rationality exists in the use of legal analytics and methodology to weigh public needs and objectives,¹²² draft legislation,¹²³ promulgate administrative regulations,¹²⁴ and make judicial precedents.¹²⁵ Legal rationality and logic require a minimum kind and level of reasoning to hold weight in judicial and legislative decision-making. This kind and level of reasoning are legal rationalities that are tested by a means-ends test and analyzed to ensure a minimum connection between a justifiable public need and legitimate public objective and a legislative decision.¹²⁶ A means-ends analysis operates to determine whether each legislative act furthers its stated public objective and justifies its recognized public need. Legal rationality includes using legitimate legislative findings to establish a public need and objective to begin and continue public decision-making and administrative operations.¹²⁷ Additionally, legal rationality requires regulation to further a public need and objective that can loosely or directly connect to a specific legislative act depending on its nature or character, such as classifying persons or regulating rights. Thus, the foundation of the theory of law and business can use legal rationality and its analytical nature to aid in validating business decision-making, planning and operations by ensuring decisions, plans and matters further a relevant organizational or decision objective and justify an organizational or decision need.

122. See 29 U.S.C. § 1001(a) (“Congress finds that . . . the continued well-being and security of millions of employees and their dependents are directly affected by these plans . . .”).

123. See *id.* at §§ 1001 *et. seq.* (enacting ERISA to further retirement security); 42 U.S.C. §§ 2000e *et. seq.* (enacting Title VII to promote equal opportunity and fairness in employment).

124. See 29 C.F.R. §§ 2509 *et. seq.* (federal labor regulations implementing ERISA and its retirement security policy); 26 C.F.R. §§ 1.401 *et. seq.* (federal tax regulations implementing ERISA and employee benefit taxation policy to further retirement security).

125. See *Int’l Union, UAW v. Yard-Man, Inc.*, 716 F.2d 1476 (6th Cir. 1983), *cert. denied*, 104 S. Ct. 1002 (1984) (holding that retirees were entitled to continuing benefits despite the expiration of the collective bargaining agreement), *abrogated by*, *M&G Polymers USA, LLC v. Tackett*, 135 S. Ct. 926 (2015) (reversing and remanding *Tackett* to Sixth Circuit with instructions to apply traditional rules of contract interpretation that were not applied in *Yard-Man.*).

126. See *Beery & Ray*, *supra* note 122, at 504–19 (explaining the use of legal factors, means-ends test, balancing test and categorical test to justify government regulatory classifications and mandates).

127. See 29 U.S.C. § 1001(a) (listing findings that were used by Congress to set forth the need to justify enacting ERISA to protect employee benefit plans).

VI. FOUNDATION TO EFFECT USE OF BUSINESS KNOWLEDGE, ANALYTICS AND METHODOLOGIES

The jurisprudential elements can enhance business knowledge and expand analytics and methodology independently of a managerial analysis with law. These elements individually enhance uses of business knowledge and expand applications of business analytics and decision-making methodology of business disciplines. First, the enhanced use of business knowledge works by using legal interests, text and rationality to support the knowledge-based properties that include an explanatory nature, a normative value, and business needs and objectives.¹²⁸ Second, the expanded utility of business analytics and methodology is using legal interests, texts and rationalities to support analytical- and methodological-based properties, such as recognizing problems, analyzing situations, finding normative value and exercising rational thinking.¹²⁹ However, a managerial analysis with law is dependent on common knowledge-, analytical- and methodological-based properties of law and business to make functional combinations of legal and business knowledge, analytics or methodologies.

A. Expanding the Use of Legal and Business Knowledge

The foundation of the theory of law and business uses legal text and interests to expand or enhance the operative nature of business principles and theories (knowledge) that explain and identify happenings in business relationships, transactions and other events. The theory of law and business uses legal and business knowledge to identify and verify lawful, unlawful and gray-area situations and needs existing under similar happenings and facts of a legal rule and business principle. On one hand, the operative nature of business knowledge consists of business theories and principles explaining how managers and executives can exert influence, find opportunities and gain advantages over markets, situations, and competitors, which include relationships, transactions and other circumstances.¹³⁰ On the other hand, the operative nature of legal knowledge is legal text and interests that are set forth in legal rules and precedents¹³¹ and their purposes to

128. Loevinger, *supra* note 119, at 475.

129. *See id.*

130. *See* Crossland & Hambrick, *supra* note 30, at 803–04 (setting forth hypotheses stating the impact of the national legal system can limit the use of managerial discretion theory in understanding and explaining business processes and operations of national organizations). Crossland and Hambrick state that: “Hypothesis 6: Countries with a common-law legal origin (compared to those with a civil-law origin) will provide greater discretion to CEOs of firms headquartered there.” *Id.* at 803.

131. *See* Allegheny Gen. Hosp., v. N.L.R.B., 608 F.2d 965, 969–70 (3d Cir. 1979) (giving a definition of precedent or legal rule).

mandate and control only harmful or injurious conduct and behavior of managers and organizations.¹³² These statements and purposes of legal rules govern and describe situations, relationships, transactions and other sets of facts that are not available or useful to organizations and managers to advance legitimate organizational goals and objectives.¹³³ Thus, the legal text of legal rules and regulation complement the operative nature of business theories and principles¹³⁴ that can explain business happenings, situations and needs in making decisions, plans and matters.

1. Adding Legal Interests to Enhance Business Knowledge

Legal interests enhance business knowledge by supporting the use of business theories and principles to explain lawful happenings in business decision-making, planning and operations. Business knowledge includes business text and interests that explain lawful happenings, situations and needs of organizations, relationships and markets. The private interests justify the use of business situations and needs, such as using technological innovation to start new business operations,¹³⁵ by placing these situations and needs within protected business interests, such as the use of a new business model.¹³⁶ These situations protected by lawful interests can be distinguished from unlawful and extremely risky gray-area situations that are recognized but not used by managers to initiate or begin decision-making and planning. Thus, legal interests enhance business principles and theories to aid in verifying whether a domain of lawful situations is within the stated public or personal purposes or interests of common law rules and government statutes.

Public and private interests support creativity and innovation by allowing

132. *Id.*

133. *See id.*

134. *See* AACSB-Eligibility Standards, *supra* note 16, at 35 (listing the areas of knowledge that should be taught in colleges of business); Thomas, *supra* note 59, at 232 (defining business theory as “a description of a phenomenon and the interactions of its variables that are used to attempt to explain or predict.”); Wacker, *supra* note 59, at 364 (defining business theory under the field of operations research).

135. *See* Dena Hale et al., *Gifted Innovation: An Examination Using Different Business Theories*, 17 J. BUS. INQUIRY 4, 18 (2017) (identifying business technology acceptance model and diffusion of innovation theories requiring business plans, decisions and actions to adopt technology); Crossland & Hambrick, *supra* note 30, at 798 (using managerial discretion theory as a business principle or theory to make hypotheses that demonstrate how government policy and regulation can affect the latitude and discretion of managers in making and implementing decisions, strategies and practices).

136. *See, e.g.*, Andoyan, *supra* note 54, at 155–56 (explaining that ride sharing companies are new business models confronted by common law and state regulation defining employer-employee relationships that could severely restrict development of the ride sharing industry).

managers and executives to put forth ideas, models and technologies to minimize restrictions on or pursue legislative protection by tariffs, taxes and other regulation to begin and continue decision-making and planning and conduct and expand ongoing business operations. Legal interests aid in ascertaining whether creative and innovative situations and matters, which can be explained by business principles, are within a legitimate private need or interest (not necessarily codified) and do not conflict with an important public interest or need of common law or government regulation. Moreover, legal interests of common law and government regulation point firmly to organizations and managers needing to be sensitive and responsive to public interests when business transactions, relations and happenings affect national social welfare and other policies, such as retirement security.¹³⁷ Business sensitivity and responsiveness to public interests point out any lawful and unlawful decisions, practices and strategies frequently causing injury or harm to an important public interest that is protected or not protected by a legal rule.¹³⁸

In responding to harmful decisions, legislatures will regulate more, or courts may need to consider existing interpretations of common law rules and legislative provisions to protect public interests, such as labor relations and retirement security.¹³⁹ Legislatures, courts and agencies will respond or react to an injurious and harmful line of decisions, such as misclassifying employees as independent contract workers, by imposing restrictions on managers and executives making business decisions, strategies and practices harming or undermining important public interests. Common law and regulation protect public interests but often leave enough private interests to allow, if not demanded, business innovation and creativity to compete in domestic and global markets, assuming employers know and understand

137. See 29 U.S.C. § 1001(a) (2018) (listing findings that were used by Congress to set forth the need to justify enacting ERISA to protect employee benefit plans).

138. See *infra* Part III.A and accompanying note (defining a managerial failure as “managers [who] . . . continuously define or analyze the same or similar situations and make the same or similar [unethical or socially irresponsible] decisions”).

139. See, e.g., 29 U.S.C. § 1001(a) (2018).

their rights under common law¹⁴⁰ and duties under government regulation.¹⁴¹ Thus, legal interests enhance business principles and theories by adding sensitivity in responding to public interests and broadly using unrestricted private interests in business decision-making and planning and matters of business operations.

2. Adding Legal Text to Expand Business Knowledge

Legal text enhances business knowledge by identifying and verifying a situation or factual matter that is within a set of facts of a legal rule and factual happenings of a business principle. The application of a business principle to a legal rule identifies similar situations that may include a more effective or useful situation(s) to verify the legality of the recognized situation and complete the first stage of decision-making, planning, and continuing operations. This recognized or actual situation is recognized by the manager to begin or initiate decision-making and planning or evaluate a factual matter of business operations. Moreover, common law and regulation can enhance business knowledge to reveal how an innovative business model may be consistent with a legal rule and its purpose. For example, Uber and other ride-sharing services allow independent contractors to use their personally owned vehicles to provide ride-sharing services on drivers' work schedules.¹⁴² The ride-sharing model supports the use of independent contractors to operate their personally owned vehicles. This model allows these contractors and ride-sharing services more flexibility in managing employment relationships of the domestic ride-sharing industry.¹⁴³ Broadly

140. Compare Hohfeld, *supra* note 94, at 746 (explaining the enormity of legal rights, powers and other legal relations conferred on persons and organizations owing property can be restricted greatly by the lack of innovation and creativity), with Pullitzer v. Livingston, 89 Me. 359, 363 (1896) (“[W]ith all the rights, privileges, and powers incident to ownership”). Hohfeld describes this enormity by stating that “Suppose, for example, that A is fee-simple owner of Blackacre. His “legal interest” or “property” relating to the tangible object that we call land consists of a complex aggregate of rights (or claims), privileges, powers, and immunities.” Hohfeld, *supra* note 94, at 746; see also *infra* Part VI.A.2 and accompanying notes (explaining how legal rules and principles can enhance business principles and theories to protect innovative and creative business models, such as Lyft and Uber ride sharing services).

141. See 42 U.S.C. §§ 1001 *et. seq.* (regulating administration of employee benefits to protect retirement security); 42 U.S.C. §§ 2000e *et. seq.* (regulating employment practices, decisions and strategies to promote equal opportunity and fairness in employment).

142. Andoyan, *supra* note 54, at 155 (“Uber provides rides to those who are seeking them and connects them with a driver. This characteristic places it into the ‘On-Demand Economy.’”).

143. *Id.* at 156 (“[I]f Uber drivers were found to be employees, the cost to Uber would increase and pressure Uber to limit the drivers’ ability to set their own schedules. It is a poor outcome for both parties.”).

construing employer-employee relations limits the flexibility of the ride-sharing industry by not allowing vehicle operators to choose their employment status.¹⁴⁴ When the legal text or rule states a set of facts or happenings that are broader than the happenings of any business principle, the business model is totally unlawful, notwithstanding any business innovation. Thus, enhancing business knowledge often uses legal text to broadly analyze business situations, findings and information to find and understand regulatory risks, regulatory restrictions and common law limits facing business innovation and creativity, such as new business models.

3. Hypothesis on Legal Interests and Text to Enhance Business Knowledge

One could easily hypothesize that a managerial analysis with law supported by legal interests and text can apply a business principle to a legal rule to create a domain of lawful, unlawful and gray-area business situations. This application of business principles to legal rules occurs at the beginning of business decision-making and planning and addressing factual matters of ongoing business operations. As an example, a managerial analysis with law supported by legal text and interests would enable a manager to apply a business principle to a legal rule to identify a domain of employment situations that would allow a manager to identify lawful, unlawful and risky gray area¹⁴⁵ situations. This can in turn verify whether a manager's

144. *Id.* at 158–61 (explaining the application of California's right-to-control test in *S.G. Borello & Sons, Inc. v. Dept. of Indus. Relations*, 769 P.2d 399 (Cal. 1989), and *Alexander v. FedEx Ground Package Sys., Inc.*, 765 F.3d 981 (9th Cir. 2014), to determine the employment status of workers in ride sharing industry of California and holding that drivers were presumptive employees of Uber); Douglas O'Connor v. Uber Technologies, Inc., 82 F. Supp. 3d 1133, 1141–45 (N.D. Cal. 2015), *rev'd*, 904 F.3d 1087 (9th Cir. 2018) (deciding issue of enforceability of the arbitration agreement, designation of arbitrability and class certification under the arbitration agreement). However, on November 3, 2020, a majority of California residents voted to approved California's Proposition 22 that permits Uber and Lyft to treat drivers and other workers as independent contractors, though an earlier California judicial decision and labor law had declared these drivers as employees. Kate Conger, *Uber and Lyft Drivers in California Will Remain Contractors*, N.Y. TIMES (Nov. 4, 2020), <https://www.nytimes.com/2020/11/04/technology/california-uber-lyft-prop-22.html> (“Californians rejected the principles outlined in a 2018 State Supreme Court ruling and enshrined in a 2019 state law that said workers who performed tasks within a company's regular business . . . must be treated as employees. Under Prop. 22, gig workers are exempted from these rules and can continue to work independently.”)

145. *See generally* Int'l Union v. Yard-Man, Inc., 716 F.2d 1476 (6th Cir. 1983), *cert denied.*, 104 S. Ct. 1002 (1984), *abrogated by*, M&G Polymers USA, LLC v. Tackett, 135 S. Ct. 926 (2015) (involving the termination of postretirement welfare benefits under ambiguous terms of an employee benefit plan). In the early 1980s, the termination of post-retirement benefits under reservation clauses of employee benefit plans raised a legal issue regarding the legality of post retirement plan terminations under ambiguous

recognized situation or factual matter or practice is lawful and the most effective situation to begin decision-making and planning and most productive matter to continue ongoing business operations.

B. Increasing the Usefulness of Legal and Business Analytics

The foundation of the theory of law and business uses legal text and rationality to expand or enhance the utility or usefulness of business analytics by supporting a broader analysis of qualitative and quantitative findings, information and conclusions. Legal text and rationality are integral parts of legal rules and reasoning and can enhance business analytical tools and methods by minimizing uses of marketing and other findings, information and conclusions presenting legal and regulatory concerns, showing a lack of normative value and demonstrating a detrimental impact on business organizations. First, legal analytics is the use of legal analysis to recognize and analyze findings, information and conclusions and then find and analyze corresponding legal rules or preferably request and understand legal advice to find legal and regulatory issues. Second, the utility of business analytics consists of financial, operations and other analytical tools and methods providing analysis of factual patterns, data and information and making findings and conclusions to make end results, such as feasible alternatives, hiring practices and marketing strategies. The theory of law and business uses legal text and rationality to increase or expand utility of business analytics in making lawful end results at the end of stages of decision-making and planning and completing end results of matters of business operations.

1. Adding Legal Text to Enhance Business Analytics

Legal text accompanied by legal analytics complements financial, accounting and other business analyses to aid in analyzing business situations, findings, data and information to begin, continue and complete lawful decision-making, planning and operations. In finding legal issues and making legal applications, legal analytics are used to determine whether business information, findings and conclusions¹⁴⁶ may be subject to a legal

terms and conditions. See Raymond A. Franklin, *Vesting Retirement Benefits: Revisiting Yard-Man and Its Unacknowledged Presumption*, 25 J. CIV. RTS. & ECON. DEV. 803, 805 (2011) (“Most of the courts that have looked at the issue have based their decisions on their agreement or disagreement with the 1983 Sixth Circuit decision *International Union, UAW v. Yard-Man, Inc.* . . . [H]olding that retirees were entitled to continuing benefits despite the expiration of the collective agreement.”) In 2015, the United States Supreme Court remanded *Tackett* to the Sixth Circuit instructing it to apply contract principles to the interpretation of the collective bargaining agreement rather than rely on *Yard-Man*. 574 U.S. at 937.

146. See AACSB-Eligibility Standards, *supra* note 16, at 36 (establishing undergraduate and graduate learning and curriculum standards that require colleges of

rule. Specifically, legal analytics complement business analytics to conduct factual analysis, recognize issues and make legal conclusions in determining whether business information, findings and conclusions are needed to make end results in stages of decision-making and planning and matters of business operations are lawful.¹⁴⁷ Some acquired information, findings and conclusions may be unlawful on their face, such as false information or competitor's trade secrets. Other findings and information that could raise gray-area concerns will require more business analysis or scrutiny upon entry and use in recursive decision-making and planning and ongoing business operations. Once business analytical tools are used to determine the relevancy or usefulness of these findings, information and conclusions on entering a stage or matter, the manager may consider the need for legal analytics accompanying legal rules or advice to determine if a legal issue is raised by these findings, information or conclusions in this stage or matter. This need for and entry of legal text enhances the utility of business analytics in ascertaining the legality and validity of business and other information, findings and conclusions to make effective end results, such as one or more feasible alternatives to establish a flexible and adaptable workforce.

2. Adding Legal Rationality to Enhance Business Analytics

Legal rationality exists with legal analytics and reasoning accompanying legal rules to enhance business analytics by increasing rational business thinking in making decisions, plans and matters. Legal analytics and methods increase rationality in the use of business analytical tools and methods to find and use information, findings and conclusions to make lawful, rational end results of stages of decision-making and planning and matters or practices of operations.¹⁴⁸ In addition, legal rationality enhances business analytics and methods to ensure managers and organizations exercise sufficient rational thinking to relate the end result of each stage or matter to the decision objective and need.¹⁴⁹ Rational end results include the

business to teach students to recognize problems and make creative solutions).

147. See *id.* (establishing standards that require colleges to teach students to think creative, integrate knowledge across as well as understanding disciplines from multiple perspectives).

148. See Peter Dewitz, *Legal Education: A Problem of Learning from Text*, 23 N.Y.U. REV. L. & SOC. CHANGE 225, 228 (1997) (identifying the nature of legal analysis and reasoning that are used to make the rationale in judicial decisions). Legal text includes “[l]egal cases [that] have a unique structure, typically including a summary of previous proceedings, issues or disputes, a rationale of the reasoning, decisions and the rule. Experts use their knowledge of this structure to guide their comprehension as they locate the facts, then the decisions, and finally the rationale behind the legal reasoning.” *Id.*

149. Jack Woerner, *Steps in the Rational Decision-Making Model*, STUDY.COM (Feb. 2, 2022), <https://study.com/academy/lesson/the-rational-decision-making-model-steps->

selection of lawful feasible alternatives and making employment practices that comply with legal rules, justify the need for the decision, and advance the decision objective. Thus, legal rationality enhances business analytics and methods by using rational thinking to completing the end result to the decision need and objective.

3. Hypothesis on Legal Text and Rationality to Enhance Business Analytics

One could easily hypothesize that a managerial analysis with law supported by legal text and rationality of legal and business knowledge and analytics in stages of business decision-making and planning and matters of ongoing business operations form legal-managerial tools and methods. The creation and formation of these tools and methods analyze the legality of business and other information, findings and conclusions in making lawful and valid end results at each stage and matter. As an example, a managerial analysis with law combines finding the legal issues with selecting feasible alternatives to analyze and find legal issues raised by information and data to identify one or more lawful and valid feasible employment alternatives in making a human resources decision to expand the workforce.

C. Extending Usefulness of Business Methodologies

The foundation of the theory of law and business uses legal text and rationality to expand or enhance the utility of business decision-making and planning methodologies and operational methods or tools. Legal texts and rationalities expand the usefulness or utility of business methodologies by using legal rules to determine the legality of business findings and information in making lawful end results of stages of decision-making and planning methodologies and matters of conducting business operations.¹⁵⁰ On one hand, business decision-making and planning methodologies and operational methods consist of analytical tools and methods that can interact with legal text and rationality to expand or enhance rational thinking in completing each end result of a stage or matter.¹⁵¹ On the other hand, judicial

and-purpose-in-organizations.html.

150. See O'Dell, *supra* note 67, at 70–71 (recognition of the situation in an organization, market or other decision environment is finding the need or problem as the first step in business decision-making); Cappalli, *supra* note 45, at 399 (recognizing legal methods include, among others, finding the legal issue that leads the court to make a conclusion and rationale).

151. See Certo et al., *supra* note 13, at 114 (stating several commentators do not believe that decision-making is always rational). Certo and coauthors explained the theory of “bounded rationality, which suggests that managers make imperfect decisions due to a variety of factors including lack of information, inadequate time, and cognitive

decision-making methodology uses legal analytics and rational thinking in analyzing facts to find a specific legal issue and then applying a legal rule to these facts to make a legal conclusion with a rationale.¹⁵² Consequently, amenable legal and business decision-making and planning methodologies include a common problem recognition method that covers recognizing problems (situations) and finding legal problems (issues), respectively, of transactions, relationships and other happenings. Other methods use facts, information and conclusions to make rational end results and include both making legal conclusions and selecting a business decision with an applicable rationale.¹⁵³ A business decision is implemented within organizations, industries and markets and then followed up to determine its effectiveness to solve or address the business situation or need. In contrast, a judicial decision is implemented within society, government and organizations and may become a precedent that can be used by lower courts. Perhaps, the follow-up is an eventual review of the judicial decision or a similar case by a higher court. Thus, the theory of law and business relies on amenable legal and business methodologies to permit legal text and rationality to enhance the utility of business decision-making, planning methodologies and operations.

1. Adding Legal Text to Enhance Business Methodology

Business methodology requires legal text to make legal conclusions and rationales under common law rules and regulation at each conclusion of these stages and matters. Legal text consists of legal rules accompanied by legal analytics and directly covers some situations or factual happenings. These happenings and other situations may often be explained by business principles, such as organizational flexibility theory,¹⁵⁴ accompanied by or

limitations. . . . [Herbert] Simon labeled this process of making decisions that are suboptimal yet 'good enough' as *satisficing*." *Id.* (citing HERBERT A. SIMON, *MODELS OF MAN: SOCIAL AND RATIONAL* (1957)).

152. See Cappalli, *supra* note 45, at 398 (stating that legal methodology "does concern itself with the methodology employed, principally by courts, to create, elaborate, and apply that substance. Think of a mechanic and her tools in constructing a machine [T]he worker's tools and knowledge of their use are analogous to method. The tools can be used to construct or to dismantle, to add on, or to downsize.").

153. See *id.* at 399.

154. See Martin R. Fellenz, *Flexibility in Management Theory: Towards Clarification of an Elusive Concept*, J. STRATEGIC MGMT. EDUC. at 65, 78 (2008) (discussing the making a flexible organization using organizational flexibility theory); John G. Lynch, *Organization Flexibility*, HUMAN RESOURCE PLANNING, at 24–25 (Mar. 1, 1989) (discussing the use of flexible work arrangements in creating organizational flexibility); Crossland & Hambrick, *supra* note 21, at 803 (using managerial discretion theory to show the impact of using workers and employees to create organizational flexibility in some countries). Crossland and Hambrick state that "[t]he less employer flexibility in a

needing business analytics in making decisions, strategies and practices, such as controlling the employment status of workers to create a more flexible workforce. Legal text ensures the legality of a situation at an end result, or occurring at the beginning stage, and the legality of findings, information and conclusions of other end results at other stages of decision-making and planning and throughout all matters of operations. Business and planning methodologies and marketing, banking and various analytical methods are made more effective and useful by using legal text to precisely identify and address legal issues raised in using situations, information, findings and conclusions to make lawful business decisions, strategies and practices. Simply, unlawful situations, information, findings and conclusions cannot be used in business decision-making, planning and operations to make lawful decisions, strategies and practices if they lack normative values, such as not conforming to ethical standards. Thus, enhancing or expanding the utility of business decision-making and planning methodologies and operational methods, which are both qualitative and quantitative, is using legal text and its fact-sensitive nature to determine legality and recognize normative values.

2. Adding Legal Rationality to Enhance Business Knowledge

Legal rationality enhances business rational thinking in decision-making, planning and operations to further organizational goals and objectives by rationally relating each end result to the decision, plan or practice need and objective. Enhancing rational thinking upon each end result uses legal rationality as a legal-managerial or analytical method. In legal decision-making, this analytical method is used to relate or connect a legislative decision to its public need and objective.¹⁵⁵ The foundation enables stage- or matter-specific rationality by using a legal-managerial (analytical) method to objectively measure the relationship between each end result and its decision need and decision objective. Simply, each end result of a business decision, plan or matter must justify its lawful decision need and further its lawful decision objective where the theory of law and business assumes the

country, the less discretion available to CEOs. Facing significant legal restrictions, executives will have limited ability to furlough or reassign employees — even in periods of downturn or strategic restructuring.” *Id.*

155. Galloway, *supra* note 118, at 449 (citing G. GUNTHER, CONSTITUTIONAL LAW 93 (1985)) (“[M]eans-end scrutiny [is] the most common form of analysis used by courts in enforcing constitutional limits on government action. . . . [J]udicial scrutiny of means-ends relationships . . . may well be the most frequently invoked technique in the judicial review of the validity of federal and state legislation.”). The means-end test or method is not the only test of legal knowledge, analysis and reasoning to measure the legality of government decisions. *See* Beery & Ray, *supra* note 122, at 504–19 (explaining the use of legal factors, means-ends test, balancing test and categorical test).

decision need and objective are consistent with and advances a requisite organizational need and objective. The rational matter or stage-specific method measures the fit between the end result and decision purpose at each stage of a recursive process of decision-making and planning and each matter of ongoing operations.

As stated above, this legal-managerial method is similar to legal methods applied to measure the rationality of government decision-making conducted to enact legislative acts addressing actual public needs and advancing legitimate public objectives.¹⁵⁶ Legal rationality increases methodological order and analytical scrutiny of the relationship between a manager's end result and the decision or organization's needs and objectives. Moreover, rational judicial decision-making requires analytical scrutiny to avoid relying on feelings, emotions and intuition¹⁵⁷ and requires methodological order to make and justify legislative acts consistent with their public needs and objectives, and judicial decisions consistent with purposes of legal rules.¹⁵⁸ Federal and state constitutions require government policymakers to enact legislation that furthers legitimate public needs and objectives, though the connection between a legislative act and its need and objective may range from deferential to non-deferential.¹⁵⁹ In recursive decision-making and planning ongoing operations, an end result is sufficiently rational when it is justified by a definite decision need and can effectively advance a legitimate decision objective in moving to the next stage of business decision-making or the next matter of ongoing business operations.

Lawyers give legal advice on the legality of business situations, information and findings and conclusions.¹⁶⁰ Executives and managers need

156. Galloway, *supra* note 118, at 449 (“When government action is subject to a constitutional limit, courts frequently evaluate the justification for that action. If a sufficient justification exists, the action may be permitted despite the applicability of the limit.”).

157. Loevinger, *supra* note 119, at 472–75 (examining the logic and rational thinking of judicial decision-making and arguing that Justice Holmes did not mean that judicial decisions should be based on experience); Simon, *supra* note 134, at 63 (contrasting the use of judgment and intuition in rapid decision-making relying on education and experience and the use of logic and rationality in a well ordered process of decision-making where judgment and rational thinking can be used appropriately to make rational decisions).

158. Galloway, *supra* note 118, at 449 (recognizing that government regulation requires a legitimate need and objective).

159. *Id.* at 452 (quoting G. GUNTHER, CONSTITUTIONAL LAW 472 (1985)) (“The deferential rational basis test is so easily satisfied that it has been nicknamed the ‘hands off’ approach. The outcome of deferential rationality review is virtually a foregone conclusion. In nearly all cases, the government action is held constitutional.”).

160. See Praveen Kosuri, *Beyond Gilson: The Art of Business Lawyering*, 19 LEWIS & CLARK L. REV. 463, 472–75 (2015) (citing George W. Dent, Jr., *Business Lawyers as*

specific legal rules and advice accompanied by analytical and rational explanations of the relevant legal rule and its application to determine the legality of situations, findings, information and conclusions to create and ensure rational end results.¹⁶¹ Such explanations are not unthinkable and perhaps are more likely where managers and executives know enough legal analytical tools and methods, such as recognizing the legal issue, to understand and make basic uses and applications of a few relevant legal rules in stages of decision-making and planning and matters of business operations. Where managers have completed a legal studies course or earned a joint business and law degree, it is reasonable to assume that they can recognize a basic factual, or mixed legal issue by using basic legal analysis and methods. Therefore, some managers and lawyers, today, have proficient uses of some legal rules and statutory provisions and their accompanying legal analytics. In seeking or knowing when to request and receive legal advice accompanied by legal analytics, these proficient uses are more comparable with managers using basic statistical, financial and marketing principles and their related business analytical tools and methods in stages of processes of business decision-making and planning and matters of ongoing business operations.

Legal rules or advice accompanied by legal analytics includes legal rationality that is an essential quality of legal analysis and its analytical methods to measure whether a lawful end result is consistent with the decision or organizational need and objective.¹⁶² These methods include measuring the rationalities of a decision, strategy or matter by determining whether the end result is consistent with the purpose of the stage or matter, such as identifying and evaluating feasible alternatives identifying one or more manufacturing operations to use digital technology to modernize a production line.¹⁶³ And if the end result of a stage or matter is not consistent with the decision need or objective, it cannot be used to move to the next stage or matter and should cause the rethinking of this stage or matter, termination of decision-making and planning, or discontinue this matter of

Enterprise Architects, 64 BUS. L. 279, 296–99 (2009)) (recognizing business lawyers as problem solvers and should understand business as optional skills).

161. See Certo et al., *supra* note 13, at 114 (recognizing a rational decision-making process with several steps); Archer, *supra* note 67, at 54–55 (explaining a nine-step process of decision-making and noting an earlier five-step process of decision-making).

162. See Certo et al., *supra* note 13, at 114 (“[T]he most prominent assumption in this body of literature is that decision-makers are rational. Among scholars working in this arena, decision makers are understood to vary with respect to their beliefs, opinions, and preferences. . . . Despite the dominant stronghold of rationality in decision-making research, some scholars have questioned this assumption.”).

163. See *id.*

ongoing business operations. Thus, legal rationality enhances rational thinking of business decision-making and planning methodologies and making matters of ongoing operations by measuring the fit or link between each end result and the decision need and objective.

3. Hypothesis on Legal Text and Rationality to Enhance Business Methodology

One could easily hypothesize that a managerial analysis with law supported by legal text and rationality continues business decision-making, planning and operations by forming legal-managerial tools and methods. These tools and methods use legal text to determine or understand the legality of information and findings and measure rational thinking by connecting each end result to the decision objective and need. Broadly, the relationship between an end result and organizational need and objective determines whether the end result justifies the need and furthers the objective for beginning and continuing decision-making and planning and continuing business operations. As an example, a managerial analysis with law uses a legal-managerial (means-ends) analysis to measure the connection between one or more feasible employment alternatives and the decision need and objective to identify lawful and valid feasible employment alternatives in making a workforce expansion decision.

VII. FOUNDATION TO SUPPORT MAKING LAWFUL AND EXAMINING UNLAWFUL END RESULTS

The foundation of the theory of law and business rests on the use of jurisprudential elements to integrate law and business using fundamental knowledge-, analytical- and methodological-based properties that are possessed by legal and business knowledge, analytics and methodologies. Conducting a managerial analysis with law consists of forming or creating and using legal-managerial information, tools and methods in stages of business decision-making and planning and matters of business operations to make lawful and examine unlawful end results, find the normative value of end results and explain the impact of law on business and its disciplines and organizations. At these stages and matters, the managerial analysis with law depends on legal interests, text and rationality to support making useful combinations of legal and business knowledge, analytics or methodologies to make legal-managerial tools, methods and information.¹⁶⁴ At each stage of decision-making and planning and on each matter of ongoing business operations, these tools, methods and information are used to make lawful end

164. See Certo et al., *supra* note 14, at 114.

results under common law and government regulation by providing and performing specific analytical and methodological uses and applications within each stage or matter. This information in conjunction with these tools and methods, add more fact sensitivity, methodological order and analytical scrutiny to recognizing and weighing legal, normative and business considerations to determine or understand the legality of end results and their usability and validity under ethics, public policy and organizational policy.

A. Foundation to Support Conducting a Managerial Evaluation

The foundation supports a managerial analysis with law by using legal text, interests and rationality to ascertain or understand whether business situations are lawful and usable to further a decision or organizational objective and justify the need for the decision. A managerial analysis with law includes a managerial evaluation that uses a uniquely different knowledge-based combination of legal and business principles by applying a business theory or principle to a legal rule to identify the domain of lawful, unlawful and gray-area or ambiguous or risky situations. This combination addresses whether managers recognize the most beneficial, lawful, and usable business situations that include business opportunities, problems and needs, such as making an employee layoff and developing a growth strategy. This legal-managerial combination is a managerial evaluation tool resting firmly on legal interests, rationality and text to add fact sensitivity, methodological order and analytical scrutiny to find benefits and constraints on defining or recognizing lawful business situations.

1. Using Legal Text to Support a Managerial Evaluation

Some business managers and executives may not give enough weight to enforceable legal rules or text that states a specific set of facts describing the circumstances, facts and other happenings that may also be explained by established marketing, finance and other business principles. These accepted principles do not necessarily violate any legal rules but explain happenings and circumstances creating marketing, financial and other opportunities and advantages. In using these explanations, managers can manipulate happenings to undermine business principles but not suffer a government penalty or sanction. They cannot perform personal acts, such as making a false statement or misrepresentation, which are within the set of facts of a legal rule; if they do so, they can lose business opportunities explained by business principles, incur a criminal or civil penalty and suffer public humiliation. Thus, business principles are lawful and useful in making decisions, strategies and practices, but the manager's behavior or conduct of making false statements is unlawful or extremely risky under one or more

accepted business principles.

An accepted sales principle could explain happenings and circumstances that can be used to create practices or matters of banking, retail and other business operations. A retail sales practice is designed and implemented to acquire new customers and increase product or service sales.¹⁶⁵ In determining the legality of a sales practice, a legal rule sets forth a specific set of facts that describes unlawful organizational or personal acts, which include relationships, transactions and other happenings.¹⁶⁶ The use of these acts would cause a legitimate product sales practice to be unlawful if this practice deceived customers or public¹⁶⁷ within the set of facts stated by legal rules. In beginning decision-making or ongoing retail operations, a managerial evaluation would have identified and applied the prevailing retail sales principle to fraud (or fraudulent misrepresentation) to identify and verify the legality of the situations and factual patterns that created the need to increase sales and revenues. These situations and patterns were made unlawful by personal conduct, such as making false representations, under a relevant legal rule governing unlawful conduct or act of the retail sales practice based on legitimate sales principles. A managerial evaluation that applies a sales principle to fraud (or fraudulent misrepresentation), a legal rule, would identify one or more matters or sales practices that are unlawful and risky gray-area practices or matters that are lawful, but unusable for a lack of normative value under fraud or fraudulent misrepresentation. The managerial evaluation includes fact sensitivity and analytical scrutiny to understand facts or factual patterns, legal rules and business principles and methodological order to control insertion and use of legal advice or rules with accompanying analytics in the beginning stage of decision-making and planning and matters of continuing business operations. This sensitivity, order and scrutiny are used to determine whether the situation is lawful under

165. Brian Murtha & Goutam Challagalla, *Sales Principles: The Case of Rules and Standards*, 28 AMERICAN MARKETING ASSOCIATION SUMMER EDUCATORS' CONFERENCE PROCEEDINGS, N35, N35-N36 (Aug. 4, 2017) ("This paper examines the implications of articulating a sales principle as more rule-like or standard-like."). See generally UNIV. OF MINN. LIBR. PUBL'G, PRINCIPLES OF MARKETING, §13.2 (2010), <https://open.lib.umn.edu/principlesmarketing/chapter/13-2-customer-relationships-and-selling-strategies/> (retrieved on Dec. 18, 2021) (explaining the roles of salesperson, including account managers, and customer relationships, selling strategies and ethical issues) [hereinafter UNIV. OF MINN., MARKETING].

166. See *Allegheny Gen. Hosp. v. NLRB*, 608 F.2d at 969–70 (defining a precedent as describing a detailed set of facts).

167. See Petek Tosun, *Unethical Sales Practices in Retail Banking*, 38 INT'L J. OF BANK MKTG. 1305, 1308 (2020) ("Ethical sales practices are becoming increasingly essential since establishing long-term relationships with the target consumers and having loyal customers have positive outcomes on profitability and having a sustainable competitive advantage in banking.").

a legal rule and relevant business principle that together explains the legality of the situation or other similar situations and needs in beginning decision-making and planning and using factual patterns in matters of business operations.

Legal text supports a managerial evaluation to add fact sensitivity, methodological order and analytical scrutiny to identify and verify a domain of lawful, unlawful and gray area situations where only one or more lawful situations and factual patterns may be better than or equal to the recognized situation that was originally recognized by the manager. In considering lawful situations and practices, legal text is used with managerial discretion theory to enable a managerial evaluation to go much farther. The managerial evaluation adds methodological sensitivity and analytical scrutiny to recognize and perhaps address the normative values of lawful situations and factual matters. This sensitivity, order and scrutiny recognizes whether a lawful situation contributes significantly to a breach of an ethical standard, violation of an organizational policy, or undermines an important public interest. Lawful situations may breach an ethical standard or organizational policy or undermine a public interest and may not be usable to move to the next stage of decision-making and planning and matters of business operations. Thus, a lawful situation containing a breach may contribute substantially to a managerial failure¹⁶⁸ that may trigger regulatory reform and result in unwanted attention to a business organization or industry.¹⁶⁹

2. Using Legal Interests to Support a Managerial Evaluation

Legal interests include public needs to protect consumers and organizations from deceptive or unfair retail, banking and other sales practices. These interests support a managerial evaluation by increasing fact sensitivity to unlawful business situations or factual matters affecting both organizational and public needs. In examining Wells Fargo banking operations, for instance, a managerial evaluation would determine how bank managers used fraudulent acts to create unlawful product sales practices under accepted sales principles of the marketing discipline. Such principles

168. *See supra* Part II.A and accompanying notes (explaining that continuously harmful decisions, plans and practices have legal consequences causing litigation, regulation and precedents restricting managerial discretion or latitude of managers and organizations).

169. OFF. OF ENTER. GOVERNANCE AND THE OMBUDSMAN, OFF. OF THE COMPTROLLER OF CURRENCY, LESSONS LEARNED REVIEW OF SUPERVISION OF SALES PRACTICES AT WELLS FARGO (Apr. 19, 2017), <https://www.occ.gov/publications-and-resources/publications/banker-education/files/pub-wells-fargo-supervision-lessons-learned.pdf> [hereinafter OFF. OF THE COMPTROLLER OF CURRENCY] (finding that Wells Fargo engaged in unsafe banking practices and improper sales practices).

explain and permit only lawful sales practices to advance bank objectives and justify bank needs, namely new products and account sales and more bank revenues, in managing banking operations.¹⁷⁰ These managers used retail banking sales practices, such as opening credit card accounts, but did not disclose to their customers the opening of these accounts.¹⁷¹ The willful failure to disclose or intentional concealment of information raises a legal issue that is either a violation of a common law rule or statutory provision governing the conduct of bank managers who deceive their customers by not soliciting their approval or disclosing to them product sales and other transactions.¹⁷² The applicable marketing sales principle explains legitimate happenings that can be used to make product sales in conducting retail bank operations to sell bank products and services.¹⁷³ This application of the marketing sales principle to fraud, a legal rule or provision, identifies the domain or grouping of all lawful, unlawful and gray-area sales practices or matters that can be used by bank managers to verify an actual factual pattern in operations, a business situation in decision-making, and a business environment in planning.

If the legal rule governs all situations or factual matters explained by a business principle, then the application of this principle to this legal rule cannot identify or verify any lawful situations or matters. Simply, the business theory or principle is lawfully null or empty to predict or explain lawful situations and needs and therefore, is a managerial loss or useless to the business and legal disciplines. Consequently, managers and executives cannot use these principles to aid in recognizing lawful situations and factual

170. See Chad Albrecht, Conan C Albrecht, Andrew N. Rocha & Victor Morales, *A Better Understanding of the Wells Fargo Fraud: Through the Lens of the Fraud Triangle*, COST MGMT. 35, 35–40; Joseph A. Smith, Jr. & Lee Reiners, *Wells Fargo Unauthorized Account Openings: A Case Study for Bank Board Directors*, THEFINREG BLOG (Apr. 26, 2017), <https://sites.duke.edu/thefinregblog/2017/04/26/phony-accounts-scandal-a-case-study-for-bank-board-directors/>; OFF. OF THE COMPTROLLER OF CURRENCY, *supra* note 170 (setting forth lessons learned from the marketing practices used by employees in retail banking operations of Wells Fargo).

171. See Smith & Reiners, *supra* note 171; Michael Wursthorn, *Wells Fargo to End Broker Bonuses Tied to Loan Sales*, WALL ST. J. (Dec. 15, 2016), <https://www.wsj.com/articles/wells-fargo-to-end-broker-bonuses-tied-to-loan-sales-1481829657> (“The move comes as Wells Fargo continues to face public outrage after paying a \$185 million fine related to retail-banking sales practices that contributed to the opening of as many as 2 million customer accounts with fictitious or unauthorized information.”).

172. See Smith & Reiners, *supra* note 171 (explaining a case study of legal issues facing Wells Fargo regarding bank staff or employees providing products and services not authorized by bank customers).

173. See *id.*

matters.¹⁷⁴ A managerial evaluation demonstrates fact sensitivity, methodologically order and analytically scrutiny by allowing managers and their lawyers to identify and accept the most beneficial lawful situations and matters and reject unlawful and risky gray-area situations and matters that either violate or would eventually violate federal regulation or state common law and regulation.

3. Using Legal Rationality to Support a Managerial Evaluation

A managerial evaluation is supported by legal rationality accompanied by legal analytics to enhance rational thinking in identifying and verifying a domain of situations or factual matters and removing from this domain unlawful and highly risky gray-area situations or matters. The managerial evaluation creates a domain of unlawful and lawful situations to begin decision-making and planning and factual matters to continue business operations. Within decision-making, planning and operations, an unlawful situation, alternative or other end result could not rationally lead to a legitimate decision, advance a decision objective and justify a decision need.

¹⁷⁵ Normally, effective lawful situations and matters which further organizational needs and objectives do not violate common law rules and legislative acts protecting financial markets, environmental qualities, employee welfare and other public interests.

The managerial evaluation is supported by legal rationality in using or applying banking, trade, communications and other legislative acts that set forth facts describing fraudulent and other unlawful situations and practices. Legal rationality complements rational business thinking to ensure business practices and other end results are rational under common law and regulation. In the Wells-Fargo incident, legal rationality would have minimized the illegality of using factual matters and practices that are not capable of complying with or create too much legal risks under common law and regulation, such as federal banking regulation.¹⁷⁶ Legal rationality would have enhanced the rational business thinking of executives and managers by connecting federal banking regulation to specific public needs that were undermined by fraudulent sales practices of managers and other

174. See *supra* Part II.A and accompanying notes (explaining that business theories and principles that would be rendered useless or totally restricted by common law and regulation are managerial losses to business disciplines of a useful business theory or principle).

175. See *id.*

176. See OFF. OF THE COMPTROLLER OF CURRENCY, *supra* note 170 (setting forth lessons learned from the marketing practices used by employees in retail banking operations of Wells Fargo).

employees.¹⁷⁷ Equally important, legal rationality would also demand rational thinking by managers needing to connect or relate their end results or banking practices to legitimate bank decision objectives and needs.¹⁷⁸ Simply, an unlawful sales practice, situation or other end result can never legitimately advance a decision objective or justify a decision need. Thus, the managerial evaluation uses legal rationality to connect managers' unlawful sales practices to legitimate legislative or public objectives and requires managers to carefully weigh legitimate organizational needs and objectives that can indicate limits on decisions, strategies and practices of managers and executives.

The managerial evaluation uses legal rationality to add methodological order to business organizations by identifying and verifying lawful situations capable of moving to the next stage or matter by furthering the decision objective and need. The domain of lawful business situations and factual matters is determined by using a business theory or principle, such as a sales principle and organizational flexibility theory.¹⁷⁹ These principles or theories explain or describe happenings that advance private or business interests, such as profitable operations, market growth and flexible workforce. In retail sales and other industries, private interests include profitable retail operations and market growth that may depend on sales practices and strategies to attract new customers and provide better services to old customers.¹⁸⁰ So, here the need exists for legal rationality supporting a managerial evaluation to connect a lawful situation to a specific organizational objective and need that was the cause for decision-making and planning and a change to operations. Lawful situations must further decision or organizational objectives and justify decision or organizational need. Thus, legal rationality supports a managerial evaluation by adding methodological order to enhance rational business thinking by aiding managers and executives in relating or connecting a business situation or factual matter to a known organizational objective and need of decision-making, planning and operations before moving to the next stage of decision-making and planning or next factual matter of business operations.

177. *See id.* (explaining that “OCC processes . . . could have improved the timeliness and effectiveness of supervision of sales practices”).

178. *See supra* Parts V.B & C & VI.B.2 and accompanying notes (explaining how legal rationality can enhance the usefulness of business knowledge, utility and methodology).

179. Murtha & Challagalla, *supra* note 165, at N35–N36 (recognizing sales principles and need to address their implementation as standards or rules); *see also* Fellenz, *supra* note 154 and accompanying text; Lynch, *supra* note 154 and accompanying text.

180. *See* UNIV. OF MINN., *MARKETING*, *supra* note 165, § 13.2 (explaining the use of customer relationship and selling strategies to acquire customers).

B. Foundation for Determining Usability of Lawful Situations

The foundation uses legal interests, text and rationality to enable the theory of law and business to find and analyze the nature and extent of the manager's latitude or discretion in recognizing and managing conformance under ethical standards, public interests and organizational directives. Such latitude or discretion is possessed by business policymakers, executives and managers and requires them to consider whether end results of lawful stages and matters conform to ethical standards, public interests and organizational directives. For a managerial analysis with law, the managerial evaluation measures or tests managerial latitude to determine or recognize the usability of business situations and validity of alternatives and other end results under ethical standards, public interests and organizational policies.

1. Using Legal Text to Understand Limits on Managerial Discretion

Managers and executives do not have unbridled latitude or discretion to use lawful situations that could undermine public policy, breach ethical standards and violate organizational policy. Managerial discretion theory is used to recognize the extent of the managerial latitude of business managers and executives to use lawful situations and other end results under common law and government regulation.¹⁸¹ The legal text of common law rules and statutory provisions restrict or limit managerial latitude to initiate and continue business decision-making, planning and operations, such as employment practices unlawfully discharging employees.¹⁸² Other limits include conflicts with norms and public interests, such as retirement security and equal employment opportunity, that could be undermined by a breach of an ethical standard, violation of an organizational policy or not conforming to a public interest,¹⁸³ such as using race and gender in recruiting professional

181. David B. Wangrow, Donald J. Schepker & Vincent L. Barker III, *Managerial Discretion: An Empirical Review and Focus on Future Research Directions*, 14 J. MGMT. 99, 100 (2014) (citing Donald C. Hambrick & Sydney Finkelstein, *Managerial Discretion: A Bridge Between Polar Views of Organizational Outcomes*, 9 RESEARCH IN ORGANIZATIONAL BEHAVIOR: AN ANNUAL SERIES OF ANALYTICAL ESSAYS AND CRITICAL REVIEWS 369, 371 (“[S]eek[ing] to examine how research has advanced the concept of managerial discretion and explore both its antecedents and consequences . . . and noting that “. . . managerial discretion comes from sources at three levels: the environment, the organization, and the individual.”)); see Crossland & Hambrick, *supra* note 25, at 802–03 (analyzing the impact of civil and common law systems on managerial discretion exercised by managers and organizations and hypothesizing that “[t]he greater the ownership dispersion in a country, the greater the discretion available to CEOs of firms headquartered in that country” and that “[c]ountries with a common-law legal origin (compared to those with a civil-law origin) will provide greater discretion.”).

182. See Crossland & Hambrick, *supra* note 25, at 803 (explicitly recognizing that common law and legislation of a common law system can limit managerial discretion).

183. See Calabresi & Melamed, *supra* note 94, at 1090 (explaining that conflicting

contract workers.¹⁸⁴ In recognizing limits imposed by legal rules, fact sensitivity and analytical scrutiny include using legal text of legal rules accompanied by factual analysis, issue recognition and other legal analytics to make factual findings and recognize legal issues in making each lawful end result. In recognizing the use of methodology and operations, methodological order includes using legal text and its qualities to move only a lawful end result to the next stage of business decision-making and planning methodologies and another matter of ongoing business operations. Managers and executives need this sensitivity, order and scrutiny to stay within the requisite latitude or discretion of legal text accompanied by legal analytics of a managerial evaluation. Managers use a managerial evaluation to avoid relying on emotion or intuition and remain cognizance of ethical, public policy and organizational conflicts by reflecting on the limits of their latitude to use lawful end results. Thus, legal text supports a managerial evaluation by using managerial discretion theory to set the boundaries for use of lawful situations, feasible alternatives, employment practices and other end results before moving to the next stage of business decision-making and planning and next matter of business operations.

2. Using Legal Rationality to Add Sensitivity to Managerial Evaluation

Legal rationality supports a managerial evaluation to recognize the normative values of lawful decisions, strategies and matters under ethical, organizational policy and public policy questions regarding the usability of lawful situations and validity of lawful alternatives and other end results. Managerial discretion theory accompanied by a managerial evaluation, which is a legal-managerial method and information, enhances rational business thinking in recognizing and deciding whether managers need to find and weigh ethical, public policy or organizational policy concerns likely to undermine end results. Legal rationality supports managerial evaluation and other legal-managerial tools and methods to add analytical scrutiny in

interests exist in society and legal rules protect the important interests).

184. *See id.* (recognizing that conflicting interests exist in society and legal rules determine the important interests to resolve conflict).

recognizing the need to consider public interests,¹⁸⁵ ethical standards¹⁸⁶ and organizational directives¹⁸⁷ that could undermine selecting the decision and its implementation.¹⁸⁸ Next, legal rationality adds methodological order to a managerial evaluation to recognize and decide whether each lawful end result could breach or conflict with a public interest, ethical standard or organizational directive before moving to the next stage or another matter. Thus, a managerial evaluation uses legal rationality to aid business rational thinking in deciding whether a lawful situation and other end results breach an ethical standard,¹⁸⁹ raise a public policy concern¹⁹⁰ or violate an organizational directive by exceeding their managerial latitude to continue decision-making, planning and operations.

3. Using Legal Interests to Increase Sensitivity in Managerial Evaluation

A managerial evaluation rests on identifiable legal interests, both private

185. See Michael Hadani et al., *The CEO as Chief Political Officer: Managerial Discretion and Corporate Political Activity*, 68 J. BUS. RSCH. 2330, 2331 (2015) (finding the impact of managerial discretion on public policy to be mixed). Hadani and coauthors define corporate political activity as “discrete activities such as electoral campaign donations, lobbying, grassroots advocacy, petitioning, organizing media campaigns, participating in trade associations and other related activities.” *Id.* at 2331 (citing Hart, *The Political Theory of the Firm*, in THE OXFORD HANDBOOK OF BUSINESS AND GOVERNMENT 173–90 (D. Coen, W. Grant, & G. Wilson, eds.)); see also Hillman, A., & Hitt, M. *Corporate Political Strategy Formulation: A Model of Approach, Participation and Strategy Decisions*, ACAD. MGMT. REV. 825–842 (1999).

Hadani and coauthors make conclusions and recommendations to board of directors on the corporate value of exercises of CEO’s managerial discretion on corporate political activity. *Id.* at 2336. Hadani and coauthors state that “those responsible for the oversight and direction of executive leadership . . . should not take at face value any argument made by executives regarding . . . any public policy option.” *Id.* at 2336. Hadani and coauthors find the impact of managerial discretion on public policy as political activity is mixed. *Id.* Specifically, they examined the impact of CEO on public policy and found positive, negative or no effects on policy outcomes of firms. *Id.*

186. Susan Key, *Perceived Managerial Discretion: An Analysis of Individual Ethical Intentions*, 14 J. MANAGERIAL ISSUES 218, 229–30 (2002) (explaining that managerial discretion affects ethical decision-making in situations that raise ethical dilemmas).

187. *Id.* at 220 (finding that organizational directives and policies exist but may be confusing, ambiguous and ineffective).

188. Rapoport & Tiano, *supra* note 39, at 1284 (describing how legal analytics and methodology can aid legal and business decision-makers to increase rationality, writing “when raw data are analyzed and transformed into data analytics insights, an end user can uncover important trends, averages, correlations, and patterns”).

189. Key, *supra* note 186, at 220 (examining managerial discretion of managers who possess perceived latitude that had been granted to address ethical dilemmas).

190. See Hadani et al., *supra* note 185, at 2331 (examining the impact of CPAs on public policy and finding positive, negative or no effects of CPAs on policy outcomes of firms).

and public, in weighing the latitude of business managers, executives and policymakers by identifying and verifying the legality of situations, which in some instances, permit managers to better define or recognize the best situation or factual matter. In evaluating the legality of situations, a managerial evaluation is a legal-managerial method and information that aids managers to identify and verify the most useful, lawful situation.¹⁹¹ Managers and executives can recognize and work with a comparable situation if circumstances permit recognizing the best situation among several situations rather than a unique problem or situation with only one solution. Under a legal rule, the domain of lawful situations may include one or more lawful situations that are more productive or beneficial in advancing a decision objective and justify the decision need than the actual situation recognized or defined by the manager. A managerial evaluation also recognizes and weighs the usability of the best, lawful situation by modifying or rejecting its use in the processes of decision-making and planning and ongoing factual matters of business operations.

On furthering organizational and public interests, the lawful implementation of a decision can still raise a public policy, ethical or organizational concern that involves undermining a public interest,¹⁹² breaching an ethical standard¹⁹³ or violating an organizational directive.¹⁹⁴ Although this lawful implementation can comply with a legal rule, it may still impose harm on organizations, persons and society¹⁹⁵ by not fully advancing a social norm, business custom or public interest.¹⁹⁶ For example, an employment decision or practice could recognize retirement security but refuse to grant any retirement benefits as wanted by public policy.¹⁹⁷ In

191. Key, *supra* note 186, at 220.

192. See 29 U.S.C. § 1051(1) (exempting welfare benefit plans, such as dental and life insurance, from nonforfeiture or vesting requirements, thus allowing employers more latitude in terminating these plans under most circumstances); 42 U.S.C. § 2000e-2 (not providing coverage of independent contractors who perform work for the principal or employer).

193. Key, *supra* note 252, at 220 (recognizing corporate policies and ethical standards may fail to have positive effects on corporate decision-making).

194. *Id.*

195. *Id.* (recognizing ethical standards may not prevent unethical conduct). Under a managerial analysis with law, the managerial evaluation and its use of managerial discretion theory can recognize a policy conflict, ethical dilemma and organizational breach but may need to defer to other counselors and their disciplines and professions to give a final solution to this conflict, dilemma or concern.

196. See 42 U.S.C. § 2000e-2(a) & (b) (not providing coverage of independent contractors who perform work for the principal or employer).

197. See 29 U.S.C. § 1001 (enacting ERISA to establish employee benefit rights for employees participating in retirement and welfare benefit plans).

another instance, a lawful factual matter could recognize an equal employment opportunity concern but still unfairly treat unskilled, low-income contract workers by not hiring minority workers.¹⁹⁸ Such refusal or unfair treatment raises a public policy concern or ethical question whether the lawful hiring practice or decision undermines an important federal public interest and should be discontinued by the organization. Finally, lawful situations can include managerial limits on exercises of contract, property or business rights¹⁹⁹ to avoid interfering with important public interests, such as equal employment opportunity²⁰⁰ and retirement security.²⁰¹ Therefore, legal interests support a managerial evaluation by increasing methodological order to and analytical scrutiny of the discretion or latitude of managers and organizations to recognize and address the usability of lawful situations and factual matters.

C. Foundation for Legal-Managerial Analytics to Determine Legality

The foundation of legal text, interests and rationality supports finding and using a managerial analysis with law to ensure fact sensitivity, methodological order and analytical scrutiny of business situations and factual matters and marketing, statistical and other information, findings and conclusions in the stages of decision-making and planning and matters of business operations. Legal text, interests and rationality support a managerial analysis with law to add methodological order and fact sensitivity to and increase analytical scrutiny in making lawful and examining unlawful end results. Legal interests include public interests and private interests of business, society and organizations.²⁰² Next, legal text includes fact-sensitive statements of legal rules and their purpose governing business

198. See 42 U.S.C. § 2000e-2 (not providing coverage of independent contractors who perform work for the principal or employer).

199. See Key, *supra* note 186, at 220. Managerial discretion is a business theory that demonstrates the theory of law and business by its very nature. Managerial discretion theory is most explanatory when nationally protected business or economic rights exist giving managers and executives the latitude to make decisions, plans and matters; Crossland & Hambrick, *supra* note 30, at 803-04. Also, these rights can be violated by a breach of a duty in making unlawful decisions, strategies and practices. See Albrecht et al., *supra* note 171, at 35-40. Managerial discretion also demonstrates that managers and executives can make nonconforming ethical, organizational and policy decisions, plans and practices.

200. See 29 U.S.C. §§ 1001 *et. seq.* (government regulation of the administration of gratuitously or voluntarily established employee benefit plans by employers).

201. See 42 U.S.C. § 2000e-2 (government regulation of employment practices to prohibit employment discrimination based on race, color, sex, religion and national origin).

202. See Joseph T. Mahoney, Anita M. McGahan & Chris N. Pitelis, *The Interdependence of Private and Public Interests*. 20 ORG. SCI. 1034, 1035 (2009).

situations, relationships and transactions. Lastly, legal rationality includes the use of analysis and adds more reasoning in making a rationale for the decisions and other conclusions. Legal text, interests and rationality enable the integration of law and business by supporting a managerial analysis with law to add methodological order, fact sensitivity and analytical scrutiny by forming and using combinations of legal and business principles, analysis or methods to make lawful and examine unlawful end results.

1. Using Legal Interests to Make and Examine End Results

Legal interests are needed to make lawful and examine unlawful end results. These interests protect persons and organizations by imposing obligations and mandates to secure rights and freedoms of our society and economic system, such as closing a business or expanding business operations. Legal interests support forming and using legal-managerial tools and methods to ensure the making of lawful end results, such as feasible alternatives and employment practices, with legitimate decision needs and objectives that may not always be consistent with private interests.²⁰³ Legal-managerial analytics and methods rely on legal interests to add methodological order and analytical scrutiny of end results to ensure the need for and use of marketing, statistical and other findings, information and conclusions do not offend purposes and undermine needs of common law and regulation. This order and scrutiny exists in making and using combinations of amendable properties of legal and business analytics and methodologies to form stage- or matter-specific legal-managerial tools and methods. These combinations provide methodological order and analytical scrutiny of business and other findings and information within stages and matters. The methodological order ensures the end result of each stage or matter has a specific business purpose, such as implementing the decision, in making and executing the decision, plan or matter.²⁰⁴ Thus, the need for

203. Calabresi & Melamed, *supra* note 94, at 1090 (recognizing that conflicting interests can cause government to grant entitlements to protect legal rights).

204. Crossland & Hambrick, *supra* note 25, at 803 (explaining that common law and regulation permitting greater managerial discretion enable managers to create greater workforce flexibility). On using business principles and analytics, common law and government regulation are rarely an absolute restriction or limit on using business situations and happenings that are explained by business theories and principles. For example, the at-will doctrine is a common law restriction that limits discharges or terminations of employer-employee relationships only for cause under common law or a regulation. *See, e.g.*, 42 U.S.C. § 2000e-2 (government regulation of employment discharge and other practices to prohibit employment discrimination based on race, color, sex, religion and national origin). Most likely, the greatest limit on using business situations to further business needs and objectives is a lack of creativity, innovation or originality in finding and then choosing the most effective, lawful situations, alternatives

each end result must be known by managers and executives to determine whether each end result furthers its stated decision need and objective and accomplishes its intended decision purpose before moving to the next stage.

Business managers and executives need an appropriate legal-managerial tool and method supported by legal interests to find the legality of business information, findings and conclusions whether they are making lawful or examining unlawful end results. This legality must be sensitive to the business purpose of an end result and consistent with the purpose of the rule. For example, managers make an end result that is the decision to lay off a large number of employees to reduce labor cost. Labor, financial and other information and findings used to make the layoff decision must support the decision and business need for a layoff and objective to reduce cost. The decision and its implementation must be consistent with the legal purpose of the at-will doctrine to avoid making a wrongful discharge.²⁰⁵ The employment-at-will doctrine, a legal principle and its purpose, gives employers the authority to freely discharge employees for almost any reasons or needs.²⁰⁶ In decision-making and planning methodologies and business operations, legal interests add methodological order to business findings and information of the layoff to ensure that the end result or decision furthers the decision objective and justifies the need for the layoff. This order and scrutiny are applied by one or more legal-managerial tools and methods at a stage or matter to ensure an end result is consistent with the legal rule and its purpose and is least likely to cause criminal or civil litigation at the completion of decision-making, planning and operations. Legal-managerial tools and methods add fact sensitivity, methodological order, and analytical scrutiny to ensure end results, which use findings, information and conclusions, do not violate common law and regulation but do further decision and organizational objectives and needs, such as to allocate labor costs.

2. *Using Legal Rationality to Make and Examine End Results*

A managerial analysis with law has the capability to make lawful and examine unlawful end results of business decision-making and planning and matters or practices of business operations. In examining unlawful end results, legal rationality adds reasoning and a rationale by using legal-managerial tools to recognize and avoid using unlawful information, findings and conclusions in making and completing an end result. Legal

and other end results in making decisions, strategies and practices.

205. See Morriss, *supra* note 138, at 681 (explaining the development and application of the at-will employment doctrine).

206. *Id.*

rationality ensures that a lawful end result is rational by increasing consistency between the end result and the decision objective and the stated needs of decision-making, planning and operations. Legal-managerial tools and methods ascertain the legality of end results to increase rational thinking by keeping end results within the common law or regulatory purpose and by connecting end results to the decision objective and need.²⁰⁷ The legality of an end result depends on using one or more legal-managerial tools and methods, such as the combination of finding the legal issue and identifying only feasible decision alternatives.²⁰⁸ Thus, this combination and others are used to ascertain and understand the legality by completing or examining all end results, for example, all alternatives of decision-making, strategies of planning and matters of operation.

Examining unlawful end results requires a unique legal-managerial tool or method to precede or follow another unique legal-managerial tool or method to determine if rational thinking took place at each end result of each stage of past decision-making and planning and past matter of past business operations. A combination of applying a business principle to a legal rule (managerial evaluation) in the recognition of the situation can be followed in the next stage by combining the recognition of the legal issue with identifying all possible alternatives (issue recognition-identifying alternatives) to determine the illegality of business and other findings, information and conclusions of feasible alternatives. Legal rationality enables legal-managerial tools and methods to determine the illegality of end results by adding rational thinking to making end results and testing the closeness of the relationship between end results and the decision objective of and need for decision-making, planning or operations. For example, one legal-managerial tool combines the recognition of the legal issue and identification of feasible alternatives. This legal issue-feasible alternative tool adds analytical scrutiny to determine whether a legal issue was raised by a finding, information or conclusion used in identifying the feasible alternatives of an unlawful decision. Legal-managerial tools and methods find and examine whether end results of past decision-making, planning and operations are unlawful. These tools and methods add analytical scrutiny to ensure rational business thinking is considered in examining the legality of end results, such as the identification of feasible alternatives. Lawful end results must be used to move to the next stage or matter. Moreover, methodological order ensures legal rationality is used to test whether each alternative and other end results purposely further the desired and legitimate decision objective and the justifiable decision need. Thus, legal rationality

207. See Holloway, *Concept*, *supra* note 11, at 167.

208. See *id.* at 180.

supports legal-managerial tools and methods to determine the cause of illegality by finding and examining unlawful end results and testing the rationality of the connection between each end result and the decision objective and need of unlawful business decision-making, planning and operations.

3. Using Legal Text to Make and Examine End Results

Legal texts state substantive law that includes common law rules, legislative acts and administrative regulations to govern business situations and happenings that include relationships, transactions and behaviors. In common law and regulation, the regulated situations and happenings govern or control organizations and their managers and executives by imposing duties or obligations under legal prohibitions and mandates.²⁰⁹ Legal text supports a managerial analysis with law to form and use legal-managerial tools, methods and information in making lawful and examining unlawful end results of decision-making, planning and operations.

In making lawful end results, the legality of end results occurring at stages of decision-making and planning and matters of operations depend on the legality of business and other information, findings and conclusions under the text of legal rules. Legal-managerial tools and methods ascertain the illegality of information and findings using legal rules and statutory provisions that describes and explains a set of facts detailing a mandate on or prohibition of happenings, transactions, relationships and other facts. For instance, a corporation establishes a flexible workforce objective and a production need for its manufacturing operations to temporarily increase production caused by global competition. It wants to establish a temporary workforce of temporary employees, contract workers and part-time employees. Corporate managers and human resources specialists gather information, findings and data on the gender, race, positions, numbers and skills of needed part-time employees, temporary employees and contract workers. These managers also gather more data and information on union sentiment, workforce diversity, compensation, health care and other areas to make findings and conclusions that would be used in flexible workforce decision-making and operations. Legal text of state common law and state and federal employment regulation, which includes employee rights and employer duties,²¹⁰ is used with one or more legal-managerial tools and

209. See Calabresi & Melamed, *supra* note 122, at 1090–91 (1972) (explaining that government made legal rules and principles to protect public and private interests); see Wesley Newcomb Hohfeld, *Fundamental Legal Conceptions as Applied in Judicial Reasoning*, 26 YALE L.J. 710, 710 (1917) (listing duties as one of the eight jural conceptions that identify and explain legal relations).

210. See Crossland & Hambrick, *supra* note 30, at 803 (finding that employers that

methods, such as combining issue recognition-feasible alternatives in recognizing legal issues. These tools and methods ascertain and explain the legality or lack of it in matters relating to employment and other information, findings and conclusions in identifying or verifying feasible alternatives and other end results of decision-making to establish a flexible workforce.

Managers and their lawyers may find the need to review or examine past decision-making, planning and operations. This organizational need is to find how the legal rules applied to one or more end results which resulted in an unlawful decision or its implementation, or in an unlawful course of action of planning and an unlawful matter of operations. Such decisions, courses of action and matters can violate federal and state law by not following or considering legal rules or advice accompanied by analytics, such as recognizing the legal issue. The need to examine unlawful decisions, courses of actions and matters include one or more unlawful end results and may also include lawful end results breaching a normative value that disrupts business operations.

These injurious but lawful end results did not include adequate uses of fact sensitivity, methodological order and analytical scrutiny by using appropriate legal-managerial information, tools and methods to find and weigh legal rules that were applied to facts and information and to make conclusions in business decision-making, planning and operations. First, methodological order is forming legal-managerial tools or methods, such as recognition of a legal issue, at a stage or matter, such as recognition of situation, to allow managers and executives to test legality or application of a legal rule in forming and using a legal issue-decision situation tool before moving to next stage or matter. Second, analytical scrutiny is using a legal-managerial tool, such as legal issue-decision situation, to ascertain whether a legal issue existed in the recognition of the situation of unlawful decision-making. Third, fact sensitivity is using a legal-managerial tool, such as factual analysis-feasible alternatives, to ascertain and explain the nature and consequences of a feasible alternative as an end result under a legal rule. This sensitivity, order and scrutiny are provided by forming legal-managerial tools, methods and information to find and analyze unlawful end results and only lawful end results breaching normative values, such as ethical standards or organizational policy.

The managerial analysis with law creates and uses specific legal-managerial tools, methods and information to recognize the need for and analyze the application of common law rules and statutory provisions, preferably as legal advice accompanied by legal analytics, in the process of

exercise less managerial discretion have less employer flexibility in making layoffs and reassignments).

making decisions and plans and conducting business operations. These tools, methods and information examine illegality of business situations, needs, findings, information and conclusions of each stage of unlawful business decision-making and planning and each matter of unlawful business operations. For instance, managers implement the workforce decision by recruiting and hiring contract workers who later argue or dispute that they are contract workers under corporate work guidelines, instructions, schedules and compensation. Now, a federal court of appeals agrees with the contract workers holding that they were employees under the employer-employee relationship.²¹¹ Now, managers must examine their unlawful decision-making by using stage- or matter-specific legal-managerial tools, methods and information that are created or formed for a specific stage, such as combining finding the legal issue and selecting the best alternative to form an issue-best alternative tool. This issue-best alternative (decision) tool ensures factual sensitivity and analytical scrutiny to examine labor, employment, organizational or other findings, information and conclusions of the best decision alternatives. In using a legal-managerial tool, methodological order ensures reviewing any legal issues that were raised at the stage of selecting the best alternative and only a lawful end result is permitted to move to the next stage of decision-making and planning and next matter of operations. Thus, a managerial analysis with law resting on legal text can test or examine unlawful business situations and financial, marketing and other information, findings and conclusions to determine the illegality of end results at stages of business decision-making and planning and matters of business operations.

VIII. CONCLUSION

The theory of law and business is an existing or emerging reality of modern legal and business education that teaches legal, business and other knowledge and qualitative and quantitative analyses and methodologies. Modern legal and business education teaches business, legal, statistical and other findings, data and information for use in business decision-making, planning and operations. The theory of law and business is based on the reality that business is not totally or completely restricted by common law

211. See *Vizcaino v. Microsoft Corp.*, 120 F.3d 1006, 1009–10 (9th Cir. 1997) (recognizing that the Internal Revenue Service (“IRS”) had applied traditional agency law principles to determine whether independent contract workers were employees under ERISA and that decision of IRS was consistent with *Nationwide Mutual Insurance Co. v. Darden*, though its decisions could still raise a legal issue); see also *Nationwide Mut. Ins. Co. v. Darden*, 503 U.S. 318, 318–19 (1992) (holding that the courts must apply traditional agency law principles to determine whether an independent contract worker is an employee under ERISA).

rules and statutory provisions. This reality creates the need to more precisely use relevant common law and regulation within stages of business decision-making and planning and matters of business operations. Most proactively, the use of common law and government regulation recognizes and addresses legal issues and regulatory concerns in meeting business competition, pursuing market opportunities, addressing organizational needs and creating competitive advantages. Consequently, the theory of law and business is an integration of law and business explaining and aiding managers and executives to use legal rules and statutory provisions to make an effective and lawful end result at the completion of each stage of business decision-making and planning and each matter of business operations. Thus, the theory of law and business gives credence to modern education by resting squarely on a jurisprudential foundation enabling the integration of law and business and complementing uses of business principles, analytics or methodologies to better use of law in business and its organizations, institutions and disciplines.

The jurisprudential foundation enables the integration of law and business to support a managerial analysis with law that aids managers and executives in making lawful and examining unlawful decisions, strategies and practices. The foundation enables the theory of law and business to integrate law and business by making specific and purposeful combinations of legal and business knowledge, legal and business analytics, and legal and business methodologies. Moreover, the foundation supports the managerial analysis with law by combining legal and business knowledge, legal and business analytics and judicial and business methodologies to add more fact sensitivity, analytical scrutiny and methodological order in the use of common law and regulation in stages of business decision-making and planning and matter of business operations. Thus, the jurisprudential foundation enables a conceptual framework and supports an analytical framework to use common law and regulations to explain and demonstrate the existence of the theory of law and business.

The jurisprudential elements of legal interests, text and rationality integrate law and business by combining legal and business knowledge, analytics and methodologies sharing basic knowledge-, analytical- and methodological-based properties of creating and using knowledge and recognizing and engaging in logical and rational thinking of legal and business disciplines. First, the jurisprudential elements support the managerial analysis with law by adding more fact sensitivity, analytical scrutiny and methodological order by forming and using legal managerial tools, methods and information to determine legality, ascertain illegality and recognize violations of normative values of end results at stages of decision-making and planning and matters of business operations. Second, the

jurisprudential elements of the foundation enhance the explanatory nature of business principles and theories and expand the analytical and methodological utility of business analytics and methodologies in using legal rules accompanied by legal analytics in business decision-making, planning and operations. Third, the foundation underpins the theory of law and business by creating a legal-business taxonomy and using legal-managerial analytics to assess and explain the impact of common law and regulation on business and its disciplines and organizations by recognizing, measuring and categorizing limits on, losses from and failures of business organizations, institutions and their managers and executives. Thus, the foundation of legal text, interests and rationality provide fact sensitivity, methodological order and analytical scrutiny in stages of making creative, innovative and effective decisions, strategies and practices under common law and regulation.