

# Theory and Practice – Combining Private Law Practice with an Academic Career

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## 1. Background

In 1994, in parallel with my full-time work as an associate at the Stockholm office of global law firm Baker McKenzie, I enrolled as a doctoral student at Stockholm University with a view to writing a licentiate thesis on deputies (alternates) in limited companies under the Swedish Companies Act. The subject had caught my eye within the framework of my work at the firm and I had first met my excellent supervisor, Svante Johansson, when he as a doctoral student visited a law firm in New York, where I was a summer associate. So, even at that early stage, my academic work was closely intertwined with my professional career.

The many mandatory seminars in the doctoral programme were sometimes a challenge to coordinate with the demands of the profession, but my employer was surprisingly understanding and the partners I worked with at the time helped me to adjust my schedule to accommodate the requirements.

At the same time, I also marched into the office of Professor Lars Pehrson, who was then the head of the law of associations department, and announced that I was ready to take on the teaching that I had (mis)perceived to be a compulsory part of the doctoral programme. Lars did not disabuse me of that delusion and cheerfully assigned me my first group of students in the undergraduate programme, which I found incredibly rewarding. I have therefore continued to teach long after I realised that an “externally funded” doctoral student did not have to teach at all. I defended my licentiate thesis in 1998 with Professor Katarina Olsson as a strict but empathetic opponent, and it gave me a taste for more.

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The reason I first chose to pursue a licentiate was that I wasn't sure I could manage a full-time law firm job and higher academic studies in parallel, but at this juncture I felt that I would be able to pull off a full doctoral thesis. When I was accepted as a doctoral student in 1994, the university had conditioned the acceptance on that I was not allowed to develop the book on the deputy directors of limited liability companies into a doctoral thesis, as the topic was too narrow. That didn't bother me much at the time because I felt quite finished with the deputies after four years. So I thought for quite a while about a new topic. Svante Johansson, by then a partner at Linklaters, agreed to supervise me once again, and we debated the topic extensively. Svante thought that I should focus on a more commercial subject than directors' and officers' (D&O) liability, and considered that the special procedure for appeal against resolutions by the general meeting of shareholders was a suitable subject. However, during the work on my licentiate thesis I had become interested in liability issues and wanted to write about discharge from liability. And so I did, taking about eight years, during which time my wife and I had our fourth child. Much of the research and writing took place in the evenings, on weekends and on holidays. An extremely productive time was every summer when my son went to hockey camp in the US and I sat with my books and computer in the cafeteria at Floyd Hall Arena for the full camp days with no phone, email or even wi-fi. I think most of the book was written there. In the last year I decided to write or edit one page a day, every day until I was done, and that was it. On 27 April 2007, it was time for a rematch with an equally stern and empathetic Katarina Olsson and then my LL.D. was complete.

In 2009 I was appointed as a part time Adjunct Professor at Uppsala University. A factor strongly contributing to that appointment so soon after the LL.D. was that I, in addition to a number of articles (many based on issues that arose within the framework of my work at Baker McKenzie), had actually written two monographs, i.e. my iur. lic. thesis was in practice equated to a "post-doc" publication. After 12 productive and enjoyable years in Uppsala and close cooperation with Professor Daniel Stattin, as well as an appointment as a Pro-inspector at the student society of my home province, Östgöta Nation, I came up against the term limit for adjunct professors in the Higher Education Ordinance. Since 2022, I have instead been an Adjunct Professor at Stockholm University, where I have continued to teach part-time. In parallel, I have, for a couple of rounds, been the Head of the Research Panel for

Company and Securities Law at SCCL, most recently together with Associate Professor Jessica Öberg.

I am sometimes asked why, as a full-time partner in an international business law firm, I want to take on more “unnecessary” work. This article is an attempt to answer that question in a way that not only reflects my experience, but also aims to highlight some more general observations about the combination of law firm practice and academic work.

## 2. Inspiration for writing and teaching

Starting with what the legal profession has offered to the academic side of my work, the client matters I work on serve – as already noted above – as an almost inexhaustible source of inspiration both for academic papers and teaching.

In terms of research and writing, I have lost count of the essays, articles and festschrift contributions that I have written on the basis of problematic issues from my practice. Svante Johansson’s criticism of the topic of my doctoral thesis, corporate liability law, as “uncommercial” was certainly justified at the time (when there were only a handful of cases from the Supreme Court that applied to the equivalent of Chapter 29 of the Swedish Companies Act). However, I have benefited greatly from my practical experience from several of the major D&O liability cases in the 2000s, including the HQ case, to find inspiration for my writing. One example is my essay on the business judgement rule in *Vänbok till Anders Lagerstedt*.<sup>1</sup> The concept was originally imported to Sweden by Professor Rolf Dotevall in his thesis from 1989. The business judgment rule has, in recent years, had a significant impact when Swedish courts make their culpability assessment of business decisions that, in retrospect, have proved to be less successful in the context of corporate liability. My essay in *Vänbok till Anders Lagerstedt* draws its inspiration from a number of cases in the Swedish Supreme Court and the lower courts, several of which I have been personally involved in as counsel. I might add that it is very rewarding to have my writings quoted in court judgements or arbitration awards, sometimes with decisive effects for the case.

A practising commercial lawyer can offer students in the classroom not only a deeper insight into how the rules of law are structured and interpreted, but also how they work in practice. Attorneys or other legal practitioners can

<sup>1</sup> Svernlöv, Carl, En svensk Business Judgment Rule, i *Vänbok till Anders Lagerstedt*.

provide tangible examples and share their experiences from the courtroom and client cases, giving students a deeper understanding of how legal theories are applied in real life. It is of course essential that university law programmes are run on a scientific foundation but, in my experience, practical examples and “war stories” often deliver a deeper understanding of the rules of law and their role in business and society at large than volumes of theoretical tomes can ever provide. Another concrete example is the lecture I have been giving for several years as part of the undergraduate programmes in the law of associations in both Stockholm and Uppsala. It is based on an article in the Swedish daily newspaper Svenska Dagbladet about a possible action for damages against the former CEO and board members of Swedbank, following a corporate scandal involving insufficient anti-money laundering and know your client routines at the bank. My insights into how the possibility of success for an action for liability under company law in such a complex sequence of events, are based on the investigation assignment I had from Swedbank’s board to investigate these particular issues and to make a recommendation to the board whether or not to proceed with an action.

### 3. Advantages for law firms

So far, it may seem that the universities are the big winners in this type of cooperation, but that is far from the whole truth. For the teaching lawyer and his or her firm, the collaboration leads not only to increased knowledge and skills but also to a strengthened brand and unique opportunities for business development recruitment.

In terms of skills development, I cannot emphasise enough the value of higher academic studies. The point of doctoral studies as I see it is not the cutting-edge expertise you gain in the well-defined and narrowly delimited field of your actual topic, but about the vast peripheral knowledge you acquire along the way. As with many things in life, the journey rather than the destination is the goal.

Unless you have engaged in PhD studies yourself or have someone close to you who has, it can be hard to understand the value of becoming an expert in, for instance, a field as mundane as bathroom cleaning (to take an example that received an inordinate amount of criticism a number of years ago).<sup>2</sup> Someone studying for a doctorate in bathroom cleaning will become

<sup>2</sup> Linn, Gudrun, Badrum och städning, akad. avh. Linköping 1985.

an expert not only in that particular subject, but also in cleaning in general, detergents, mops, sponges, how a bathroom should optimally be designed to be easy to clean, etc. This is also the case with respect to my studies of the rather esoteric subject of discharge from liability (although it can be noted that the subject is still so hot that my colleague at Stockholm university, Dr Stina Bratt chose to write about it as her post-doc!). Not only did my dissertation make me an expert on discharge, but also on the D&O liability rules of the Swedish Companies Act, and by extension on how companies are governed and how the entire company law system functions. For example, the general understanding of corporate governance obtained during my LL.D. studies provided a solid foundation for writing a commentary on the Swedish Code of Corporate Governance when it was adopted in 2005, a commentary that I have developed as new revisions of the Code entered into effect.<sup>3</sup>

Teaching has also given me deeper insights into various difficult aspects of company law, which I have benefited greatly from in my practical work. When you have to teach a difficult area of law, you are forced to familiarise yourself with it in a completely different way than if you have to solve practical questions in the area on an *ad hoc* basis from time to time. I attribute my deep understanding of the notoriously impenetrable loan prohibition provisions in the Companies Act, with all its counterintuitive effects and exceptions, entirely to the teaching I did on the subject at Stockholm University in the 1990s and early 2000s.

When it comes to branding and business development, the causality (and indeed the proximate causation) is less clear. When I started writing academic and popular science articles in both the usual Swedish “channels” like Svensk Juristtidning and Juridisk Tidskrift as well as more unusual publications in legal circles, such as the accountancy journal Balans and various trade journals that I selected for the purpose of promoting my services, I liked to imagine that potential clients would pick up the phone and say “Hey Carl, I read your article on [any legal problem]. I have exactly that problem and I want you to help me solve it.” Although it has happened on more than one occasion, the instances of such immediate gratification can easily be counted on the fingers of one hand. For me and other academic lawyers, I think it is more about long-term brand building. If a certain person is associated with a certain area of law over a long period of time, people, including potential clients, may eventually perceive that that person knows

<sup>3</sup> Svernlöv, Carl, Svensk kod för bolagsstyrning. En kommentar. 6 uppl. 2023.

something about the area, which in the long run can actually lead to tangible assignments. Although it is extremely difficult to pinpoint the decisive factors when a client chooses a lawyer and a law firm to entrust them with an important assignment, a long series of studies suggests that one essential factor is precisely the perceived competence of the individual lawyer. In this respect, an association with the university world can also help to convey an image, often real, of such competence. Although many assignments come to the law firm because of its general brand and position in the market, I attribute most of my more interesting cases in association law matters to my academic profile in the field.

It should also be recognised that teaching lawyers can be a powerful recruitment tool for their firm. When I was in the final stages of my undergraduate studies in Uppsala in the late 1980s, hardly anyone of my peers knew what a law firm was, let alone a commercial law firm. As graduating law students, we aimed for a career in the judiciary, public administration or the more nebulous “business”. The reality now is quite different, with the more ambitious students having worked part-time for years before they graduate in one or more of the top law firms. In the increasingly fierce competition for talent, it is important to get in touch with potential future employees at an early stage. To this end, specialised courses can, in particular, provide great contacts and an insight into what law students are capable of and interested in. Over the years, I have handpicked a considerable number of associates for the firm and many of my best colleagues over the years are ones whom I met through the university (you know who you are!). It may also be revealed that two of my current partners at Baker McKenzie were my thesis students in their earlier lives.

#### 4. Challenges and obstacles

So far, I have focused on the many advantages of combining law practice with an academic career. Of course, there are also challenges and obstacles. If I take the perspective of the lawyer working in both camps, one of the biggest – if not the biggest – challenge is obviously the lack of time. In my experience of 35 years in the profession, the demands placed on lawyers in private practice are constantly increasing. With successive advancements in the professional role and career, more and more time is spent not only managing client work but also every other aspect around it. I like to compare the role of a partner in a commercial law firm to the circus act where a

performer spins porcelain plates on long wooden sticks attached to a table. Having responsibilities for case management, staff and client and business development – not to mention private life – places great demands on planning, prioritisation and a systematic approach to all areas. If you focus too much on some plates for too long, others fall to the floor and break. Finding time for academic research and teaching on top of this is not always easy.

Another challenge is the savage cost-cutting in the law departments of the universities, and Stockholm university's ignominious decision to terminate all "external" lecturers. I have full respect for the basic precept (as mentioned above) of conducting higher education on a scientific foundation. While this should be the overarching principle, I see no obstacle in alternating deep-diving theoretical lectures by highly qualified professors with practical seminars taught by experienced private practitioners. For this reason, I believe that the university is shooting itself in the foot by excluding many of the teachers that could give the students practical and valuable insight into how the law actually works. When in practice, engaged and experienced external lecturers are replaced by harried doctoral students, it is also doubtful whether the ambitions about scientific foundations are fulfilled to any greater extent. This decision has made the student experience at Stockholm university that much poorer and has removed a great competitive advantage that the law department had in comparison with the law departments of the other venerable universities. A primary attraction with studying law in Stockholm has been the access to practicing lawyers, law firms, business and commerce, and this competitive advantage no longer exists. I believe the law department should reconsider its decision.

## 5. Conclusion

Combining work as a lawyer in a law firm with higher academic studies has a number of synergies for the lawyer, the law firm and the university. It improves teaching skills, brings joy, engagement and stimulation to teaching, and contributes to academia and legal education. For law firms, it also offers benefits as a recruitment tool and brand building. Despite the challenges and obstacles, it is a rewarding combination that can enrich the lives of both lawyers and students. It may also serve as an important recruitment base for future academics at a time when it is getting harder and harder to attract talented young people to the scientific community.

