Business Planning (B632)

Indiana University Maurer School of Law

Fall 2009

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Office Hours: Tuesdays: 3:30 to 4:30 pm
Wednesdays: 11:00 am to 1 pm
By appointment

Required Text: Drake, *Business Planning: Closely Held Enterprises* (2d ed. 2008)

E-Library: For hypothetical law firm of Ochoa, Popkin & Robel. Compilation of business forms, practitioner articles, and links to relevant statutory and regulatory resources:
http://law.indiana.edu/instruction/wihender/vault/elibrary/
Username: b632 Password: lysozyme

Course Description:

This course focuses on the role of the lawyer as an advisor to closely held businesses and their owners. Numerous case studies are used to expose the student to a broad range of structural planning issues and the practical and analytical challenges of the planning process. There is a heavy emphasis on planning traps and creative planning strategies. Different types of closely held businesses are analyzed, compared, and contrasted in case studies that raise important issues in co-ownership planning, enterprise funding, choice of entity planning, multiple entity planning, owner compensation, key executive planning, life insurance planning, structuring profit and capital interests, profit distribution planning and diversification, exit and business transition planning, employee relations and benefits, and retirement planning. Numerous drafting considerations and implementation mechanics also are reviewed. The course is designed to broaden the student's substantive knowledge on a broad range of issues and to help the student develop three essential planning skills:

(1) the ability to identify and address business objectives, not just legal issues;
(2) the ability to evaluate and apply specific strategic options;
(3) the ability to effectively communicate with non-lawyers.

Class Meeting Time

This class is technically scheduled for Monday, Tuesday, & Wednesday from 2:20 to 3:15. However, for most of the semester, we will meet only on Mondays and Tuesdays. Despite the shortened meeting schedule, you will earn all three credit hours by working on assigned problems. Moreover, I expect to answer many questions via email and have many office meetings throughout the semester.

Electronic Library

For the purposes of this course, you are a junior associate at Ochoa, Popkin & Robel (OPR), a small (hypothetical) business law boutique in Indianapolis. An OPR paralegal has created a webpage that contains many useful links for OPR lawyers to consult when working on transactions or giving advice to clients, including links to federal tax and securities statutes and regulations, state law governing corporations and limited liability entities, the Secretary of State offices for Indiana and Delaware, and sundry other relevant resources. The site also contains several model business forms (e.g., partnership agreements, LLC operating agreements, shareholder agreements, by-laws, employment contracts, stock-repurchase agreements, etc.), which the firm's lawyers typically use as a starting point for various client transactions. The firm's library will be accessible from the course's webpage.

Although this is an advanced course that presumes knowledge of basic business and tax law, it is likely that at many points throughout the semester, students will encounter knowledge gaps that will not necessarily be filled by the course book. On these occasions, students should peruse the E-library for a relevant resource.

Course Structure and Management

The purpose of this course is to identify specific planning challenges and conflicts, analyze relevant tax and non-tax factors, and evaluate specific planning strategies that are likely to crop up in the counseling of closely held businesses. To this end, mini-case studies are used daily. Students are expected to complete assigned readings and analyze case studies before coming to class.

The benefit of this class is directly proportionate to the effort exerted, particularly with regard to your willingness to work together in teams. At the beginning of the semester, I will divide the class into Teams of four or five students. Each Team is encouraged to review and analyze each case study problem as a group. However, for each class session, at least one Team member is required to be prepared to present his or her mini-case study answer to the class. (The Team that actually presents will be determined by drawing names from a hat.) Each presentation should comply with the following guidelines:

- Begin with a client recommendation or a concise conclusion of your analysis.
- Simulate how the student would discuss the problem and its potential solutions with a business owner/client who has no legal training.

- It should be no more than six minutes in duration.
- No use of PowerPoint, though you can circulate a 1-page chart, table, or graph.

These presentations are ungraded. However, I will poll the class to generate a score and feedback for each presenter. I will leave it to each Team to devise its own schedule for internally allocating the workload. Further, I would strongly encourage each Team to adopt a norm of circulating proposed solutions to team members in advance.

PowerPoint slides for each day's class discussion (excluding the case study answers) will be posted to the class website at least two hours before each class. Thereafter, a copy of the case study answers (shown and discussed in class) will be available for student review. Please contact Sheila Gerber in Room 252A to sign-out the binder containing these slides. Note that students are prohibited from Xeroxing or otherwise digitally copying these materials.

Grading

Grades are based on three components and a 100-point scale: Class Participation (20 points); Written Problems (30 points); and a Final Case Study Project/Final Problem Set (50 points). Alternatively, by pursuing the "Memo Option", discussed below, a student can earn a guaranteed grade of "B" or "B+". Fortuitously, pursuit of the Memo Option also increases the likelihood that a student will receive a high grade on Class Participation and the Final Case Study Project/Final Problem Set.

1. Class Participation (20%). This grade is based on attendance, contribution to class discussion, and providing feedback to fellow students. Because this course does not lend itself to Socratic dialogue, I will usually be looking for volunteers to keep the discussion moving. If you want to increase your grade in the course, be prepared for every class and participate in the class discussion. In addition, students are required to give very short written feedback (1 to 2 sentences) for each student presentation. Faithfully submitting your feedback will increase your class participation grade.

2. Written Problems (30%). Each student is required to write answers to a minimum of four mini-case studies or a related assignment. Three of these problems will be assigned to the entire class; the fourth problem, also drawn from the assigned readings, is selected by the student. Each written problem assignment should be formatted as a memorandum to a client (unless I specify otherwise) and be approximately 600 to 1,000 words in length. In preparing these problems, you are encouraged to work in groups. However, each student is responsible for writing his or her own memorandum.

A high-quality written work product will satisfy the following criteria: (a) discuss the key challenges raised by the case study, (b) analyze potential solutions, (c) summarize a recommendation and the related rationale, (d) identify additional key facts that might impact the analysis, and (e) be substantially free of grammatical and typographical errors (i.e., proofread). The fourth mini-case study problem should include the words "submitted for a grade" in the header of the first page. Each memorandum will be returned to students with a grade (max. of 7.5 points).

3. Final Case Study Project / Final Problem Set (50%). The final graded portion of the course consists of two options:

(a) *Final Problem Set*. Students can submit answers to a Final Problem Set, which will be based on the materials covered during the semester. The Final Problem Set will be distributed on Monday, November 30 and is due on Friday, Dec. 4th at 4 pm. In completing this assignment, students are not permitted to work in groups or discuss this assignment with anyone inside or outside the law school community.

(b) *Final Case Study Project*. In lieu of the Final Problem Set, a group of two to five students can create their own Case Study of an actual business by interviewing the principals (and, if appropriate, their lawyers). If pursuing this option, students are free to form their own teams.[1] The Case Study should include an interesting narrative of the company's development, discuss the major planning issues either resolved or currently confronting the company, and, where appropriate, draw upon relevant course materials. The written work product should be 2,500 to 5,000 words (variable based on the size of the group). In addition, during the week of Nov. 30, the group will be required to make a 12 to 20 minute presentation to the class (also variable based on the size of the group). The written word product is due on Friday, Dec. 4th at 4 pm.

One of the major advantages of the Final Case Study Project is that students will have the opportunity to apply their knowledge to a true real world setting. Moreover, the networking from such a project can often be used to advance their post-law school professional goals. The synergies from this option can be enormous. NOTE: Each group member will receive the identical grade on this project.

Student groups wishing to pursue the Final Case Study Project must notify me by Friday, Oct. 16. Thereafter, I will meet with each group to define the scope of the proposed case study and set reasonable grading criteria. Students are strongly encouraged to use a portion of their fall break to conduct at least some of the required interviews, ideally in person and on-site. (Bloomington has no shortage of companies!)

Memo Option. The writing process requires students to engage with course materials at a fairly deep level. In reality, the more memos you write, the more you will

[1] This is no presumption that the teams formed at the beginning of the semester will also work together on the Final Case Study Project.

learn. Therefore, for students who write and submit a set number of mini-case studies, each receiving a passing grade, I am willing to guarantee a certain minimum grade in the course. In effect, the "Memo Option" enables a student to opt out of the Final Case Study Project / Final Problem Set. Here is the schedule for guaranteed minimum grades:

- "B": Passing memos for ≥ 9 mini-case study problems.
- "B+": Passing memos for ≥ 14 mini-case study problems.

The number of memos in the Memo Option includes the three mandatory mini-case study assignments and the one graded memorandum designated by the student. In other words, five additional memoranda of passing quality guarantees a minimum grade of a "B"; ten additional memoranda guarantees a minimum grade of "B+". Note, however, that a maximum of <u>two problems per chapter</u> will count toward the grade guarantee. Each case study memorandum under the Memo Option must be turned in before the commencement of the class period in which the case study is scheduled for discussion. The pass/fail grading criteria are the same as those listed in the "Written Problems" section above. Students can presume a passing grade if they do not receive a notification from me within 72 hours of submission.

There are many good reasons to pursue the Memo Option. First, it guarantees a decent grade regardless of performance on the Final Case Study Project/Final Problem Set. Second, it makes it much easier to make valuable contributions to class discussions, thus increasing Class Participation grades. Third, it generates excellent materials to draw upon for either the Final Case Study Project or the Final Problem Set. Fourth, it will sharpen a valuable professional skill. Many of my former Business Planning students have reported that the intensive writing in this course has enabled them to make a very favorable impression on their subsequent legal employers.

<u>Summary of Substantive Course Content</u>

This is the first time I have used the Drake course book for Business Planning. It is therefore difficult to generate reading assignments in advance for the entire semester. To help students allocate their time, I will make assignments with a lead time of approximately one week (posted on the course website and announced in class). With a few exceptions, we will follow the order and structure of the course book. Depending upon depth and volume of class discussion and other factors, we may or may not cover the entire book.

<u>Ch.</u>	<u>Topic</u>
1.	America's Closely Held Business – Big Picture and Trends
2.	Identifying and Prioritizing Client Objectives

18. The Lawyers Role: Building a Practice and Ethical Issues
3. Closely Held Business Classifications and the Choice of Entity Challenge
4. Organizing and Funding the Enterprise
5. Entity Conversions: Unraveling Prior Choices
17. Valuing Closely Held Business Enterprises
6. Structuring Buy-Sell Agreements
7. Executing the Business Purchase and Sale
8. Family Business Transition Planning
9. Employment Agreements for Key Employees
10. Deferred Compensation Planning
11. Strategies for Compensating with Equity
12. Business Life Insurance Planning
13. Diversifying Business Profits and Wealth
14. Competitor Collaborations
15. Employee Compensation, Benefit Planning, and Protecting Employee's Rights
16. Estate and Multi-Entity Planning Interface