

**Business Transactions**  
**Laws 7601**  
**Course Syllabus**

University of Colorado Law School

Professor Young Kim

Spring, 2010

**Course Description:** This course provides a practical understanding of how to apply the law in both transactional and litigation settings. In doing so, it focuses on the legal aspects of purchasing and selling businesses, for the most part, privately-held businesses. The substantive areas of law involved in even a simple business acquisition are broad, and the course takes an interdisciplinary look at how various areas of the law are brought together in common factual settings. Students will negotiate and document the acquisition of a business covering such legal areas as corporate, contracts, real property, secured transactions, and bankruptcy law. One applies, in practice, a hypothetical litigation test to the various documentary provisions of a business transaction as one develops a deal. Students will test, in a litigation setting, decisions made during the acquisition stage of a business transaction.

**Course Materials:** The main text for the course is the *ABA Model Asset Purchase Agreement with Commentary* ("Model Agreement"). Further, excerpts from the following resources, all on reserve at the library, are used, including: (1) American Bar Association. 2007. *Negotiating Business Acquisitions*. Chicago: ABA-CLE Publications ("ABA"). (2) Gevurtz, F. 2008. *Business Planning Fourth Edition*. New York: Foundation Press ("Gevurtz"). (3) Drake, D. 2008. *Business Planning: Closely Held Enterprises 2<sup>nd</sup> ed.*. St. Paul: Thomson/West ("Drake"). (4) Bainbridge, S. 2003. *Mergers and Acquisitions*. New York: Foundation Press ("Bainbridge"). Such excerpts as well as additional course materials have been placed on and may be accessed through the TWEN System.

**Reading Assignments and Class Participation:** Students are expected to have studied the assigned Readings and be prepared to participate in class. **Class participation constitutes 20% of the grade for the course.**

**Contract Drafting and Negotiation.** Students will be divided into teams to negotiate and document the hypothetical purchase and sale of a business. Each purchaser team and each seller team will be responsible for drafting two versions of the purchase and sale agreement. There will be three structured in-class negotiating sessions. **Contract drafting and negotiation constitutes 40% of the grade for the course.** Teams will be penalized for late drafts. Failure to reach a final version of the purchase and sale agreement will penalize members of both teams up to one-half the credit for this element of the course grade (i.e., up to 20% of the final grade of the course).

**Class Times:** Classes will meet on Mondays and Wednesdays at 1:00-2:20 pm in Room 300. See the Class Schedule following.

**Office Hours by Appointment:** Email ([yk@colorado.edu](mailto:yk@colorado.edu)) to arrange meetings.

**Grading:** The grades for this course will be based on a final examination (40%), to be held as posted (please refer to Spring 2010 Final Exam Schedule), contract drafting and negotiation (40%) and class participation (20%).

**Course Schedule:** The course will include 27 classes during the Spring semester, 2010. See the Class Schedule following.

## **Business Transactions**

### **Class Schedule Spring, 2010**

#### **Background**

Class 1: January 11. Topic: The Course. Reading: (1) *Buying, Selling and Combining Businesses Under the Colorado Business Corporation Act*. (2) *ABA Model Rules of Professional Conduct (excerpts)*. (3) ABA V98-110.

Class 2: January 13. Topic: Choice of Entity. Reading: Gevurtz 58-112.

Class 3: January 20. Topic: Form of Transaction. Reading: (1) ABA A1-23. (2) Drake 233-252.

Class 4: January 25. Topic: Structuring the Transaction. Purchaser's and Seller's Considerations. Reading: Gevurtz 1006-1051.

Class 5: January 27. Topic: Term Sheets and Letters of Intent. Reading: ABA D1-20. *Announce teams and hand out Term Sheets for contract drafting and negotiating assignment. Library resources presentation.*

Class 6: February 21 Topic: Drafting the Contract for the Purchase and Sale of a Business. Reading: Drake 253-273.

Class 7: February 3. Topic: Checklists, Forms and Due Diligence. Reading: (1) *Buying and Selling Businesses* Sections 6.1-6.13. (2) Bainbridge 177-179.

Class 8: February 8. Topic: Corporate Valuation. Reading: Drake 639-670.

Class 9: February 10. Topic: Tax Considerations. Reading: (1) ABA B1-11. (2) Gevurtz 1064-1132.

Class 10: February 15. Topic: Securities Considerations. Reading: (1) Gevurtz 1052-1063. (2) Bainbridge 74-103.

Class 11: February 17. Topic: Directors and Corporate Governance. Reading: (1) ABA O18-39. (2) Bainbridge 162-171. (3) *Purchaser teams 1<sup>st</sup> contract draft due.*

Class 12: February 22. Topic: Sale of Assets. Reading: ABA H1-22.

Class 13: February 24. Topic: Purchase Price Adjustments and Earnouts. Reading: ABA F1-35. *Negotiating Session I.*

Class 14: March 1. Topic: Representations and Warranties. Reading: Model Agreement Sections 3 and 4.

Class 15: March 3. Topic: Covenants and Agreements. Reading: Model Agreement Sections 5 and 6.

Class 16: March 8. Topic: Conditions Precedent, Closing and Post-Closing. Reading: Model Agreement Sections 2, 7 and 8.

Class 17: March 10. Topic: Employees and Employee Benefits. Reading: (1) Model Agreement Section 10.1. (2) Does Defining Constituencies Matter? *Seller teams 1<sup>st</sup> contract draft (2<sup>nd</sup> overall) due.*

Class 18: March 15. Topic: Non-Competition and Non-Solicitation Covenants. Reading: (1) ABA H158-160. (2) Cases.

Class 19: March 17. Topic: Indemnification and Insurance. Reading: Model Agreement Section 11. *Negotiating Session II.*

Class 20: March 29. Topic: Sale of Stock. Reading: ABA E1-27.

Class 21: March 31. Topic: Topic: Financial Statements and Auditor's Report. Reading: ABA *Manual on Acquisition Review* Chapter 5. *Purchaser teams 2<sup>nd</sup> contract draft (3<sup>rd</sup> overall) due.*

Class 22: April 5. Topic: Legal Opinions. Reading: (1) ABA *Third Party Legal Opinion Report.* (2) Legal Opinion.

Class 23: April 7. Mergers. Reading: Bainbridge 154-173. *Negotiating Session III.*

Class 24: April 12. Topic: Shareholder Approval and Dissenting Shareholders Rights. Reading: (1) Delaware General Corporation Law Section 271, as amended. (2) Bainbridge 192-206. (3) *Hollinger International v. Black.*

Class 25: April 14. Topic: Ethical Considerations. Reading: Ethical Considerations. *Seller teams 2<sup>nd</sup> contract draft due to Purchaser teams.*

Class 26: April 19. Topic: Final Exam Review. *Seller teams 2<sup>nd</sup> and final contract draft (4<sup>th</sup> overall) due at 5pm.*

Class 27: April 21. Topic: Contract Drafting and Negotiation Recap.