

CHAPTER 9

BUSINESS LAW/ BUSINESS TRANSACTIONS

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Learning the Ropes

Business Transactions

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1. Introduction
2. What do Business Lawyers Do?
 - a. General Description – 30,000-foot view
 - Entity selection and formation
 - Real estate development (purchase and sale)
 - Financing – equity and debt
 - Mergers & acquisitions
 - Employment advice
 - Compensation and benefits
 - Securities
 - Intellectual property
 - Regulatory compliance
 - Contract review
 - Vendor agreements
 - Service agreements
 - Goods agreements
 - Succession planning
 - Buying and selling of business assets
 - Licensing and other regulatory advice
 - Tax
 - Secured transactions
 - b. Specific Examples
 - Mergers and Acquisitions
 - Representing Small Businesses
3. Day in the Life
 - a. Negotiating and advising through emails, meetings, conference calls etc
 - b. Document drafting and review
 - Nondisclosure agreements
 - Term Sheets/Letters of Intent
 - Purchase and Sale Agreements
 - Real Estate
 - Asset purchases
 - Equity purchases
 - Goods and services
 - Other
 - Leases
 - Real Estate
 - Equipment
 - Licensing and other regulatory documents
 - Entity Documentation
 - Operating Agreements and other formation documents
 - Consent Resolutions
 - Loan Documents
 - Promissory notes
 - Loan agreements
 - Trust deeds

- Guaranties
 - Collateral assignments
 - Construction contracts
 - Other Real Estate-related agreements
 - Easement and licenses
 - Environmental indemnities
- c. Lawyer to counselor/strategic advisor

Speakers will take questions at the end of this segment.

4. Characteristics of a Successful Business Attorney
- a. Problem solver/strategic thinker and advisor
 - b. Pragmatic – focused on practical solutions
 - c. Skilled at listening to the client to determine what they really are trying to accomplish, want, and need.
 - d. Organized
 - e. Able to analyze risks and articulate them in a way clients can understand
 - f. Negotiator
 - g. Emotionally intelligent/People skills – ability to relate well with clients and also be able to evaluate what risks your clients present
 - h. Initiator/planner/self-motivated and able to pace yourself
 - i. Attention to detail
 - j. Passion/“Fire in the belly”
 - k. What personal characteristics does transaction work draw on for Laura and Todd
5. Advantages of Practicing as a Business Attorney
- a. Common goal
 - b. Collaborative
 - c. Long-term relationships with clients
 - d. Helping clients with an opportunity they want
 - e. Allows for efficiencies
 - f. Schedule can be flexible
6. Disadvantages of Practicing as a Business Attorney
- a. Risks can be difficult to quantify and analyze
 - b. Urgency - this varies depending on the deal and client
 - c. Predictability can vary widely

Speakers will take questions at the end of this segment.

7. Business Development and other Practice Tips
- a. Finding and Developing Clients
 - Where to go and who to network with – industry groups; other professionals
 - How to reach people in a way that encourages them to hire you as their lawyer
 - Presenting yourself in a way that makes your strength and interests clear
 - b. Know your own limits - associate other lawyers as co-counsel/get help; establish a network of professionals in various fields; learn what cases to reject
 - c. Know your client base and where your money is coming from; have a sufficiently diverse base for law practice sustainability
 - d. Find mentors
 - e. Attend substantive CLEs

Speakers will take questions at the end of this segment.

8. Resources and Practice Tools:

a. Free resources

- Bar Books
- FastCase
- PLF forms
- Law libraries

b. Other resources

- Practical Law (affiliated with Westlaw)
- Onecle
- Friedman on Leases
- RealDealDocs.com
- American Arbitration Association forms
- JAMS Mediation, Arbitration, ADR services and forms
- National Venture Capital Association (NVCA) forms
- Building Owners and Managers Association (BOMA) forms
- Lexis Nexis Forms and Templates
- Nolo.com
- Podcasts in your industry of interest; podcasts on practice management

PLF LEARNING THE ROPES CLE

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I. Agreements to Become Familiar With:

- Operating Agreement
- Shareholders Agreement
- Stock Purchase Agreement
- Asset Purchase Agreement
- Security Agreement
- Independent Contractors Agreement
- Master Services Agreement (MSA)
- Non-Disclosure or Confidentiality Agreement
- Employment Agreement
- Commercial Lease
- Loan Agreements & Promissory Notes
- Real Property Purchase & Sale Agreement

II. Some Basics to Know:

- Forming new entities
- Taxation of entities
- Buy-Sell provisions in Operating Agreements & Shareholders Agreements
- Commercial lease review
- Intellectual property basics: trademarks and copyrights
- Difference between a stock sale and an asset sale
- Difference between non-compete and non-solicitation provisions
- Ethical requirements of representing business entities

III. General Tips / Miscellaneous Thoughts:

- Get to know CPAs. Talk with the client's CPA during a transaction. Don't be afraid to ask them questions. Unless you have an LLM or a tax background, you don't need to advise on complicated partnership tax concepts (for example). With that said, in addition to understanding how the different entities are taxed, know specific forms, filing deadlines, and other practical advice (on the federal, state, and county level). This will be helpful for you too if you ever open your own practice.
- Be helpful. You'll need to provide a lot of practical advice and there is value for the client in this. Many questions won't be legal questions. Understand what you can/can't answer. Be prepared to answer basic questions about how to file a form (for example). Keep track (or ask your legal assistant to) of deadlines for clients.
- Draft agreements that clients can read, understand and use.
- Don't worry about sounding like a lawyer. Sometimes it's better to explain things in layperson terms so a client can understand. Most business clients want to work with someone who is approachable.
- Start a documents roster so you can keep track of what you've already drafted and can use these agreements going forward.
- Start a mentor / attorney resources roster. Establish relationships with specialty attorneys you can turn to when an issue is outside of your comfort zone.
- Be an active listener.
- Always be responsive, but also establish boundaries with clients.