

BUSINESS PLANNING

Office: Room 406 (619) 525-1474

Office Hours: Monday 9:00-10:30 am, 12:30-2:30 pm

Wednesday 1:00 –2:30 pm, or by appt.

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MMR

Tues & Thurs 10:50-12:05 am

Organization of the Course

This course will follow the creation, operation and reorganization of a closely-held company called, Compu Devices. The course text is a CWB Workbook written by Dwight Drake on Business Planning, and integrates case study problems written by Andrea Johnson. The course will be divided up into fourteen modules. Students will work individually and in teams of two to represent different party interests in each of the modules. Assignments will be random, based upon student last names. Teams will also be asked to prepare a presentation to their client on a variety of topics, and lead the discussion on in-class problems that will be handed out.

Learning Outcomes

Throughout the term, students will be engaged in lecture and class discussion; self-directed learning using the Cyber Workbooks modules with immediate feedback; group negotiation and discussions; and oral taped presentations.

Students will be expected to demonstrate a proficiency in written and oral skills; critical and analytical thinking; and applied reasoning. Students will also receive training in preparing for and conducting client negotiations and meetings.

Graded Assignments

Students will have individual, team and group grades based upon oral, written and reading assignments. Students be graded on the following course assignments:

Class Problems		5 points
Drafting Exercises		60 points
Retainer Agreement (individual)	15 points	
Shareholder/Operating Agreement (group)	15 points	
Employment Agreement (individual)	15 points	
Client Memo re Reorganization (individual)	15 points	
Cyber Workbooks (Q&A)		35 points

Extra Credit (Telecommuting Policy)

5 points

Total Points

105 points

Written Assignments

This is a practicum course and as such, the focus is to provide hands-on training for business lawyers in devising strategies, negotiating agreements, and drafting business documents. The assignments focus on oral, written, negotiation skills, and self-directed learning. This means that the assumption is that students will be motivated to do what is assigned in a timely manner. The lessons build upon each other so it is impractical to think there is an easy way to get through the course without doing the work.

Students will work individually, and in teams to negotiate and draft different types of documents used during the life of a business. First, students will draft a client retainer agreement for one of five owners of Compu Devices. Second, students will select the appropriate legal entity for the business, negotiate the terms, and draft the appropriate organizational documents to effect the selected business entity. Third, students will negotiate and draft an employment agreement for a key executive, and a policy statement to permit telecommuting (extra credit). Finally, students will negotiate and draft a client memo outlining the steps and legal and tax consequences for a reorganization of the entity.

Negotiations/Presentations

Students will be expected to conduct client meetings during which counsel will explain to the client (Professor Johnson) pertinent provisions of the agreement negotiated. Client meetings will be conducted in a round robin tag-team approach, meaning that a team of students will begin the presentation, a second team will pick up the presentation at a given point, followed by a third and fourth team. This means that all students will have to be prepared to discuss and explain to the client the substance of the terms negotiated and agreed upon.

BUSINESS PLANNING AND SKILLS TRAINING: PRACTICUM

Goals and Learning Outcomes for Course Modules

Cyber Workbook: Drake on Representing Closely-Held Entities

Module 1: Getting Started (Week 1)

This course module will cover the following areas:

1. How to use Westlaw's business forms and statutes to locate, research, and understand California business law and practice, and employment statutes;
2. What basic thinking skills business advisors need to have in assisting business clients; and
3. An overview of computers.

Students are expected to demonstrate the ability to:

1. Locate a document on Westlaw;
2. Understand skills used in evaluating client objectives, offering advice, and reaching a compromise to achieve win-win solutions; and
3. Distinguish between computer hardware and software.

Module 2: Lawyer's Role in Business Transactions (Week 2)

This course module will cover the following areas:

1. Role of the lawyer and ethical considerations in advising different types of business clients;
2. Strategies to resolve conflict issues in representing multiple business owners.
3. Interviewing techniques for business clients to solicit relevant information related to the scope of representation, use of experts, the attorney-client relationship, and conflict of interest questions;
4. How to analyze a case study problem; and

5. Critical terms that need to be included in a client retainer agreement.

Students are expected to demonstrate the ability to:

1. Understand skills used in evaluating client objectives, offering advice, and reaching a compromise to achieve win-win solutions;
2. Understand pertinent sections of the Model Code of Professional Responsibility as it relates to ethical rules on multiple representation of business owners;
3. Analyze the client's objectives in order to advise the client on allocating voting authority and control in a business enterprise;
4. Understand and articulate potential and actual conflicts of interest that may arise in representing multiple parties; and
5. Apply sections of California Code of Professional Responsibility in drafting a client retainer agreement.

Written Exercise 1: Draft Retainer Agreement (Due 9/10/07)

This exercise will cover the topics in Modules 1 and 2. Using one or more of the sample forms, draft a client retainer letter agreement to represent Compu Devices in business, tax and corporate matters related to the company. Assume that the parties have decided that it is in everyone's best interests to have C & W represent only the company, and then in the event there is a conflict, the firm will continue to represent Andrew, with whom the firm has a previous relationship. Each of the parties will retain separate counsel to review the ownership agreement drafted by C&W.

This is a short answer question so take your time. Draft your response in MS Word in no more than 1000 words and cut and paste into the box provided and click insert. You need not select your name before submitting your answer. Feedback will automatically be sent to you via email. You should also submit a draft by email to Professor Johnson.

Comments will be provided and you will be expected to make the corrections and resubmit for inclusion in your course portfolio.

Module 3. Tutorial on Business Law Basics (Week 4)

This course module is a tutorial and will cover the following areas:

1. Different types of business entities, including partnerships, corporations, and limited liability companies;
2. Basic business law principles in assessing the parties' goals and interests; and
3. An overview of basic tax terms, how they are applied in analyzing the tax consequences of different types of entities.

Students are expected to demonstrate the ability to:

1. Analyze the rules, principles, and facts to understand different business relationships and legal entities;
2. Understand the requirements, advantages and disadvantages of partnerships, limited liability companies, and corporations; and
3. Understand and apply the basic tax concepts and ramifications in selecting the business entity.

Module 4: Choice of Entity Challenge (Week 5)

This course module will cover the following areas:

1. Classification of business owners as Toilers, Golfers, Hybrids, Big Fish, Family Affair, Personal Service Organizations; and Emerging Public Companies;
2. Selecting the appropriate business entity based upon the nontax considerations, focusing on closely-held corporations and limited liability companies; and
3. Organizational, financing and tax strategies for converting existing entities to other business entities.

Students are expected to demonstrate the ability to:

1. Analyze the pros and cons of corporations and limited liability companies and apply the principles to different client interests;

1. Apply the financial and strategies to make recommendations to clients based upon their priorities; and
2. Apply the tax rules governing conversions from one entity to another.

Module 5: Tax Considerations (Week 6)

This course module will cover the following areas:

1. The tax perks and traps in selecting different legal entities for a business; and
2. Planning strategies in evaluating different business entities based upon the tax implications.

Students are expected to demonstrate the ability to:

1. Understand the tax terms affecting the acquisition and disposition of a business ownership interest;
2. Understand the tax perks and traps for corporations, limited liability companies and partnerships; and
3. Analyze basic tax rules to evaluate and select the most appropriate business entity.

Module 6: Setting Up the Company (Week 7)

This course module will cover the following areas:

1. Organizing and funding the business, including a basic understanding of tax considerations and capital requirements; and
2. Developing a plan to obtain financing for a business enterprise.

Students will be expected to demonstrate the ability to:

1. Critically analyze the various factors that will impact on tax liability, control issues, and funding requirements for the business;
2. Understand and analyze the formalities associated with organizing a closely-held corporation;

3. Evaluate common rules and traps in organizing and funding a business enterprise; and
4. Propose solutions to address issues that may arise.

Module 7: Buy-Sell Agreements (Week 8)

This course module will cover the following areas:

1. Different types of buy-sell agreements and the pros and cons of each;
2. Considerations for using buy-sell agreements in service organizations; and
3. When to use different types of buy-sell agreements to effect the interests of the parties.

Students will be expected to demonstrate the ability to:

1. Understand and analyze different types of buy-sell agreements;
2. Critically analyze how these agreements should be structured and the planning objectives in evaluating different types of strategies;
3. Understand common mistakes and apply solutions that attorneys often encounter in drafting buy-sell agreements; and
4. Understand unique challenges faced by professional service organizations where person expertise is critical to the success of the enterprise and there is no secondary market for an owner's interest.

Module 8: Negotiating the Organizational Agreement (Week 9)

This course module will cover the following areas:

1. Considerations in negotiating an ownership agreement to create a limited liability company and closely held corporation;
2. Principled negotiating techniques for reaching win-win solutions; and
3. The basics of copyright law, including licensing and assigning rights to a third party; and
4. The basics of patent law, including licensing and assigning rights to a third party.

Students will be expected to demonstrate the ability to:

1. Understand strategies for creating a win-win solution to issues;
2. Understand the rights of owners to software and to apply them to a case study to determine the value of intellectual property as an asset of a company; and
3. Evaluate the differences between assignment and licensing of patents.

Module 9: Drafting Organizational Documents (Week 10)

This course module will cover the following areas:

1. Critical terms for an operating agreement for a limited liability company;
2. Critical terms for a shareholder agreement for a closely held corporation;

Students will be expected to demonstrate the ability to:

1. Apply critical terms to negotiate an agreement in which all of the parties achieve substantially what they desire;
2. Memorialize the substance of a negotiated agreement among owners to create a limited liability company or a closely held corporation;
3. Draft the essential terms for an operating agreement or shareholder agreement; and
4. Work effectively in a group to achieve a win-win solution.

Written Exercise 2: Operating Agreement/ Shareholder Agreement
At the end of this module students will be negotiating an ownership agreement in a group with other students assuming the role of one of the parties. This exercise will cover topics covered in Modules 3 through 9.

Module 10: In-House Employee Matters (Week 11)

This course module will cover the following areas:

1. Considerations in developing a retirement plan for non-key company employees;
2. Protecting employee rights and operational policies that need to be in place in any business enterprise;
3. Protecting the business from acts of its employees; and
4. Critical areas that need to be included in the Employee Manual.

Students will be expected to demonstrate the ability to:

1. Analyze benefits plans for employees;
2. Evaluate the options for a benefits plan and apply them to develop an employee benefits plan to address key issues; and
3. Draft a company policy related to telecommuting.

Module 11: Employment Agreements for Key Executives (Week 12)

This course module will cover the following areas:

1. The basic components of an executive compensation package;
2. Essential terms to be included in an employment agreement;
3. Common mistakes and traps in drafting employment agreements; and
4. Different types of stock option and equivalency programs for key executives.

Students will be expected to demonstrate the ability to:

1. Structure a compensation package for a key executive employee;
2. Analyze and resolve strategic planning issues in negotiating employment agreements for key employees; and

3. Evaluate and advise on the pros and cons of stock options and equivalency plans.

Module 12: Drafting the Employment Agreement (Week 13)

This course module will focus on:

1. How to customize a sample agreement and integrate the interests of the employer and employee into a single employment agreement; and
2. The mechanics of drafting an employment agreement for a key executive.

Students will be expected to demonstrate the ability to:

1. Assess each parties priorities to establish an employment relationship; and
2. Apply these priorities and draft an employment agreement for a key executive.

Written agreement 3: At the end of this module, you will draft an employment agreement for Carla that reflects a compromise between the company's interests and Carla's interests. Assume that the parties have negotiated an agreement that reaches a compromise between their respective interests. If you choose to defer a benefit or obligation, include a process for addressing that issue in the future.

Will cover topics in Modules 10 through 12.

Module 13: Transactions Between Entities (Week 14)

This module will cover the following areas:

1. Transactions between companies such as the sale of stock or the assets of a company;
2. Strategies for a company that wants to diversify into other areas of business; and
3. Different ways to structure the deal to diversify, including asset sales, stock sales, and reorganizations.

Students will be expected to demonstrate the ability to:

1. Understand and evaluate the factors and determine when and how to diversify; and
2. Apply different types of diversification strategies to a series of case studies.

Module 14: Negotiating the Deal (Week 14)

This module will cover the following areas:

1. Essential terms for a Purchase and Sale Agreement; and
2. Essential terms for a stock sale or exchange.

Students will be expected to demonstrate the ability to:

1. Analyze and explain a complex reorganization plan; and
2. Draft a client memo explaining the mechanics and advantages of a stock purchase and asset exchange.

Writing Exercise 4: At the end of Part 2, draft a Client Memo to one of the following sets of clients, explaining the proposed reorganization: 1) Andrew, Bob and Vendors Group regarding disposition of their interests in Compu Devices, Inc.; OR 2) Carla, Devon & Edward regarding the proposed D Reorganization. Assume that the parties have negotiated an agreement that reaches a compromise between their respective interests. The Memo should not be more than 7 pages, 1 1/2 lines, 12 point font and should include the subheadings as outlined in the instructions.

Cyber Workbook: Representing Closely-Held Entities

Outline of Course Modules 8/20/07

Module 1: Tutorial to Get Started (Week of 8/28/07)

- A. Goals & Learning Outcomes
 - 1. Library Resources
 - 2. Skill and Outcomes
- B. Overview of Computers
 - 1. Computer Basics

Module 2: Lawyer's Role (Week of 9/5/07)

- A. Code of Professional Responsibility
 - 1. As Business Advisors.
 - 2. Ethical Issues
- B. Retainer Agreement
 - 1. Analyzing Potential Conflicts
 - 2. **Drafting the Retainer Agreement: Written Exercise 1-(Due 9/10/07)**

Module 3. Tutorial on Business Law Basics (Week of 9/11/07)

- A. Different Types of Legal Entities
 - 1. Partnerships
 - 2. Corporations
 - 3. Limited Liability Companies
- B. Business Law Basics
 - 1. Understanding the Deal
 - 2. Tax Basics
 - 3. Tax Planning

Module 4: Choice of Entity Challenge (Week of 9/18/07)

- A. Client Objectives
 - 1. Classifying the Business
 - 2. Non-Tax Considerations
- B. Entity Conversions
 - 1. Partnerships to Corporations
 - 2. Partnerships to LLCs

Module 5: Tax Considerations (Week of 9/25/07)

- A. Perks & Traps
 - 1. Corporate Tax Perks
 - 2. Partnership Tax Perks & Traps
- B. Planning Strategies
 - 1. Corporate Rules & Traps: Section 351
 - 2. Partnership Rules & Traps: Section 721
 - 3. Service & Debt Options

Module 6: Setting Up the Company (Week of 10/2/07)

- A. Documenting the Deal
 - 1. Critical Elements
 - 2. Ownership Issues

- C. Funding the Enterprise
 - 1. The Capital Challenge
 - 2. Types of Financing Vehicles

Module 7: Buy-Sell Agreements (Week of 10/9/07)

- A. Primer on Buy-Sell Agreements
 - 1. Overview of Buy-Sell
 - 2. Common Mistakes
- B. Professional Service Organizations
 - 1. Transition Planning
- C. Funding Buy-Sell Agreements
 - 1. Funding Strategies

Module 8: Negotiating the Ownership Agreement (Week of 10/15/07)

- A. Getting to Yes
 - 1. Creating a Win-Win Solution
- B. Overview of Intellectual Property
 - 1. Copyright
 - 2. Patents

Module 9: Drafting the Organizational Agreement (Week of 10/23/07)

- A. Outlining the Deal
 - 1. LLC Operating Agreement
 - 2. Shareholder Agreement
- B. Closing the Deal
 - 1. Drafting a LLC Operating Agreement
 - 2. Drafting a Shareholder Agreement

Written Exercise 2: Operating Agreement/ Shareholder Agreement (Due 10/30/07)

Module 10: In-House Employee Matters (Week of 10/30/07)

- A. Enterprise Employees
 - 1. Benefits Plan: Leave and Medical
 - 2. Retirement Benefits
 - 3. Case Study: Brand Inc.
- B. Protecting Employee Rights
 - 1. Key Rights.
 - 2. Handbook

Module 11: Employment Agreement for Key Executive (Week of 11/6/07)

- A. Negotiating the Deal
 - 1. Essential Terms
 - 2. Traps & Mistakes
- B. Funding Strategies
 - 1. Stock Equivalency Rights as Compensation

Module 12: Drafting the Employment Agreement (Week of 11/13/07)

- A. Assessing the Options
 - 1. Tips on Drafting an Employment Agreement

Written Exercise 3: Key Employment Agreement (Due 11/27/07)

Module 13: Transactions Between Entities (Week of 11/27/07)

- A. Assessing Diversification Options
 - 1. Diversification Challenges
 - 2. Strategies and Qualifications
- B. Structuring the Deal
 - 1. Asset and Stock Sales
 - 2. Mergers and Reorganizations

Module 14: Negotiating the Deal (Week of 12/4/07)

- A. Purchase & Sale Agreement
 - 1. Critical Terms
- B: Drafting a Client Memo
 - 1. Understanding the Deal

Written Exercise 4: Client Memo Key (Due 12/10/07)