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**Transaction Approaches to Business
Associations Pedagogy:
A Business Planning Practicum**

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I. The Scope of the Course

- A. Course description (Attachment A)
- B. Broad substantive law coverage; integrating several areas of law through problem-solving in transactional settings
- C. Relationship of course to 2007 Carnegie Foundation Report on legal education

II. Pedagogy; the Aims of the Course

- A. Experiential learning in context; student-driven; problem-solving; intellectually demanding
- B. Gathering pertinent information
- C. Identifying and understanding the business client's objectives
- D. Taking initiative and requesting help
- E. Formulating and expressing professional judgment; legal counseling
- F. Dealing with uncertainty and complexity
- G. Group work; collaboration and its challenges
- H. Achieving clarity of expression; preventing or minimizing legal trouble in drafting
- I. Revising and revising and... work
- J. Receiving supervisory assessment and feedback
- K. Seeing professional and ethical issues in more realistic context
- L. Weaning from teacher-centered learning; teacher as "lonesome right fielder"
- M. Internalizing professional performance standards; away from letter grades; see Attachment B

III. Sample Assignments; See Attachments C and D

- A. Teacher-student interaction; toward a more lawyerly relationship
- B. Being fully available to students
- C. Methods of evaluation
 - 1. Written projects
 - 2. Extensive office interaction
 - 3. Peer review; mixed success here
 - 4. Classroom; limited
 - 5. No final exam

IV. Resources

Frank Gevurtz, *Business Planning* (4th ed. 2008) [good problems]

Extensive supplemental readings are handed out throughout the semester

Lisa Penland, *What A Transactional Lawyer Needs to Know: Identifying And Implementing Competencies For Transactional Lawyers*, 5 JALWD 118 (2008)
[Appendix A collects source material]

Louis N. Schulze, Jr., *Transactional Law In The Required Legal Writing Curriculum: An Empirical Study of The Forgotten Future Business Lawyer*, 55 CLEVELAND ST. L. REV. 59 (2007).

Steven L. Schwarcz, *Explaining the Value of Transactional Lawyering*, 12 STAN. J. L. BUS. & FIN. 486 (2007).

Business Planning Practicum
(Lyman Johnson, Washington and Lee; University of St. Thomas)

There is a great deal of ferment in legal education today as a result of the 2007 Carnegie Foundation report on, and recommendations for change in, U. S. legal education. Those who teach in the business law area must join in this national conversation. Lyman Johnson has been teaching a 3L “capstone” course founded on these principles for over twenty years. In 2009, the course will carry 5 credits. The following paragraphs provide a summary description of this transactional and “experiential” approach to a business law course that seeks to meet the urgings of the Carnegie Foundation.

This business planning practicum is aimed at third-year law students who expect to be legal advisors to business leaders. The principles of law learned in the business associations, securities regulation, tax, and other commercial law courses are drawn together as students perform lawyer-like work on common, but complex and intellectually-demanding, simulated business transactions. All work is done in small groups – allowing students to experience the benefits and challenges of collaboration – and it is closely supervised and carefully evaluated by a full-time faculty member who assesses the work as though it were produced by a first-year associate in a law firm. Students largely work outside the classroom, and spend much time meeting with the professor to explore issues in an in-depth, give and take manner. There is no final exam.

Students start by advising two entrepreneurs as to the best organizational form for a start-up biotech venture, writing a six-page analytical memo detailing and supporting their views on entity selection and a host of related legal/deal issues. They then prepare an actual operating agreement (or partnership agreement) for an LLC (or partnership) for the proposed deal. They do this work, however, only after engaging in an in-depth analysis of state statutory provisions and federal income tax rules governing unincorporated business entities. They also confront intellectual property topics, professional responsibility concerns, and a host of other business and finance issues as they design the optimal business arrangement for the venture.

Students next confront a challenging financing issue. Drawing on their understanding of securities regulation, they closely analyze, and express views and an ultimate recommendation on, the choice between conducting an IPO or entering a corporate joint venture to finance a growing business. They then negotiate and prepare (and revise) a detailed letter of intent, addressing all pertinent issues, for a proposed Delaware corporate joint venture between the LLC (or partnership) they earlier formed and the contemplated venture partner, an unrelated public company.

Finally, students handle selected issues associated with the purchase and sale of a business. Here too they learn by doing. They work with an Asset Purchase Agreement and ancillary documents in this setting. As they do so, they see how a broad range of

legal subjects must be thoroughly understood and addressed in order to handle a complex sale and purchase transaction. This portion of the course generally involves participation by a business person who discusses the various business and strategic issues in selling or buying a substantial business, and an experienced lawyer who has conducted numerous acquisitions. These persons spend two or three days explaining how particular transactions were shaped and documented.

ATTACHMENT A

MEMORANDUM

TO: Business Planning Students

FROM: Lyman Johnson

DATE: February 19, 2009

RE: Return of Memos and Agreements on Limited Liability
Companies/Partnerships

I am returning your memos and operating agreements and related documents to the person whose name first appears on the memo. Please see to it that you and your colleagues carefully review my comments. I spent significant time commenting on your work. I evaluated your work as I would if it were from a first year associate in a law firm. Therefore, the standard was demanding and there may be, and probably are, extensive comments. Of course, re-drafting would improve the work. The specific comments are the most useful – don't worry as much about the more general comments. Also, it may seem a small thing but it is not: proof your work, for conceptual sense and internal coherence and for typographical errors.

This was a challenging drafting project. The more you draft, the better you become. It is a challenge to put together an agreement that "ties together" several issues in a coordinated fashion. Some of you had problems making the pieces fit together, as is common starting out.

Let's approach the second problem with the idea of doing even better work. Please see me as a group, or as an individual, at any time to discuss your work, or my evaluation, on the first Problem. In fact, it may be a very good idea to do so. Evaluation possibilities are: Very Poor, Poor, Fair, Good, Very Good, and Excellent. Most of the work fell into the Fair or Good category. The memo and OA each were separately assessed.

ATTACHMENT B

MEMORANDUM

TO: Business Planning Students

FROM: Lyman Johnson

DATE: January 21, 2009

RE: Assignment on Limited Liability Partnerships and Companies

This memorandum describes your next assignment, which is due at 12 p.m. on Wednesday, February 11, 2009. Your team should immediately schedule a time to meet me either later this week or early next week, and the following week, to touch base on your handling of this project and for you to seek guidance. We will meet as a class on February 4th and 5th to review and learn some securities law. Other than that, we will not meet as a class until the 11th, when we meet to discuss your final work product on the current project; more on that class session later.

Your assignment is to write a clear, cogent memorandum no longer than 6 single-spaced pages tightly analyzing whether the Bender and Wise venture described in Problem number I the issues arising out of that venture largely (but not entirely) having been identified through our discussions should be organized as a Virginia limited liability company or as a Virginia general or limited partnership. As to general or limited partnerships, consider the possibility of a limited liability (sometimes called a registered) general partnership and a limited liability (sometimes called a registered) limited partnership. Be specific, addressing particular aspects of this start-up venture, including, without limitation, (i) identifying key client goals and how you are achieving them, (ii) identifying key difficulties and how you are surmounting them, using as guidance the sort of very specific issues (e.g., meeting the need for future funding, whether Wise should contribute the process, handling innovations, special tax allocations, establishing capital accounts, distributions, how to deal with BSU, management issues, separation and exit issues, etc.) we have discussed in class. I want solutions for our clients and their goals, not general platitudes. Please assume that we are operating in Virginia which has a limited liability company law, as well as a general partnership and limited partnership statute, and tie your discussion to that statute. Also, in a separate section, offer your re-considered views on representing both (rather than just one) of these clients, being specific in your assessment.

Next, based on your conclusion, prepare a good draft of either specified portions of the Operating Agreement for a Bender-Wise *Virginia* limited liability company *or* specified portions of an appropriate partnership agreement. The portions to be included are: formation; capital contributions and loans (current and future, if any); profits/losses and distributions; management; separation and exit issues. You may, if you wish, draft the entire agreement. You may use as a possibly ^B useful model (you need to examine the two statutes) the attached form Operating Agreement for a *North Carolina* member-managed (not manager-managed) limited liability company; use the form critically and intelligently, not mechanically. *Also prepare* whatever document must be executed and filed to actually legally form the vehicle you chose.

You will work in teams. The team assignments are attached to this memorandum. Please see me if you have any questions, whether now or on an ongoing basis. Let us be clear about what your assignment is. Put your names on all work products.

ATTACHMENT C

MEMORANDUM

TO: Business Planning Students

FROM: Lyman Johnson

DATE: February 13, 2009

RE: First Assignment Under Problem II

Working in teams (see attached), those persons representing Bender and Wise should meet with their counterparts representing Gilbert Chemical to negotiate a highly detailed letter agreement covering the relevant points for the organization and operation of a corporation under Delaware law. After reaching preliminary agreement, those persons representing Bender and Wise should prepare a solid draft of the detailed letter agreement (addressing all relevant points) for the organization and operation of the corporation, deliver a copy of that draft to their counterparts representing Gilbert Chemical no later than 9:00 a.m., Monday, March 2, 2009 and deliver a copy to me at the same time. I will provide my comments on the agreement to each of the teams as soon as possible. (I expect by 4:00 p.m. the following day – the 3rd). Thereafter, the teams should meet with their counterparts to discuss the draft agreement and finalize negotiations; then, those persons representing Gilbert Chemical should draft the final letter agreement, deliver a copy to their counterparts representing Bender and Wise for final approval, make necessary revisions, and deliver the final letter agreement to their counterparts and to me by 4:00 p.m. on Friday, March 6, 2009. Pick up the next assignment at that time and meet with your group to initially assess the assigned project. Please see me if you have any questions about this assignment. You should see me to schedule any conference you would like to have with me. I am attaching some quite helpful materials to this memo. I have placed on Reserve some materials on Letters of Intent, including a sample (albeit for another type of transaction).

ATTACHMENT D