Course Syllabus for
USC Law 673

BUSINESS PLANNING II:
Deal Structure, Drafting and Negotiation

Spring 2015 – Professor Alan J. Levine

Course Description:

This course will examine the legal and business skills, concepts and practices, involved in structuring, drafting and negotiating various types of financing, production and distribution deals in the entertainment and media industry. To do so, students will work with a running hypothetical in the context of the motion picture business that progressively covers certain operational aspects of a major studio in connection with its development, production, distribution and exploitation of a slate of motion pictures for worldwide distribution, and its related dealings with third parties.

The instructor is a veteran entertainment attorney, studio chief executive, investment banker and media consultant with over 40 years of practical experience in the entertainment and media industry. Accordingly, this is a practical “hands on” course that will cover the details of selected transactions and related agreements encountered during development (e.g. overall term deals), production (e.g. production financing, completion guarantees), and distribution (e.g. agreements with distributors, exhibitors and other end-users) of motion pictures, and accounting and financial reporting of film performance to participants and other interested parties. Students will be exposed to the structuring, reviewing and drafting of deal memos, term sheets and formal agreements documenting such transactions examined from all sides of each relationship, corporate operation and/or transaction. Like a real-life corporate attorney or business executive, students will encounter a wide gamut of legal issues and business considerations addressed by the hypothetical players in the deals discussed in this course.

This course can be identified by many different titles. It combines courses in Business Planning, Legal Writing and Negotiation with basic principles students would encounter in many Contracts, Entertainment Law and Intellectual Property courses. While the focus of this course will be transactions and deals in the motion picture business, the issues, skills and principles presented can easily be applied to any media business involving the development, production, financing and distribution of content in today’s diverse media world. In fact, students will come to appreciate this view when you think of the development, production and distribution of each motion picture, television series or other self-contained entertainment content as the establishment of a new business. While the basic market considerations and customary practices of the traditional motion picture business may appear to be different, all of the basic legal and business issues encountered in counseling any type of new venture are quite similar.
Class Meetings; Number of Units:

This class will meet twice a week for 4 units of credit.

Registration:

While other qualifying courses for a business law or entertainment law certificate (including Business Planning I: Structuring and Financing the New Enterprise) are desirable, they are not prerequisites. Registration priority will be given to students who are 3Ls and JD/MBA candidates; 2Ls wishing to register for this course must submit a request for enrollment indicating their reasons for taking this course and providing any additional background information from previous academic, employment or other relevant business or media experience.

Course Materials:

All assigned reading can be found in: (i) the initial materials (“Initial Materials”), and the document appendix (“Document Appendix”) which will be made available to students at the Copy Center before the first class session, and (ii) a series of additional handouts and other materials (“Additional Materials”) which will be posted on Blackboard or made available to you at the Copy Center at announced times during the semester. Slides (“Class Slides”) outlining each class discussion will also be posted on Blackboard either prior to or immediately after each class session. (The Initial Materials, the Document Appendix, all Additional Materials and the Class Slides are the “Course Materials” herein.)

The Course Materials attempt to cover as many material issues and principles, as well as secondary commentary and documentation, that are relevant to the subject matter of this course and the transactions described in the course hypothetical – students are expected to use the Course Materials as a handbook or reference guide for required reading and short class assignments as well as the final exam.

The Document Appendix contains formal agreements, which have been drafted to conform to the hypothetical assumptions described in the Initial Materials as illustrations of the transactions contemplated by each such agreement. We will review and dissect as many of these agreements as time permits. While we will examine the overall structure of each deal, we may only focus on a few important provisions of each formal agreement in class and in the reading assignments. Students will not be responsible for knowing all of the specifics of documents or provisions we do not review in class unless specifically assigned to review the same as part of a reading or short class assignment. Therefore, the Course Syllabus may be revised from time to time to accommodate our progress through, and possible revisions to, the Course Material and the Topic Outline below.

Reading Assignments; Class Discussions:

At the end of (or shortly after) each class session, I expect to announce, email and/or post an announcement concerning the reading assignment from the Course Materials for, and the
topics I expect to cover in the immediately following class session. It is not possible to pinpoint upfront the specific timing for reading assignments for each class session; this will depend on our progress through the material in class.

Even though we may not cover all of the topics, concepts and documents that have been included in the Course Materials in detail during the semester, the matters that will be covered (and the reading and short class assignments) will be taken from the general Topic Outline below. Nevertheless, it is important for students to understand where all of the general topics fit in the sequencing of the transactions included in the course hypothetical, even if not covered. Except for such sequencing, you will not be responsible for those topics, Chapter sections or Course Materials which are not covered in class, or not part of a reading or short class assignment.

*Topic Outline:*

The Topic Outline below is generally organized to correspond to the Chapters in the Initial Material. We may cover one or more Chapters in a given class session, and it may take several class sessions to cover just one Chapter. Therefore, although the sequence will remain the same, please use the Topic Outline below as a guide rather than a specific schedule for anticipated reading or short class assignments until announcements are made regarding such assignments.

As with the Course Materials, this course has been organized around a running hypothetical, which will continue to evolve throughout the semester. A more detailed set of facts and assumptions for this hypothetical will be discussed during each class session to better focus on the issues and principles to be covered in each and subsequent class session. It is anticipated that this course will track the following topics covered in the Initial Material:

**Chapter 1: Introduction**

- Course Description
- Course Materials and Reading Assignments
- Running Hypothetical
- Introduction to Business Planning
- Organize Your Thoughts Before You Jump
- Glossary of Terms
- Standard Contract (Boilerplate) Provisions

**Chapter 2: The Motion Picture Business**

- Background Reading
- Discussion of Industry Players
  - Major Studios
  - Typical Studio Organization
  - Typical Film Group Organization
  - Major Independents
Chapter 3: Development of Pictures

- Development Process
- Acquisition of Literary Material
- Literary (Option and) Purchase Agreements
- Hiring a Writer
- Writer’s Loan-Out Agreement
- Overall Term Deals
- Overall Term Agreement

Chapter 4: Greenlight Process

- Election to Proceed to Production
- Pay or Play
- Abandonment and Turnaround
- Reversion with a Lien
- Turnaround Agreements

Chapter 5: Financing the Pictures

- Sources of Financing
- Co-Financing Agreements
- Co-Production Agreements
- Completion Guarantees

Chapter 6: Production of the Pictures

- Talent & Other Production Agreements
- Producer Agreements
- Producer’s Loan-Out Agreement
- Director Agreements
- Director’s Loan-Out Agreement
- Actor Agreements
- Actor’s Loan-Out Agreement
- Location Agreement
- Production Service Agreement
- Additional Topics
Chapter 7: Marketing & Distribution of Pictures

- Marketing and Distribution Agreements
- Standard Booking Terms
- Pre-Release (Financial Projection) Sensitivities
- Box Office and Post-Release Reporting

Chapter 8: Count the Money

- Profit Participations
- Basic Calculations
- Participation Statements
- Accounting and Other Provisions
- Audits; Audit Reports
- Formal Exhibits

Recording Policy:

The class will not be recorded on a regular basis. The Dean of Students and I will consider exceptions to this policy on a case-by-case basis within customary standards for such accommodations.

Attendance: Class Participation and Behavior:

Attendance and class participation will also be graded within law school parameters. Regular and punctual attendance is expected of all students. Attendance will be taken at the beginning of each class session. Lack of preparation, early departure or inappropriate behavior will influence the final grade. All communication and entertainment devices (e.g. cell phones, iPods, iPads, etc.) must remain off during each class session.

Short Assignments; Final Exam:

Students will be assigned several short class assignments during the semester that may include short class presentation(s), deal memo and contract drafting, and/or short paper(s) on assigned topics taken from the Course Material or previous class discussion. The final exam will be open-book (using only hard copies of the Course Materials and the student’s notes), in class for which students may use a laptop computer with SofTest. The exam may cover all assigned readings, all distributed Course Materials and any other matters discussed in class. Laptops may be used only for taking notes and for the final exam.

Grading:

Numerical grading (only) will be given. The final grade will be based on a combination of (i) in-class participation and the short class assignments given during the semester (30%), and (ii) the final exam (70%).
Office Hours:

Generally, I will make myself available after class and I will stay on campus on class days as needed for appointments with students. I also anticipate being on campus on some other days on an irregular basis. To schedule an appointment, students should speak to me after class or email me at alevine@law.usc.edu. Students should note that I prefer to respond to substantive questions in person, and preferably during class so all students can benefit from a discussion of the questions and answers.