

## Syllabus for USC Law 673

### DEAL STRATEGIES IN BUSINESS AND ENTERTAINMENT LAW

Spring 2020 – Professor Alan J. Levine

**Units: 4**

**Class Meetings: M/W at 10:00 AM - 11:50 AM**

**Location: Room 130**

**Instructor: Alan J. Levine**

**Office: Room 411B on class days**

**Office Hours: By appointment**

**Contact Info: alevine@law.usc.edu**

#### *Course Description:*

This is an upper division “specialized transactional skills” course that qualifies as part of the approved curriculum for students seeking a Business Law Certificate and the Media and Entertainment Law Certificate offered by the Law School. Using the motion picture business as a proxy for any general business or media content producer, financier and/or distributor, this course will examine the deal making strategies, legal and business issues, and the skills of structuring, negotiating and drafting various types of document, including executive and talent employment contracts, rights acquisitions, financing, production, distribution agreements and other important deals in the entertainment and media industry. While the focus of this course will be on transactions (deals) in the motion picture business, the issues, skills and principles presented can easily be applied to any general business involving the creation, financing, distribution, marketing, or sale a product or service, in any other business; the basic market and planning considerations and customary practices of the traditional motion picture business may appear to be different, but all of the basic legal and business issues, skills and principles presented in this course can easily be applied to any corporate or general business environment.

Specifically, this “hands on” course 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. To do so, students will work with a running hypothetical that progressively covers the critical operations of a major studio/distributor and an independent production company in connection with the development, production, distribution and exploitation of motion pictures for worldwide distribution; students will also examine the financial, economic, and practical aspects of each transaction, and

will also engage in “mock negotiations” of some of the more important transactions that will be examined in class.

Students will be exposed to the strategy of structuring, reviewing, drafting and negotiation of deals at the deal stage (through letters of intent, deal memos and term sheets) as well as formal agreements documenting such transactions examined from all sides of each relationship and corporate operation; and, like a real-life corporate attorney, business executive, and talent lawyer, students will encounter a wide gambit of legal issues and business considerations addressed by the players in the hypothetical deals discussed in this course. Please review again the Course Description for additional information concerning other important information concerning this Course.

### *Class Meetings; Office Hours; Teaching Assistant*

This class will meet twice a week for 4 units of credit for a numerical grade only; this course qualifies as an experiential “skills” course under Law School and ABA requirements. Class sessions will be held from 10:00 AM to 11:50 AM on regularly scheduled Monday and Wednesday class sessions in Room 130 in the Law School. The instructor will hold voluntary study sessions and office hours during the semester; to schedule an individual student conference to review questions regarding the Course Material (defined below), a student’s class participation, drafting skills or the Exercises (defined below), students should email Professor Levine at [alevine@law.usc.edu](mailto:alevine@law.usc.edu). Students should note that Professor Levine prefers to respond to substantive questions in person, and preferably during class so all students can benefit from a discussion of the questions and answers. Gurgen Sargsyan ([gurgen.sargsyan.2020@lawmail.usc.edu](mailto:gurgen.sargsyan.2020@lawmail.usc.edu).) will serve as the teaching assistant for this course this semester. Gurgen will be available to meet with students to assist those who are interested in better understanding the Course Materials, class discussions, and the Exercises.

### *Course Materials:*

All assigned reading will be from a Course Reader (including the term sheets, deal memos, formal agreements and other documents, financial and other notes and illustrations, class slides contained therein) prepared by the instructor, which will be made available to students at CopyVision at the Law School before the first class session. Additional handouts, other materials may be distributed and posted on Blackboard during the semester (all of the foregoing materials “Course Materials” herein.) The Course Materials 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 (“Exercises”) as well as the final exam. Students may not be required to read and/or master some of the topics in the

Course Materials due to time constraints or other circumstances; however, all of such material has been included to give students exposure to its existence and an understanding of where it fits in the sequencing of some of the transactions described in the hypothetical, and to make it available to those students who are interested in the subject matter in greater depth. The financial information and calculations included in the Course Materials is intended to give students exposure to the type and form of such financial information and calculation that are commonly used in many of the transactions to be discussed in class and to illustrate what professionals are using in the preparation and analysis of the transactions covered in this course. Students will be advised when a basic understanding of the structure and purpose of such information and projections is expected.

### ***Reading Assignments:***

At the end of (or shortly after) each class session, an announcement, email and/or posting on Blackboard concerning the reading assignment from the Course Materials for, and the topics expected to be covered in, the immediately following class session will be made. 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 all of the topics, concepts and documents that have been included in the Course Materials may not be covered in detail during the semester, the matters that will be covered (and the reading and the Exercises) will be taken from the general Topic Outline below. Students will not be responsible for knowing all of the specifics of every document or other material that is not reviewed in class unless specifically assigned to review the same as part of a reading or an Exercise. Therefore, the Course Syllabus and the Topic Outline below may be revised from time to time to accommodate the progress made by the class through the Course Material. 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 in class.

### ***Topic Outline:***

The Topic Outline below is generally organized to correspond to the Chapters in the Course Reader. The actual timing of the reading assignments and class discussions will depend on the actual progress through the Course Material made in each class. Therefore, although the sequence will remain the same, students should use the Topic Outline below as a guide rather than a specific schedule for anticipated reading or the Exercises until announcements are made regarding such assignments.

As with the Course Materials, the class sessions have 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 order of topics covered in the Course Reader:

- **Chapter 1: Introduction**
  - Review Course Syllabus, Course Materials and the Running Hypothetical
  - Discuss your role(s) in this course
  - Introduction to Business Planning
  - Background Reading on the Motion Picture Business
  - Discussion of Industry Players
    - Major & Mini Studios
    - Typical Studio Organization
    - Typical Film Group Organization
  - Distribution Windows and Revenue Streams
  - Calculating ultimate film revenue and costs
  - Guild and Union Agreements
    - Organization of Guild Basic Agreements
  - Motion Picture Industry Economics & Statistics
  - Review of Glossary of Terms & Phrases
  
- **Chapter 2: The Contract Review Process**
  - “Organize Your Thoughts Before You Begin”
  - Formal Agreements
    - “How do you review a contract?”
    - *The drafting process - step by step*
    - Standard (Boilerplate) Provisions
  - Contract Review Process Simplified
    - Suggested approaches: Three-Column Chart and Negotiation Grid
  - Examine an Executive Employment Agreement
    - Duties; Reporting; Exclusivity
    - Structure Compensation and Benefits
    - Target Bonus Plan
    - Termination Provisions
    - Employment Agreement Exercise
  - Doctrine of Mitigation
    - *Parker v. Twentieth-Century Fox Film Corp.*
  - Importance of Negotiating Skills
    - *The Art of Negotiation in the Business World*
  - Other related Topics & References
    - Cross-Collateralization
    - Portfolio Effect
    - Ethical Obligations of Deal Lawyers
    - Lawyers as Investors and/or Directors
    - *All You Need to Know About the Music Business*

- *Entertainment Litigation*
- *Entertainment Law: Fundamentals and Practice*
  
- **Chapter 3: Development of Pictures**
  - Development Process
  - Studio Executives
    - Certificate of employment Exercise
  - Freelance Producer Agreements
  - Overall Term Agreements
    - Deal Memo & Formal Agreement
    - Use of Loan-Out Companies
    - Recoupment Illustrations
  - Acquisition of Literary Material
    - Ludlum Literary (Option and) Purchase Agreement
    - Options, Rights of First Negotiation, First and Last Refusal
    - Literary Purchase Agreement Drafting Exercise
    - *Gardner v. Nike*
  - Hiring a Writer
    - WGA Basic Agreement Exercise (in class)
    - Writer's Loan-Out Agreement
    - Writer's Agreement Drafting Exercise
  
- **Chapter 4: Greenlight Process**
  - Election to Proceed to Production
  - Examine the concept of "pay or play"
  - Abandonment and Turnaround
    - Reversion of project with a lien
    - Turnaround Agreement
  
- **Chapter 5: Financing the Pictures**
  - Sources of Financing
  - Co-Financing Agreements
    - Single Picture Co-Financing Agreement
    - Co-Financing Agreement Illustration
  - Optional Reading: Co-Production Agreements
    - Co-Production Agreement & Illustration
  - Optional Reading: Financing Independent Motion Pictures
    - Completion Guarantees
    - Negative Pick-Up Agreement & Illustration
  
- **Chapter 6: Production of the Pictures**
  - Talent & Other Production Agreements
  - Producer Agreements

- Director Agreements
  - Producer/Director Loan-Out Agreement
- Actor's Agreements
  - Actor's (Schedule F) Agreement Template
  - Lead Actor Deal Memo
  - Lead Actor Agreement Exercises
- Location Agreements
  - Sample Location Agreement
  - Location Agreement Exercise
- Production Services Agreement
  - Sample Production Service Agreement
- Film Music
  - Sample Composer Agreement
- Optional Reading: Insurance Policies & Issues
- Additional Production Topics
  
- **Chapter 7: Marketing & Distribution of Pictures**
  - Introduction
  - Basic Booking Terms
    - Sample Bid Confirmation
    - Basic Agreement and Standard Booking Terms
  - Theatre Bid Confirmations
  
- **Chapter 8: Count the Money (Third-Party Participations)**
  - Profit Participations
  - Basic calculations
    - Defined Gross Proceeds
    - Defined Net Proceeds
    - Company's Share of Defined Net Proceeds
    - Defined Gross Proceeds After Initial Cash Breakeven ("ICBE")
  - Participation Statement Illustrations
    - Defined Gross Proceeds Statement
    - Defined Net Proceeds Statement
    - Company's Share of Defined Net Proceeds Statement
    - Defined Gross Proceeds after ICBE Statement
    - Creation of a Pool of Defined Gross Proceeds after ICBE
    - Defined Gross Proceeds after ICBE with Escalators
    - Sample Escalators
    - Step-by-Step Analysis of Defined Gross Proceeds after ICBE Escalators
  - Summary and Formal Exhibits
    - DGP Exhibit Drafting Exercise (in class)
  - Accounting, Payments and Other Provisions
  - Audit Reports

### *Written Exercises; Final Exam & Grading:*

There will be six written Exercises assigned during the semester that will focus on the review and drafting of provisions of term sheets, deal memos and formal agreements on topics taken from the Course Material or class discussion (see further descriptions below). The final exam will be open book, but students are limited to hard copies and electronic files of the following Course Materials: (i) your own notes and outlines, class handouts or other postings on Blackboard downloaded to your laptop; and (ii) your copy of the Course Reader, Class Slides, class handouts and hard copies of the postings on Blackboard. You may not have access to the internet or any non-course material. The final grade will be based on a combination of (x) in-class participation and the written Exercises given during the semester (30%), and (y) the final exam (70%).

Attendance and class participation will also be considered and 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, unexcused early departure or inappropriate behavior will influence the final grade. Laptops may be used only for taking notes and for the final exam. All other communication and entertainment devices (e.g. cell phones, iPods, iPads, etc.) must remain off during each class session. Students engaging in any social media or other communications (or surfing the internet) with any device during a class session may be dismissed from such class session and graded accordingly.

The following is a brief description of the Exercises that will be assigned during the semester; the instructions for completing each Exercise are contained in the applicable Chapter of the Course Reader (please note that in-class Exercises need not be submitted in written form for grading):

Employment Agreement Exercise: Following the introduction to the Contract Review Process and the examination of an Executive Employment Agreement with studio CEO Bob DeBoss, students will be asked to identify and characterize the provisions of the DeBoss Agreement, separating them into the material terms, the terms which are customarily found in agreements of this type, and the standard boilerplate provisions. Additionally, using a template provided, students are asked to prepare an analysis of how each party to the DeBoss Agreement prepared for the negotiation of the DeBoss Agreement. This Exercise will focus on the student's ability to identify and prioritize the material terms of the Agreement and each party's point of view on the numerous issues and context the parties considered when developing their respective strategy for approaching the negotiation of this arrangement. What was the purpose of the deal? What is the structure of the deal? What additional facts do you need to know in order to understand the context and proceed with the assignment? What is your strategy for accomplishing the goals of each party?

Certificate of Employment Exercise: Following a discussion concerning the various people involved in the initiation of the development of motion picture projects, students are asked to prepare a simple one-page agreement to be used by a studio/ employer when hiring a junior creative executive (on an “at-will basis”). Using a template and some basic assumptions provided, and the experience of the DeBoss Employment Agreement Exercise noted above, this Exercise requires students to be much more concise when covering all (but only) the material terms necessary to complete this assignment. Students must identify what is important and communicate those terms without the formality of a formal agreement such as the DeBoss Agreement.

Literary Purchase Agreement Exercise: This Exercise is designed to focus on each student’s preparation and drafting skills when asked to prepare three provisions for inclusion in the compensation section of the formal Ludlum Literary Purchase Agreement examined in Chapter 3 of the Course Reader. Students are given a brief description of three different bonuses in a deal memo between the Author’s agent and a Business Affairs executive at the studio from which the students must convert such terms into three provisions for the formal Literary Purchase Agreement. In order to complete this assignment, students must consider how to resolve any issues or missing facts presented by the informal language in the deal memo and match the style of the formal agreement.

WGA Basic Agreement Exercise: Students are provided with a schedule from the WGA Basic Agreement covering the minimum scale payments for various services on theatrical motion pictures. Students are then asked to identify the applicable minimum scale payments that are necessary to pay the Writer under the Tell Writer’s Loan-Out Agreement discussed in Chapter 3. This Exercise is for class discussion only.

Writer’s Agreement Exercise: Following a review of a deal memo between the Writer’s agent and a Business Affairs Executive of the studio, and the formal Writer’s Loan-Out Agreement covering such deal, students are asked to draft several provisions to be included in the compensation and expense sections of the formal Tell Writer’s Loan-Out Agreement. These sections require students to work through and resolve various ambiguities in the deal memo when preparing the requested inserts.

Lead Actor Exercises: Using a studio template for a formal agreement with a lead actor in a motion picture discussed in Chapter 6, students are asked to revise and complete certain provisions of the template to conform to the terms of two deal memos covering the two leads of the Picture in our course hypothetical. This Exercise is designed to bring together all of the skills required to complete all of the previous Exercises and display students’ understanding and proficiency to organize and communicate deal points in drafting provisions for a formal agreement.

Location Agreement Exercise: This in-class Exercise is designed to bring together the skill and experience of the previous Exercises for students to display their skills of



preparation and oral communication through the negotiation of a deal for a production company to utilize two on-going business locations in connection with the production of our hypothetical Picture. Working in two groups, each representing opposite sides of this arrangement, a mock negotiation will be conducted covering the material terms to be included in the final formal Location Agreement (a template of which has been examined in Chapter 6 and discussed in class before this Exercise). Students will have the opportunity to display their ability to work efficiently with others and with an appreciation of the input of others on the same team, in preparing for this Exercise and showing they can negotiate in class on behalf of their client in an organized and respectful, professional manner.

DGP Drafting Exercise: This Exercise is for class discussion only. Using the Standard Participation Provisions discussed in Chapter 8, students will identify which provisions are necessary to include (and revise, if necessary) in an Exhibit to be attached to a formal agreement pursuant to which a Participant is entitled to receive a Participation in Defined Gross Proceeds.

### *Learning Outcomes*

Below are listed the knowledge and abilities (“learning outcomes”) that this course was intended to help students attain. By the end of this course, students will be able to do the following:

(A) Transition from an upper division law or business student to think like a transactional lawyer, business executive, entrepreneur or other advisor by examining information and documentation derived from a sequence of real transactions regarding the formation, capitalization, funding and operation of a new independent motion picture production company (as a proxy for any new start-up company).

(B) Demonstrate the ability to identify and apply the business and legal issues, concepts and principles that must be considered by each party to a transaction before structuring, negotiating or drafting any documentation in respect to such transaction. Examining the term sheets, financial data and projections, formal agreements and other documentation concerning each transaction in this course will help students to develop a process and gain experience in how to accomplish the learning outcomes described herein.

(C) Identify, frame and understand the issues, goals, problems and options available or facing each party to the agreements used in the hypothetical transactions presented in this course, and to apply the knowledge and experience obtained in this course in connection with the advice and counsel to be given to each party/client in each such transaction.

(D) Prepare to structure and negotiate the terms of a transaction by articulating the purpose, context, structure and priority of the material terms of each transaction in this course from the point-of-view of all parties to such transaction. An understanding of the methods discussed in class and the Course Reader should help students develop their own process of how to analyze agreements, prepare to structure, negotiate and document transactions, and advise a party/client in respect to such transaction.

(D) Build on drafting, negotiating and communication skills through the written and in-class Exercises assigned in this course.

(E) Hypothesize performance and hypothesize non-performance by the parties to an agreement in order to test the outcome of your structuring, negotiating and drafting skills before finalizing or publishing a term sheet, formal agreement or other document memorializing a transaction.

(F) Eliminate any fear to analyze a deal, prepare an explanation of available options or support a proposition from both a qualitative and quantitative point-of-view; students will not be afraid of financial schedules, calculations and analyses.

(G) Apply these learning outcomes, tools and skills in whatever professional career path students may pursue (not just in entertainment/media transactions and contexts, but in general corporate and business environments as well). These learning outcomes can easily be applied in counseling any start-up company or in a general transactional business or practice.

(H) Always be prepared, truthful and ethical, and seek to make good decisions.

### **Law School Statement on Academic Conduct and Support Systems**

**Attendance:** Note that regular and punctual attendance is an important part of the learning process and is necessary to satisfy residence and class hours requirements. A student whose attendance is not regular and punctual may be withdrawn from enrollment at the discretion of the Dean of Students and the instructor. Instructors are permitted to announce additional attendance requirements and penalties for their classes.

**Academic Conduct:** Plagiarism – presenting someone else’s ideas as your own, either verbatim or recast in your own words – is a serious academic offense with serious consequences. Please familiarize yourself with the discussion of plagiarism in SCampus in Part B, Section 11, “Behavior Violating University Standards” [policy.usc.edu/scampus-part-b](http://policy.usc.edu/scampus-part-b). Other forms of academic dishonesty are equally unacceptable. See additional information in SCampus and university policies on scientific misconduct, [policy.usc.edu/scientific-misconduct](http://policy.usc.edu/scientific-misconduct).

### ***Support Systems:***

*Counseling and Mental Health - (213) 740-9355 – 24/7 on call*

[studenthealth.usc.edu/counseling](http://studenthealth.usc.edu/counseling)

Free and confidential mental health treatment for students, including short-term psychotherapy, group counseling, stress fitness workshops, and crisis intervention.

*National Suicide Prevention Lifeline - 1 (800) 273-8255 – 24/7 on call*

[suicidepreventionlifeline.org](http://suicidepreventionlifeline.org)

Free and confidential emotional support to people in suicidal crisis or emotional distress 24 hours a day, 7 days a week.

*Relationship and Sexual Violence Prevention and Services (RSVP) - (213) 740-9355(WELL), press "0" after hours – 24/7 on call*

[studenthealth.usc.edu/sexual-assault](http://studenthealth.usc.edu/sexual-assault)

Free and confidential therapy services, workshops, and training for situations related to gender-based harm.

*Office of Equity and Diversity (OED)- (213) 740-5086 | Title IX – (213) 821-8298*

[equity.usc.edu](http://equity.usc.edu), [titleix.usc.edu](http://titleix.usc.edu)

Information about how to get help or help someone affected by harassment or discrimination, rights of protected classes, reporting options, and additional resources for students, faculty, staff, visitors, and applicants. The university prohibits discrimination or harassment based on the following *protected characteristics*: race, color, national origin, ancestry, religion, sex, gender, gender identity, gender expression, sexual orientation, age, physical disability, medical condition, mental disability, marital status, pregnancy, veteran status, genetic information, and any other characteristic which may be specified in applicable laws and governmental regulations. The university also prohibits sexual assault, non-consensual sexual contact, sexual misconduct, intimate partner violence, stalking, malicious dissuasion, retaliation, and violation of interim measures.

*Reporting Incidents of Bias or Harassment - (213) 740-5086 or (213) 821-8298*

[usc-advocate.symplicity.com/care\\_report](http://usc-advocate.symplicity.com/care_report)

Avenue to report incidents of bias, hate crimes, and microaggressions to the Office of Equity and Diversity | Title IX for appropriate investigation, supportive measures, and response.

*The Office of Disability Services and Programs - (213) 740-0776*

[dsp.usc.edu](http://dsp.usc.edu)

Support and accommodations for students with disabilities. Services include assistance in providing readers/notetakers/interpreters, special accommodations for test taking needs, assistance with architectural barriers, assistive technology, and support for individual needs.