

# USC Gould

## School of Law

### Counseling the Startup Company – Law 827

**Units:** 2

**Term—Day—Time:** Fall 2021—Friday—11:00 am to 12:40 pm

**Location:** Room 101

**Instructor:** Neil J Wertlieb

**Office:** [TBD]

**Office Hours:** [TBD]

**Contact Info:** Email: [Neil@WertliebLaw.com](mailto:Neil@WertliebLaw.com); Phone: (424) 265-9659

#### Course Description

This course will introduce students to typical business transactions in the life cycle of a business, providing students with substantial drafting and negotiation experiences, as well as exposure to the ethical, tax and other legal and business issues raised by the representation of corporate clients in a transactional practice. The course takes a hands-on approach, centered on student-led, immersive experiential exercises and case studies.

On the first day of class, the students will collectively pick a hypothetical business as the context for experiential exploration throughout the semester. This course will examine the life cycle of that business, focusing in detail on sample transactions from two of the major stages of a business's life cycle: *the front-end* – formation and initial financing (including choice of entity, and early-round seed and venture capital offerings); and *the back-end* – exiting or sale of the company (including IPOs and recapitalizations). Students will analyze, structure and negotiate transactions in both stages, draft select provisions of key contracts, and receive instruction from and report to “clients”.

In addition, during the life cycle of the business, the students will be confronted with various ethical issues that arise in practice from a practical perspective, such as whether to engage with a potential client, whether to invest in or alongside a client, whether to accept a seat on the board of directors, and to whom duties are owed when the client is a business entity rather than an individual.

This course will emphasize active role playing, with students at various times playing the role of attorney, client, executive officer and judge, in a manner similar to what they will encounter as practicing attorneys. In addition to frequent feedback from the instructor, students will also be evaluating themselves and each other in such roles. This student-driven evaluation approach will serve as an important learning tool in the course and will provide opportunities for self-reflection.

Required and recommended reading materials (e.g., case studies, selected articles, and portions of relevant textbooks) will be posted on Blackboard for this course. Reading assignment for first week should be completed before first class. Check Blackboard for course announcements, assignments, updates and discussion forums

#### Learning Outcomes

By working through the simulated life cycle of a hypothetical business from startup to sale, students will learn the basics of transactional law in an experiential, hands-on format. The focus of the course is on the transactional skills required of a junior attorney in a transactional law practice (although that skill set will be useful in a variety of other practice areas as well).

This course is designed to teach students the requisite skills to:

- Analyze, structure and consummate typical transactions at different stages of the life cycle of a business
- Draft a basic bilateral agreement for a business transaction
- Negotiate a business transaction
- Develop judgment to help navigate the common ethical dilemmas faced by legal counsel in transactional matters

**Prerequisite(s); co-requisite(s), or recommended preparation:**

None, but Law 603 – Business Organizations strongly encouraged.

**Required Materials (e.g., textbooks or other)**

No required textbook, but required reading materials are posted on Blackboard.

## Description and Assessment of Assignments

Course grades will be based on:

- a contract drafting exercise assigned Week 5 (see below): 25%
- a negotiation exercise assigned Week 8 (see below): 25%
- an exit strategy exercise assigned Week 11 (see below): 25%
- class attendance, homework assignments and in-class participation (see below): 25%

**Participation:** Full credit for class attendance, homework assignments and in-class participation may be earned by doing all homework assignments (such assignments are not graded, but must be submitted), attending every class, and contributing to every class.

**Grading Options:** This course may be taken for a numeric grade or CR/D/F.

## Course-specific Policies

Class attendance, homework assignments and in-class participation are strongly encouraged. As noted above, this accounts for 25% of course grades. If you must miss class, please contact me in advance. Students who miss more than 3 classes may be dropped from the course. Students are encouraged to volunteer answers and to ask questions. My preference is to not put students on the spot by calling on them, although I may on occasion do so to encourage broader participation.

## Course Schedule: A Weekly Breakdown

The course will track a simulated business from startup through sale. A sample Course Schedule is set forth below. The reading assignments for each week are posted on Blackboard, and should be completed before class.

### Week 1 (8/27/21) – Introduction Class

- Substance:* Introduction to Course; Role of Transactional Counsel; Introduction to Transactional Drafting.
- Simulations:* Students to come up with business concept, give it a name, and outline a business plan in class.
- Assignment:* Unless otherwise indicated below, each week students will have as a homework assignment a contract drafting exercise to be submitted by email before class the following week. Each assignment will be to draft in a single sentence a contract provision to address a specific goal discussed in class. Focused feedback designed to sharpen students' drafting skills will be provided in the following class. Ungraded (although failure to submit a drafting assignment will be taken into account in grading).

### Week 2 (9/3/21) – Entity Formation

- Substance:* Ethical Considerations; Exit Strategies; Choice of Entity; Tax Considerations.
- Simulations:* Class discussions each week will begin with a group drafting exercise based on the Assignment from the prior week.  
Students to negotiate type of entity to use for the Company.
- Assignment:* Draft a single-sentence contract provision.

### Week 3 (9/10/21) – Introduction to Transactional Practice

- Substance:* Anatomy of a Transaction; Anatomy of a Contract.
- Simulations:* Further development of the Company's business plan, with a focus on marketing and growth.
- Assignment:* Draft a single-sentence contract provision.

### Week 4 (9/17/21) – Introduction to Early Stage Financings & Angel Investors

- Substance:* Financing an Early Stage Company; Seed Capital; Valuations; Capital Structure of a Business Entity; Angel Investors.
- Simulations:* Negotiate, draft and critique a contract provision by which an Angel Investor secures a seat on the Company's board of directors.
- Assignment:* Draft a single-sentence contract provision.

### Week 5 (9/24/21) – Early Stage Equity Financings – Convertible Preferred Stock Terms

- Substance:* Venture Capital; The Benefits of a Term Sheet; The Preferred Stock Term Sheet; Preferred Stock Terms.
- Simulations:* Negotiate whether or not the Preferred Stock Term Sheet should be signed by the parties, and whether any provisions should be binding on the parties.  
Negotiate, draft and critique certain provisions of the Series A Preferred Stock Term Sheet.
- Assignment:* Contract Flaws, Defects & Loopholes Graded Exercise.

### Week 6 (10/1/21) – Early Stage Equity Financings – Convertible Preferred Stock Terms *Continued*

- Substance:* Preferred Stock Terms Continued; Documentation.
- Simulations:* Negotiate, draft and critique certain provisions of the Series A Preferred Stock Term Sheet.
- Assignment:* Contract Flaws, Defects & Loopholes Graded Exercise *Continued*.

#### **Week 7 (10/8/21) – Early Stage Equity Financings – Subsequent Rounds of Preferred**

- Substance:* Subsequent Equity Financings; Layering in New Investors; Reconciling Conflicts and Preferences; Negotiating Techniques, both Academic and Practical; Negotiating with Clients and with Opposing Parties.
- Simulation:* Explore key questions to ask of both clients and opposing parties in the negotiation of certain provisions of the Series B Preferred Stock Term Sheet.
- Assignment:* Draft a single-sentence contract provision.

#### **Week 8 (10/15/21) – Debt Financings**

- Substance:* Debt vs. Equity; The Benefits of Leverage; Structure of Debt Investments; Introduction to Restrictive Covenants.
- Simulations:* Negotiation and analysis of whether, at this stage of its development, the Company should raise additional funds through debt or equity.  
Analyze a debt restrictive covenant for flaws, defects and loopholes.
- Assignment:* Negotiation Analysis Graded Exercise.

#### **Week 9 (10/22/21) – Debt Financings *Continued***

- Substance:* Restrictive Covenants; Royalty-Based Financings.
- Simulations:* Negotiate and draft restrictive covenants for flaws.
- Assignment:* Negotiation Analysis Graded Exercise *Continued*.

#### **Week 10 (10/29/21) – Introduction to Exit Strategies**

- Substance:* Introduction to Exit Strategies and Exit Alternatives; Initial Public Offerings.
- Simulations:* Advise the Series B Lead Investor of the various alternatives for monetizing its equity stake in the Company.  
In order to pursue an exit strategy, outline the provisions that would be included in a Non-Disclosure Agreement between the Company and a prospective buyer of the Company.
- Assignment:* Draft a single-sentence contract provision.

#### **Week 11 (11/5/21) – Introduction to Exit Strategies *Continued***

- Substance:* Exit Alternatives; Recapitalizations and Restructurings.
- Simulations:* In order to help facilitate a successful exit strategy, outline the provisions that would be included in an Employment Agreement for the Company's Chief Executive Officer.
- Assignment:* Exit Strategy Graded Exercise.

#### **Week 12 (11/12/21) – Sale of the Company – Structuring the Deal**

- Substance:* Structuring a Sale Transaction; Tax Considerations.
- Simulations:* Analyze the effectiveness of a closing condition relating to the continued employment of the Company's Chief Executive Officer.

*Assignment:* Exit Strategy Graded Exercise *Continued*.

**Week 13 (11/19/21) – Sale of the Company – Terms & Documentation**

*Substance:* The Stock Purchase Agreement; Terms of Sale Transactions; Closing Mechanics.

*Simulations:* As legal counsel to the buyer of the Company, students will evaluate the pros and cons of reflecting a closing requirement into the purchase agreement as either a representation, a closing condition or a pre-closing covenant.

*Assignment:* Describe in one sentence the single most important piece of tax advice to provide to your client. Due prior to the following class. Ungraded (although failure to submit will be taken into account in grading).

**Week 14 (11/23/21) – Sale of the Company – Terms & Documentation *Continued***

*Substance:* Post-Closing Obligations; Final Thoughts.

*Simulations:* Negotiate and analyze indemnification provisions

*Assignment:* None! We're all done!

## Statement on Academic Conduct and Support Systems

### 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,” <https://policy.usc.edu/files/2020/07/SCampus-Part-B-2.pdf>. Other forms of academic dishonesty are equally unacceptable.

### Support Systems:

*Student Counseling Services (SCS) – (213) 740-7711 – 24/7 on call*

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

<https://studenthealth.usc.edu/counseling/>.

See also this guide for Gould students to facilitate access to mental health resources on campus: <https://gould.usc.edu/assets/docs/directory/Mental-Health-Services-at-USC.pdf>

*National Suicide Prevention Lifeline – 1 (800) 273-8255*

Provides free and confidential emotional support to people in suicidal crisis or emotional distress 24 hours a day, 7 days a week. [www.suicidepreventionlifeline.org](http://www.suicidepreventionlifeline.org)

*Relationship and Sexual Violence Prevention Services (RSVP) – (213) 740-4900 – 24/7 on call*

Free and confidential therapy services, workshops, and training for situations related to gender-based harm. <https://studenthealth.usc.edu/sexual-assault/>

*Sexual Assault Resource Center*

For more information about how to get help or help a survivor, rights, reporting options, and additional resources, visit the website: <https://eeotix.usc.edu/>

*Office of Equity and Diversity (OED)/Title IX Compliance – (213) 740-5086*

Works with faculty, staff, visitors, applicants, and students around issues of protected class. <https://eeotix.usc.edu/>

*Bias Assessment Response and Support*

Incidents of bias, hate crimes, and microaggressions need to be reported allowing for appropriate investigation and response. <https://eeotix.usc.edu/>

*The Office of Disability Services and Programs*

Provides certification for students with disabilities and helps arrange relevant accommodations. <https://dsp.usc.edu/>

*Student Support and Advocacy*

Campus Support and Information is where members of the Trojan Family go to seek support for themselves, for others, and for the community. It is a one-stop-shop for care and support, troubleshooting and advocacy. <https://cwci.usc.edu/campus-support-and-intervention/>

If you are concerned about a fellow Trojan challenged with personal difficulties, you can file a report through Trojans Care for Trojans. The form can be found at:

<https://campussupport.usc.edu/trojans-care-4-trojans/>.

### *Diversity at USC*

Information on events, programs and training, the Diversity Task Force (including representatives for each school), chronology, participation, and various resources for students. <https://diversity.usc.edu/>

Gould-specific information can be found at <https://gould.usc.edu/about/race-equity/> (Law, Race and Equity page) and <https://gould.usc.edu/students/diversity/> Students can submit anonymous EDI-related comments/complaints through the law portal: <https://mylaw2.usc.edu/about/contact/anonymous-comments>

### *USC Emergency Information*

Provides safety and other updates, including ways in which instruction will be continued if an officially declared emergency makes travel to campus infeasible. <https://emergency.usc.edu/>

*USC Department of Public Safety – UPC: (213) 740-4321 – HSC: (323) 442-1000 – 24-hour emergency or to report a crime.*

Provides overall safety to USC community. <https://dps.usc.edu/>