

## **Transactional Skills Immersion Program**

### January 2010

The January 2010 immersion program was based on a simulation of portions of a “friendly” business transaction: the purchase and sale of a small, family-owned manufacturing business (the “deal”). Throughout the transactional skills workshop, instructors played the role of the “clients” (buyer or seller), with pairs of student “lawyers” being assigned to represent their client and to negotiate with a lawyer pair representing the other side. Students were told in advance that their experiences in the January immersion program would be more free-flowing than their experiences in the fall program, and somewhat more realistic and unpredictable, with new issues arising and changes of course taking place as the transaction developed.

**Highlights of Deal Simulation.** The deal simulation focused on selected events that might occur during the course of a transaction:

- Meetings with client to learn information about the business deal and to understand the client’s objectives.
- Negotiation of selected portions of the transaction.
- Due diligence process, including review of corporate records and documents, as well as client interviews.
- Consideration of corporate tax issues in the structure of a deal (presented through simulated CLE presentation and subsequent client-meeting demonstrations).
- Consideration of employment issues that might arise in the acquisition of a non-union manufacturing business (presented in the context of two simulated CLE presentations and meetings with mock client).
- Advising client regarding legal issues related to business issues, including legal issues related to employees of seller’s business.
- Negotiation and drafting of selected provisions of (1) an asset purchase agreement and (2) an employment agreement.
- Meeting with client to determine steps necessary to close the transaction.

**Pedagogical Objectives.** Transactional skills highlighted by the deal simulation gave students practice and experience in developing the following skills:

- Understanding steps of a business transaction and the role of transactional attorneys in a “friendly” transaction (i.e., a transaction that has not originated in a dispute).
- Identifying and distinguishing business and legal issues.
- Interviewing, listening to and working with transactional client to learn relevant information and to identify and solve problems.
- Developing and updating a negotiation strategy and plan.
- Reacting to and dealing with client decisions, new facts and changes of pace that change the negotiation plans.
- Negotiating transaction, including advocating client’s position while being aware of underlying client business relationships.



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- Reviewing corporate records and documents as part of due diligence process and further identifying issues relevant to the transaction.
- Summarizing and prioritizing open issues and presenting them to client in both written and oral reports.
- Counseling clients on risks related to transaction, including risks related to employees and employment law.
- Suggesting possible business-oriented solutions to allocate legal risks in accordance with client's wishes.
- Drafting and further negotiating provisions of an employment agreement and an asset purchase agreement.
- Learning and disclosing information appropriately in meetings with counsel for the other side.
- To the extent appropriate, working collaboratively with other side as clients resolve their issues.
- Understanding certain ethics and professionalism issues in transactional negotiations.

Substantive areas of law emphasized in the transactional skills immersion program included the following:

- General Corporate Law
- Contracts
- Employment Law
- Corporate Tax
- Financial Statements and Accounting (students attended online course in advance of transactional skills immersion)

### **Structure of Course**

***Preliminary Exercises.*** The program began with small-section exercises to focus on the following:

- Identifying and distinguishing business and legal issues.
- Interviewing technique and theory in a transactional setting (contrasting with interviewing technique in a litigation setting).

### ***Introduction to the Simulated Deal.***

- Students saw video of Buyer CEO and Seller CEO meeting to plan the sale of small, family-owned furniture business located in Chicago.
- Student lawyers received additional emails and materials from their clients and prepared negotiation strategy and plan.



**Development of Facts in Simulation Contexts.** Throughout the deal, the following simulated transactional experiences enabled the student lawyers to learn new facts and to understand client goals and motivations:

- Small section (fishbowl-style) interviews of “client” by student lawyers:
  - Gathering information from client about proposed deal, including business and legal issues.
  - Due diligence review of corporate records and documents.
  - Additional business information about business, with emphasis on identifying potential liabilities and other issues.
- Client phone call (presented as video) – Buyer CEO and Seller CEO discussed possible employment by Buyer of Seller CEO, as well as concerns regarding Buyer’s hiring of Seller’s employees in proposed deal.
- Meetings with co-counsel to determine negotiation strategy and plan.
- Individual meetings with client:
  - Formal scheduled meetings.
  - Impromptu meetings initiated by student lawyers or by client.
- Meetings with counsel for other side to negotiate transaction.
- Emails from clients.
- Due diligence review of simulated corporate records and documents.

**Development of Legal Knowledge.** As the student lawyers learned new facts, they also learned how to put these facts into appropriate legal context through the following:

- Simulated CLE presentations on substantive areas of the law, with specific information relevant to the deal embedded in those lectures:
  - *Employment Law in Transactions: Drafting Employment Agreements and Recognizing Employment Concerns* – Kathryn (Kalee) Vargo (partner at Bryan Cave)
  - *Corporate Tax Issues in Business Transactions* – Jeff Kahn
  - *Labor and Employment Law Considerations in the Sale or Purchase of a Business in the Non-Union Setting* – Mark Grunewald
- Brief lecture presentations relevant to the deal:
  - Steps of a Deal – Timeline
  - Corporate Structure
  - Due Diligence Issues and Due Diligence Review:
    - Third-Party Contracts
    - Minute Books and Stock Records
      - Formation Documents
      - Stock Records
      - Minutes (spotting legal and business issues)
  - Structuring the Deal



- The Acquisition Agreement
  - Indemnification Provisions
- Demonstrations (live) regarding Structure of Deal (emphasizing liability and tax issues):
  - Client meeting (Buyer CEO and Buyer's Attorney)
  - Meeting of Buyer's Attorney and Seller's Attorney
  - Client meeting (Seller CEO and Seller's Attorney)

***Integration of Developed Facts and Legal Knowledge.*** As the student lawyers developed their legal knowledge, they then applied that knowledge to the facts of the deal:

- Client Counseling by Student Lawyer Pairs:
  - Employment Agreement issues
  - Employee Issues in Sale and Purchase of Non-Union Business
- Negotiation and Drafting of Agreements:
  - Employment Agreement (between Buyer and Seller CEO):
    - Term and Termination
    - Definition of “Cause”
    - Non-Competition and Non-Solicitation Clauses
  - Asset Purchase Agreement (between Buyer and Seller):
    - Provisions regarding Assets to be transferred and Liabilities to be assumed
    - Provisions regarding Hiring (or Not Hiring) Seller Employees
    - Selected Representations and Warranties
    - Selected Covenants and Conditions to Closing
    - Indemnification Provisions

***Feedback and Debriefing.*** Instructors provided “non-client” feedback to students at specifically scheduled meetings during the course, and students participated in a debriefing exercise at the end of the course.

- Instructor Feedback:
  - Meeting with Negotiation Pairs: Due Diligence Reports
  - Meeting with Negotiation Pairs: Employment Agreement Provisions
  - Written Critiques to Negotiating Teams (Buyer and Seller Attorneys) regarding drafted Asset Purchase Agreement and overall transaction.
- Student Debriefing:
  - Individual preparation of Debriefing Memo
  - Individual preparation of Confidential Peer Evaluation Memo
  - Meeting of combined small sections – collaborative development by students of master list of characteristics of good transactional negotiator.

