Course: Commercial Transactions Workshop  
LAW 842

Days/Time: Tuesdays, 1:30 pm – 4:15 pm

Instructor: Professor Cassandra Jones Havard  
ALB 1109  
Office Hours Th: 10:00 a.m. -12:00 p.m.

Location: Room assignments are available through MyUB.

Course Description: 
This course teaches students the principles of drafting commercial agreements by studying the documents necessary to structure a corporate transaction and applying the relevant law. Students will learn how transactional lawyers translate a business deal into contract provisions, as well as techniques for minimizing ambiguity and drafting with clarity. Students will have the opportunity to analyze the documents that comprise a corporate transaction from the letter of intent to closing documents such as the legal opinion. The course is taught through a combination of lecture and hands-on drafting exercises. Final grades will be based on class participation and the preparation of model documents reflecting a hypothetical corporate transaction.

Prerequisites: Business Organizations.

Course Materials:

- Bagley & Dauchy,  
  The Entrepreneur’s Guide to Law and Strategy, 5E,  
  - ISBN-10: 1285428498  
- https://cb.hbsp.harvard.edu/cbmp/coursepacks/overview/72528451

- Articles and links posted on TWEN

Student Learning Outcomes:

1. Develop knowledge of the law of prospective start-up business creation throughout the development of the enterprise.
2. Develop knowledge of the various legal and business considerations involved in advising entrepreneurs in forming and operating an emerging growth business.
3. Develop knowledge of the theories of entrepreneurship, assess entrepreneurial characteristics, and learn about the phases of the entrepreneurial process.
4. Understand and develop knowledge of entrepreneurship ethics and social responsibility.
5. Develop skills to work effectively as a team member through team projects, case studies and problem analysis.

**Course Outline.** This course is designed to prepare first year lawyers for a general corporate practice, whether in an in-house, law firm, or solo practice setting by teaching law students exactly what it is that transactional lawyers actually do in the context of organizing and financing a new business. By using a simulated deal format, we will use a simulated deal format, (i) to teach the substantive knowledge about financing a start-up business venture with (ii) the development of the skills needed in a transactional practice. By going through the life cycle of a deal, you will gain a real world perspective on as well as exposure to the kind of problems that typically arise over the course of a deal and frequently jeopardize its successful completion.

To achieve these skills that are particularly helpful to first-year lawyers, students will work through a hypothetical finance transaction that will encompass the entire semester. The course will analyze all stages of the acquisition transaction, including considering the often divergent strategies and goals of lenders and borrowers. The fundamentals of structuring and negotiating varying aspects of a private company transaction will be stressed. The approach will begin at the financing commitments and term sheet stage at the beginning of a typical private equity-backed acquisition, advance through the negotiation of the credit agreements and related documents, and finish with the closing and required collateral filings. The course will focus on how the many dimensions of corporate law influence the structuring and documenting of a deal and will also address often-contested key economic and legal deal terms, as well as common ethical dilemmas. The course will show how a lawyer adds significant value to a transaction by finding, analyzing, and resolving business issues.

**Grading.** You earn points toward your grade in this class based on your performance. Keep track of your ongoing performance and please come and see me if you have any questions or concerns. Although letter grades maybe important to some of you in the short-run, the true measure of success in this course is what you learn that you can apply to your future as lawyers. Thus, I encourage you to invest in yourself, work hard, and do the best you can on all components of the course. Below are the course grade components and associated weights:

- 15% for Class Contributions
- 20% Case Assignments/Analysis Essays
- 20% Team Presentations
- 55% for Graded Writing Assignments, as follows:
  - Graded Writing Assignment #1 – 15%
  - Graded Writing Assignment #2 – 20%
  - Graded Writing Assignment #3 – 20%

**There is no final examination for this course.**

**Class Contributions.** Your contribution to class discussions is an invaluable part of your learning experience, and the experiences of the other students in the class. Contributions are evaluated based on willingness, courage, ability to learn and respond to others, and letting others build off of what you have said. Contributions are evaluated using the **Class Contribution Rubric.**
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**Case Assignment/Analysis Essays.** Case assignments are opportunities for you to analyze, explain, and defend your position on a case. These assignments also prepare you for class discussion. You will prepare case assignments per the class schedule, except for those cases which you are presenting. Analysis essays are evaluated using the *Analysis Essay Rubric* to help you hone your critical analytical writing skills. See the TWEN website for assignment instructions.

**Team Presentations.** You will be assigned to a team of no more than four (4) people for the semester. Your team will be assigned cases for both a Presenter and Discussant presentation during the semester. Presentations are evaluated based on: (1) quality of the presentation using the *Presentation Evaluation Rubric*, and (2) contribution to the final product based on the *Team Case Peer Evaluation*. Each student shall have a post-presentation meeting with me after the first presentation to discuss feedback on your individual presentation performance based on the rubric. See the TWEN website for the rubric.

**Graded Writing Assignments and Rules:** There will be three major “Graded Writing Assignments” to be completed during the course of the semester, as set forth on the Syllabus below. This class satisfies the Upper Division Writing Requirement.

Students are expected to complete each of the three Graded Writing Assignments independently. **No collaboration or discussion is permitted.** The Graded Writing Assignments do not call for research beyond the reading materials provided and applicable corporations code statutes.

- **The stated maximum page lengths for the Graded Writing Assignments are not to be seen as expectations — many very good papers are shorter.** Papers should have margins of no less than one inch on each side and should be presented in Times New Roman 12 point, or a font of equivalent size. Footnotes are prohibited. Papers may be single spaced, but grading includes an assessment of the value of the paper to the reader, which includes the ease of use by the reader. Single spaced papers without frequent paragraph breaks or section divisions are difficult to read and will be graded accordingly.

- **Graded Writing Assignments are due at the beginning of class on the due date.** Consistent with UB’s anonymous grading policy, the Graded Writing Assignments when turned in should show only the student’s identification number. Students are to keep time sheets, just as in a law practice, showing their time spent on each Graded Writing Assignment and turn them in with their papers. So that the time sheets are outside the anonymous information used to grade the Writing Assignments, they are to be turned in separately from the Graded Writing Assignment materials and are to show the student’s name.

- **Questions on the Graded Writing Assignments may be asked by email, during office hours, or in class.** Answers will be provided only in class, so that all students have access to the questions and the answers and any follow-up issues can be discussed with the group as a whole. Thus, the last opportunity for questions is the class session preceding the due date for that particular Graded Writing Assignment. After that class, no further questions will be addressed. As a consequence, it is very much in the students’ best interests to begin working on the assignments early so that they may discover their questions before the last opportunity for the Instructor to answer their inquiries has passed. The Graded Writing Assignments are handed out at least three weeks before they are due. The time allowed is intended to give students the ability to complete the Graded Writing Assignments while managing their study schedules and other commitments without undue inconvenience. Unfortunately, some
students leave the project to the last few days before the due date; thus, they lose the opportunity to raise questions and often don’t perform as well as they would like.

Class Session. Each class session covers articles and cases focused on a common theme. The following is the format and general timeline for each class session:

- Discuss current news and overview of the session topic: 30 minutes
- Introduce the topic and discuss relevant real-world business situations and current events.
- Team presentations: 45 minutes
- Break: 5 minutes
- Directed class discussion: 50 minutes
  Discussion builds off the presentations to examine the case and readings in more depth.
- Synergy—What we learned from the class session as a whole: 10 minutes

Course Expectations:

American Bar Association Standards for Law Schools establish guidelines for the amount of work students should expect to complete for each credit earned. Students should expect approximately one hour of classroom instruction and two hours of out-of-class work each week for each credit earned in a class, or an equivalent amount of work for other academic activities, such as simulations, externships, clinical supervision, co-curricular activities, and other academic work leading to the award of credit hours.

Conduct.
Professional conduct in this course is built upon the following elements of professional decorum:

- Attending the class. Each class benefits from the attendance and participation of all students. You are responsible for all material covered and announcements made during classes missed. Late arrivals are disruptive and show disrespect to those who are on time.
- Minimizing disruptions. Cell phones should be turned off during class. You should not leave and re-enter the class and avoid engaging in side conversations during class. NO eating in class.
- Focusing on the class. While you may take notes on laptops, do not use laptop computers or hand-held devices for other tasks while in class. Activities such as Internet surfing, updating Facebook, and answering email are very impolite and disruptive.
- Respect. Act respectfully toward all class participants. This means giving people time to explain their thoughts and arguments, encouraging others to participate in class, and being professional when hearing or responding to a comment you do not agree with.

How to Make This Course a Success.
The following are recommendations for making this class a success (for all of us):

- Preparation. Read the assigned articles and cases; but equally important, spend time thinking about what you read, formulating questions, challenging assumptions, considering alternative viewpoints, and developing recommendations.
- Participation. You must be present to share your unique insights about the topic and help develop the intellectual content of the course. Ask questions about things that don’t make sense to you. Share your related experiences. Do not be overly concerned with whether you have the “correct” answers or
“great” questions. You and your classmates will often learn more from thoughtful questions and responses that are related to the discussions as we work together to sharpen your understanding.

- **Enthusiasm.** Analysis and decision making are essential to professional accounting practice. The more you invest in this course, the more you will get out of this course and position yourself for success in business.

You are encouraged to seek help from a friend or visit me during my scheduled office hours if you have any questions about the course material. Meetings during my office hours will be much more productive if you come well prepared. Whenever possible, try to write out your questions and, preferably, map them into the learning outcomes for the course. Most importantly, don’t tell me that you understand something when you are still perplexed.

**Attendance:**

Class attendance is a primary obligation of each student whose right to continued enrollment in the course and to take the examination is conditioned upon a record of attendance satisfactory to the professor. A student who exceeds the maximum allowed absences (generally 20% of class sessions) as illustrated below may be compelled to withdraw from the course, or may be barred from sitting for the final exam. Students who are forced to withdraw for exceeding the allowed absences may receive a grade of FA (failure due to excessive absence). This policy is consistent with American Bar Association Standards for Law Schools.

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<th>Regular Semester Hours</th>
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**Course Website:**

This course has a TWEN page that links to this syllabus, announcements, the class assignments, and other class materials. You are responsible for self-enrolling in the TWEN page and for checking it regularly for course information.) **You must have your own email account and check TWEN on a regular basis.** All communications will be sent to the email address listed on TWEN.

**Computers:**

Students may/may not use laptop computers for class related purposes.
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Class Cancellation:

If the instructor must cancel a class, notices will be sent to students via email and posted on the classroom door. If there is inclement weather, students should visit the University of Baltimore web site or call the University's Snow Closing Line at (410) 837-4201. If the University is open, students should presume that classes are running on the normal schedule.

Academic Integrity:

Students are obligated to refrain from acts that they know or, under the circumstances, have reason to know will impair the academic integrity of the University and/or School of Law. Violations of academic integrity include, but are not limited to: cheating, plagiarism, misuse of materials, inappropriate communication about exams, use of unauthorized materials and technology, misrepresentation of any academic matter, including attendance, and impeding the Honor Code process. The School of Law Honor Code and information about the process is available at http://law.ubalt.edu/academics/policiesandprocedures/honor_code/.

The following examples illustrate how the School of Law Honor Code applies to this course:

• The copyrighted cases in the Coursepack for your use only. **It is a violation of the student conduct policy to share these materials with other class members. Each student must purchase the assigned Coursepack.**
• **Graded Writing Assignments are individual work only.** No collaboration of any kind is allowed.
• Collaboration is permissible and encouraged on any group assignments. However, the **final write-up of cases or other assignments should be exclusively your own. For example, after discussing a case in your study (or other) group, you should form your own opinion and submit your own analysis. Do not contact prior students to get insight on a particular case. Do you own work.**
• **If at any time you are unclear about the any aspect of your responsibilities pertaining to the student conduct policy, please contact me rather than make assumptions.**

Title IX Sexual Misconduct and Nondiscrimination Policy:

The University of Baltimore’s Sexual Misconduct and Nondiscrimination policy is compliant with Federal laws prohibiting discrimination. Title IX requires that faculty, student employees and staff members report to the university any known, learned or rumored incidents of sex discrimination, including sexual harassment, sexual misconduct, stalking on the basis of sex, dating/intimate partner violence or sexual exploitation and/or related experiences or incidents. Policies and procedures related to Title IX and UB’s nondiscrimination policies can be found at: http://www.ubalt.edu/titleix.

Disability Policy:

If you are a student with a documented disability who requires an academic accommodation, please contact Leslie Metzger, Director of Student Services, at 410-837-5623 or lmetzger@ubalt.edu.
Format, Approach and Expectations of Students

This course will be an intellectually rigorous exploration of topics, but the law is a practical discipline, and this course is designed to provide frameworks and tools that will be of practical use to students involved in business ventures or research relating to cutting-edge technologies. The class will meet for three hours with a break in the middle.

COURSE STRUCTURE AND PEDAGOGY
Each class session covers articles and cases focused on a common theme. The following is the format and general timeline for each class session:

- Discuss current news and overview of the session topic: 30 minutes
  - Introduce the topic and discuss relevant real-world business situations and current events.
- Team presentations: 45 minutes
- Break: 5 minutes
- Directed class discussion: 50 minutes
  - Discussion builds off the presentations to examine the case and readings in more depth.
- Synergy—What we learned from the class session as a whole: 10 minutes.

Reading Assignments

This course introduces students to the various legal and business considerations involved in forming and operating an emerging growth business. The course uses a hypothetical start-up business as well as supplemental readings, sample agreements, and class discussions to help students identify and deal effectively with the numerous issues presented to legal counsel in the start-up and operation of a growth oriented business, including selecting and forming a business entity, structuring the economic benefits and management control among various owners, protecting intellectual property assets, and raising capital. The course begins with an analysis of some of the issues confronting a start-up company in its earliest stages, and examines the use of an LLC, both as an operating entity and as a vehicle for a joint venture, then addresses issues faced by company founders in contemplation of a subsequent venture financing. The course presents an overview of the venture capital industry and the significant legal and business issues involved in a venture financing from both the company and investor perspective. The course combines theory and practice in order to prepare students for the types of projects and challenges they will confront in the first year of a transactional practice.
Reading Assignments

The following is a tentative schedule of reading assignments. This schedule will likely change as we move through the semester. Please check the TWEN WEBSITE at least weekly to see if the schedule has been altered. Otherwise you may not be properly prepared for the classroom discussion.

REQUIRED MATERIALS

- https://cb.hbsp.harvard.edu/cbmp/coursepacks/overview/72528451
- Articles and links posted on TWEN

1. OVERVIEW (1/16)

   a. Bagley & Dauchy, The Entrepreneur’s Guide to Law and Strategy, Choosing an Attorney, pp. 38-44; Sources of Funds, pp. 147-158; Determining the Valuation, pp. 449-452.

   Note: You need not read Exhibit 1, 3, 5, 7, 8 or 9.

   Please come prepared to discuss the DigitalThink case (including Exhibits 2, 4 and 6).
   Please read the study questions posted on the TWEN.

2. ORGANIZING THE START-UP: FORMATION (1/23)

   a. Bagley & Dauchy, Deciding Whether to Incorporate, pp. 54-72; Where to Incorporate, pp. 79-81
   b. Delaware Court Applies Internal Affairs Doctrine to California Law (Posted on TWEN)
   c. The Risks of Hiring a Finder (Posted on TWEN)
   d. Reiling, Quabbin Cablevision Co., (“Coursepack”)

   Please come prepared to discuss the Quabbin Cablevision case.
   Please read the study questions posted on TWEN.
3. EMPLOYEES AND COMPENSATION I (1/30)

b. Oncidi, Non-Competes are D.O.A. in California (Posted on TWEN)
e. Woronoff, Confidentiality pp. 2-9 (Posted on TWEN)
f. Roberts & Thedinga, Sheila Mason & Craig Shepard, (Coursepack)

4. EMPLOYEES AND COMPENSATION II (2/6)

a. Bagley & Dauchy, Employee Stock Options, pp. 105- 110, 241
b. Restricted Property Supplemental Materials (Posted on TWEN)
c. Roberts & Bagley, Richard Spellman, (Coursepack)

Please come prepared to discuss the Richard Spellman case.
Please read the study questions posted on the TWEN.

5. FORMATION AND STRUCTURE OF THE VC FUND (2/13)

b. Morgan Lewis, Preparing a Venture Capital Term Sheet, pp. 1-18 (Posted on TWEN)
c. Balance Sheet Exercise, In-Class
d. Term Sheet Comparison, (Posted on TWEN)

Please come prepared to discuss Term Sheet Packet (Posted on TWEN)
Memo 1 (Posted on TWEN) due by 1:30 p.m.

6. SECURITIES LAW CONSIDERATIONS AND VENTURE CAPITAL STRUCTURING (2/20)

Securities Law Considerations
b. Securities Law Supplemental Materials (Posted on TWEN)
c. Eliminating the Prohibition Against General Solicitation and General Advertising in Rule 506 Offerings (Posted on TWEN)
d. Crowdfunding (Posted on TWEN)

Venture Capital Structuring
a. Bagley & Dauchy, Rights of Preferred Stock, pp. 454-490

The following portions of the Article are optional: The Introduction; Part I.C.; Part III.C.; the Conclusion; Appendix A & B; all footnotes.

Please come prepared to discuss the Term Sheet beginning on page 491 of Bagley & Dauchy

7. THE TERM SHEET: VC NEGOTIATIONS (2/27)

a. Bagley & Dauchy, Types of Investment Securities, pp. 162-188
b. Kuemmerle, Term Sheet Negotiations for Trendsetter, Inc. (Coursepack)
c. Study Questions (Posted on TWEN)

Please come prepared to discuss the Trendsetter, Inc. case.
Please read the study questions posted on the TWEN.

8. FIDUCIARY DUTIES/ETHICS IN VENTURE CAPITAL (3/13)

a. Hardymon, Lerner & Leamon, Case Vignette: The Salesman Saga, (Coursepack)
c. Northeast Harbor Golf Club v. Harris (Posted on TWEN)
d. Burton, Itz & Marshall, Director Liability in Venture Capital Down Rounds, (Posted on TWEN)
e. Amit Singh, How To Prepare for Investor-Led Down Round Financing (Posted on TWEN)

No Class – Spring Break (3/20)

9. EXIT STRATEGIES (PART I): PLANNING FOR SALE (3/27)

a. Bagley & Dauchy, Ch. 16, Buying and Selling a Business
b. Venture Capital Investment Documents (Posted on TWEN)

Please come prepared to discuss the Term Sheet beginning on page 689 of Bagley & Dauchy.

10. Exit Strategies (Part II): Due Diligence (4/1) (No Class)

a. Bagley & Dauchy, Due Diligence, 667- 669; Courtship Process, 446-447; IPO Preliminary Due Diligence Process, 703-704; 719-21; Venture Capital, 446-447.
Memo 2 (Posted on TWEN) due by 2:00 p.m.

   a. Frequently Asked Questions About Going Public,
   b. Seiger, Netflix – Going Public (Coursepack)

12. Closing the Transaction and Thereafter 4/17)
   a. The Mechanics of Closing
      (Posted on TWEN)
   b. Legal Opinions and What They Mean
      (Posted on TWEN)
   c. Bagley & Dauchy, Closing and Post Closing Integration, p. 681
      (Posted on TWEN)

13. Aerospace Negotiation (4/17)
    (Posted on TWEN)
    Assignment: Please email me 3 questions for the panel by 5:00 pm 4/16/18.

14. VC/PE Panel (4/24)
   a. Bagley & Dauchy, Deciding Whether to Seek Venture Capital, et. seq. pp. 439-449
   b. This is your chance to ask anything you want.

Final Memo (Posted on TWEN) due (5/01) at 5:00 p.m.