

**CORPORATE TRANSACTIONS 2019**  
**(Wednesdays 4:30 – 6:20 pm, Room 308)**  
**Course Outline**

**Instructor:** Ben Pryde (902.444.8453)  
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<b>Grading:</b>	Assignment 1 – Purchase and Sale of a Business	45%
	Assignment 2 – Debt Financing	35%
	Quiz	20%

**Texts:** None

**Readings:** Listed Below

**Plagiarism**

All students in this course must read the University policies on plagiarism and academic honesty referenced in the Policies and Student Resources sections of the <http://academicintegrity.dal.ca/> website, and the Law School policy on plagiarism, available online at <http://www.dal.ca/faculty/law/current-students/jd-students/academic-regulations.html>. Any paper or assignment submitted by a student at the Schulich School of Law may be checked for originality to confirm that the student has not plagiarized from other sources. Plagiarism is considered a serious academic offence which may lead to loss of credit, suspension or expulsion from the law school, or even revocation of a degree. It is essential that there be correct attribution of authorities from which facts and opinions have been derived. Prior to submitting any paper or other assignment, students should read and familiarize themselves with the policies referred to above and should consult with the instructor if they have any questions. Ignorance of the policies on plagiarism will not excuse any violation of those policies.

**Copying or adapting text from precedent documents obtained in class or from your own sources in the completion of the assignments is strongly encouraged and will not be considered plagiarism. Copying or adapting text from assignments submitted in past years in the completion of the assignments will be considered plagiarism.**

## **Students Requests for Accommodation**

Requests for special accommodation for reasons such as illness, injury or personal circumstances will require an application to the Law School Studies Committee. Such requests must be made to Associate Dean Michael Deturbide or Assistant Dean Elizabeth Hughes as soon as possible, before a scheduled exam or a deadline for an assignment. Retroactive accommodation will not be provided. Please note that individual professors cannot entertain accommodation requests.

Students may request accommodation as a result of barriers related to disability, religious obligation, or any characteristic under the Nova Scotia *Human Rights Act*. Students who require academic accommodation for either classroom participation or the writing of tests and exams should make their request to the Advising and Access Services Center (AASC) prior to or at the outset of the regular academic year. Please visit [www.dal.ca/access](http://www.dal.ca/access) for more information and to obtain the Request for Accommodation – Form A. Students may also contact the Advising and Access Services Centre directly at (902) 494-2836.

## **Class Schedule**

### **Class 1 – January 9, 2019 (David Wallace and Ben Pryde)**

Topics: Course Introduction & Overview

### **Class 2 – January 16, 2019 (David Wallace)**

Topic: Purchase and Sale of a Business - Shares v. Assets  
Purchase and Sale of a Business – Preliminary Documents

Suggested Readings:

1. Frisina Filomena; “Purchasing the Assets or Shares of a Corporation: Key Considerations”; Negotiating and Drafting Key Business Agreements, September 30, 2006.
2. Dentons Canada LLP “Mergers and Acquisitions in Canada”; (Dentons Website, September, 2013).
3. Sean Collins, Jamey Gage, Warren Milman, & Roger Taplin; “Mergers and Acquisitions in a More Uncertain World: Using the Companies Creditors’ Arrangement Act”; (McCarthy Tétrault LLP Website, July 15, 2012).
4. Hartley Nathan; “Letters of Intent and MOUs: A Guide”; Negotiating and Drafting Key Business Agreements, September 30, 2006.

### **Class 3 – January 23, 2019 (David Wallace)**

Topic: Purchase and Sale of a Business - Due Diligence  
Purchase and Sale of a Business - Searches

Suggested Readings:

1. Cassels Brock & Blackwell LLP; "Sample Due Diligence Checklist".
2. McInnes Cooper; "Sample Due Diligence Request Checklist".
3. Gary R. Shiff; "Due Diligence or Bet the Firm: Take Your Pick"; Osgoode Hall Law School Professional Development Program, Conducting Effective Corporate Due Diligence Seminar, November 16, 2009.
4. John F. Fox & David N. Ross; "Real Estate Due Diligence: The Purpose and the Process"; (McMillan Binch LLP Website, 2001).
5. Isis E. Caulder; "Intellectual Property Due Diligence"; Osgoode Hall Law School Professional Development Program, Conducting Effective Corporate Due Diligence Seminar, November 16, 2009.
6. Roderick A. Ferguson & Michael S. Klym; "Doing Deals in Distant Places: The Perils of International Due Diligence"; (Fasken Martineau DuMoulin LLP Website, 2006).
7. Stanley Freedman & Chantale Blais; "Ordering and Reviewing Searches"; Osgoode Hall Law School Professional Development Program, Conducting Effective Corporate Due Diligence Seminar, November 16, 2009.
8. Miho Felicio; "Minute Book Reviews"; Osgoode Hall Law School Professional Development Program, Conducting Effective Corporate Due Diligence Seminar, November 16, 2009.

**Assignment #1 Distributed by Email – Due February 15, 2019 by noon.**

**Class 4 – January 30, 2019 (David Wallace)**

Topic: Purchase and Sale of a Business - The Agreement

Suggested Readings:

1. Valerie C. Mann; "Purchase and Sale Agreements"; 10<sup>th</sup> Negotiating and Drafting Major Business Agreements Conference, March 2, 2009.
2. Law Society of British Columbia; "Share Purchase Agreement Drafting Checklist"; Excerpt from Practice Checklists Manual, 2013.
3. Law Society of British Columbia; "Asset Purchase Agreement Drafting Checklist"; Excerpt from Practice Checklists Manual, 2013.
4. Don Ross, Allison McLean & Chris McMullan; "Warranties, Indemnities and Insurance Coverage: Beyond the Boilerplate"; 12th Annual Negotiating and Drafting Major Business Agreements, February 15-16, 2006.
5. Mitch Frazer & Mary Picard; "Negotiating the Agreement – Part I: Representations"; CBA Conference on Pensions and Employee Benefits in Mergers and Acquisitions, November 21, 2008.

**Class 5 – February 6, 2019 (David Wallace)**

Topics: Purchase and Sale of a Business - The Closing

Suggested Readings:

1. Bruce Chapple & Michael Hollinger; “Confidentiality, Non-Competition and Non-Solicitation Covenants – A Practical Guide” (McMillan Binch LLP Website, 2004).
2. Jonathan Levin; “Confidentiality and Non-Compete Arrangements” (Fasken Martineau DuMoulin LLP Website, 2006).
3. Terence G. Stewart; “Non-competition Agreement”, Chapter 5 of Buying and Selling a Business – Annotated Precedents. (Continuing Legal Education Society of British Columbia, October 1, 2000).
4. Michael & Ara Basmadjian, “Enforceable non-compete clauses in business sales: the analytical framework” (Dentons Website, 2013)
5. Terence G. Stewart; “Escrow Agreements”, Chapter 7 of Buying and Selling a Business – Annotated Precedents. (Continuing Legal Education Society of British Columbia, October 1, 2000).
6. Dentons Canada LLP “Mergers and Acquisitions in Canada”; (Dentons Website, September, 2013 – specifically sections labeled “Competition Act – Merger Notification And Review” and “Foreign Investment Notification And Approval Under The Investment Canada Act”.

**Class 6 – February 13, 2019 (Michael Murphy)**

Topics: Labour & Employment Issues in Commercial Transactions

Suggested Readings:

1. William R. Gale & Jeffrey C. Hopkins; “Employment Contracts: The Prenuptial Agreement of the Business World”; Ontario Bar Association Essential Business Agreements: A Practical Overview Conference, June 4, 2004.
2. Osler, Hoskin & Harcourt LLP; Section VI of “Canadian Labour and Employment Law”; (Osler, Hoskin & Harcourt LLP Website, 2009).
3. Mitch Frazer; “Merging Pension Plans in Canada: Where Do We Go From Here?”; Tenth International Pension and Employee Benefits Lawyers Conference, 2005.

**No Class (Reading Week) – February 20, 2019**

**Class 7 – February 27, 2019 (Ben Pryde)**

Topics: Debt Financing

Suggested Readings:

1. Blake Cassels & Graydon LLP; "Bulletin on Asset-Based Lending" (Blake Cassels & Graydon LLP Website, 2006)
2. Alison Manzer; "Loan and Credit Agreements: From Term Sheets to Termination"; Negotiating and Drafting Key Business Agreements, January 21, 2011.

**Class 8 – March 6, 2019 (Ben Pryde)**

Topics: Debt Financing Agreements

Suggested Readings:

None. Precedents to be distributed via email prior to class.

**Assignment #2 Distributed by email – Due March 29, 2019 by noon.**

**Class 9 – March 13, 2019 (Ben Pryde)**

Topic: - Financing the purchase and sale of a business (e.g. vendor take backs, earn outs, leverage loans, sale leasebacks, ABL facilities)  
Purchase and Sale of a Business  
- Regulation of Corporate Transactions  
- Shareholder Agreements

Suggested Readings:

1. J. Anthony VanDuzer, "The Law of Partnerships and Corporations", 3d ed. (Toronto, Irwin Law, 2009), Chapter 7G.
2. Michael C. Ward & Eric Robb; "Shareholder Agreements: How to Customize Them to Your Specific Business Context"; Ontario Bar Association Essential Business Agreements: A Practical Overview Conference, June 4, 2004.
3. Gary R. Sollis; "Shareholder Agreements" (Fraser Milner Casgrain LLP Website, 2006).
4. Jeffrey A. Hoyt, "Shareholder Agreements" 2010 Major Business Agreements Conference, March 24, 2010.

**Class 10 – March 20, 2019 (David Wallace)**

Topic: Corporate Securities

Readings: None

**Class 11 - March 27, 2019 (Guest Lecturer – Jamie Angus)**

Topics:           Incorporations  
                      Share Provisions  
                      Share Subscriptions

Suggested Readings:

1. J. Anthony VanDuzer, "The Law of Partnerships and Corporations", 3d ed. (Toronto, Irwin Law, 2009), Chapters 4 & 6.
2. Ralph Shay, "Canadian Securities Law" (Fraser Milner Casgrain LLP Website, 2007), pages 1 through 14.

Reference Material:

1. Industry Canada; CBCA Forms 1, 2, 3, 4, 6.
2. Industry Canada; Policy Statement 3.1, Incorporation Kit
3. Industry Canada, "Guide to Federal Incorporation 2011"

**Class 12 – April 3, 2019 (David Wallace and Ben Pryde)**

Topic:            Quiz

Readings:       None