

CORPORATE TRANSACTIONS 2009
(Mondays 4:30 – 6:30)
Course Outline

Instructor: Ray Adlington (444-8470)
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Grading: Assignment 1 – Debt/Equity Financing Assignment 35%
Assignment 2 – Purchase and Sale of a Business Assignment 45%
Quiz 20%

Texts: Corporate Transactions Materials Books

Class 1 - January 5, 2009

Topics: Course Introduction + Overview

Class 2 - January 12, 2009

Topics: Negotiations
Drafting
Corporate Governance

Readings: Anne McNeely; “Is It Time To Call The Undertaker For A Duty To Negotiate Contracts In Good Faith?”; (Blake, Cassels & Graydon LLP Website, 2003).
Alan Mark and Allison Knutz; “Evolving Contract Law: Trends in Interpretation, Performance and Remedies”; 12th Annual Negotiating and Drafting Major Business Agreements, February 15-16, 2006.
Robert E. Milnes; “Directors’ and Officers’ Duties and Liabilities”; (Gowling Lafleur Henderson LLP Website, August 1, 2008).
Osler, Hoskin and Harcourt LLP; “Key Lessons from the BCE Decision”; (Osler, Hoskin and Harcourt LLP Website, December 22, 2008).

Class 3 - January 19, 2009

Topics: Incorporations
 Share Provisions
 Share Subscriptions

Readings: J. Anthony VanDuzer, *"The Law of Partnerships and Corporations"*
(Toronto, Irwin Law, 2003), Chapters 4 & 6.
 Industry Canada; CBCA Forms 1, 3, 4, 6.
 Industry Canada; Small Business Kit, Chapters 2 – 5, Annexes A-F.
 National Instrument 45-106: Prospectus and Registration Exemptions
 with related forms and Companion Policy 45-106.

Class 4 – January 26, 2009

Topic: Shareholder Agreements
 Debt Financing

Assignment #1 Distributed – Due February 20, 2009.

Readings: J. Anthony VanDuzer, *"The Law of Partnerships and Corporations"*
(Toronto, Irwin Law, 2003), Chapter 7G.
 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.
 Gary R. Sollis; "Shareholder Agreements" (Fraser Milner Casgrain
 LLP Website, 2006).
 Blake Cassels & Graydon LLP; "Bulletin on Asset-Based Lending"
 (Blake Cassels & Graydon LLP Website, 2006)
 Allison Manzer; "Loan and Credit Agreements: From Term Sheets to
 Termination"; Negotiating and Drafting Key Business Agreements,
 September 30, 2006.
 Jonathan A. Levin; "Business Trust Financing and Restructuring: Key
 Banking and Insolvency Issues" (Fasken Martineau DuMoulin LLP
 Website, 2003).
 John Cameron; "Ontario's Securities Transfer Act, 2006: New Rules
 for Securities as Collateral" (Torys LLP Website, 2006).

Class 5 – February 2, 2009

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

Readings: Filomena Frisina; "Purchasing the Assets or Shares of a Corporation:
 Key Considerations"; Negotiating and Drafting Key Business
 Agreements, September 30, 2006.

Fraser Milner Casgrain; "Mergers and Acquisitions: Acquiring a Canadian Company"; (Fraser Milner Casgrain Website, November 1, 2008).

Sean Collins, Dean Hutchison, Warren Milman, and Roger Taplin; "Mergers and Acquisitions in a More Uncertain World: Using the Companies Creditors' Arrangement Act"; (McCarthy Tétrault LLP Website, December 18, 2008).

Class 6 – February 9, 2009

Topic: Purchase and Sale of a Business - The Agreement

Readings: Hartley Nathan; "Letters of Intent and MOUs: A Guide"; Negotiating and Drafting Key Business Agreements, September 30, 2006.
Janice J. Javier; "Purchase Agreements: Protecting Your Client's Interests"; Ontario Bar Association Essential Business Agreements: A Practical Overview Conference, June 4, 2004.
Law Society of British Columbia; "Share Purchase Agreement Drafting Checklist"; Excerpt from *Practice Checklists Manual, 2004*.
Law Society of British Columbia; "Asset Purchase Agreement Drafting Checklist"; Excerpt from *Practice Checklists Manual, 2004*.
Barry Leon and Graham Reynolds; "A Canadian Perspective: Choice of Law and Choice of Forum"; NYSBA International Law Practicum, Vol. 18, No. 2, Autumn 2005.

Class 7 – February 16, 2009

Topic: Purchase and Sale of a Business - The Agreement (Continued)

Readings: Don Ross, Allison McLean and Chris McMullan; "Warranties, Indemnities and Insurance Coverage: Beyond the Boilerplate"; 12th Annual Negotiating and Drafting Major Business Agreements, February 15-16, 2006.
Mitch Frazer and Mary Picard; "Negotiating the Agreement – Part I: Representations"; CBA Conference on Pensions and Employee Benefits in Mergers and Acquisitions, November 21, 2008.
Joe McArthur and Paul Heisler; "What is Fair for Dissenting Shareholders? B.C. Court Sets Out Test for Fair Value in Dissent Proceedings"; (Blake, Cassels & Graydon LLP Website, December 10, 2007).

Class 8 - March 2, 2009

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

Assignment #2 Distributed – Due April 3, 2009.

Readings: McInnes Cooper; “Sample Due Diligence Checklist”.
Gary R. Shiff & Trudy A. Pye; “Due Diligence or Bet the Firm: Take Your Pick”; Osgoode Hall Law School Professional Development Program, Corporate Due Diligence Seminar, October 25, 2000.
John F. Fox and David N. Ross; “Real Estate Due Diligence: The Purpose and the Process”; (McMillan Binch Website, 2001).
Bruce M. Green; “Intellectual Property Due Diligence Searches” Chapter 40 of Due Diligence Deskbook. (Continuing Legal Education Society of British Columbia, August 1, 2000).
Roderick A. Ferguson and Michael S. Klym; “Doing Deeds in Distant Places: The Perils of International Due Diligence”; (Fasken Martineau DuMoulin LLP Website, 2006).
Stanley Freedman & Paul Fitzgerald; “Ordering and Reviewing Searches”; Osgoode Hall Law School Professional Development Program, Corporate Due Diligence Seminar, October 25, 2000.
Stuart English; “Minute Book Reviews: Identifying and Dealing with Deficiencies”; Osgoode Hall Law School Professional Development Program, Corporate Due Diligence Seminar, October 25, 2000.

Class 9 – March 9, 2009

Topics: Purchase and Sale of a Business - Regulatory Environment
Purchase and Sale of a Business - Employment Considerations

Readings: Davies, Ward, Phillips and Vineberg LLP; “The Revised Canadian Take-Over Bid and Issuer Bid Regime”; (Davies, Ward, Phillips and Vineberg LLP Website, February 1, 2008).
Part IX of *Competition Act*, R.S.C. 1985, c. C-34, as am. and *Notifiable Transactions Regulations*, SOR/87-348 as am.
Richard Annan; “Merger Remedies in Canada”; Canadian Bar Association Annual Competition Law Conference, November 4, 2005.
Davies, Ward, Phillips and Vineberg LLP; “The Investment Canada Act”; (Davies, Ward, Phillips and Vineberg LLP Website, December 1, 2008).
Oliver I. Burgers; “Investment Canada Act: Minister of Industry Blocks Acquisition of MDA by Alliant Techsystems”; (McCarthy Tétrault LLP Website, May 12, 2008).

J. Timothy Kennish, Peter Franklyn, and Gregory Somers; "Regulation of Investment in Canada" (Osler, Hoskin & Harcourt LLP Website, January 11, 2000).

Dufferin Harper; "Environmental Issues Associated with Corporate Transactions".

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.

Carman J. Overholt; "Labour and Employment Issues in a Hot Mergers & Acquisitions Market"; Insight Conference on Advanced Human Resources Management in a Hot Economic Climate, (November 27-28, 2006).

Mitch Frazer; "Merging Pension Plans in Canada: Where Do We Go From Here?"; Tenth International Pension and Employee Benefits Lawyers Conference, 2005.

Class 10 – March 16, 2009

Topics: Purchase and Sale of a Business - The Closing
Initial Public Offerings & Going Private Transactions

Readings: Bruce Chapple & Michael Hollinger; "Confidentiality, Non-Competition and Non-Solicitation Covenants – A Practical Guide" (McMillan Binch LLP Website, 2004).
Jonathan Levin; "Confidentiality and Non-Compete Arrangements" (Fasken Martineau DuMoulin LLP Website, 2006).
"Going Public in Canada and the United States" (Davies Ward Phillips & Vineberg LLP Website, 2006).
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).

Class 11 – March 23, 2009

Topic: Alternative Business Structures

Readings: Simon Romano; “Income Trusts: How They Work”; (Stikeman Elliott LLP Website, 2005).
John Smith; “Governance Challenges for Income Trusts”; Pacific Business & Law Institute Conference, November 8, 2005.
Blake Cassels & Graydon LLP; “Bulletin on Securities Law” (Blake Cassels & Graydon LLP Website, February, 2007).
Paul Tamaki; “Minister of Finance Announces Changes to SIFT Conversion Rules and Normal Growth Guidelines”; (Blake, Cassels & Graydon LLP Website, December 12, 2008).
Paul Edmonds; “Unincorporated Business Associations”; 12th Annual Negotiating and Drafting Major Business Agreements, February 15-16, 2006.

Class 12 – March 30, 2009

Topic: Quiz

Readings: None