

**BUSINESS PLANNING
SPRING 2018**

Professor Edward Osterberg
713-238-2666
eosterberg@mayerbrown.com

Professor Richard Sherry
281-794-3575
dicksherry@outlook.com

1. Class Sessions: Tuesday, Thursday 5:30 – 7:00

2. Required Materials:

- Gevurtz, Business Planning (Foundation Press 5th Edition 2014)
- Texas Business Organizations Statutes, relevant sections available at <http://www.sos.state.tx.us/corp.index.shtml>
- Texas Model Business Organization Forms, relevant sections available at <http://www.sos.state.tx.us/corp/forms.shtml>
- Internal Revenue Code of 1986, as amended, relevant sections available at <http://www.access.gpo.gov/uscode/title26/title26.html>
- Securities Act of 1933, including rules and regulations, relevant sections available at <http://www.sec.gov/about.shtml>
- Securities Exchange Act of 1934, including rules and regulations, relevant sections available at <http://www.sec.gov/about.shtml>

3. Grading Policy:

Except as otherwise provided in the Attendance and Class Participation Policy, your grade in this course will be entirely dependent upon the final examination. The examination will be a take-home examination. Materials permitted to be used for the examination will be (i) Required Materials (described above), (ii) this syllabus, (iii) any supplemental materials (as provided during the semester), (iv) class notes and (v) outlines you prepared or helped to prepare. Not permitted are commercially prepared materials and outlines.

4. Attendance and Class Participation Policy:

Attendance and class participation are required. We reserve the right (i) to raise a student's grade for exceptional class participation and (ii) to lower a student's grade for an unusually high number of absences or for being unprepared.

5. Objectives of Course:

The objectives of this course are (i) to provide an introduction to business planning, (ii) to consider ethical and professional questions related to the subject matter, and (iii) to integrate the subject matter with the analytical and practical skills necessary to the practice of law.

6. Anticipated classroom discussions:

Class sessions will begin with the assumption that all students have (i) read the weekly assignments (described below), and (ii) worked through the assigned problem.

7. Office hours:

Professors Osterberg and Sherry will have office hours by appointment, scheduled by telephone or E-mail.

WEEKLY ASSIGNMENTS

- Week 1 General: pp. 1-45; Class organization, Begin Problem 1; Introduction; attorney's role in advising clients entering into new venture; business decisions; necessary warnings v. breaking the deal; ethical issues; who is the client?; fee arrangements; level of specialty required;
- Week 2 General: pp. 47-97; Choice of entity; general considerations; tax considerations; limited liability, management, control, familiarity and flexibility; tax factors; losses; participation in venture; treatment of income. multi-entity structures; new hybrid entities.
- Week 3 General: pp.99-171; Formation of a partnership, limited partnership or limited liability company; contributions; special problems with non-cash contributions; alternatives to capital contributions; allocating profit and loss.
- Also:
 IRC §§ 721,722,723
 Texas Business Organization Code (Title 1; Ch. 101; Ch. 151-154)
 Texas Revised Partnership Act (Art. 6132b-1.01 et. seq.) Texas Revised Limited Partnership Act (Art. 6132a-1)
- Week 4 General: pp. 171-257; Tax aspects; conduit principle; special allocations, basis leverage and at risk limitations; passive losses; alternatives to profit shares; management; partnership dissolution and changes in ownership; liquidation planning.
- Week 5 General: pp. 257-325; Planning for a buy out; planning for liquidating; planning for new partners; mergers and the like involving non-corporate entities.
- Week 6 General: pp. 327-399; Incorporation; Begin Problem 2; contributions; special problems with non-cash contributions; receipt of stock for property or services; alternatives to purchasing stock; later stock purchases.
- Also:
 IRC §§ 351, 357, 358
 Texas Business Organization Code (Title 1; Ch. 20-21) Texas Business Corporation Act
- Week 7 General: pp. 399-454; Profit and loss; dividends; alternatives to dividends, subchapter S.

(Additional assignments for the following classes will be included in materials that will be distributed separately.)

Week 8	<u>General:</u> pp. 454-529; Management; Dissolution and changes in ownership; dissolution for deadlock or oppression.
Week 9	<u>General:</u> pp. 531-620; Financing; assessing financial needs; determining the nature and worth of the investments offered; targeting the appropriate investors; going public; alternatives to going public.
Week 10	<u>General:</u> pp. 671-749; Begin Problem 3; Corporate Restructuring Transactions; Buyouts; Redemptions.
Week 11	<u>General:</u> pp. 749-826; Restructuring through stock dividends and recapitalizations; restructuring through divisions and contractions.
Week 12	<u>General:</u> pp. 827-901; Begin Problem 4; purchase and sale of a business; preliminary considerations; negotiations.
Week 13	<u>General:</u> pp. 902-988; Purchase and sale of a business; pre-acquisition transacting; structuring the acquisition.
Week 14	<u>General:</u> pp. 988-1067; Structuring the acquisition; Tax. Aspects; Follow-up transactions. LAST CLASS