

**BUSINESS PLANNING  
SPRING 2022**

**Professor Edward Osterberg**  
**713-238-2666**  
**[eosterberg@mayerbrown.com](mailto:eosterberg@mayerbrown.com)**

**Professor Richard Sherry**  
**281-794-3575**  
**[dicksherry@outlook.com](mailto:dicksherry@outlook.com)**

**1. Class Sessions: Tuesday – Thursday 10:30 - 12**

**2. Required Materials:**

- Gevurtz, Business Planning (Foundation Press 5<sup>th</sup> 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, you will receive a letter grade in this course, which 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:** It is intended that this class will be taught in-person in classrooms, using the face to face instruction mode without social distancing. 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.

**8. Required notices:**

**Counseling and Psychological Services (CAPS)**

CAPS can help students who are having difficulties managing stress, adjusting to the demands of a professional program, or feeling sad and hopeless. You can reach CAPS ([www.uh.edu/caps](http://www.uh.edu/caps)) by calling 713-743-5454 during and after business hours for routine appointments or if you or someone you know is in crisis. No appointment is necessary for the “Let’s Talk” program, a drop-in consultation service at convenient locations and hours around campus. [www.uh.edu/caps/outreach/lets\\_talk.html](http://www.uh.edu/caps/outreach/lets_talk.html) .

**Sexual Misconduct Policy**

The University is committed to maintaining and strengthening an educational, working and living environment where students, faculty, staff, and visitors are free from discrimination and sexual misconduct. If you have experienced an incident of discrimination or sexual misconduct, there is a confidential reporting process available to you. For more information, please refer to the University system’s Anti-Discrimination Policy SAM 01.D.07 and Sexual Misconduct Policy SAM 01.D.08, available here:

<http://www.uhsystem.edu/compliance-ethics/uhs-policies/sams/01-general-information/index.php>

<http://www.uhsystem.edu/compliance-ethics/docs/sam/01/1d7.pdf> (antidiscrimination)

<http://www.uhsystem.edu/compliance-ethics/docs/sam/01/1d8.pdf> (sexual misconduct)

Please be aware that under the sexual misconduct policy, SAM 01.D.08, faculty are required to report to the University any information received regarding sexual misconduct as defined in the policy. Please note that the reporting obligations under the sexual misconduct policy reach to employees and students. Also, as a required reporting party, Law Center employees and faculty members are not a confidential resource.

### **Names and Pronouns**

Chosen names and preferred pronouns (including non-binary ones such as they/them/their) must be respected in our classroom. Please feel free to reach out to us at any time if you want to make us aware of your chosen name or preferred pronoun, or if you have concerns about how we or your classmates address you.

## **WEEKLY ASSIGNMENTS**

### **Class Dates:**

- |        |   |
|--------|---|
| Week 1 | <u>General:</u> 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 | <u>General:</u> 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 noncorporate 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.
- (Alternative assignments for the following classes will be included in materials that will be distributed separately.)**

Week 8            General: pp. 454-529; Management; Dissolution and changes in ownership; dissolution for deadlock or oppression.

SPRING BREAK

Week 9            General: pp. 531-669; 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           General: pp. 671-749; Begin Problem 3; Corporate Restructuring Transactions; Buyouts; Redemptions.

Week 11           General: pp. 749-826; Restructuring through stock dividends and recapitalizations; restructuring through divisions and contractions.

Week 12           General: pp. 827-901; Begin Problem 4; purchase and sale of a business; preliminary considerations; negotiations.

Week 13           General: pp. 902-988; Purchase and sale of a business; pre-acquisition transacting; structuring the acquisition.

Week 14           General: pp. 988-1067; Structuring the acquisition; Tax. Aspects; Follow-up transactions. LAST CLASS