

# LAW 255.9 – VENTURE CAPITAL DEAL BOOTCAMP: FROM STARTUP TO SALE

Fall 2022

## COURSE SYLLABUS

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### **Instructor Information:**

- **Instructor Name:** Neil J Wertlieb
- **Instructor Information:** <https://www.law.berkeley.edu/our-faculty/faculty-profiles/neil-wertlieb> or [www.WertliebLaw.com](http://www.WertliebLaw.com)
- **Email:** Neil@WertliebLaw.com
- **Phone:** (424) 265-9659
- **Zoom Meeting Room ID** (as needed): <https://berkeley.zoom.us/my/wertlieb>
- **Office Hours:** Generally available in the afternoon before Class. Also over Zoom or telephone, by appointment.

### **Course Information:**

- **Meetings:** Mondays, 3:35 pm to 6:15 pm (August 22 – October 31), in person [*Note that September 19 will likely be on Zoom; also November 7 is a backup date as may be required; if not needed as a backup date, then Review Session might be moved up to November 7*]
- **Location:** Law 107
- **Prerequisites:** None, but Law 250 – Business Associations highly recommended
- **Units:** 2

### **Welcome and Course Description:**

Welcome to Venture Capital Deal Bootcamp: From Startup to Sale! This course will introduce students to typical business transactions in the life cycle of a business, providing students with substantial drafting and negotiation experiences, as well as exposure to the ethical, tax and other legal and business issues raised by the representation of corporate clients in a transactional practice. The course takes a hands-on approach, centered on student-led, immersive experiential exercises and case studies.

On the first day of class, the students will collectively pick a hypothetical business as the context for experiential exploration throughout the semester. This course will examine the life cycle of that business, focusing in detail on sample transactions from two of the major stages of a business's life cycle: *the front-end* – formation and initial financing (including choice of entity, and early-round seed and venture capital offerings); and *the back-end* – exiting or sale of the company (including IPOs and recapitalizations). Students will analyze, structure and negotiate transactions in both stages, draft select provisions of key contracts, and receive instruction from and report to “clients”.

In addition, during the life cycle of the business, the students will be confronted with various ethical issues that arise in practice from a practical perspective, such as whether to engage with a potential client, whether to invest in or alongside a client, whether to accept a seat on the board of directors, and to whom duties are owed when the client is a business entity rather than an individual.

This course will emphasize active role playing, with students at various times playing the role of attorney, client, executive officer and judge, in a manner similar to what they will encounter as practicing attorneys. In addition to frequent feedback from the instructor, students will also be evaluating themselves and each other in such roles. This student-driven evaluation approach will serve as an important learning tool in the course and will provide opportunities for self-reflection.

Enrollment is limited to 23 students (to help ensure maximum in-class participation by students in experiential exercises).

**Textbook/Course Materials:**

No textbook, but required reading materials will be posted on bCourses

**bCourses:**

- **Our class bCourse link:** <https://bcourses.berkeley.edu/courses/1516024>
- Required and recommended reading materials (e.g., case studies, selected articles, and portions of relevant textbooks) will be posted on bCourses for this course
- Reading assignment for first week should be completed before first class
- Check bCourses for course announcements, assignments, updates and discussion forums

**Learning Outcomes:**

By working through the simulated life cycle of a hypothetical business from startup to sale, students will learn the basics of transactional law in an experiential, hands-on format. The focus of the course is on the transactional skills required of a junior attorney in a transactional law practice (although that skill set will be useful in a variety of other practice areas as well).

This course is designed to teach students the requisite skills to:

- Analyze, structure and consummate typical transactions at different stages of the life cycle of a business
- Draft a basic bilateral agreement for a business transaction
- Negotiate a business transaction
- Develop judgment to help navigate the common ethical dilemmas faced by legal counsel in transactional matters

I expect you to achieve the following Berkeley Law Learning Outcomes in this course:

- Knowledge and understanding of substantive and procedural law;
- Legal analysis and reasoning, legal research, problem-solving, and written and oral communication in the legal context;
- Exercise of proper professional and ethical responsibilities to clients and the legal system;

- Other professional skills needed for competent and ethical participation as a member of the legal profession; and
- Using the law to solve real-world problems and to create a more just society.

### **Exam, Experiential Exercise and Grading/Evaluation:**

Course grades will be based on:

- a take-home exercise assigned mid-semester: 25%
- class attendance, in-class participation & submission of contract provisions: 25%
- final exam: 50%

Final exam will be available as a take-home, open book exam during the window from 11/15/22 (8:30 am) to 11/21/22 (11:50 pm).

Review Session is scheduled for 11/14/22, 3:35 pm to 6:15 pm, in Law 107. *[Note that if November 7 is not needed as a backup date, then Review Session might be moved up from November 14 to November 7]*

### **Class Attendance and Participation Policy:**

Class attendance and participation are strongly encouraged. As noted above, this accounts for 25% of course grades. If you must miss class, please contact me in advance. Students who miss more than 3 classes may be dropped from the course. Students are encouraged to volunteer answers and to ask questions. My preference is to not put students on the spot by calling on them, although I may on occasion do so to encourage broader participation.

### **School-wide Policies and Resources:**

1) A “credit hour” at Berkeley Law is an amount of work that reasonably approximates three to four hours of work per week for 15 weeks, including a) classroom time, b) time spent preparing for class, c) time spent in review sessions and studying and taking, final exams, d) time spent researching, writing, and revising papers and other written work, and e) time spent preparing for and completing any other final project, presentation, or performance. For the purposes of these calculations, 50 minutes of classroom instruction counts as one hour, and the 15 weeks includes the exam period. You can expect to spend this amount of time per unit per week on in-class and out-of-class, course-related work as described above. (Note that this total workload will be distributed differently in classes that only meet for part of the semester.)

2) Students who need accommodations for disability or pregnancy or want to discuss the implementation of their accommodations, including accommodated exams, should contact [Kyle Valenti](#), Senior Director of Student Services as soon as possible.

Student Services schedules all exams, including accommodated exams, as the law school is committed to anonymous grading. PROFESSORS DO NOT HAVE THE AUTHORITY TO RESCHEDULE EXAMS.

3) The [Academic Honor Code](#) governs the conduct of all students during examinations and in all other academic and pre-professional activities at Berkeley Law. We expect students to

adhere to this code scrupulously. If you have any questions about whether your conduct may violate the code, please contact your professor or the Dean of Students before you act. You may face severe consequences, including a failing grade in this class or removal from the program, and the Bar will receive notification of your conduct.

4) Student Technology Help As a Berkeley Law student, you are entitled to general software support for your computer from the law school, and certain free software downloads from UC Berkeley, while enrolled. If you have issues with internet access or computer equipment required to participate in classes remotely, contact [studentcomputing@law.berkeley.edu](mailto:studentcomputing@law.berkeley.edu). Information, links, and instructions for many common computer/technical questions can be found in the [law library's online computing guide](#). For bCourses, Zoom, and technical support questions, please email [studentcomputing@law.berkeley.edu](mailto:studentcomputing@law.berkeley.edu) or you can use the [Student Computing chat](#). In both cases, someone will respond to you during our regular business hours.

If you have research-related questions, please contact the reference librarians by filling out the [reference request form](#). You can also reach reference librarians during business hours by using the [law library's chat service](#).

5) If you are in need of economic, food, or housing support, you can find basic needs information [here](#) You may be eligible for money to buy groceries via [CalFresh](#) or our Food Assistance Program. If you need food immediately, please visit our [UC Berkeley Food Pantry](#).

6) The University of California is committed to creating and maintaining a community dedicated to the advancement, application, and transmission of knowledge and creative endeavors through academic excellence, where all individuals who participate in University programs and activities can work and learn together in an atmosphere free of harassment, exploitation, or intimidation. Every member of the community should be aware that the University prohibits sexual violence and sexual harassment, retaliation, and other prohibited behavior (“Prohibited Conduct”) that violates the law and/or University policy. The University will respond promptly and effectively to reports of Prohibited Conduct and will take appropriate action to prevent, correct, and when necessary, to discipline behavior that violates this policy. For the complete UC Policy, definitions, compliance, and procedures, please access the [Sexual Violence and Sexual Harassment Policy](#).

Resources: If you have further questions or concerns about reporting behavior related to sexual harassment, sexual violence, and/or protected category discrimination, please contact the Office for the Prevention of Harassment and Discrimination (OPHD) by phone 510-643-7985 or email [ask\\_ophd@berkeley.edu](mailto:ask_ophd@berkeley.edu).

[Path to Care Center](#) Confidential Advocates provide affirming, empowering, and confidential support for those that have experienced gendered violence, including sexual harassment, emotional abuse, dating, and intimate partner violence, sexual assault, stalking, and sexual exploitation. Advocates bring a non-judgmental, caring approach to exploring all options, rights, and resources. They can be reached by phone at (510) 642-1988.

**Course Schedule:**

The course will track a simulated business from startup through sale. A sample Course Schedule is set forth on the following pages. The reading assignments for each week are posted on bCourses, and should be completed before class.

### **8/22/22 – Introduction Class**

- Substance:* Introduction to Course; Role of Transactional Counsel; Ethical Considerations; Exit Strategies; Introduction to Transactional Drafting.
- Simulations:* Students to come up with business concept, give it a name, and outline a business plan in class.
- Assignment:* Unless otherwise indicated below, each week students will have as a homework assignment a contract drafting exercise to be submitted by email before class the following week. Each assignment will be to draft in a single sentence a contract provision to be included in a form of contract discussed in class. Focused feedback designed to sharpen students' drafting skills will be provided in the following class. Ungraded (although failure to submit a drafting assignment will be taken into account in grading).

### **8/29/22 – Entity Formation & Introduction to Transactional Practice**

- Substance:* Choice of Entity; Tax Considerations; Anatomy of a Transaction; Anatomy of a Contract.
- Simulations:* Class discussions each week will begin with a group drafting exercise based on the Assignment from the prior week.  
Students to negotiate type of entity to use for the Company.
- Assignment:* Draft a single-sentence contract provision.

### **9/5/22 – Labor Day – NO CLASS!**

### **9/12/22 – Introduction to Early Stage Financings & Angel Investors**

- Substance:* Financing an Early Stage Company; Seed Capital; Valuations; Capital Structure of a Business Entity; Angel Investors.
- Simulations:* Students enter the “Shark Tank,” pitching the Company to early stage financing sources.  
Negotiate, draft and critique a contract provision by which an Angel Investor secures a seat on the Company's board of directors.
- Assignment:* Draft a single-sentence contract provision.

### **9/19/22 – Early Stage Equity Financings – Convertible Preferred Stock Terms**

- Substance:* Venture Capital; The Benefits of a Term Sheet; The Preferred Stock Term Sheet; Preferred Stock Terms.

*Simulations:* Negotiate whether or not the Preferred Stock Term Sheet should be signed by the parties, and whether any provisions should be binding on the parties.

Negotiate, draft and critique certain provisions of the Series A Preferred Stock Term Sheet.

*Assignment:* Draft a single-sentence contract provision.

*NOTE:* This class session will likely be held by Zoom.

### **9/26/22 – Early Stage Equity Financings – Series A Terms *Continued***

*Substance:* Preferred Stock Terms Continued; Documentation.

*Simulations:* Negotiate, draft and critique certain provisions of the Series A Preferred Stock Term Sheet.

*Assignment:* Graded Exercise.

### **10/3/22 – Early Stage Equity Financings – Subsequent Rounds of Preferred**

*Substance:* Subsequent Equity Financings; Layering in New Investors; Reconciling Conflicts and Preferences; Negotiating Techniques, both Academic and Practical; Negotiating with Clients and with Opposing Parties.

*Simulation:* Explore key questions to ask of both clients and opposing parties in the negotiation of certain provisions of the Series B Preferred Stock Term Sheet.

*Assignment:* Graded Exercise *Continued*.

### **10/10/22 – Early Stage Equity Financings – Alternative Financings**

*Substance:* Debt vs. Equity; The Benefits of Leverage; Structure of Debt Investments; Royalty-Based Financings.

*Simulations:* Negotiation and analysis of whether, at this stage of its development, the Company should raise additional funds through debt or equity.  
Analyze a debt restrictive covenant for flaws, defects and loopholes.

*Assignment:* Draft a single-sentence contract provision.

### **10/17/22 – Introduction to Exit Strategies**

*Substance:* Introduction to Exit Strategies and Exit Alternatives; Initial Public Offerings; Recapitalizations and Restructurings.

*Simulations:* Advise the Series B Lead Investor of the various alternatives for monetizing its equity stake in the Company.

In order to pursue an exit strategy, outline the provisions that would be included in a Non-Disclosure Agreement between the Company and a prospective buyer of the Company.

*Assignment:* Draft a single-sentence contract provision.

### **10/24/22 – Sale of the Company – Structuring the Deal**

*Substance:* Structuring a Sale Transaction; Tax Considerations.

*Simulations:* Analyze the effectiveness of a closing condition relating to the continued employment of the Company’s Chief Executive Officer.

*Assignment:* Draft a single-sentence contract provision.

### **10/31/22 – Sale of the Company – Terms & Documentation**

*Substance:* The Stock Purchase Agreement; Terms of Sale Transactions; Closing Mechanics; Post-Closing Obligations; Final Thoughts.

*Simulations:* As legal counsel to the buyer of the Company, students will evaluate the pros and cons of reflecting a closing requirement into the purchase agreement as either a representation, a closing condition or a pre-closing covenant.

### **11/7/22 – Make Up Day (or Review Session)**

*Either Way:* Reserve this date – there is a good chance that we will have to cancel one of the above scheduled class times. And, even if we don’t need it as a make-up day, our Review Session may move up a week to this date.

### **11/14/22 – Review Session – As Needed**

*Just in Case:* Reserve this date – there is a good chance that we will have to cancel one of the above scheduled class times, in which case the Review Session will be held on this date.

### **11/15/22 (8:30 am) to 11/21/22 (11:50 pm) – Take Home Final Exam**

*Duration:* 2 Hours

*Format:* Open book