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Transactional Matter Files

009_Introduction

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INTRODUCTION

Law students and the public have a basic understanding of what goes on in a litigation-based legal practice, especially criminal litigation, based upon books, movies, and television. But there is another side to the practice of law that is generally out of sight: transactional practice. Apparently less prone to dramatization, transactional practice is actually a much larger proportion of the practice of law than litigation. Some estimates of the proportion of U.S. lawyers that are engaged in transactional or regulatory practice run to over 75%. Introductory or overview materials describing the transactional side of law practice have historically been scarce. This book aims to help fill that void by detailing a series of transactions involving the formation and sale of a business that were undertaken by law students and their supervising professor at The University of Tennessee College of Law. In detailing and documenting this process, the book introduces readers to contract law, secured transactions, corporate law, finance, employment law, tort law, and intellectual property law in an applied setting. A Transactional Matter describes the transactional legal work necessary to form a business entity, enter into agreements necessary for its operation, and enable the founders to derive profit from their labor and their invention. It chronicles how the founders of a small, University-based software venture named “iCare” set out to commercialize the intellectual property they developed as part of their research efforts and the role of their legal counsel—student attorneys and their supervising professor—in assisting them in that process.

The purpose of this book is to take the reader through the basic business and legal steps involved with forming a company, licensing technology, developing that technology, and harvesting or monetizing the assets that the business created. Hopefully, it will demystify the process involved. Although iCare was a short-lived company, all the transactions described here and the transactional documents and instruments involved in this transaction are applicable to deals involving companies as large as Google (Alphabet), Apple Computer, Berkshire Hathaway, and Amgen Pharmaceuticals. We hope that this discussion and presentation will pique your interest in business lawyering, especially as the majority of practicing lawyers in the United States are not primarily courtroom lawyers or litigators but, rather, function as business deal or regulatory attorneys, fulfilling the role of trusted advisor to their clients as they navigate the seas of business and commerce.

The book begins by explaining how the new entrepreneurs went about choosing the form of business entity they initially adopted to provide the proper management and governance of the enterprise. This includes taking account of their risk assessment and desire to limit liability, analyzing their short and long term capital needs, and accounting for their future tax considerations. It progresses to describe the growth of the company in terms of retaining a Chief Operating Officer (COO) to oversee the management of day-to-day operations of the firm, entering into a licensing agreement for the intellectual property, obtaining financing for operations, and beta-testing the prototype software. The book then discusses the process that the company undertook when third parties became interested in purchasing the software to enhance their own business objectives, allowing the company and its owners to “harvest” or “monetize” the fruits of their labors. This includes the use of non-disclosure agreements to protect the company’s interests during the negotiation process, entering into the letter of intent that provided the initial framework for the transaction under which the business was sold to a third party, and, subsequently, the negotiation and preparation of all the documents that are part of the Asset Purchase Agreement.

This book makes use of hyperlinks in the e-book version, and is supported by a website ([url:www/kuneylooperacivilmater.com](http://www.kuneylooperacivilmater.com), bottom half of the page) containing all of the documents and authorities discussed keyed to [x] references for the print version, in order to allow the reader to access the documents that were used to memorialize the various business transactions entered into along the way, as well as the documents that became a part of the Asset Purchase Agreement. To make the best instructional use of this book, the reader should use the links to examine the source documents to gain an understanding of the legal concepts and techniques used to support the underlying business

objectives and transactions. At the end of each chapter, questions are posed to assist the reader in gaining a deeper understanding of the context and content of how the various documents were used to support the underlying business transactions. If you are reading this book in a class at school, it is highly likely that not everyone in your class will do this. *Be one that does.* It will enhance your understanding of transactional law practice.