

Teaching Transaction Planning and Project Management

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PROFESSOR SONU: Hi, my name is Michelle Sonu, and I'm the Associate Director of the Organizations and Transactions Clinic at Stanford Law School. I wanted to thank the Emory team for hosting this conference to support the transactional community. I don't know about the rest of you, but as a transactional lawyer in the law school environment I often feel like an odd duck. And I feel like I've found my people here. So thank you to the Emory team for this opportunity. I'm here to talk about transaction planning and project management, and to share how we teach it in our clinic. Please feel free to interrupt me with questions. I'd like this session to be as interactive as possible. And I did build in some time for that in the hour we have here together.

So here's the roadmap: First, I'll introduce transaction planning and project management generally and why they are important skills for corporate lawyers. Then, I'll give you a bit of background on the Organizations and Transactions Clinic at Stanford. Finally, I'll spend the most time talking about the ways we teach transaction planning and project management. I'll talk about our teaching goals and evaluation criteria, client work, class sessions, and our reflection practice.

So first, setting the stage with some background about transaction planning, and why it's an important skill for corporate lawyers. I imagine with the audience here, this will not be a hard sell. Business transactions are big projects.

So, business transactions are complex, big projects. This is true whether you're dealing with a multi-national conglomerate or an entrepreneur who's just getting their business started. Transactions often involve multiple transactions. For example, in an M&A transaction where one company is acquiring another, the buyer may need to obtain a loan in order to purchase the target company. In another example, an entrepreneur is forming a company and has lined up some investors. The entrepreneur

needs to assign their intellectual property to the entity before the investors will move forward with the investment. That assignment is a separate transaction from the investment itself. Transactions often involve and affect multiple constituents. This goes beyond the two core parties (such as buyer and seller, or investor and company). We've also got shareholders or investors, Board members, employees, customers, vendors, regulators, or others. And of course, never forget the lawyers, the consultants, accountants, and other advisors. The bottom line is that we have a constellation of players here. For students and new lawyers, this is often very eye-opening.

Transactions involve numerous and often interdependent action items, approvals, documents, and communications. We've got events and activities such as board meetings, due diligence, negotiations, regulatory filings and approvals, definitive agreement signing, and closing, to name a few. Then we've got documents: contracts, assignments, closing certificates, board resolutions and minutes, due diligence reports, and so on. Adding more paper, we've also got lots of communications – we have emails, text messages, Zoom calls, and then more emails. There are lots of moving parts, work streams, and people. So there's lots going on, to put it mildly. And oftentimes everyone involved is working to get it all done against a tight timeframe. As a result, effective transaction planning and project management are critical to completing a transaction smoothly. The goal is not only to avoid mistakes and consider contingencies, but also to avoid fire-drills and unnecessary drama.

Most often, lawyers are the ones that play a central role in facilitating business transactions. They're often the ones making the transaction happen. This is the case for a number of reasons. First, contracts are front and center since they set out the key transaction elements. Lawyers draft the contracts, negotiate them, and interpret them. Even when lawyers write them in plain English, they can be very complex and lengthy so clients will often turn to lawyers to figure out what they say and what's supposed to happen. One example of this is closing conditions in a merger agreement. These are the must-haves, must-happens, must-do's, and in some cases must-not-do's, that must be true before the parties can consummate the merger. Lawyers carefully negotiate and draft these. The parties cannot complete the

transaction unless all of the closing conditions are satisfied or capable of being satisfied at the closing or waived.

Next, legal considerations often drive structure, approvals, and timing for a transaction. This can include relatively simple things, like getting the proper approval at a Board meeting, which requires adequate notice, quorum, etc. Clients often don't get it right on their own, and lawyers have deep expertise on these matters. Legal considerations can also include higher impact things that go to the heart of the transaction. For example, if an entity wants to merge with another entity, the parties need to look at the relevant corporate statute to determine the requirements, process and timing for effecting the merger.

Finally, lawyers often play a central role in effecting transactions because clients often want them to. Transactions are usually extraordinary events for clients, not part of their day-to-day. So lawyers can provide an extra pair of hands for the client. More importantly, it goes beyond bandwidth. Transactions *are* day-to-day for deal lawyers, who are repeat players. Clients often want to take advantage of the experience that lawyers have.

In order to do good by their clients, lawyers need to have effective collaboration skills and be able to execute tasks crisply and efficiently. These things are true for any lawyer, even litigators, but are especially true on a transaction. Why is this the case? Lawyers work with other people. You work not only with your internal team at the law firm, but also with clients, opposing parties and counsel, accountants, investors, and so on. People in the constellation that I previously described. Lawyers produce lots of documents and written communications. This includes core legal agreements as well as emails. So again, lots of paper flying around. The lawyers' performance and work products are very visible to numerous parties. The lawyers' communications and performance are certainly visible during the pendency of the transaction to all sorts of people in the constellation of parties (again, clients, colleagues, bosses, opposing counsel, regulators, and other professionals). But they can also be visible after the fact. For example, if there's litigation, the emails become evidence that's reviewed by a whole

new set of lawyers, their respective clients, and a judge. Again, transactions often have timing pressure, which makes effective collaboration and crisp execution all the more important. Finally, crisp execution is important because the quality standards are very high. There's a lot of pressure to be accurate, productive and responsive.

So, all this means is that developing a stance towards transaction planning and project management is an important learning objective for a budding corporate lawyer. New corporate lawyers, even those who have prior work experience before law school, often report how surprised they are by the importance of transaction planning and project management in their practices. I would say that it's probably more important at the junior associate level than at any other stage. New corporate lawyers don't know or understand much about deal terms or substantive matters related to corporate practice, but firms will expect them to be organized and stay on top of things. If those are a weaknesses for a new corporate lawyer, that is usually exposed very quickly. Imagine the junior lawyer who drafts up some Board resolutions for a big transaction, which is a classic junior associate task. The lawyer forgets to include some important approvals. Then, the team later realizes the oversight after the Board meeting has happened. That is a bad day for that junior lawyer.

In addition, transaction planning and project management are important because they're substantive. Of course, there's a lot of checking the boxes, tracking down signatures, and the like, which are part of the effort. But it's not just about checking those boxes on checklists. It requires a deeper understanding of substantive and underlying legal matters, such as notice periods set out in a contract or disclosure deadlines in SEC rules. It also requires a firm grasp of the multiple transactions, the parties involved, their role and incentives, and so on.

Finally, project management is a core skill in and of itself. It's not one that's been part of traditional legal education. It's something that people can even get a credential or certificate in. Some people will come to transactional work with some natural abilities, or some prior work experiences, that will give them an edge. (For example, being organized, or being good at writing concise communications). But it's rare for new lawyers to have the full set of

capabilities to be able to run a deal from beginning to end, no matter how smart they are or how well they did in law school. Like any skill, transaction planning and project management can – and should – be practiced and developed over time.

Before I say more about how we engage students with these skills, I'd like to set the stage a bit further by giving you a little bit of background information about our clinic. I certainly won't go into everything, but wanted to point out some features that are relevant to what I'll discuss later. First, all of our clients are established nonprofits. They come from varied geographies (urban/suburban/rural). They also do work in a variety of different policy areas (e.g., arts, education, agriculture, animal welfare, healthcare, technology). Next, we work on a variety of projects, in three primary buckets.

First, we do comprehensive corporate governance reviews. These projects typically involve study and then an overhaul of a nonprofit's bylaws, Board committee charters, governance policies, and other documents. Students work closely with Board members and senior management on these projects. Second, we draft all sorts of contracts and other documents, such as templates, disclosures, and policies. We also do advisory projects, which typically involve a structure, program, collaboration, or proposed transaction. For example, we've helped with planning mergers, developing models for geographic expansion, and advising about affiliate relationships. These projects involve lots of different lawyering skills, such as delivering advice, contract drafting, communicating with the client (both orally and in writing), legal research, making presentations, and so on. So at Stanford we are on the quarter system. Each quarter ranges from 10-12 weeks, and is about 2/3 of a semester. Another unique aspect of the Stanford clinics is that clinic is a full-time obligation for students. This means that our clinic is the only course a student takes during the quarter of enrollment. It's like a job, and students come to the clinic space every morning and work on projects in an office environment all day long.

Next, we have a classroom component, where we meet twice weekly. These sessions generally take one of two formats. First, students lead

discussions about their projects in workshops. This is an opportunity for brainstorming or seeking feedback from the full group on draft work product or an idea. In the other type of session, one of the instructors or a guest speaker takes the lead and covers subjects that are meant to orient the students to corporate practice. Finally, in line with clinical pedagogy, we have our students engage in reflection. In our clinic we do this in two ways:

First, after meeting with a client, or after delivering a substantial work product to a client, we have the students complete a short “mini-reflection.” They answer 3 short questions: What did I like about my performance? What did I dislike about my performance? What are some key observations or lessons I took from the experience? We also have the students complete a standalone mini-reflection following a big homework assignment that I’ll talk about in a bit. The other reflection activity is a substantial self-evaluation that students complete after the end of the term. This is a bigger endeavor, 6-8 pages, where students reflect more deeply and more broadly on their performance. So that’s the background on transaction planning and project management as an important skill, and a little bit of background on our clinic. Now I’d like to get into the heart of this session and talk about how we teach this stuff.

First, our goals. One of our broad educational goals is, put simply, to teach students how to work. This is certainly the goal of *any* clinic or experiential program, and is not limited to the transactional space. Being a lawyer is very different from being a student. As I touched upon earlier, lawyers work at their desks all day, deal with other people all day, deal with documents all day, and work against a tight timeframe with super high quality expectations, etc. The work is collaborative. This means it’s group work, with multiple contributors. And an individual’s performance affects other people. If one member of the team procrastinates, there’s an unpleasant ripple effect that impacts everyone else. We think it makes sense to create a setting that demands constant collaboration and communication, sustained attention to documents and client communication, with time pressures, deadlines, and so on. A full-time clinic gives us a nice opportunity to do that.

In the clinic, we try to be up front with our students about our expectations. In addition to the broad educational goal of teaching our

students how to work and collaborate, we have more detailed evaluation criteria, which are set out on the second page of your handout on page two.¹ This page comes straight from our syllabus, and cover a number of skills directly related to transaction planning and project management. We tell students that these aren't just for grading, but rather reflect the practices, sensibilities, and disciplines that we believe are indicative of an effective lawyer and responsible colleague.

So off the bat, you'll see that we have a broad category for "working with other people", which naturally covers many aspects related to collaboration and coordination. Some specifics that I'd like to point out:

- "adapts effectively to different colleague and client work-styles"
- "considers impact of own diligence and work-style on colleagues"
- a bit further down: "respects others' time, including providing appropriate background and lead times"

The other core category related to transaction planning and project management is "executing crisply". Many of the items here touch on the high quality standards and accuracy that's expected of corporate lawyers which I mentioned earlier. Some specifics here:

- "manages multiple projects effectively"
- "responds promptly to emails and messages"
- "anticipates logistical and other lead-time items"

As you can see, there's an overall emphasis on communication, collaboration, organization, crisp execution, and attention to detail – all of which are important for transaction planning and project management.

¹ A copy of the handout is available at <https://utktransactions.wordpress.com>.

I'd like to pivot and talk about how we give students opportunities to build transaction planning and management skills in the clinic through their client work. One challenge we have is that we don't work on a lot of "live" transactions. We do some, but not a lot. The primary challenge is timing. While nonprofits engage in these transactions all the time, we can't ask them to make the transaction fit within the confines of our academic quarter. In addition, we're pretty picky about the projects and clients we take on. We want to make sure the projects are appropriate for students to work on, and serve our broader educational goals. For example, we don't want projects that are too hard, or too easy, and we want clients who are responsive. There are lots of factors like these that come into the mix. This limits our opportunities to work on a live transaction, so we do the next best thing and try to create an environment that helps students develop and practice the key skills on a more granular level.

One primary way we do this is through our project portfolio. Each student works with three or four clients. For each of those clients, they get a mix of projects. One project focuses on corporate governance. This is the project I mentioned before, where we do a comprehensive review and overhaul of a nonprofit's bylaws, committee charters, governance policies, and other documents, where students work closely with board members. The other two or three projects usually involve contract drafting or providing advice on a structural, programmatic, or transactional matter. These projects come in different shapes and sizes, each with their own smaller action items and deadlines. In addition, many of the projects have multi-part deliverables, which need to be integrated and harmonized with one another. In particular, the corporate governance assignment typically has over twenty document drafts. Next is staffing. Most of our projects are staffed with teams of two students plus a lead instructor. Students work with one partner for their governance assignment, and then a different partner for their other projects. Students also work with each of the two instructors.

To paint one part of the picture with more detail – students are working on their draft work product, as well as client communications, for all these different projects. They're all moving at different paces and have different deadlines. The draft documents and emails need to be reviewed

multiple times by different teammates and instructors, who each have their own workstyles and priorities. Students have to think ahead, handle heavy flows of documents and information, track tasks, manage calendars, and communicate expectations. Through this process, students learn how to manage drafts and establish appropriate lead times. They also see what it takes to develop work product that meets professional standards, all of which is relevant to transaction planning. We often analogize this type of activity to air traffic control, with an overall goal to land the planes on time – with no crashes or drama. So that’s the environment.

Let’s turn to look at some tools that we’ve developed for clients, which give students the chance to practice transaction planning and project management skills in another way. First I’ll walk you through the samples, which are in the handout. The first example is a document titled “Overview of Merger Process” that we prepared for a nonprofit that was merging with another nonprofit. This was loosely inspired by “time and responsibility” schedules that are commonly used in big law firms for merger transactions. It shows: the key phases and documents, approvals that are required, and the purpose and responsible party for each. We also included some timing details for certain items (e.g., providing 20 days’ notice to the California Attorney General). This document centralizes a lot of information in a relatively small amount of space, and is intended to guide the client, and help them understand and manage the transaction. Like actual deal practice in a big firm, it integrates important action items, notice periods, and the like from various sources. For example, there’s Board approval (where you’ve got to consider state statutes and bylaws), there’s a third-party consent (which requires study of an underlying contract), and a regulatory filing (notice to the Attorney General). This is emblematic of deal work. This was a relatively small and straightforward transaction, but here students got a taste of the interdisciplinary nature of it.

The next example, titled “Key Steps”, is a one-page excerpt from a deck that we prepared for a client. The goal of the deck was to educate the client about corporate dissolution, which is a fairly involved process. Since the goal here was to educate, rather than set out all the to-do’s, we didn’t

include all the different checkboxes and dates, but rather described the key steps very briefly. A dissolution is not something that happens every day, so this was intended to help the client understand what it involves. Shifting gears from actual transactions, I'm going to show some tools that still are relevant to project management. Next is the board annual planning tool. We use this for nearly all of our corporate governance assignments. It's a one-page planning tool for use by a nonprofit Board of Directors. It identifies (1) key topics for Board consideration, and (2) recurring corporate administration items such as officer appointments, conflict of interest monitoring, and review of CEO compensation. It's intended to help the Board plan its work over the course of a year, provide Board members with high-level visibility as to how their time will be used, and give management and staff visibility about preparation. One goal is to help a Board be more proactive, rather than reactive, about its activities for the upcoming year. The next example is also intended to help nonprofit boards, but on a more granular level.

So this is a timeline related to action items for a Board meeting. As many of you know, preparing for a Board meeting is a big endeavor and involves a lot more work than people think. This document reflects steps that we recommended to the client from a legal point of view (e.g., preparing minutes), as well as practical review and internal planning items (e.g., Zoom logistics or rehearsing presentations). One aspect I'd like to highlight about this document is that it incorporates different people's responsibilities and work streams. For example, the Board Chair and Executive Director are figuring out the agenda, while staff will be responsible for logistics, and the Secretary prepares the Board minutes. This next example is a planning tool we used with a client for a big contracts project. The client here is a nonprofit that offers after-school performing arts classes, workshops, and other programs. They asked our clinic to revamp their registration documents, which includes all sorts of legal agreements and waivers, sign-up forms, and other practical information about the classes and workshops. The documents in the package were assembled over many years, and had become somewhat of a Frankenstein. According to the client, parents found them hard to navigate and to understand. We prepared this tool in the early stages of the project to show the client what we were thinking in terms of revamping and repackaging the materials. On the left it shows what they had to date, and

highlighted key features of each component, including things we noticed were missing. On the right we showed our contemplated redesign. It was a pretty dramatic change and we wanted to make sure the client was comfortable.

The final example is another one that related to a contract drafting project. In this case, a relatively early-stage nonprofit was trying to develop partnerships with corporations. This document is redacted, and the client here is XYZ. Its core program is depicted on the right side here. XYZ recruits college students who know how to code and do software development, and want to do some volunteering. XYZ matches those students with nonprofits who need those services. So that's their core program. XYZ was growing quickly and starting thinking about engaging with big tech companies for partnerships and sponsorships, which is depicted here on the left. The companies would become a sponsor to XYZ in two main ways. First, the company would make a payment to XYZ and then get publicity. This reflects a classic corporate sponsorship in the nonprofit world.

Second, the company's employees, mainly programmers and product managers, could become mentors to the college students. XYZ tried to put together contracts to document these relationships. They had obtained pro bono support from some big firms. Those documents were very intense. On the other end of the spectrum, the client put together some "homemade" documents on their own. Neither type was working well for them. The students and I couldn't figure out what was going on and the related legal relationships. So the students and I put together this visual for the client. This reflected our best guess at what they were trying to do, and we screen-shared and walked through it during a Zoom meeting with the client. It helped clarify what was going on and the related legal relationships. For example, we could see which parties were in contractual privity.

So that concludes my brief show-and-tell of actual work we've prepared for clients that engage students with transaction planning and project management. So, stepping back a bit with some broader observations, to

explain why this is relevant. The content in each of these tools includes a variety of things:

- tasks – small and big (e.g., from the Board Annual Planning Tool: elect officers, review risk exposures). This certainly reflects the check-the-box aspect of transaction planning.
- phases (e.g., key periods in a transaction, months of the year, before and after)
- deadlines (e.g., notice to the Attorney General)
- documents
- parties and other actors

So these documents are doing a lot of work in a little amount of space. We're trying to organize lots of information in a concise manner. No one wants a twenty-page memo. They'd rather have a checklist with a minimal number of words. These tools can do a lot of work – both business and legal. We try to get as much work done for the client as we can in the document.

We integrate multiple work streams. Recall the Board Meeting Timeline I showed, which includes different people's responsibilities. We integrate lots of different topics. In the document overhaul project for the performing arts nonprofit, you can see: legal (e.g., liability waivers), business (e.g., enrollment terms) and practical (e.g., signature by parent). So, I hope I've made the case here that even if students aren't working directly on a transaction, there are ways for them to practice and get exposure to skills that are still relevant.

One last thing I'd like to point out is that you'll see how we tried to use visuals to make the information easy for the client to grasp. More so than other work product, transaction planning tools are really, really put to use by everyone involved in a transaction. In my own prior experience as a deal lawyer in a firm, people would often say that the deal checklist was more important than the merger agreement because it would tell you what needs to

get done. So because these tools are so practical, we do whatever we can to make them accessible, and make the user's life easier, from both comprehension and implementation perspectives. As a result, we pay a lot of attention to the design and format in addition to the content. I do acknowledge that being in a law school environment, it's nice that we have a chance to be creative like this, unlike in a firm where lawyers are under time pressure and there isn't room to try to reinvent things. We think about organizing principles – for example, going in chronological order, or using buckets based on topic area, or both – to help clients grasp the information quickly. It doesn't require a degree in graphic design, or use of Photoshop or even PowerPoint. I hope you can see here in what I've shown you today.

Let's turn now to our class sessions. Since transaction planning is such a huge part of corporate practice in the big law firms, we explore that directly in our class sessions. We do that in two primary ways.

First, we have multiple class sessions dedicated to talking about transactions. At these sessions we do a variety of things, some of which we've changed over the years to mix things up. First, we have the students take a look at some actual time and responsibility checklists from M&A or IPO transactions. One of our alums ended up practicing M&A at a big firm in New York, and we asked her to provide some template deal checklists that they use as starting points. I also found checklists for IPOs and other types of transactions on Practical Law, which is part of WestLaw. Another resource is this book, *Using Legal Project Management in Merger and Acquisition Transactions: A Guidebook for Managing Deals Effectively and Efficiently*.² I believe the ABA just published a new, 3rd edition. This book contains lots of sample checklists. So we ask students to scan through the checklists in advance, and share their reactions in a half-page homework assignment. Students can see that for a relatively simple deal, the checklists are still several pages long. It's often very eye-opening for them how much is involved. Then, we do a deeper dive

² BYRON S KALOGEROU & DENNIS JOHN WHITE, *USING LEGAL PROJECT MANAGEMENT IN MERGER AND ACQUISITION TRANSACTIONS: A GUIDEBOOK FOR MANAGING DEALS EFFECTIVELY AND EFFICIENTLY* (3rd ed. 2021).

during class, pointing out key features of deal practice (e.g., multiple work streams, organizing around key events such as a Board meeting).

Another activity we do is introduce transaction structures. Sometimes we'll draw the transaction structures on the whiteboard and then walk through them. For example, explaining the difference between an asset transaction and a reverse triangular merger. Another thing we've done recently is having the students do a little skit activity for a spinoff transaction. We direct a few students to stand up, and then stand in different locations while we walk through the steps in the spinoff. It's a little corny but a pretty good icebreaker than gets students moving around.

Another class activity is working through a transaction timeline. The handout on page nine has a very basic timeline set out here. It could apply to any type of transaction with a separate signing and closing. Those two key events create three time periods. I put this on the whiteboard, and then ask the students to chime in on what needs to happen when, and ask them to use their common sense. For example, when do the parties sign a confidentiality agreement? When would they do due diligence? Also, when would you tell employees that their company is being acquired? It's important to be careful because they're going to worry about their jobs. We talk about due diligence and the related collaboration and coordination efforts there.

We also dedicate class time to talk about the multiple constituents engaged in a transaction—it's rarely just the two main parties (buyer and seller, or underwriter and issuer). As I mentioned earlier, in addition to the primary parties, we've got a constellation of accountants, regulators, investment banks, lawyers, and consultants, and so on. We also talk about how all the different tasks and activities play out and can have an impact on those different transactions and people. And then finally, we talk about the lawyer's role as project manager. If you look at the next two pages of the handout—pages ten and eleven—these are excerpts from some slides we've used in the past. One of them asks some seemingly simple questions: What needs to get done? Who should get it done? These simple questions will often have long answers, because there's a lot that needs to get done and a lot of people involved in getting it done.

The second main thing we do in class relating to transaction management is a big homework assignment in the middle of the quarter. A copy of the assignment is included in the last two pages of your handout packet. In the assignment, the students are considering the proposed sale of the Dockers business by Levi Strauss. The students review portions of the Levi's Form 10-K and answer a series of questions. These questions consider various business and legal issues, and also touch on transaction planning matters. If you scan through, you see that we ask about debt. We also ask about HR matters. We ask students to consider the points of view of the CEO and CFO of Levi's, and also the Dockers president. They're given about three weeks to complete it. The students turn in the assignment, we review their responses. Then, right after the due date, we have a dedicated class session to talk about the assignment. Sometimes we have an M&A practitioner come in as a guest speaker and provide insights about working on this type of transaction. Other times, the clinic instructors lead the discussion themselves. For those of you who practiced M&A in the past, you may recall that a divisional asset sale is one of the most labor-intensive transactions. We like using that structure for this assignment because it raises so many issues. So that covers what we do in class.

Lastly, in line with clinical pedagogy, we try to have the students deepen their learnings through reflection. As I mentioned earlier, students complete a one-page "mini" reflection following each client meeting and delivery of each final work product. They also prepare a substantial self-evaluation following the end of the term. For that one, we explicitly direct them to re-review the evaluation criteria, and think about their performance.

So the goal here is to help students develop self-awareness, improve on mistakes and affirm their strengths. In their reflections, students often talk about collaboration, communication, organization and various other skills related to project management and transaction planning. For example, students will often say how they regret procrastinating, because of time crunch it created for their teammates or instructors. Students will also comment on specific techniques that work or didn't work, such as setting up notifications to remind them about deadlines, or meeting with their

teammates at the beginning of each day to confirm their plans. We don't ask students to reflect on professional values and identity, but recently we've had students do that on their own. For example, one student in her final self-evaluation noted that she wanted people to look at her and see her as a reliable person.

So there you have it. Thanks so much for listening, and at this time I'll open it up for any questions.