

# One Semester, One Deal: A Transactional-Practice Focused Syllabus

Kari Sanderson, University of Illinois College of Law

**PROFESSOR SANDERSON:** My name is Kari Sanderson. Thanks for coming in, and thanks to Emory for hosting this. It's exciting to be with transactional people. I always learn something, but I've only attended twice; the last time was online. It's also exciting to be in person. Today, I will talk about One Semester, One Deal, the course I am working on. You've got an outline of the syllabus and the course projects. I need a little bit of background before I go into some details. The course was developed to introduce students to the tasks they would be expected to perform or would likely be expected to perform as first-year associates in a corporate transactional practice. It is intended to give them a little bit of a head start. As background, I did banking and corporate lending before I went to law school. I went to law school because I wanted to be a litigator, but I did not like litigation, so I switched to transactional law. Then I realized I had these huge gaps in knowledge, notwithstanding that I had a related background before I moved into corporate transactional. law

When I switched to teaching, this was the course that I wanted to develop to give students that head start. It is a simulation course where, in my head, the students are all first-year associates. All their projects are drafts given to me as the supervising attorney for markup. As a first-year associate, nothing goes out to the client. It's all coming to your immediate supervisor. The course layout I've created for the semester has twelve weeks where we do in-class activities. Then there are also a couple of weeks where we do one-on-one meetings and drafting sessions. It is a scalable course. It was taught as a required course at my prior school, and all students had to take it as a 2L year. Now it is an elective. It is scalable for all students, if you have adjuncts. It would also be scalable if you could do some group activity and more of a pass-fail system. But right now it is capped at fourteen students per class because the grading is substantial. That is the way that we're running under our system. There's no prerequisite for the course. It is intended for students who are exploring but may not have had any kind of corporate background at all. That's all the background. Let's get into it.

I'm going to walk you through our approach. For all the students, they have a single client that they represent over the whole semester. I make up their client—we'll discuss that later—a private limited liability company with multiple members that are various entities, including LLCs, a corporation, a trust, and partnerships. Once the students have their hypothetical client, then we're going to do one deal to buy a division or a brand from a publicly traded corporation. And as we'll talk about. One of the benefits of this is that it lets me seamlessly integrate business research into the course because they are working with a public company. I typically select a corporation with many brands; ideally, they also have a subsidiary. Everything is keyed to Tina Stark's book as a style guide. However, I tell students that when they get into practice the documents may look somewhat different. I explain that the precedents I give them should only be treated as forms. I explain that while Stark is our style guide, learning to draft the way your supervisors want to see is incredibly important. Then, I provide the students with forms from a prior deal.

The idea for this course is that the students will walk through a deal from the letter of intent process onward. The parties have already negotiated. They've reached an agreement in concept. The students then get to:

- Draft a letter of intent;
- Draft corporate resolutions;
- Create a drop-down acquisition company for the transaction;
- Draft a purchase agreement; and
- Conduct due diligence.

The students also get to negotiate parts of the deal and then do a second turn of the purchase agreement. The negotiation focuses on the representations and warranties.

One of the things that I found challenging as a junior associate on a deal was the number of times the deal would change, and I would have to adjust everything. Accordingly, change is built into the semester. The deal changes and evolves as the students work through the semester and they have

to keep up with that. Last year, we had our buyer, who thinks they are buying substantially all assets directly from the seller. Then the deal changes and becomes a purchase from the drop-down company, but the buyer still thinks they're buying from the parent. Then, the final deal is that the drop-down company buys the assets directly from a subsidiary of the parent. For simplicity at this level, they will buy from the seller. Of course, you also want the parent on that asset purchase agreement. Still, I find that students sometimes have trouble distinguishing between the parent and the subsidiary and do not think about them all as one entity. This helps emphasize that the deal develops over time. I also bring into the classroom a lot of soft skills and business concepts that are not necessarily covered in a textbook.

As a base, I give them an unrelated letter of intent from a prior deal that I have completed a redline of. It's a really messy document that I have cleaned up according to Stark's style using tracked changes, so that the students can see what it looks like to make those style changes. I also give them a project memorandum that explains some of the deal terms for the letter of intent, but I give them the rest of the requisite information when they are sitting in my office. I do this because I think that it's a skill that is handy for students to practice in school. After all, if they go into this area of law, they will do a lot of sitting down, taking notes, and incorporating those into the deal. Then, of course, I create a key for myself of what I'm looking for.

For the first day of classroom instruction, I tell the student that I will focus on detail and on words specifically because of the impact they can have. I give them three or four examples of corporate attorneys' nightmares. One of the examples that I've used for several years is this deal. It was a document for a huge transaction document—a 732-page offering plan. One clause had 2009 instead of 2008. These examples hammer home why corporate transactional attorneys care deeply about the details, and how the possible loss to the client was tens of millions of dollars. They did lose tens of millions of dollars. Then we discussed how you do not want your firm's name to appear in that press release. We discussed how many lawyers had reviewed the document and no one caught the mistake. It is helpful, I think, at the outset, to let students know what the stakes are and why the attorneys care

about this because otherwise students, especially litigators, aren't going to care to the same extent.

I let the students know upfront that the deal will change throughout the semester and that that is a normal part of the drafting and deal processes. I also let them know where they're falling in the usual life of a deal. A lot of students think they're going to make the deal terms instead of documenting a deal that has been decided upon by the business. I do let them know that there have already been negotiations by the time they are stepping in. There's been initial due diligence, and we are stepping in with the letter of intent. Then, we're going to go through due diligence and negotiation, and we're going to set the definitive agreement. Then, I explain that after our class sessions end the students are going to close the deal and there will be post-deal actions. I advise the students that they should remember where we are within the course regarding the deal. The students start out by drafting the letter of intent, and then they start working on resolutions. While they are working on those resolutions, I send them an email telling them the client would like a drop-down acquisition company. I ask them to please add that to the resolution. I also provide them with a consent I have from an earlier deal that they can use as a base. They also have the formation documents, like bylaws and operating agreements, for the relevant parties that the students are expected to use as we move through the class. For instance, the students are tasked with figuring out which individuals need to sign the consent form. That's kind of the sneaky due diligence part and introduces them to many different formation documents.

Having students work with formation documents also gives me an opportunity to introduce students to the importance of precision with entity names. It allows me to introduce students to the concept that when working with formation documents, every little part of the name matters to a transactional attorney. I give examples of some of the consequences of using a slightly incorrect name in a document, which helps show the students that I am not being picky for no good reason. I also use this to introduce the idea that entities will have similar names if they are related, but they are student names. This is key to go over because students often have trouble figuring out which entity owns what when they are related. We also discuss where in

the formation documents we will find who has the ability to act. We discuss how as a general rule, the officers are in charge of the day-to-day, and we discuss when you might need to move up the chain to stockholders or members. This also gives me a chance to point out how much what constitutes “day-to-day” can vary for different companies. What is day-to-day for Berkshire Hathaway likely isn’t day-to-day for a little brewery in our small town.

For the resolution, the students wind up setting up future actions and approving prior actions. This ensures that they understand whether they need a resolution or a consent, either or both. Then, of course, I tell them they’re going to get an email. I think it is useful to have students actively using email because I think many students who are in school now did not grow up using email in the same way that we do. They grew up using texts and Snapchat. The students need to get used to watching for their emails in case there is a change. They have got to keep an eye on it, and starting to learn how to manage that now is going to be helpful because they cannot imagine how many emails will get in their email inbox when they are working on a deal in the real world.

After the students get the email telling them the client would like a drop-down acquisition company, they move into the third phase of the project—entity creation. This project is pretty straight forward, and it is where I introduce the idea of a closing checklist. The entity will be created in Illinois under the assumption that my students will practice there, but they also have to be qualified in a couple of different states. They put together the full closing checklist for everything. It also lets me introduce them to the good-standing certificates, which used to be the bane of my existence. However, I practiced corporate law a long time ago, and it involved a lot of phone calls to get good-standing certificates. Now, I can get them online. I introduce them to how to find forms for entity formation in different states. Here, I do partner with the librarians who come in and do a presentation on their own. That presentation explains where to find the forms at the government level and then where to find forms if they need to find precedent for an operating agreement. This helps students know where to find good

sources if their partner does not give them a sample or if they don't have a sample bank within their firm.

Once they have reviewed all this, the final segment of this part of the deal requires students to draft an email that will be suitable to send to the client that explains what has been done and what steps need to be completed in order to bring them in to finalize this stage of the process. I tell students this email needs to be short and it needs to leave no questions for the client. After this email is turned in, we turn to working on the asset purchase agreement. For our purposes, I have our hypothetical opposing counsel create the asset purchase agreement. Not surprisingly, they have included a number of clauses that we are not going to love or that are wrong that the students will be working on throughout the course. Then, in class, I do an extended exercise series that's based on the purchase agreement in Stark's book, just with a car. Similarly to the main deal we are working on, I will give them emails and instructions throughout, and they come in and draft different components.

Next, we turn to working on due diligence. I give the students a project memo that details specific questions because I want them to look at specific resources. I do think it is important that students understand that one of their tasks is likely to be due diligence when they go into a firm. It's something that junior associates on a deal routinely do. Some of that may get done more by AI, which would be great, but due diligence is important. They need to understand that they are not the only group involved in the due diligence process, and there are going to be other people involved. I will give them a couple of examples of why due diligence matters, both when due diligence has been successful and when due diligence has not been successful. I explain that before you buy this entity, due diligence is needed to kick the tires and see what's going on. I explain that you do due diligence to decide if you even want to buy the company. Only then do you sign the agreement. You don't sign the agreement before the due diligence. Even though the process can be tiresome, the reason why we do it is essential. It is an important stage of the deal process.

Then, we are into negotiations. I have only once done a scenario where the students negotiate against each other. I didn't prefer it because of the risk of having a student who says "No" to everyone and is not willing to engage in a good-faith negotiation. Instead, these negotiations are done with outside counsel—I bring in attorneys. One of the good things about COVID-19 is that this is even easier now because I can do it on Zoom. I bring in counsel from Chicago, and I have a friend in DC who loves doing this. The preparation on my part is to provide the materials for outside counsel. I'm trying to give the students a good experience, but one that also tested certain skills. So the students are going to encounter some sort of a blind-side item, where opposing counsel comes in and says, "Before we get started, we want to change the deal. Here's a document you should look at. I think we can agree to that now." Hopefully, the student tells opposing counsel they cannot agree to that now and that they will need to take it back to the client. But a surprising number of students agree. It's a good learning point that it is fine to be kind but you need to think about all the implications of what opposing counsel asked you to do.

I also ask opposing counsel to do what I call the "look kid." I have the student negotiating something that should be a slam dunk that we've talked about in class and I have told them should be no problem. Then opposing counsel comes in and says "Look, when you've been doing this as long as I have you will understand that what you are asking is unreasonable." Again, I am hoping that my students will hold their ground when this happens and I am always surprised when they don't. The students negotiate in teams, for a total of seven different negotiations. I'm lucky if one team a year holds the line and says, "Yeah, no, we want a specific clause here, and that is standard." I think seeing this is really helpful for students.

In advance of the negotiations, the students need to prepare red lines of proposed language, send it over to opposing counsel, and then provide an agenda, which is all usually new to them. Again, teaching some soft skills. This is where we get into the representations and warranties because their interests are different from those of the other side. They are going to be negotiated. I do give the students a list of things that I want and then I leave it open to them to pick one or two other issues that they would like to

negotiate. This help me keep the set of issues to negotiate refined because I'm working with outside counsel, and I have to prep them. I can't have them negotiating everything, so it's a heavy focus on the reps and warranties, which also helps drive the discussions in class as we revise them. Then I always tell them that if they want to go into this area of practice, they need a full course on negotiation. This is the tip of the iceberg, and they need to get some follow-up on that.

That brings us to the final turn of the asset purchase agreement project, which is their capstone project. They've already turned in a partial draft of the asset purchase agreement. They've gotten feedback on that. They've done a negotiation. Now, the project memo details are changed based on the negotiation, and then, additional changed deal terms are added that they're going to incorporate. At our school, everything that is final is graded blind, so I have to standardize the negotiations. They send me an email following up on the negotiations, kind of outlining what was decided, but they are not required to reach a decision on each of the negotiation points. The negotiation period is pretty small. It's a small window to discuss this. Then I tell the students, here's everyone's outcome of the negotiations. Then there are additional deal terms. Now they do the exhibits, and they can do the schedules because they've done due diligence. The due diligence questions lead into the schedules. They looked at Edgar. They've looked at tests of the trademarks. They've figured out where the trademarks are. They've done some regulatory research that's going to impact the final project. Everything kind of gets finalized here. This is also where they do what Stark calls the general provisions and what I call the boilerplate. I explain to the students that they're not going to spend a lot of time at the firm negotiating or revising general provisions, so we're not going to focus on it here.

The students have approximately two-and-a-half weeks to work on this. During this timeframe there are always mandatory conferences. They come in one-on-one with me to talk about where they are in the drafting. I help them with any questions and offer to work on things together. Then there I do "Zoom Ins" which are two- or three-hour time blocks where students can sign up and come in and work, and I am available to do breakout



sessions and answer questions in real time as they are drafting. Those tend to be helpful because often, the students don't know what the questions are until they are trying to work on a clause. If you can get help at that moment, I think they find it useful.

Thank you for coming! Thank you.

