

How to Help For-Profit Clients

The information and sample documents included in this section of the Web site are intended to be used in a small business, entrepreneurship, or technology program in which law students work under faculty supervision to provide legal assistance to for-profit business clients. Information in this roadmap is derived from ten years of clinical experience at Northwestern University School of Law, and is provided in the chronological order in which legal issues will normally be addressed.

There are references in the text to sample documents that may be accessed by clicking on the collections designated in bold letters. Most of these are “standard documents”, namely those in widespread use throughout the legal profession whose authors are unknown. Others are the original work product of a transactional clinic— usually drafted by law students in connection with actual client assignments. Materials pertaining to the states of Delaware, California and Illinois, and other jurisdictions, are included for illustrative purposes only—but tend to be representative of what might be appropriate in other states as well.

The purpose of supplying such information and documents is to provide a starting point from which faculty and students can work, on the assumption that the advice given and the documents drafted in the law school clinic will be tailored to reflect the particular facts involved and the differences in legal requirements in each jurisdiction. The names and situations identified in the sample documents are hypothetical.

Of course, there are literally thousands of legal forms, law review articles, and other source materials that students can find in their own law school libraries, by using [Lexis](#) or [Westlaw](#), or through commercial search engines like [Findlaw.com](#). A particularly useful resource that one transactional clinic requires its students to purchase is Jean L. Batman, *Advising the Small Business, Forms and Advice for the Legal Practitioner*, ABA Publication, 2007. The samples referred to and accessible through this explanatory text are only a tiny percentage of what is available. For links to additional source materials and abstracts of relevant legal literature see [Resource Links](#) and [Entrepreneurship Law Scholarship](#).

The clinical instructor will have to decide whether the sometimes conflicting objectives of providing timely assistance to real clients while teaching students how to become good transactional lawyers will be better served by directing students to specific materials or by encouraging them to find such materials for themselves. In either event, the clinic will want to establish some kind of depository for electronic copies of items produced or relied upon by the clinic

in the course of representing clients. Over a period of time, this will become a valuable resource in and of itself.

Ethical Considerations

Let us assume that an entrepreneur has undergone whatever intake procedure the transactional clinic has established and that the student(s) assigned to the matter and their instructor are preparing for their first face-to-face meeting with the new client.

Clinical students (and practicing lawyers) who provide legal assistance to entrepreneurs are exposed to a variety of ethical questions, and these are likely to arise at the very first encounter. Probably the most common is: who is the client to whom the clinic owes its undivided loyalty? Is it the individual who approached the clinic looking for legal assistance, that individual along with his or her business partners, the entity (if it is the clinic's recommendation that a corporation or LLC be formed), or all of these? If there appear to be multiple clients with potentially conflicting objectives, can the ethical dilemma be resolved by having each of them consent in writing to the multiple representation?

Another question that arises frequently in a transactional clinic is one of professional competence: Do my instructor and I have adequate expertise to handle this particular matter?

Issues like these provide an excellent opportunity for students to explore their professional obligations in a real world setting.

For guidance on the handling of such issues and a sample client engagement letter, see [*Operating Transactional Clinics*](#).

Business Plan

The clinic's first task is to meet with the founder(s) for an in-depth discussion of the business plan. If the plan is in writing, the clinic should obtain a copy along with any other papers that the founder has collected or prepared.

It is normally not the role of a law school clinic to help an entrepreneur draft a business plan (unless the clinic is working cooperatively with an associated graduate school of business or with students pursuing joint JD-MBA degrees). However, it is of great value to the entrepreneur in developing his or her plan to learn from clinic faculty and students what legal matters should be taken into consideration, how long it will take to resolve each of them and what costs will be involved. Some of this information can be provided at the first meeting with the client. Other information will be forthcoming at subsequent meetings or through correspondence, telephone conversations, or email messages.

For a law student enrolled in a transactional clinic, the most valuable parts of the experience are learning how to interact with clients, how to identify legal issues, and how to communicate them to the client in a simple and straightforward manner.

Some transactional clinics have found that “opinion letters” drafted by students are an excellent teaching tool and an effective way in which to provide legal advice to clients. The drafting of such materials for real clients (or those that are only hypothetical) teaches students how to spot legal issues, look for solutions, and communicate what has been done or needs to be done. For representative samples of such materials see [Opinion Letters](#). Because students are conscious of “covering all of the bases” and getting a good grade as well as serving the client, these may tend to be somewhat more elaborate than they would be in a real world setting. The instructor will have to decide on a case by case basis if accurate, but possibly unnecessary, explanations should be deleted or shortened.

Choice of Entity

This is normally the first substantive issue that must be resolved. Should the business be incorporated? Is a sole proprietorship, partnership, a limited liability company, or some other kind of legal entity more appropriate? Are there federal or state tax considerations that have a bearing on the decision? If an entity is to be formed, what state is the best choice.

If the client is a small enterprise with only one owner, operating in a relatively risk-free environment, a sole proprietorship is perhaps most appropriate. As a general rule, the client’s decision to operate as a sole proprietorship raises at least three major issues for the clinical student. First, is the business name that the client wishes to use available or is it being used by someone else that may have prior legal rights? Second, under state law, is the company name (if it is “assumed” or “fictitious”, i.e., other than the name of the individual business owner) required to be registered or recorded? Third, is the sole proprietorship required to obtain a business license or permit of some kind? For a further discussion of these issues, see the discussions herein regarding [Name Selection](#) and [Business Licenses](#).

A second entity option when there are two or more owners is a general partnership. A partnership is simple to establish and operate. However, this may be a poor choice in some cases because it does not limit the partners’ personal liability, and because any partner can make commitments that bind the business and the other partner. Limited partnerships (LPs) or limited liability partnerships (LLPs) are used from time to time, but most often where there is a complex financing scheme unlikely to be encountered in a law school clinic. Of course, there should be a written agreement between or among the partners. See sample agreements collected as [Owners’ Agreements](#).

The limited liability company (LLC) is the entity of choice for many entrepreneurs. It provides the owners with limits on their personal liability, permits equity to be divided among two or more owners in a variety of ways, is relatively simple to operate, and provides tax advantages not otherwise available. See [LLC Articles](#) for samples of the forms that must be filed with the Secretary of State in order to establish an LLC. The major issue that must be faced when preparing LLC Articles of Organization is: by whom is the entity to be managed—by the owners (members) or by a designated manager? Other issues regarding the structure and operation of the entity and the rights and obligations of the owners are normally addressed in a separate operating agreement. For sample forms, see [Owners Agreements](#).

Corporations have traditionally been a popular form of business entity although they have been losing favor to LLCs. The advantages of the corporation are limited liability for the owners, well-developed and understandable legal requirements, an easy way in which to divide ownership, and ownership interests that are relatively easy to transfer. The disadvantages are the possibility that the entity and its shareholders will be subjected to “double taxation” (see the discussions herein of “Tax and Other Entity Choice Considerations”) and the need to observe corporate formalities (board meetings, minutes, etc.) in order to minimize the likelihood that owners of the venture will lose their limited liability protection.

Corporations are formed by filing a certificate of incorporation or articles of incorporation with the Secretary of State. See [Cert. of Incorporation](#) for sample forms. The most challenging issues the student must resolve in preparing this basic corporate document relate to the number and type of shares (e.g., common v. preferred), the par value of the shares, and any special limitations or rights attached to the shares (e.g., voting v. non-voting rights or limitations). These decisions are important because they can affect the initial franchise tax and the ongoing relationship among the shareholders.

The certificate of incorporation will ask for the name and address of the “registered agent” and the name and address of the “incorporator”. Any person, including faculty and students, may fill these positions. It is recommended, however, that one of the founders be named rather than taking on the fiduciary responsibilities to which these positions give rise.

Practical information regarding the choice of entity, official filing fees, and required forms can be found on the Web site maintained by the Secretary of State in the jurisdiction of choice.

It is usually appropriate to give the entrepreneur a written summary of the available business forms with the clinic’s recommendation as to which is most appropriate. See the student-drafted [Opinion Letters](#) section for samples.

Tax and other Entity Choice Considerations

As indicated, tax considerations play an important role in the choice of entity decision. These present a particular challenge for law school clinics that do not have tax expertise. In such a situation, it is prudent to advise the client that the clinic's recommendations should be double-checked with the client's tax advisor.

It is probably enough for the general transactional clinic to understand that for-profit corporations are subject to "double taxation," i.e., a tax on corporate profits when earned and a second tax on the profits when distributed to shareholders in the form of dividends. If the business does not expect to generate any profits over and above what is paid to the founders as compensation, this may not be much of a concern. However, if profits are expected to be generated, serious thought should be given to forming the entity as a limited liability company. Unlike a corporation, an LLC is not subject to federal income tax; instead, the income of the LLC "flows through" to the owners and is included in their own personal taxable income. Thus, use of the LLC avoids the problem of double taxation. In addition, any losses incurred by an LLC also flow through to the owners, where they may be available to reduce the tax liabilities of the owners on income from other sources, subject to several important limitations. The state income tax treatment of LLCs is generally similar to the federal income tax treatment, although some states impose entity-level taxes on LLCs. In Illinois, for example, this tax is the "personal property replacement tax." It lessens, but does not eliminate, the tax advantage of the LLC over the corporation.

An alternative form of organization for the profitable business is the "S corporation," so named for the subchapter of the Internal Revenue Code that governs its taxation. Although S corporations are subject to a form of flow-through taxation that generally eliminates the problem of double taxation, there are several limitations on which corporations can make Subchapter S elections. In addition, S corporations are subject to federal income tax in certain circumstances and are always subject to certain state income taxes like the Illinois personal property replacement tax referred to above. Thus, formation of an LLC is usually the more satisfactory approach. A Subchapter S election may be ideal, however, for an existing corporation that is already subject to double taxation, as discussed below.

General and limited partnerships are taxed in the same manner as LLCs. As earlier noted, general partnerships provide no liability shield for the owners, and limited partnerships provide liability protection for limited partners only, not general partners. Thus, the LLC is usually the better choice.

Another important consideration in choosing between a corporation, an S corporation, an LLC, and a partnership is the income tax implications of

converting from one form of entity to another as the business matures and its situation changes. The conversion of a partnership or an LLC into a corporation is not a taxable event, except in the somewhat unusual case of an owner who has a “negative capital account” in the partnership or LLC. The conversion of a corporation into an LLC or a partnership, on the other hand, is a taxable event, for both the entity and its owners. A Subchapter S election may be particularly useful in this case. Making this election does not subject either the corporation or its owners to tax, but it allows the corporation to begin to enjoy most of the benefits of pass-through taxation.

The tax-free conversion feature of an LLC has the additional advantage of protecting the clinic from criticism from subsequent advisors who may ask the client “who ever advised you to form a corporation?”

In addition to the tax issues outlined above, the choice of entity analysis should take other considerations into account. For example, a corporation is frequently preferred over an LLC in situations where the founder’s “exit strategy” is to build up the business and then sell it, where third party capital investments are likely to be sought, and where it is contemplated that it may be necessary to grant stock options in order to attract key employees. Membership interests in an LLC can make it more difficult to achieve these objectives.

Choice of State

If the entrepreneur decides to form a legal entity rather than operate the business as a sole proprietorship or general partnership, the clinic will have to recommend a jurisdiction in which the entity will be formed. The usual choice is between Delaware and the state in which the business is located.

The advantages of Delaware are a very well-developed and widely-respected General Corporation Act, the credibility that attaches to a business incorporated in the state in which the great majority of Fortune 500 companies have incorporated, and the perceived “neutrality” of Delaware particularly when the owners are from different states or different countries. The disadvantages are double filings and double costs (because the corporation will have to register or “qualify” in its home state even though incorporated in Delaware), and the possibility that the corporation may be subject to service of process and suit in Delaware which may be inconvenient and expensive to defend.

A related consideration is the necessity of having a registered agent and registered office in Delaware (such as [CT Corporation System](#)) and another registered agent and registered office in the home state (usually one of the founders).

Name Selection

Regardless of the type of business entity chosen, the clinical student must conduct research to determine if the preferred business name is “available” for use. First and foremost, this requires the student to examine the records of the Secretary of State in the jurisdiction of choice to be certain that there is not already in existence a corporation, LLC, or other entity with the same name. If so, the Secretary of State will not permit the new entity to be formed. In some jurisdictions, the prohibition applies to any name that is “similar” to the preexisting name in appearance, sound, or meaning. The applicable test varies from state to state.

Proposed names can be searched in most jurisdictions through the Secretary of State’s online data base. See, for example:

Delaware: <https://sos-res.state.de.us/tin/EntitySearch.jsp>

California: <http://kepler.sos.ca.gov/list.html>

Illinois: <http://www.cyberdrivellinois.com>

State laws permit an entrepreneur to “reserve” a business name with the Secretary of State (if the entrepreneur is not quite ready to form the entity) on the payment of a prescribed reservation fee. In most cases, the entrepreneur will not wish to postpone forming the entity, and reservation of the name will be unnecessary.

If the business is to be operated as a sole proprietorship or partnership under a name that is different than the name(s) of the owner(s), state law may require that the “assumed” or “fictitious” name be publicly recorded, e.g., in Illinois, with the clerk of the county in which the principal office is located.

Even though a search of the official data base indicates that there is no preexisting corporation or LLC with the same name that would preclude formation of the entity that should not be the end of the student’s inquiry. Further searches should be conducted to determine if there is a preexisting business name or trademark that might be considered confusingly similar to the name that the entrepreneur wishes to use. If there is, the clinical student must advise the client of the risk of an action for trademark infringement or unfair competition lawsuit and perhaps recommend that another name be chosen.

In addition to the search of corporations and LLCs in the home state, online searches that might be employed include (a) the data base of corporations and LLCs maintained by Secretaries of State in states adjacent to the state in which the new entity intends to conduct business; (b) the record of trademark registrations and applications maintained by the [U.S. Patent and Trademark](#)

[Office](#), (c) telephone directories in the area where the new business is located; and, (d) a general search through Google or Yahoo.

These online searches by the student are *not* comprehensive, and the client should be urged to order a company name search from a commercial searching organization, such as [Thomson & Thomson](#), if the client can afford the service charge of several hundred dollars.

The on-line search of applicable data bases is only the first half of the job. When the search is complete, the student will be required to exercise his or her judgment about the likelihood of confusion and the possibility that a prior user or registrant may assert a meritorious claim for trademark infringement against the new business. This usually requires the student to write a letter or otherwise communicate to the client (a) the results of the search; (b) each prior use, registration, or application for registration that presents a risk of an infringement claim; and, (c) the clinic's opinion regarding the seriousness of the risks presented. See [Opinion Letters](#) for an example of how this might be done.

Federal and State ID Numbers

Once the company name has been cleared and the entity has been formed, the client should obtain a Federal Employer Identification Number. This is like a social security number and will be required even though the entity has no employees. The FEIN can be obtained by filing IRS Form SS-4 or following other instructions on the form.

A state identification number should also be obtained, usually from the Department of Revenue in the home state of the business.

Minutes, Resolutions, and Corporate Records

If the business has been incorporated or an LLC has been formed, the clinic has other tasks to undertake, e.g., the drafting of other organizational documents including an agreement between or among the owners if there is more than one (See [Owners Agreements](#)) and, in the case of a corporation, a set of [By-Laws](#) and the initial corporate minutes—or more commonly, informal actions by the shareholders and directors. These documents will be required to be produced when the business seeks to open a bank account, and play an important role in creating and preserving the “corporate veil” that insulates the shareholders from personal liability.

For sample documents other than by-laws and owners agreements, see [Formation Documents](#).

Owners Agreements

Whenever there are two or more owners of a business, regardless of the form of entity chosen, there should be a written agreement between or among them setting forth their respective rights and obligations. The preparation of such an agreement presents an ethical problem for the clinic which will find it difficult to represent all of the owners who, at least theoretically, may have conflicting interests. This is true even in a case where the owners are a husband and wife or a father and son.

One possibility is to ask the owners to sign a consent authorizing the clinic to draft the required agreement. The Rules of Professional Responsibility on this subject vary from state to state and must be carefully studied before this approach is taken. However, because the matter is so risky for the faculty and students involved, it is recommended that some other approach be found.

Some clinics have adopted the practice of providing what might be described as a more or less "standard" owners agreement in draft form with the recommendation that each owner should consult with his or her own private attorney, or some other advisor, on the contents of the draft—with a statement from the clinic that it can go no further in working out the final agreement. In such cases it is well to advise the owners in writing of what has been recommended and to secure their written consents to proceeding in the manner suggested in this paragraph.

Owners' agreements are complex and sophisticated legal documents. Sample shareholders agreements and LLC operating agreements have been provided and are accessible at [Owners Agreements](#). As with other samples made available through this Web site, it should be understood by the user that these are samples only and that substantial changes will be required in order to reflect the particular fact situation with which the user is dealing and the requirements of applicable local law.

One of the most commonly encountered issues in drafting an owners' agreement and explaining it to the client is to determine what mechanism should be included in the agreement to resolve disputes between and among the owners, particularly where each is to have an equal ownership interest. Experience has shown that there is no completely adequate way in which to handle this situation. In fact, the closely held business is akin to marriage: if you are concerned about disputes with your business partner, it may be better not to get married.

Where one owner has voting control, it is quite common to protect the minority owner by requiring a unanimous or super-majority vote on certain key issues, e.g., the distribution of profits, the sale of ownership interests to other persons, amendments to the certificate of incorporation or articles of organization, and sale or liquidation of the business.

LLC operating agreements are particularly difficult for many transactional clinics to handle because they typically include elaborate provisions under the partnership provisions of the Federal Income Tax laws. Even if the clinic undertakes to prepare a final document for signature by all parties involved—as opposed to only a “first draft” —the parties should be advised to have it reviewed by a tax advisor before it is signed.

Business Licenses

The new business will undoubtedly need to obtain some kind of business license from the municipality or county in which it is located. The clinic should decide if it is prepared to handle this task or if the entrepreneur should do so. If the clinic takes on the responsibility, the first challenge will be to obtain a copy of the applicable municipal ordinance or state regulation which may not be available in the law school library or through Lexis or Westlaw. Once obtained, it must be determined what kind of license is required and what documentation must be submitted with the application.

In some cases (e.g., when the business is a retail shop or a web-based enterprise), the license should be relatively easy to secure. However, there are businesses that receive close regulatory scrutiny (e.g. a fast food outlet, a child care facility, a bus service for senior citizens) where extensive documentation, zoning clearance, and an inspection of the premises or equipment may be required. In such a case, the client may be better equipped to pursue the license application than the clinic.

A word of warning: Home-based businesses are often required to be licensed, and the licensing requirements are frequently more restrictive than the client contemplates. If such a business is involved, it may be best to have the client investigate whether its “at-home” business plan is viable before the clinic has gone too far in creating an entity and providing other advice.

See [Licenses and permits](#) for student-drafted materials that may be helpful.

Intellectual Property

The clinic can be of considerable assistance to the new client by providing advice about its intellectual property. This is frequently a two-edged sword: (a) how does the client protect its intellectual property, and (b) is there any infringement risk in using it?

An entrepreneur frequently wishes to exploit intellectual property that is the same as, or similar to, what has been exploited by his current or former employer. In such a case, it may constitute a violation of the entrepreneur’s contractual or fiduciary obligations to do so. This possibility requires the clinic to have a full and candid discussion with the entrepreneur about the genesis of

his or her business and product offerings. The matter is particularly fraught with danger if the entrepreneur has in his or her possession anything taken from the place of employment.

Similar problems can arise if the entrepreneur has worked with a partner (who is no longer involved in the business), or with a Web site designer or other individual who has arguably contributed something of value to the enterprise. In some cases, it is difficult if not impossible to unwind these relationships so that the entrepreneur can proceed with a reasonable degree of confidence that no claim will be asserted.

On the other edge of the sword, the clinic will probably be asked to advise the client what can be done to protect its own intellectual property. If the entrepreneur has an invention that he or she wishes to commercialize, there will be an immediate problem because very few law school clinics have sufficient expertise to conduct patent searches or to file and prosecute patent applications. Consequently, some general advice about patents along with a referral to a patent lawyer or patent agent may be necessary.

If the entrepreneur is a student or member of the faculty at the university which supports the small business clinic, and if the university claims ownership of inventions conceived of on-campus, any involvement by the legal clinic in the patentability decision making process can present an additional ethical problem.

While most patent lawyers would recommend against the process if the invention is truly valuable, one possibility for the client with limited financial resources is to file his or her own application for a "provisional patent" which is relatively inexpensive and which provides some minimal protection for the invention for a period of one year (see the [U.S. Patent and Trademark Office](#) for more information). This is sometimes done when the inventor needs time to test the marketplace and does not have the \$10,000 or more which might be required to file and prosecute a standard utility patent application.

Notwithstanding its limited role insofar as patents are concerned, a general business clinic should nevertheless be able to provide valuable advice and assistance regarding trademarks, copyrights, and contractual protection for intellectual property.

Trademarks can be registered with the [U.S. Patent and Trademark Office](#) once the trademark has been used commercially or in advance of actual commercial use if the applicant has a bona fide intention of commencing use within the near future. Alternatively, the trademark can be registered with the Secretary of State in the company's home state. The latter process is less expensive and not nearly as rigorous as a federal trademark application, but provides a degree of protection for the client. Trademarks and trade names

can also be protected under general common law doctrines even if not registered. An explanation of these doctrines may satisfy the client if it does not have the funds necessary to file an application for registration.

Copyrightable material (like artwork, literary material, photographs, and music) is also protectable without registration. In fact, the copyright “springs into existence” as soon as the work is embodied in some tangible form as in a Web site design or brochure. The client may then follow up at its leisure and register the work with the [U.S. Copyright Office](#) on the payment of a modest registration fee if it is felt that the work has significant long range value to the business.

On the contractual side, the clinic may be called upon to draft a non-disclosure agreement that the client can use when it presents its proposed product or business plan to prospective investors or others, or an agreement with a third party that is providing creative material on a “for hire” basis. For samples of such agreements, see [Business Contracts](#) and [Internet and Web site](#).

Contracts and Leases

In addition to agreements with regard to intellectual property, there is a wide variety of business contracts that the clinic may be asked to prepare and others that it may be asked to review. These include franchise agreements, commercial leases, agreements with customers and suppliers, employment agreements, and independent contractor agreements. Samples can be obtained through [Lexis](#) or [Westlaw](#), in law school form books or, occasionally, through specialized online services such as [Findlaw.com](#). See also, the miscellaneous forms accessible through the [Business Contracts](#) link.

Independent contractor agreements are common in the small business setting, but are particularly problematic because entrepreneurs like to describe persons employed in the business as “independent contractors” so that the client is relieved of wage and hour, discrimination, and tax withholding requirements. Suffice it to say, that merely calling an employee an “independent contractor” is not enough. Misclassification can result in severe penalties, and clients are well advised to proceed with extreme caution in this area. The IRS provides helpful information to enable a company to determine how its workers should be classified. For more information, visit the [IRS](#) Web site.

Female and Minority-Owned Businesses

Small business clients owned or controlled by women or members of a minority group will often ask for assistance in obtaining certification so that they can seek government contracts or business relationships with private companies that provide preference to such vendors.

While this may appear to be a highly specialized assignment for a legal clinic, almost every government agency and department at the federal, state, and local level has regulations or instructions that set forth quite clearly exactly how certification may be obtained. See, e.g., materials posted at [Female and Minority](#). As a general rule, a substantial amount of information and documentation is required; and the entrepreneur is usually in the best position to fill out the formal application and collect the items required. The role of the law student will most likely be to guide the client through the process, to review the application in draft form, and to prepare corporate or LLC documentation that gives the woman or minority business owner clear control over the affairs of the entity applying for certification.

A related task for the clinical student is to review any government subcontract to which the client is a party to make certain that the client has a real, commercially viable role to play and is not allowing its name to be used with no significant responsibility for providing goods or services.

Third Party Investments

Many small business owners will want to raise capital by issuing shares or LLC ownership interests to friends and family, and occasionally to angel investors and venture capitalists.

If the proposed investor is sophisticated, the investor will probably submit an investment contract of some kind, in which case the clinic's job will be to review it or to refer the client to an attorney specializing in such transactions. The latter will be a relatively expensive course of action for the client, but since the client is looking for an influx of cash into the business, it should be prepared to pay at the market rate for whatever professional advice may be needed.

On the other hand, if the proposed investor is a family member or friend without investment experience and sophistication or legal representation, the clinic may be required to evaluate the transaction and draft the required documentation.

The threshold issues in any such case is whether an equity interest in the business is a "security" and whether offering it to a third parties must be registered with the U.S. Securities and Exchange Commission or securities commissioners in the states in which offers are made. In most cases, the clinic will find that the offering is "exempt" from registration, but it is important that this be determined with a high degree of certitude or the transaction may be revocable at the investor's option (typically when the business fails) and the clinic may be faced with a malpractice claim. In fact, there are transactional clinics that simply decline to advise clients on what might be construed to be a "public offering".

It is beyond the scope of this Web site to provide definitive information regarding federal and state securities laws. However, the student-drafted materials collected at [Investors](#), may be helpful in understanding the issues involved, and demonstrate how they might be communicated to a client.

Purchase and Sale of the Business

Many small enterprises begin with the acquisition of an already existing business. Such transactions may be difficult for many legal clinics to handle because of the many tax and contractual issues that are likely to arise.

It is impossible to provide an M&A primer to users of this Web site. However, a few asset acquisition agreements have been collected at [Purchase and Sale](#). These should help the clinic to decide if it has the competence to handle a purchase, or sale, or whether it would be prudent to refer the client to an attorney specializing in such work.

Other Legal Issues

Specialized subjects frequently encountered by entrepreneurs that are beyond the scope of this section of the Web site include (a) import and export regulations; (b) food, drug, and cosmetic laws; (c) antitrust concerns with pricing and distribution arrangements; (d) employment laws; and, (e) real estate deals.

Hopefully, the clinic will have enough general expertise in these areas of the law to provide some guidance, but these are situations in which the clinic may wish to refer the client to another professional or to a law firm willing to help out on a pro bono or discounted fee basis.

“How To” guide current as of December 15, 2009.