**OVERVIEW**

During this session, you are going to prepare the legal foundation for starting a new business. Your business idea can be one that you are seriously considering, have thought about in the past, are discussing in other classes, or simply an idea you would like to further explore. Whatever business you choose, it should be something that you are interested in, and that you could see yourself pursuing in the future.

The goal of this project is to expose you to many of the issues a new business owner faces from a *legal perspective*. (I encourage you to think about the financial, accounting, management and marketing perspectives of your business idea as you study these topics in your other courses.) There will be an online presentation at the end of the semester which is worth 30% of your session grade.

**SUBMISSIONS AND GRADING**

This project will require you to **think strategically about legal issues facing business owners**. It will give you an opportunity to prepare an analysis of potential legal risks, opportunities, and issues common to a particular industry. *Please note: We will not have time to address all of the topics in your reading and lectures. You will be required to do some of your own research to address some of the questions.*

Your grade will depend on how thoroughly and thoughtfully you answer the questions posed by correctly applying appropriate legal concepts and analysis to the facts surrounding your chosen business and industry. One-sentence answers are not acceptable.

At the end of the session, you may choose among **three different ways to present your project: build a website,2 record a video presentation of 10 minutes or less,3 or create an infographic**.4 If you think of another way, just ask. Regardless of the method you choose, your submission must

provide a thorough and organized analysis of each question posed, and should be delivered in a professional manner following best practices for your selected medium.

**CONTENT**

The final presentation should thoroughly address ALL of the following:

1.   **Business Vision** (10 points - be creative, but realistic as possible)

**a.** **What type of business are you starting, and what is the industry classification description and NAICS Code for your business?5 Why have you chosen this business?**

NAICS code 327420 - Gypsum Product Manufacturing. The industry has performed well over the past 20 years as housing starts have remained steady and house prices have rose with no foreseeable reason to stop, additionally opportunity has arisen.

b. **What goods and/or services will you provide? How would you describe your future customers/clients?** Drywall and related gypsum products will be the primary goods. Mainly the customers targeted will be people looking to purchase in bulk leading to major contractors, big box stores and material suppliers.

c.  **How do you intend to raise capital to start your business? Will you have investors? Explain.** Capital raising both in equity investment and debt raising. Money lent from JP Morgan and from a group of investors selected from a hedge fund that I manage.

**d.** **Will you have any physical locations (any “brick and mortar” stores, distribution/storage facilities, warehouses, etc.) or will you be a strictly virtual/online business? Where will your headquarters be?** The physical location of American Gypsum in Gypsum Colorado so the acquisition company will be located in Gypsum with its sole office being ran from the American Gypsum plant. Meaning both Cline Manufacturing and American Gypsum will be operating, headquarters and based in Gypsum Colorado.

e. **How many employees do you expect to have within two years after start-up? Describe their job functions.** Approximately 100 employees, including managers, operators and salesmen. Existing employees will be retained in American Gypsum and a new team of salesmen will be onboarded with the oversight of Cline Manufacturing LLP. Currently this plant employs 80 persons and we expect a small bump in hiring.

2.    **Business Formation** (40 points) [Note: There is not a lecture on the different types of business entities and the process of forming them in this course. You will need to do some outside research in this project. To that end, make sure you carefully examine the footnotes before you begin writing this section.]

a**. What is the name your business?** Cline Manufacturing LLP acting as an acquisition company to purchase American Gypsum LLC.

b. **What form will you use for your business? (Please limit your choices to Sole Proprietorship, General Partnership, Limited Partnership, LLC, or Corporation.) Explain. How does your selected form of business protect your personal assets from creditors and/or people who might win a lawsuit against you?**

The company is set up an a limited liability partnership (LLP) as is standard with hedge funds. The company is effectively an investment vehicle to a group of savvy investors so this allows me Peter Cline to maintain control over all assets through a lockout agreement and restricting voting rights of investors as is typical in these sorts of deals. Additionally the company acting as an acquisition company insulates investors in the Cline Manufacturing Company from lawsuits and losses from American Gypsum LLC,

**c. In what state are you going to create and/or register your business entity? Why?** There are numerous states that are wonderful for businesses to operate in. But because the deal is already complex and convoluted its best to have a simplified legal background. The filling will be made within the state of Colorado where the buyout will take place, where all business will take place, and where both American Gypsum and Cline Manufacturing will be headquartered. This allows for simplification and greater oversight and communication.

**e.**   **Is your business name available to use in your state? Explain how you know.**

Running a search for trademarks and business names in Colorado the name “Cline Manufacturing” has no matches showing the name is unique and available. [https://www.sos.state.co.us/biz/BusinessEntityCriteriaExt.do?resetTransTyp=Y](%20%20https://www.sos.state.co.us/biz/BusinessEntityCriteriaExt.do?resetTransTyp=Y)

**f.**  **Based on your answer to 2.b., what documents do you need to submit to the state in order to form or operate your business? Are there any registrations and licenses needed for your specific type of business to legally operate? Explain your research process.**

Running a brief search on that website an LLP has the following necessary documents: certificate if limited liability partnership (state treasury), submission of agent information (me) (state treasury), partnership information (my investors) (state treasury), partnership agreement a filing fee (state treasury), submission of annual reports (to partners and tax authorities) and industry specific licensing however this will not be applicable

f. **Based on where you create your business and where you will do business, in what states could your business be sued if a customer is injured or a supplier is not paid? Recall our personal jurisdiction discussion of minimum contacts and the *International Shoe* case11 from Chapter 6.** The company will operate solely within Colorado so the only state for a lawsuit would be Colorado unless a suit were so severe as to be seen by a federal court.

3.    **Torts** (25 points)

**a.** **Recall the lecture about the elements of negligence. Beyond the duty of reasonable care to avoid harm, will your business have a special relationship with anyone, to whom you would owe a heightened duty of care to protect foreseeable harm? Think about this based on the type business and whether you have physical locations.**

Generally speaking basic materials tend to be safe products, and provided they are used as intended there is minimal harm. That said, warning labels about dust inhalation and a possibility of trace amounts of asbestos have to be present. Also, to mitigate issues most drywall contains a paper type coting to make sure there is minimized risk of harm to the end user. The highest risk persons in the operation are employees as there is large equipment and potentially hazardous materials. This means regular safety training needs to be given, managers must ensure compliance with OSHA regulations and employees must acknowledge risk.

**b.** **Describe two foreseeable circumstances in which someone could sue your business for negligence. Analyze the prima facie case of Duty, Breach, Causation, and Damages under each scenario, and explain what precautions you could take to prevent such lawsuits.** The two most likely lawsuits I can see happening are as follows:  
 The first being an employee gets hurt, Industrial areas are higher risk and workplace safety is a concern. If a suit were filed it would be against American Gypsum LLC for violating a strict liability of their professional duty to care. The suit would have to prove that risks were not properly mitigated and that the employee was not negligent.  
 The other likely suit I can foresee is damages merchandise. Gypsum based drywall is a fragile material and if improperly stored or transported it can split. Fortunately its non structural and damages are readily apparent. That said damaged goods is an issue. Liability would be contingent of proving negligence and possession. If damaged goods was proven to be a result of our negligence then we could be held liable for replacement or even a case similar to Hadley v Baxendale where downtime could be sued for. If determined a breach of our own professional duty while the product is under our case of course.

**c.**  **Will your business be exposed to any product liability claims? What would a plaintiff have to prove? Could any of the other types of strict liability claims that we discussed in class apply to your business? Explain.** As stated in prior answer product liability is amount the most likely of legal liabilities faced by Cline Manufacturing and its holding American Gypsum.

d. **Identify two plausible intentional torts an employee could commit, either against your business or against a customer. Describe the circumstances under which such claims could arise. Think about all the intentional torts we discussed in class.** Two foreseeable torts I could imagine would be one distribution recklessness and product recklessness issues.  
 For one it is typical to both have customers directly pick up products from the sight and to deliver to customers. This means a number of employees who as part of their role drive trucks with products. If a driver were to intentionally hide the fact there was issue with his commercial drivers license or worse to be under the influence it would mean he would be operating company equipment unlawfully. This would be posing risk to the company and its assets as well to the company. These type of torts would likely fall at least partly on the operational company as a legal liability.  
 Another is mismanagement, its common in industrial work to have stubbornness and disregard for rules if for instance an equipment operator were to be driving a forklift without caution and hit an employe this tort would be a breach of his care that would take place on company property and under company oversight. The likely result would be legal repercussions faced by the operating company.

4.    **Contracts** (10 points)

a. **Identify four different contracts your business will need to have to operate effectively. (Think about all the business relationships your will have.) For each contract, identify the party, and describe the purpose of the contract. What promises will each party be making as consideration? Do not include contracts in which you likely have no bargaining power, such as with the electric company.** Employment contracts – to run the operating company (under oversight of the acquisition company) would have to maintain its employees stating all workplace hazards, screening for all relevant qualifications, outline all pay and benefits and explain the terms in which termination is possible. This agreement is made between each employee and the operating company for the afore mentioned reasons.  
 Purchase Orders – These are made exclusively by the operating company, for simplicity I am including purchasing orders where the company acts as a buyer and where the company acts as a seller. These documents outline what is buying bought, when position of a good takes place, where delivery is made to, how much is bought and at what cost.  
 Purchase Agreement – This document would simply outline how the acquisition company (Cline Manufacturing) buys the operating company (American Gypsum). It connects investors to the assets and outlines the scope of the deal, that is what is bought and for what price.  
  
 Partnership Agreement – This is a document that the partners of the acquisition company (Cline Manufacturing) agree to. In it it outlines the limitations and responsibilities of the parties explains the distribution of earnings, the investor lockout period, how negotiation is made between partners, and the intent of the companies core operation.

5.    **Intellectual Property** (25 points) [We will not have time to cover Intellectual Property Law in this course, but I want you to be familiar with the basic types.]

a. **Read Chapter 41 of your textbook for a general overview of Intellectual Property. Which types of intellectual property will your particular business create and need to protect? Explain how patents, copyrights, trademarks and/or trade secrets will be important to your business.** Drywall and other basic materials tent to not have much in the way of secrete formulas. That said the main intellectual property is branding and distributer relationships with materials suppliers and any purchasers. This for all intensive purposes means a rolodex and a few logos, although to contradict my first statement the recopies will be useful even if they are not necessarily trade secretes. This would be the main intellectual property I am concerned with.

1. **Will you have a brand name, and/or logo design, so customers recognize your business and your products? If so, what will it look like, and how will you use it in commerce? Include a mock-up drawing of your potential trademark.**

 

Fig. 1 (Cline Manufacturing)                    Fig. 2   (American Gypsum)                                                   
                               
 Above are two logos one of the acquisition company Cline Manufacturing (Fig. 1) and the other American Gypsum (Fig. 2). The latter logo is gotten by the acquisition and the former is unique to the new acquisition company. The second logo will be used as it is recognized by existing customers and the underline product will not change.

**c.** **Will you be able to register your logo as a federal trademark to obtain trademark protection? Why is this important? Explain the search process you performed.12 Be sure to search both your Word Mark and your Design, using the correct Search Codes, and describe the results. The PTO database is tricky to use, so do whatever research you need to in order to learn how to use it.**

The logo in Fig. 2 is already an existing logo and as part of the deal it already has federal trademark protection. The former logo (Fig.1) is would have to be filed with the state through a form called a trademark or service mark application. As there are no other firms by the same name and the overall design us unique and unique to the industry there should be no more hurdle than a fine and time spent waiting for approval.

d. **Will you have a website? What domain name will you use? Is it available for your use? Will you use social media platforms to advertise and/or sell? Is your name available there? Are other businesses in your state using a same or similar name that could create confusion for your (or their) business? What about out-of-state businesses? How confident are you that your business or product name will be yours without contest? Explain.** There will be a website for the acquisition company (Cline Manufacturing) outlining the deal and as part of ownership of the operating company (American Gypsum) that website will be obtained as part of the deal. As for advertising the advertising of products will be done under the American Gypsum brand at it has existing recognition. Social media will not be a necessary advert, instead it will be done through a sales team directly reaching out to potential buyers. In the state of Colorado no similar businesses have similar names so brand confusion wont be an issue. Out of state confusion however will not be an issue or concern as there are no existing plans to move operations out of state nor to pursue out of state interference claims. We are confident the name and branding will remain ours through our tenure as the brand “American Gypsum” has a long standing uncontested recognition.

6.    **Agency** (10 points)

**a.** **Review your list of employees. Who might have implied agency authority to sign contracts on behalf of your company?**

Sales persons would have limited agency to create sales contracts and purchase orders on level of American Gypsum LLC.  
 General managers would have limited agency to create new employment contracts and purchase materials at the level of American Gypsum LLC.  
 I would have agency to do the above as well as (with approval of my investors) obtain new capital. And making general executive decisions. On level of Cline Manufacturing LLP and American Gypsum LLC.

b. **Review your list again. Would you be liable for behavior by your employees that resulted in harm to others? Which employees are most likely to bring liability to your company? Under what circumstances?** Yes I am definitely at risk of harm by these employees for instance sales persons might knowingly pressure a buyer into purchasing a faulty product. This would fraud. Specifically this would be fraud in the inducement as a person acting on behalf of my company. Not only would I face damage to reputation but my business could be liable for a fraud case.  
 Additionally my company would be liable for certain harms committed by management. For instance if a manager were acting in disregard of OSHA guidelines and a case were filed not only would the manager be at fault but so to would the company for either aiding and abetting or for negligence.