In this section we're going to talk about the difference between asset deals and stock deals, recognizing that asset deals can be for stock and stock deals can be for cash. All of this will be explained in just a moment.

Clint: What is a stock deal?

Brad: The lawyers and the accountants did us a disservice when they defined the two types of acquisition structures as a stock deal or an asset deal. I would have preferred if they had called them banana deals and papaya deals because the words themselves 'stock' and 'asset transaction' don't mean that much they just represent a particular type of deal.

A stock transaction is when the buyer buys your entire company. They buy the stock of the company. As a result, your company becomes part of the buyer's company, all of it. It's a particular type of legal structure that affords different dynamics in the transaction than an asset deal.

Fundamentally, the buyer is buying everything associated with your company in a stock transaction.

Clint: What is an asset deal?

Brad: An asset deal, also commonly known as a banana deal, not really, is a situation where the buyer is buying specific assets of the company. They're not buying the whole company, they're just buying assets. The company itself is still a standalone entity. It turns out that they can buy virtually all of the assets of the company. All that's left is a tiny little thing that just needs to be wound down.

It changes the legal structure of the deal and the allocation and responsibility for the various liabilities, since in this particular case the entire company isn't being subsumed by the acquirer.

Clint: Why would an acquirer want to buy assets instead of the whole thing?

Brad: For a lot of acquirers, they would prefer to do an asset deal for a variety of reasons, typically dominated by two thoughts. One is liability and ease. With liability, you're able to pick and choose the assets that you want. If you run into particular assets of a company that you're acquiring that you don't want, you can leave it behind and it's still part of the old company.

From a liability perspective, this allows the buyer to be more precise about what liabilities they're picking up, or not picking up. The other is the perception that it is easier to do an asset transaction than a stock transaction. That might have been true at one point in time.

It's probably the case today that the actual amount of work that you need to do is roughly equivalent in the diligence and acquisition process, especially when you're trying to use an asset deal to circumscribe certain liabilities. Of course, the seller is going to want to be pushing those liabilities to you.

The dynamics between the two are very nuance and very complicated from a legal perspective. Interestingly, they have tax implications as well, both directions. Historically, you would see most sellers wanting to do a stock transaction and most buyers wanted to do an asset transaction.

Today, it turns out that the vast majority of companies that are buying private companies are willing to do a stock transaction because they recognize that overall it's a cleaner transaction all the way around. Some venture capitalists really push hard to do a stock transaction because they don't want to be in a position where they have to wind down the company after the fact.

Recognize that, again, the only people making money in this case are the lawyers and accountants because you can structure things in such a way, either as a stock transaction or an asset transaction, where you can end up in a relatively happy place, both as buyer and seller.

Student: Are there certain industries that lean more towards stock acquisitions or asset industries?

Brad: Historically, companies that have lots and lots of physical assets, especially assets that might have things like environmental liabilities and other kinds of liabilities, you often saw more asset based transactions in those situations. When your primary assets are customers and intellectual property and things like that, the buyer wants all of those things anyway. The information based businesses tend to be more stock transactions.

You also saw a case where when there was a consolidated ownership position among the founders, you often see more asset transactions, especially when they're corporate organizations, like a subchapter S organization where really the founders are the only shareholders versus when you have investors.

That's kind of all blurred around, again, this day and age.