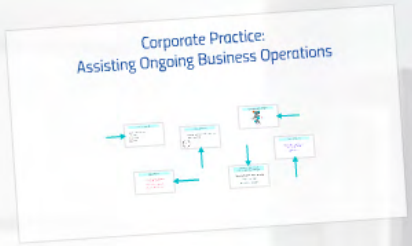
Business, Corporate and Transactional Practice



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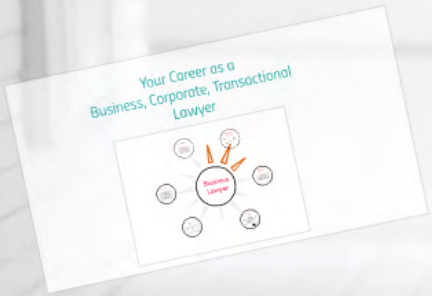

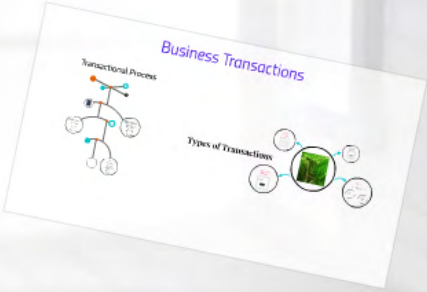

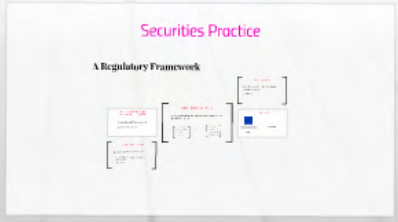

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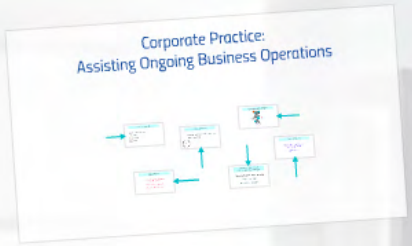
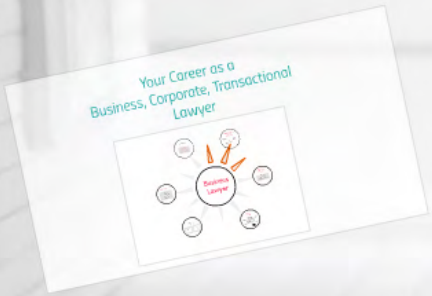
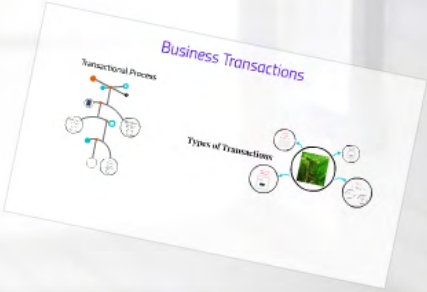
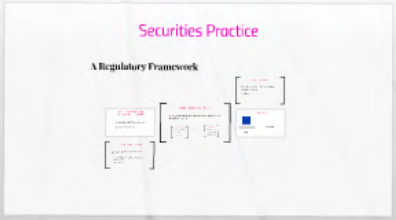
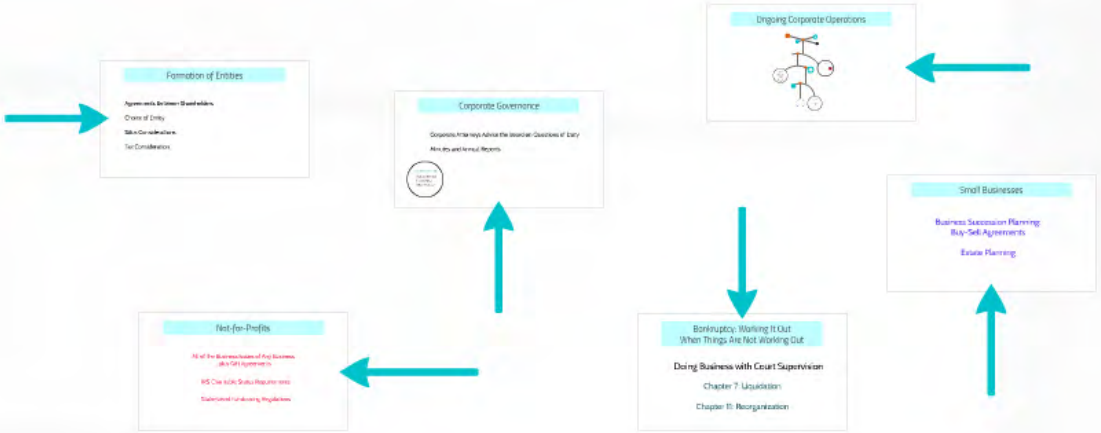






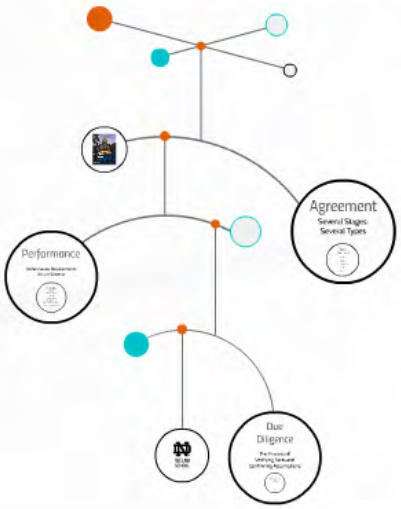


Corporate Practice:
Assisting Ongoing Business Operations



Business Transactions

Transactional Process



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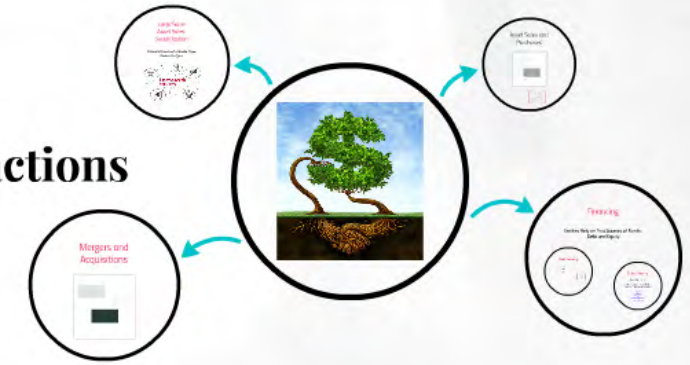


Securities Practice

A Regulatory Framework

Your Career as a Business, Corporate, Transactional Lawyer

Professionalism in Transactional Practice

Winning or Not?

A Common View

Maximize Benefits

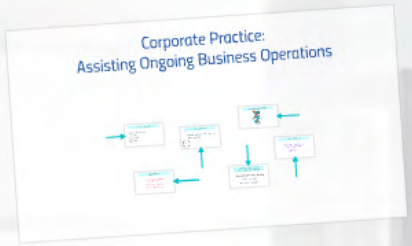
Sharing the Load?

Disclosing Hidden Defects

Business Practice Lies In Agreements... Not Disputes

How Do We Reconcile Competing Interests?

Business, Corporate and Transactional Practice



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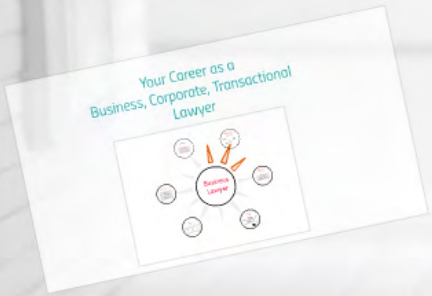

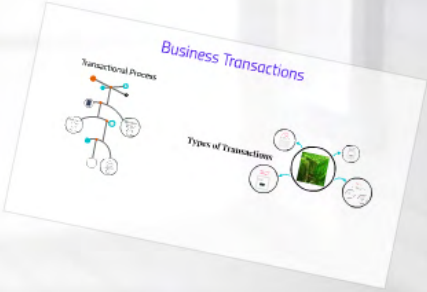

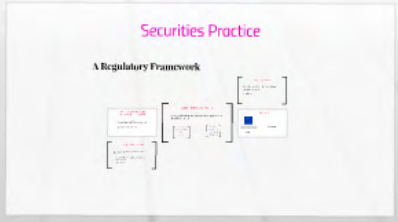

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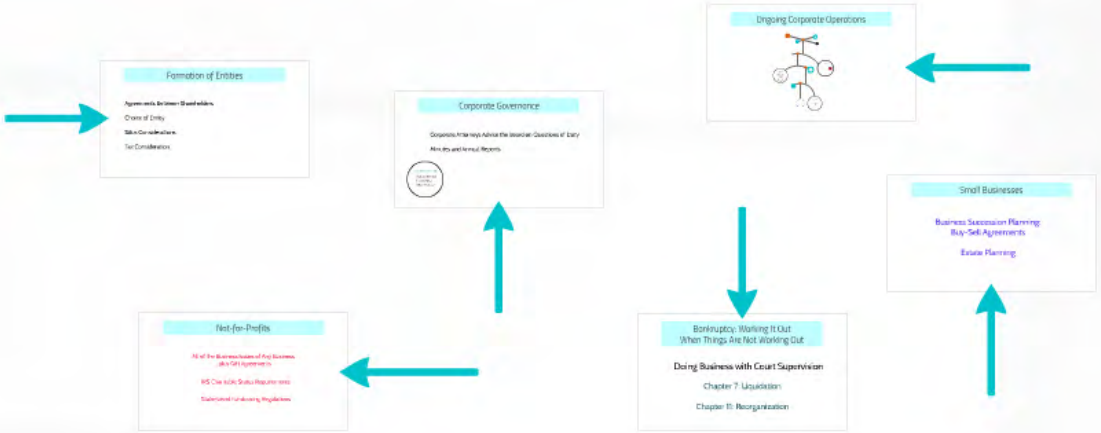

Formation of Entities

Agreements Between Shareholders

Choice of Entity

Situs Considerations

Tax Consideration

Corporate Governance

Corporate Attorneys Advise the Board on Questions of Duty

Minutes and Annual Reports

Basic Governance Model

Shareholders Elect Directors

Directors Pick Officers

Officers Run the Company

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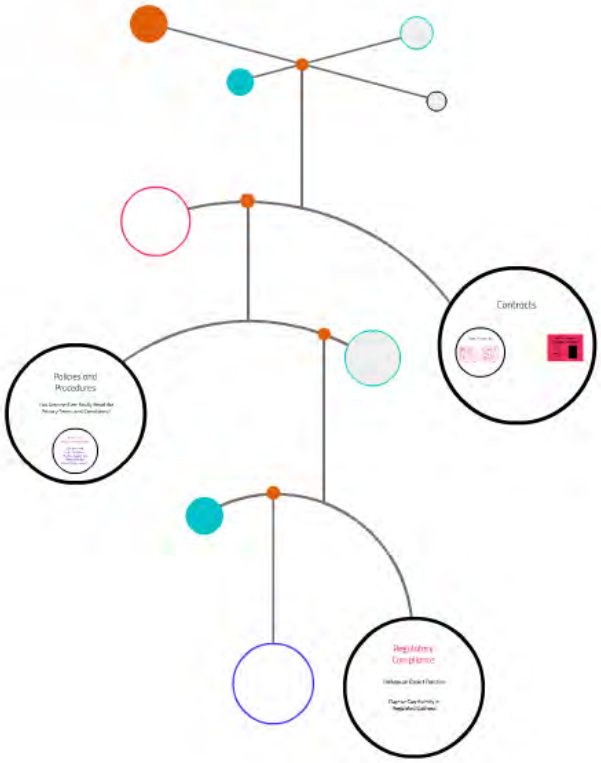

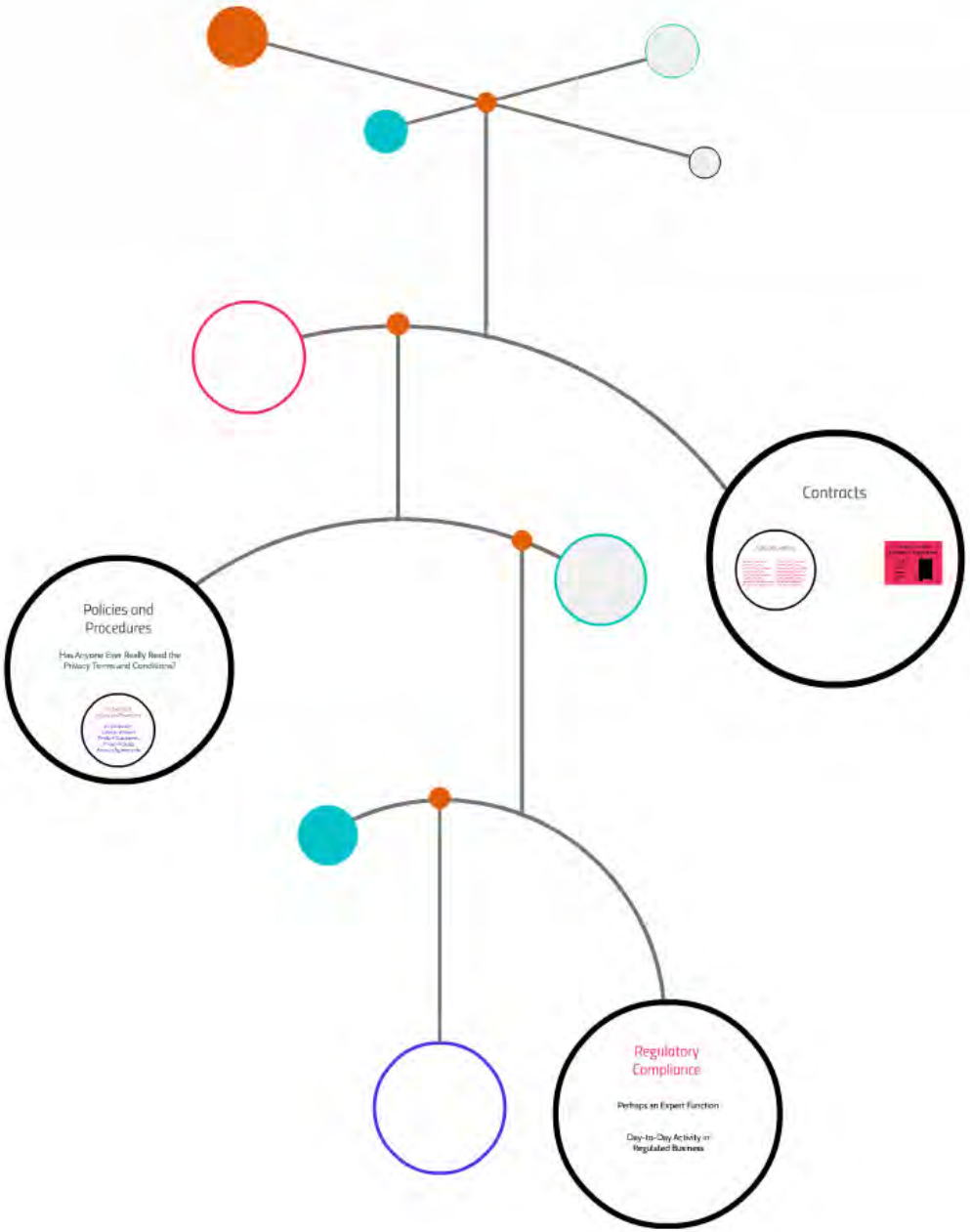
Contracts
Policies and Procedures
Has Anyone Ever Really Read the Privacy Terms and Conditions?
Regulatory Compliance
Perhaps an Expert Function
Day-to-Day Activity in Regulated Business

Contracts

Types of Contracts

Services Agreements
Equipment Leases
Joint Venture Agreements
Licenses/Royalties
Risk Exchange Agreements
Supply Agreements
Covenants Not to Compete
Management Agreements
Employment Agreements
Real Property Leases
Development Agreements
Indemnity and Guaranty
Construction Agreements
Distribution Agreements
Franchise Agreements
Operating Agreements

The Five Universal Contractual Expectations

Result
Cost
Timeliness
Process
Risk

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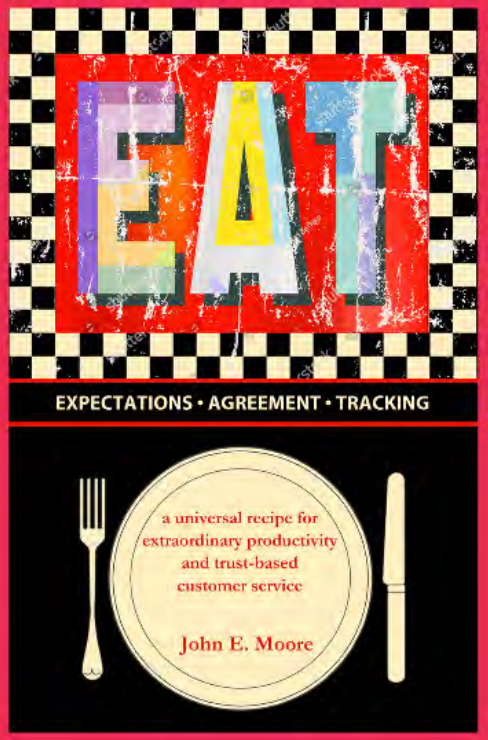

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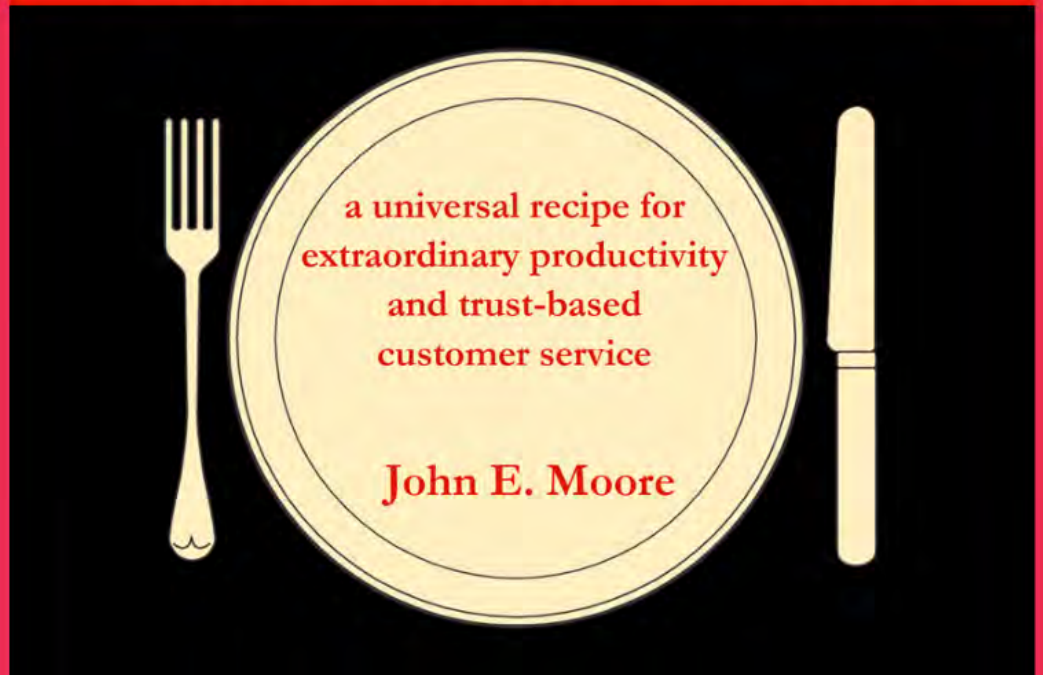
EXPECTATIONS • AGREEMENT • TRACKING



a universal recipe for
extraordinary productivity
and trust-based
customer service

John E. Moore

The Five Universal Contractual Expectations

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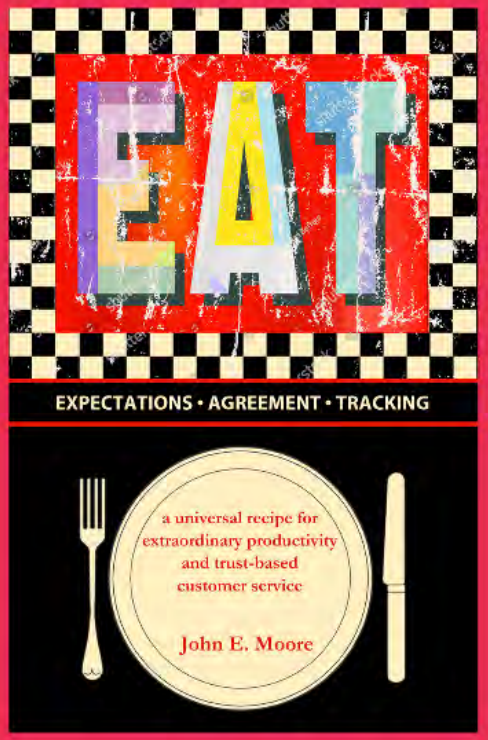

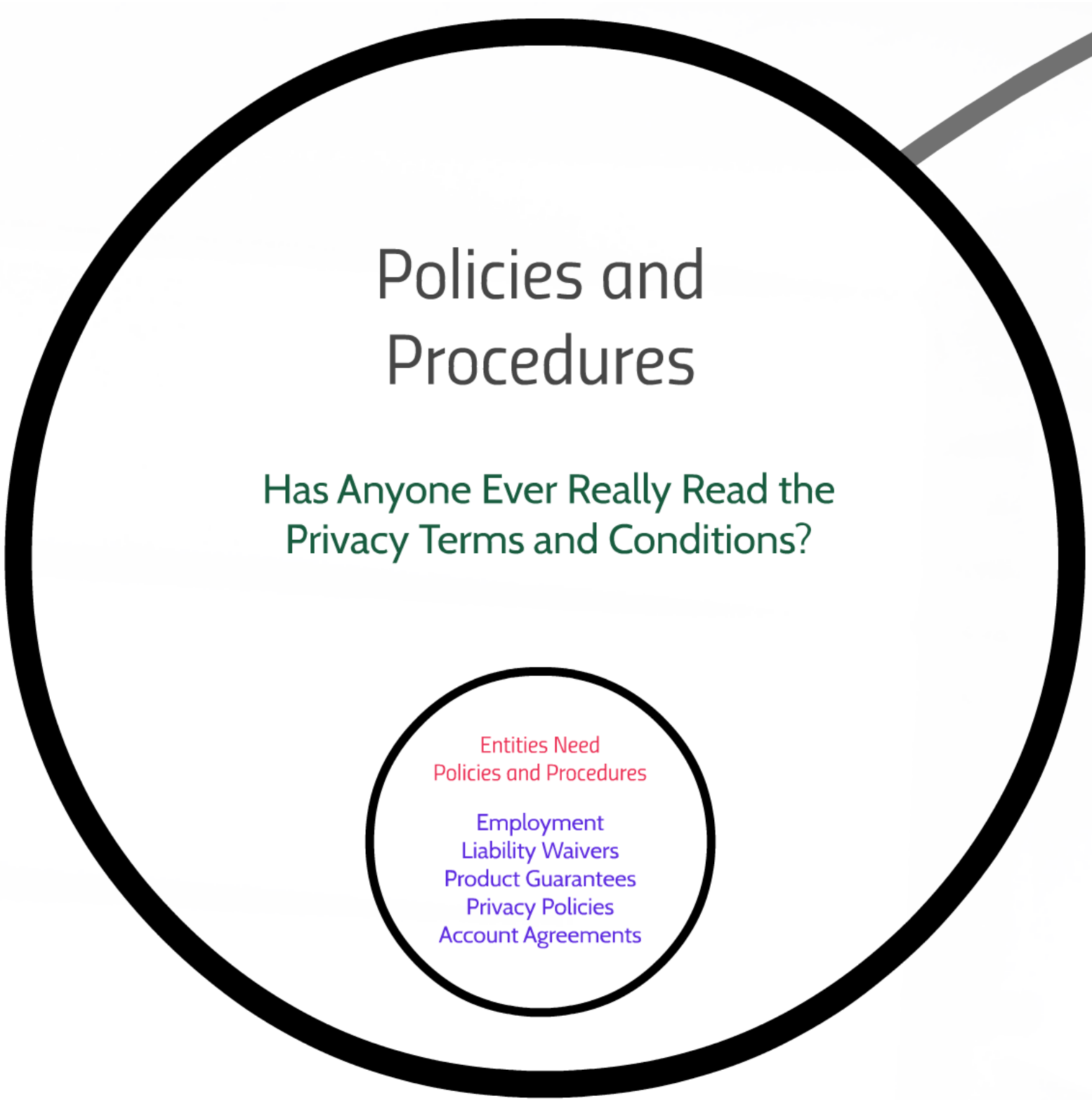
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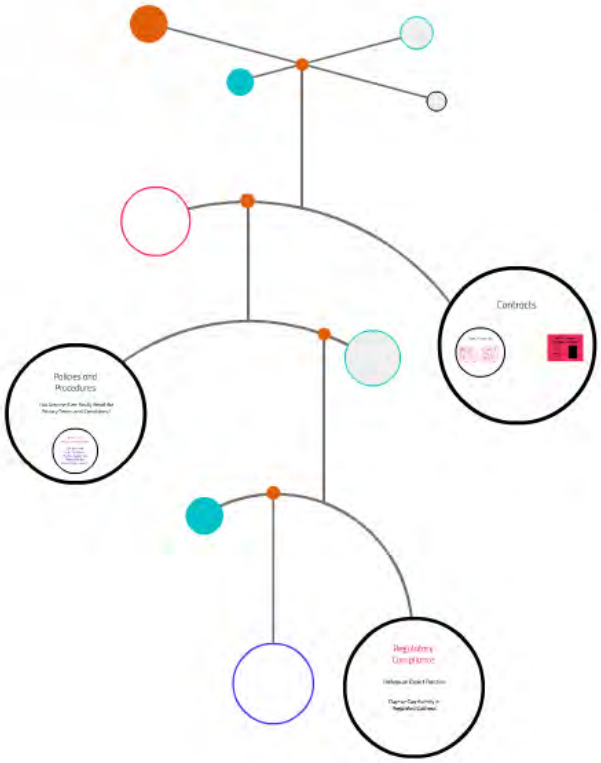

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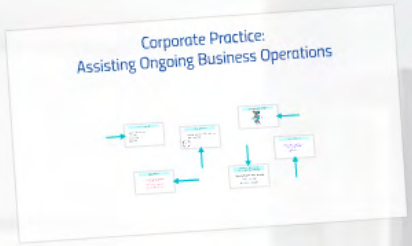
Business, Corporate and Transactional Practice



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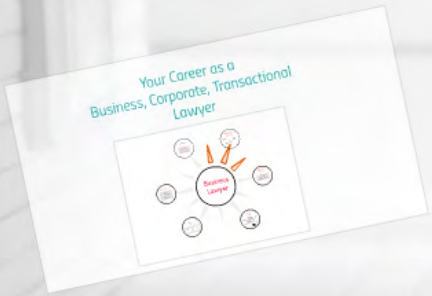
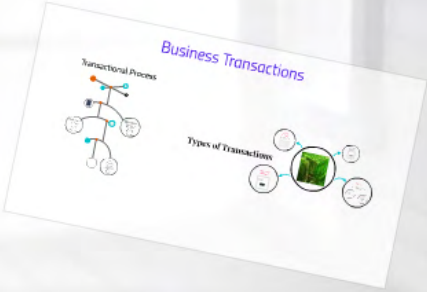
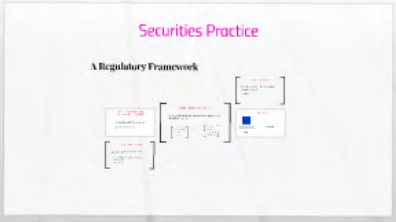
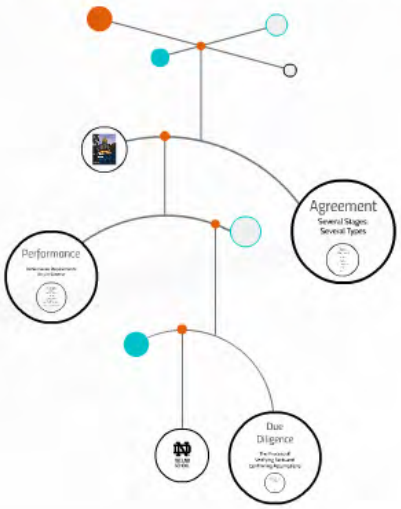




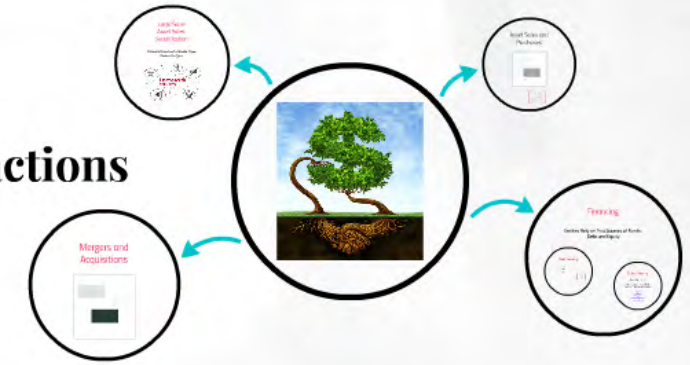


Business Transactions

Transactional Process



Types of Transactions



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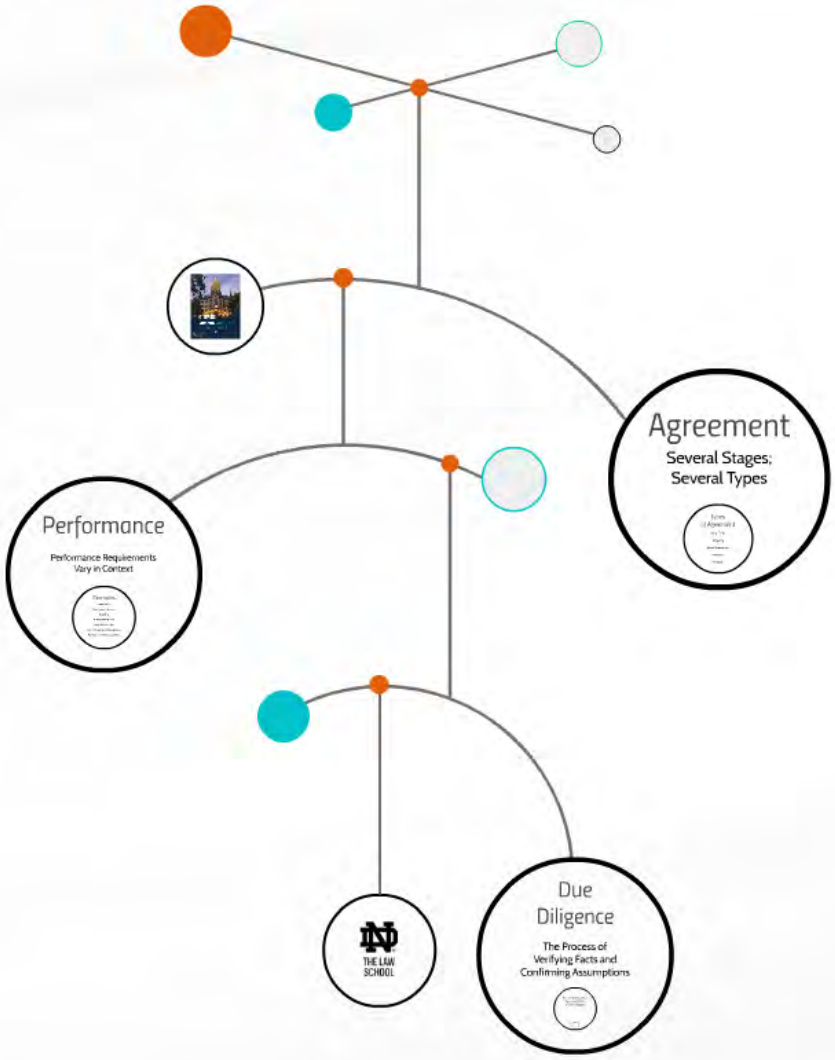
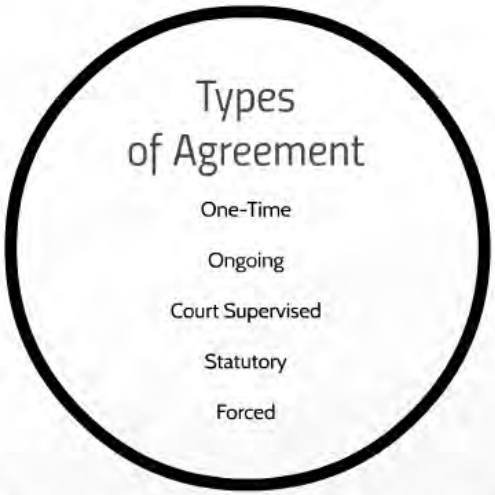


Typ

Agreement

Several Stages; Several Types



Types of Agreement

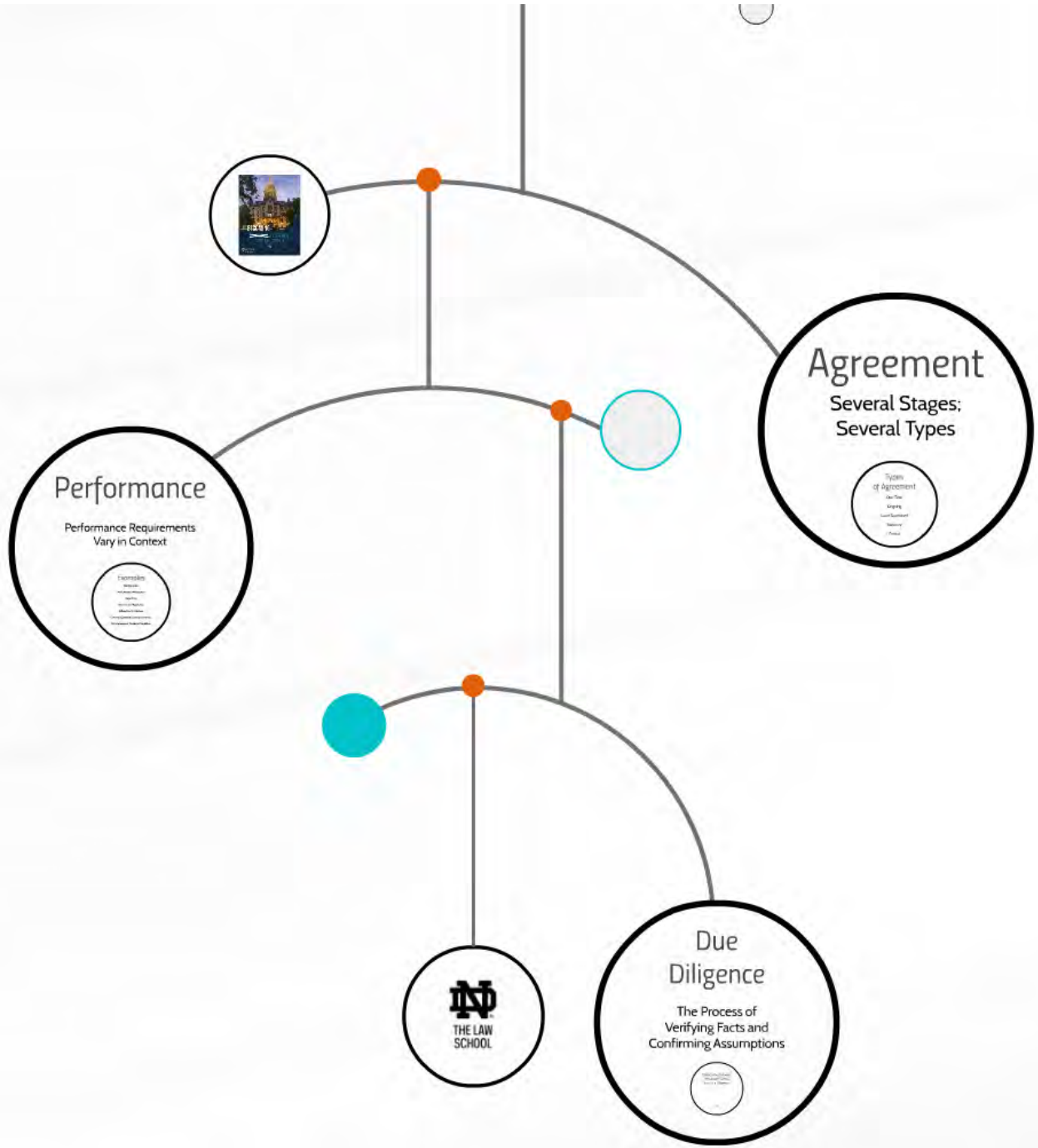
One-Time

Ongoing

Court Supervised

Statutory

Forced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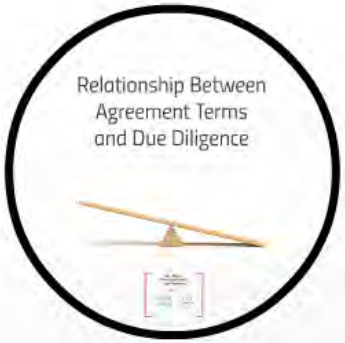

Relationship Between Agreement Terms and Due Diligence

Due Diligence: A Remarkably Diverse Legal Experience

Due Diligence for a Typical Corporate Acquisition Might Involve:

Antitrust
Contingent Liabilities
Contract Enforceability
Corporate Status
Customers Status
Employment/Management
ERISA
Financial Statements
Insurance
Intellectual Property
Litigation
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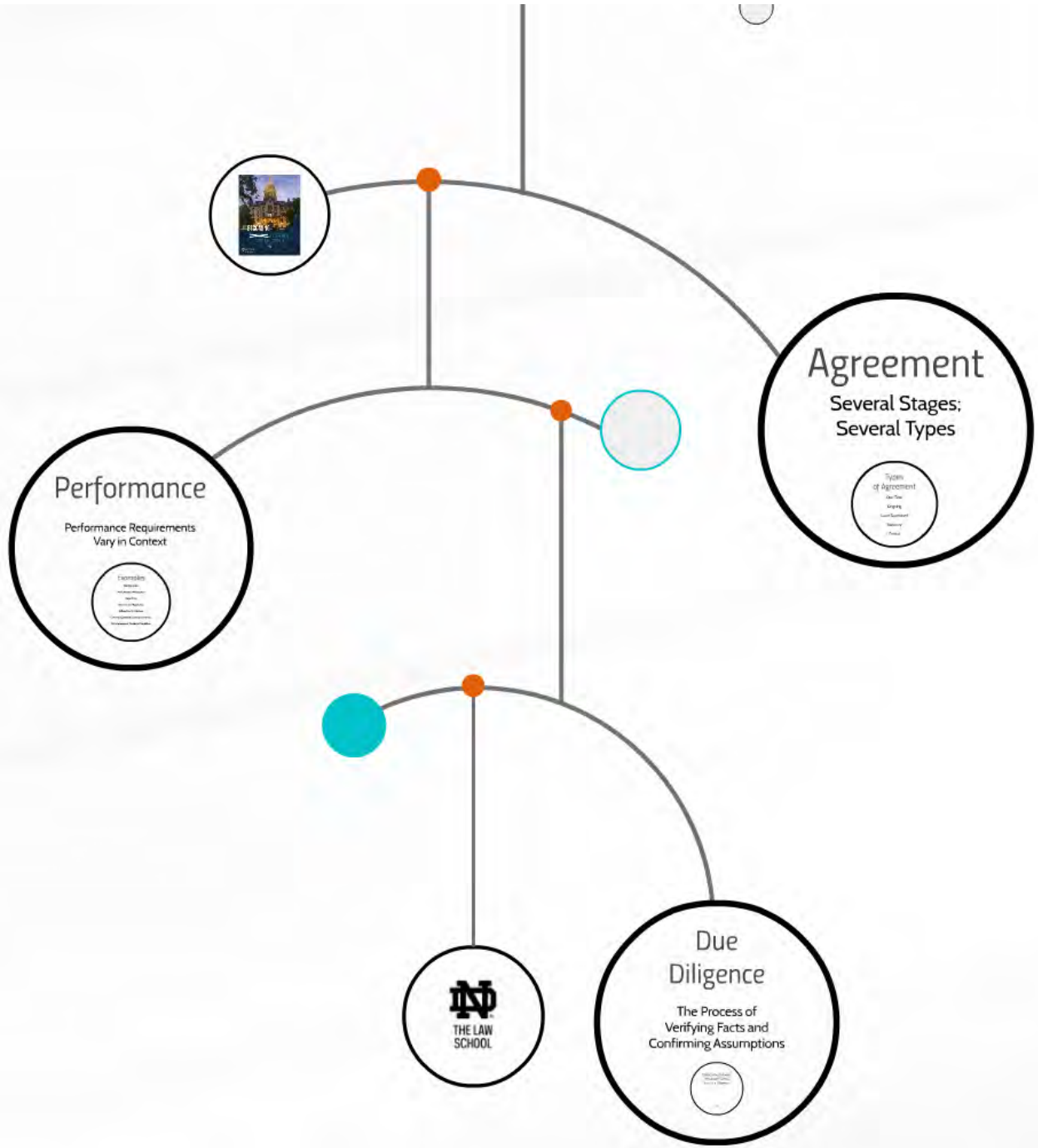
THE LAW SCHOOL

Due Diligence

The Process of Verifying Facts and Confirming Assumptions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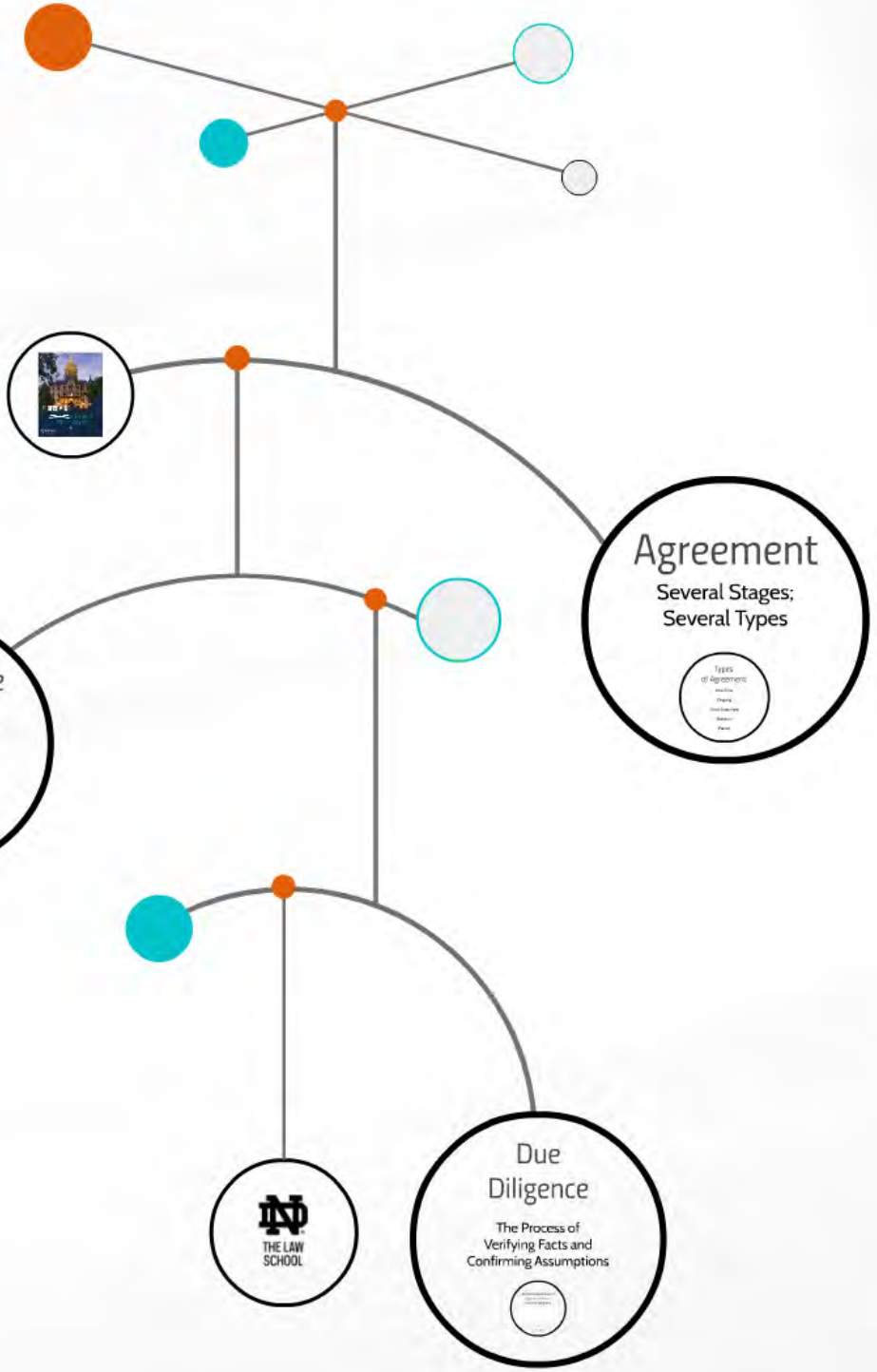
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Performance

Performance Requirements Vary in Context

Examples

- Deliverables
- Performance Milestones
- Reporting
- Reviews and Approvals
- Subjective Evaluation
- External Conditions and Occurrences
- Maintenance of Financial Condition

Examples

Deliverables

Performance Milestones

Reporting

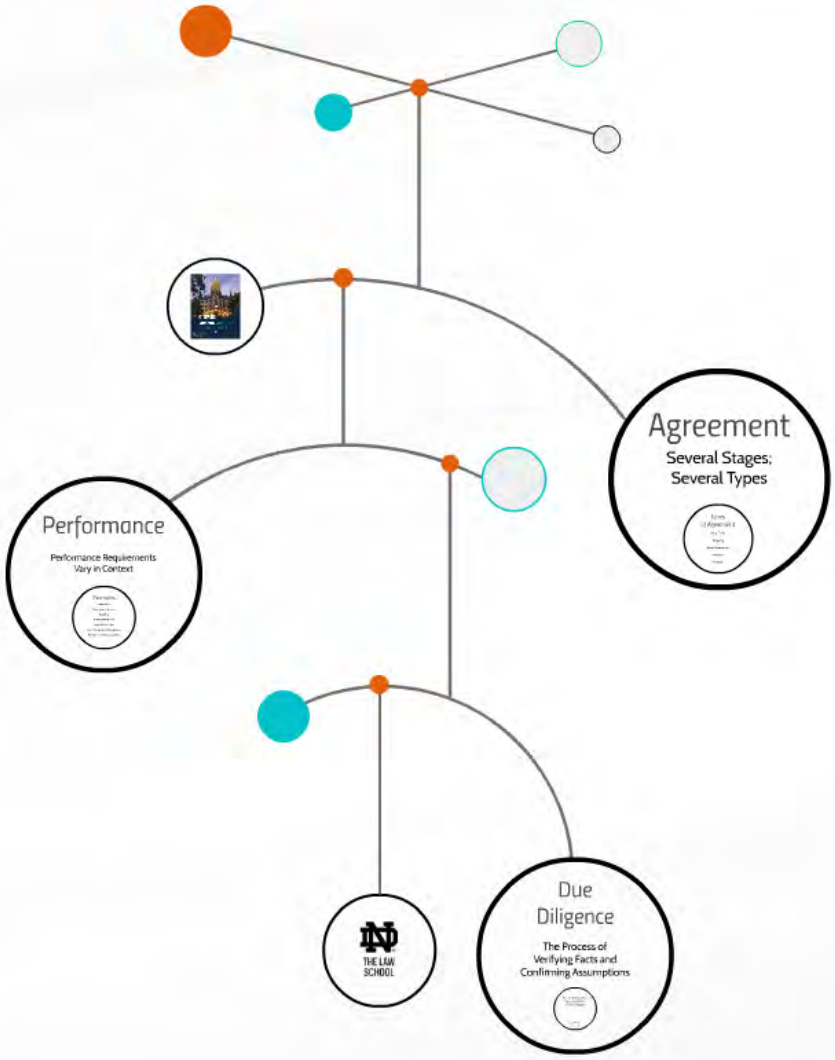
Reviews and Approvals

Subjective Evaluation

External Conditions and Occurrences

Maintenance of Financial Condition

Transactional Process



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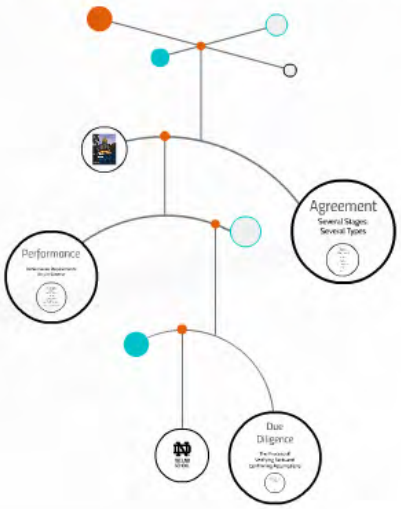

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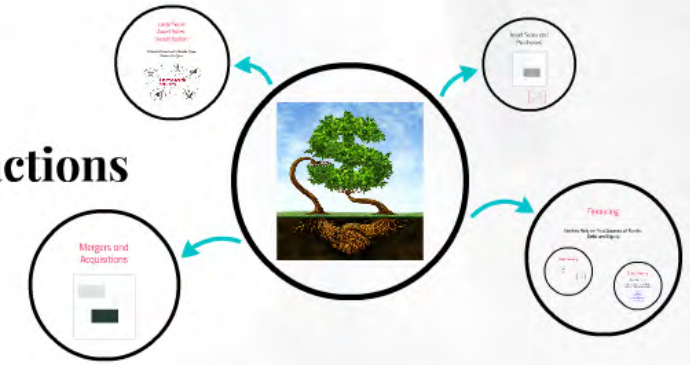

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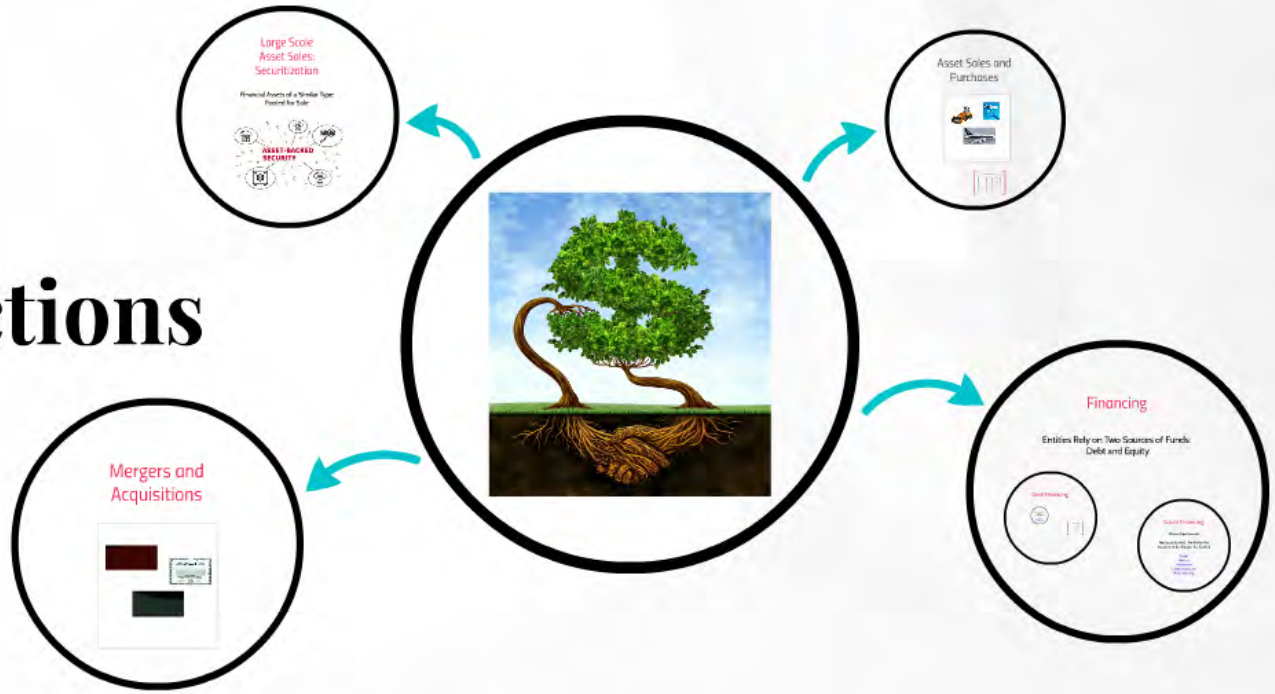

Asset Sales and Purchases

Real Property Practice

Real Property Titles

Acquisition Due Diligence

Environmental
Traffic
Land Use
Construction Viability
Survey
Endangered Species
Titles

Zoning and Land Use

What Can One Do With a Property?

Entitlements Enhance Value

Strong Interplay with Governmental Entities

Largely Local

Ongoing Operations

Financing

Development Process

Leases

Sales of Assets

Acquisition Due Diligence

Environmental
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Real Property Titles

A New Orleans lawyer sought an FHA loan for a client. He was told the loan would be granted if he could prove satisfactory title to a parcel of property being offered as collateral. The title to the property dated back to 1803, which took the lawyer three months to track down. After sending the information to the FHA, he received the following reply:

> ***Upon review of your letter adjoining your client's loan application, we note that the request is supported by an Abstract of Title. While we compliment the able manner in which you have prepared and presented the application, we must point out that you have only cleared title to the proposed collateral back to 1803. Before final approval can be accorded, it will be necessary to clear the title back to its origin.***

The lawyer responded as follows:

> ***Your letter regarding title in Case No. 189156 has been received. I note that you wish to have title extended further than the 194 years covered by the present application.***
>
> ***I was unaware that any educated person in this country, particularly those working with real property titles, would not know that Louisiana was purchased by the United States from France in 1803, the year of origin identified in our Abstract of Title. For your edification, I should explain that title to the land in question was acquired by the United States by purchase from France, which had acquired it by right of conquest from Spain. Title to the land had come to Spain by right of discovery made in the year 1492 by a sea captain named Christopher Columbus, who had been granted the privilege of seeking a new route to India by the then reigning monarch of Spain, Queen Isabella. The good queen, being a pious woman and careful about titles, had taken the precaution of securing the blessing of the Pope before she sold her jewels to fund Columbus' expedition. The Pope is the emissary of Jesus Christ, the Son of God. And God created Louisiana.***

Ongoing Operations

Financing

Development Process

Leases

Sales of Assets

Zoning and Land Use

What Can One Do With a Property?

Entitlements Enhance Value

Strong Interplay with Governmental Entities

Largely Local

Real Property Practice

Real Property Titles

Acquisition Due Diligence

Environmental
Traffic
Land Use
Construction Viability
Survey
Endangered Species
Titles

Zoning and Land Use

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Financing

Entities Rely on Two Sources of Funds:
Debt and Equity

Debt Financing

Equity Financing

Ownership Interests

Key Issue: Control...the Earlier the Investment the Greater the Control

Angel
Venture
Mezzanine
Private Placement
Public Offering

Debt Financing

Secured Financing

Repayment Secured
By Assets
Known as Collateral

Mortgage
Asset-Backed Lending
Capital Lease
Home Equity Line of Credit
Some Bonds

Unsecured Financing

Repayment Not Secured
By Assets...
Personal Guaranty

Personal Lines of Credit
Letters of Credit
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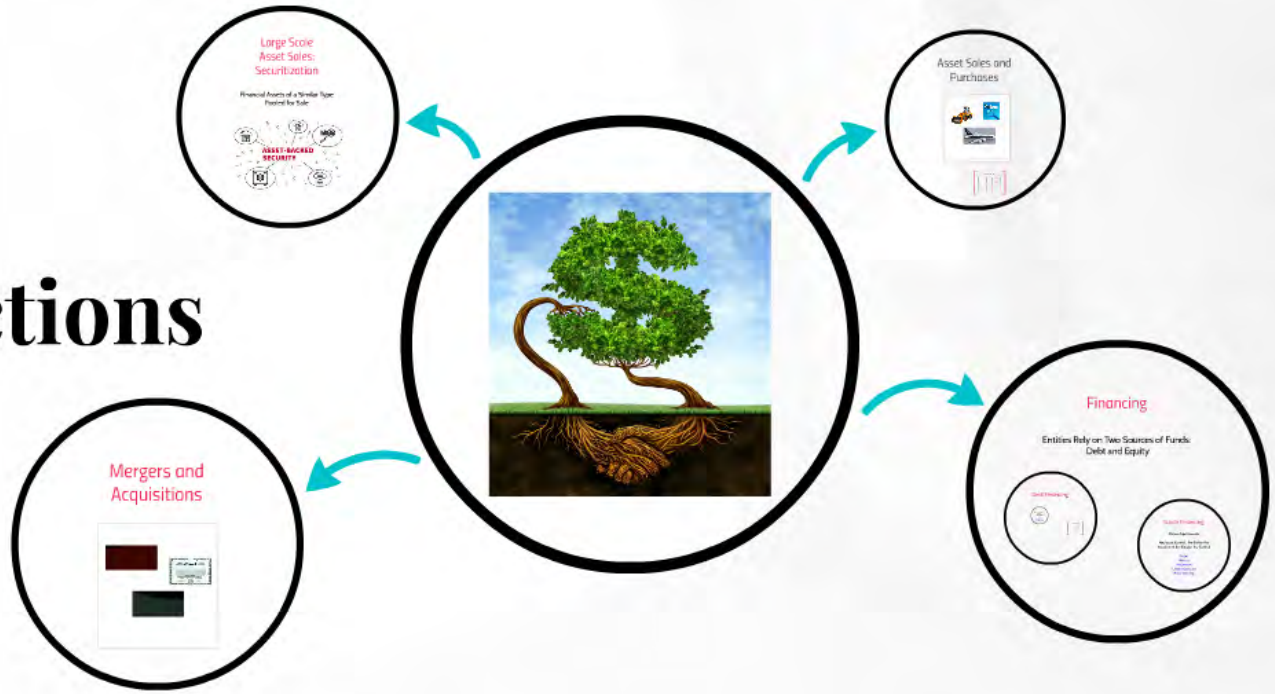
Types of Transactions



Mergers and Acquisitions

MERGER!
MERGER!

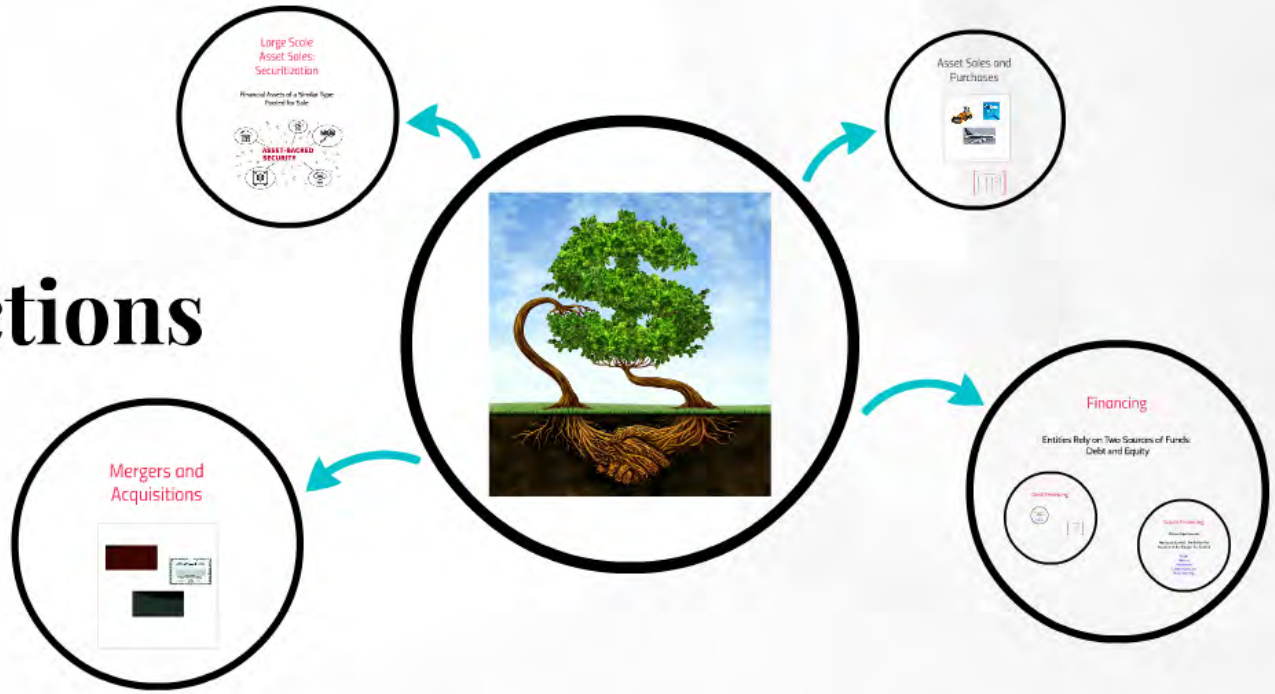
Microsoft
This Certifies that
is the registered holder of
MICROSOFT CORPORATION
SEAL

SELLING
ASSETS

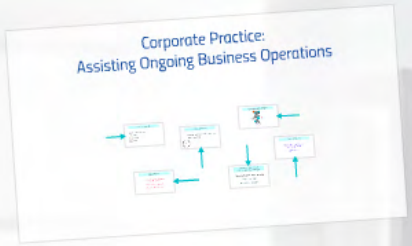
Large Scale Asset Sales: Securitization

Financial Assets of a Similar Type Pooled for Sale

Types of Transactions

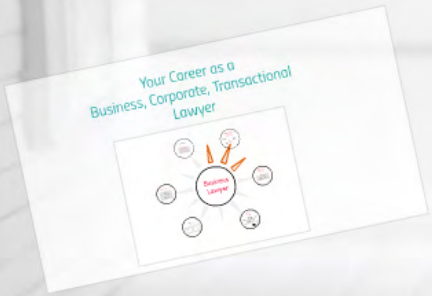


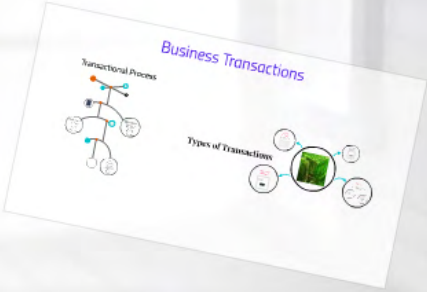
Business, Corporate and Transactional Practice

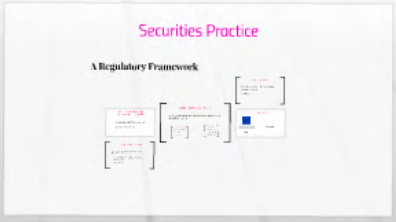


Business Practice
Lies In Agreements...
Not Disputes

How Do We Reconcile Competing Interests?







Securities Practice

A Regulatory Framework

A Regulatory Framework

Sales Exempt from Registration
Entities Exempt from Regulation

Private (not public) Sales Exempt

Small Issuers Exempt

Sales of Securities: '33 Act

Security? Investment in a Common Enterprise with an Expectation of Profit

Sales to Public Require Registration...Registration Requires Review

The Prospectus

Overall Theory and Players

An integrated web of federal and state laws designed to protect the public from fraud.

The Players

Securities and Exchange Commission

State Regulators

Private Lawsuits

The Theme

Review of Offerings

The Investing Public Can Assume Risks Disclosed to Them

Reporting: '34 Act

Entities Which Have Sold Securities Report on Activities

Quarterly Earnings Reports

Annual Reports

Enforcement

Indiana Securities Division

Civil

Criminal

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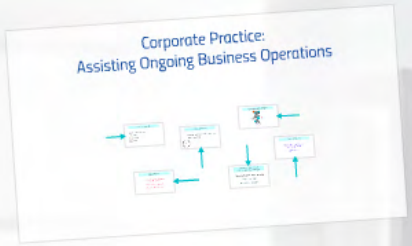
Securities Practice

A Regulatory Framework

Business, Corporate and Transactional Practice



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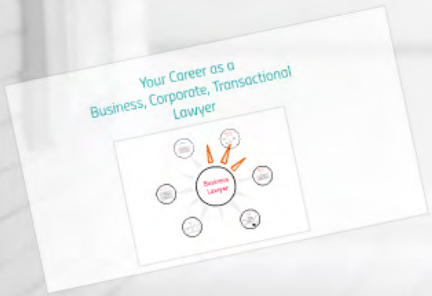
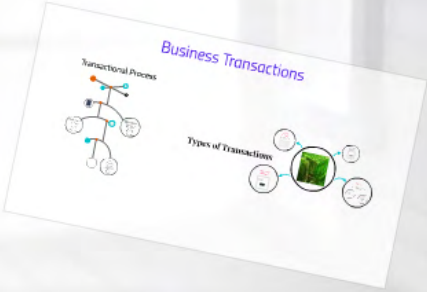
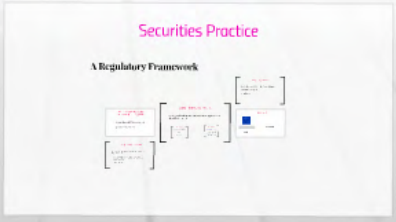
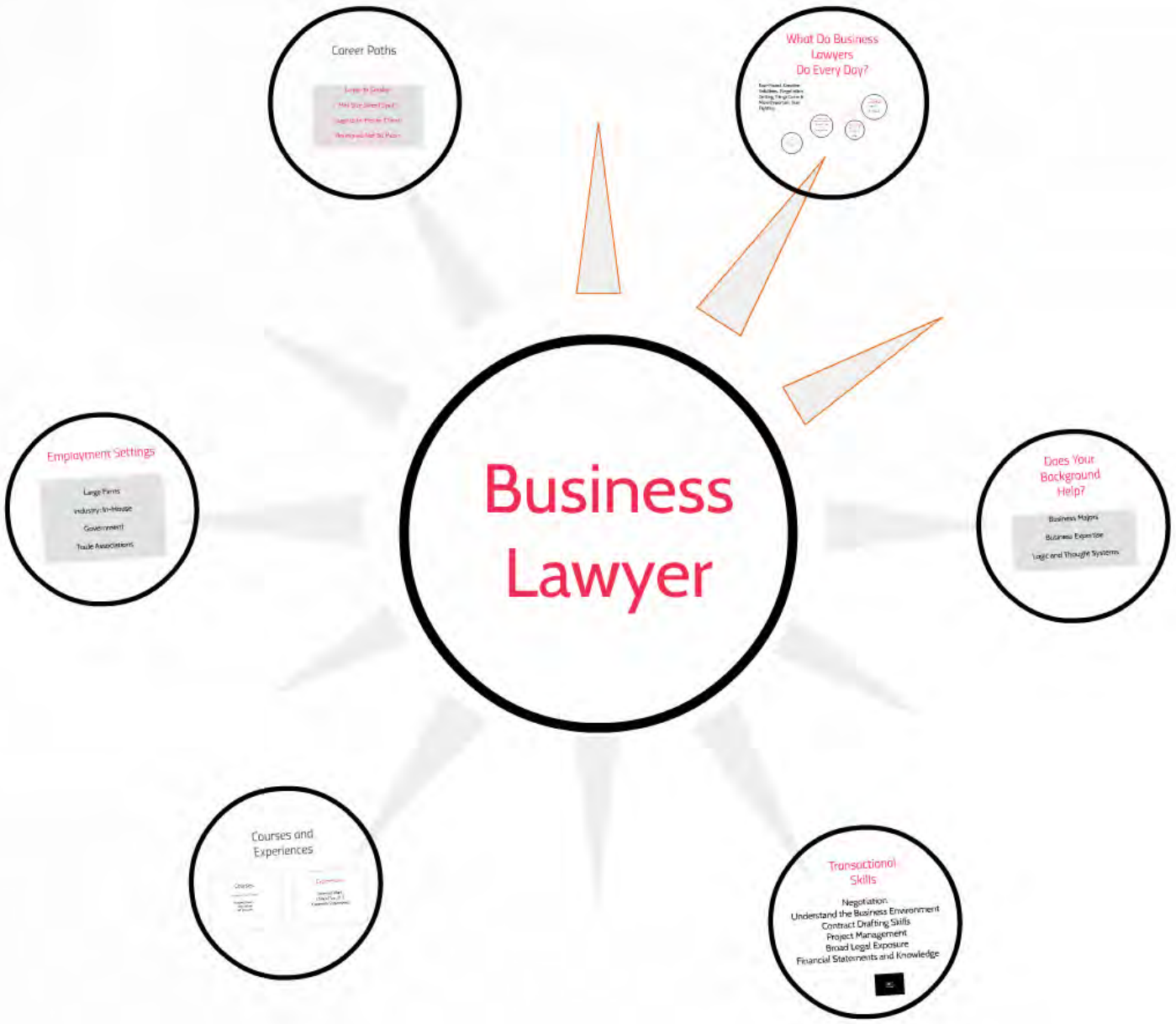






Your Career as a Business, Corporate, Transactional Lawyer


Career Paths
What Do Business Lawyers Do Every Day?
Employment Settings
Large Firms
Industry: In-House
Government
Trade Associations
Business Lawyer
Does Your Background Help?
Business Majors
Business Expertise
Logic and Thought Systems
Courses and Experiences
Transactional Skills
Negotiation
Understand the Business Environment
Contract Drafting Skills
Project Management
Broad Legal Exposure
Financial Statements and Knowledge

What Do Business Lawyers Do Every Day?

Fast-Paced...Creative Solutions...Negotiation... Getting Things Done Is More Important than Fighting

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Look for
Creative Solutions
Two Sides...Shared Objective...
Win/Win

Drafting and Administer Contracts

A Different Kind of Writing

Precision

Working Relationships

What Do Business Lawyers Do Every Day?

Fast-Paced...Creative Solutions...Negotiation... Getting Things Done Is More Important than Fighting

Transactional Design And Structure Advice Across Industry Lines

"Deal" Lawyers Know Deals

Structures
Tools
Negotiation

Integrate Multiple
Legal Disciplines
on Behalf of the Client

Within a Deal

General Counsel:
Inside and Outside

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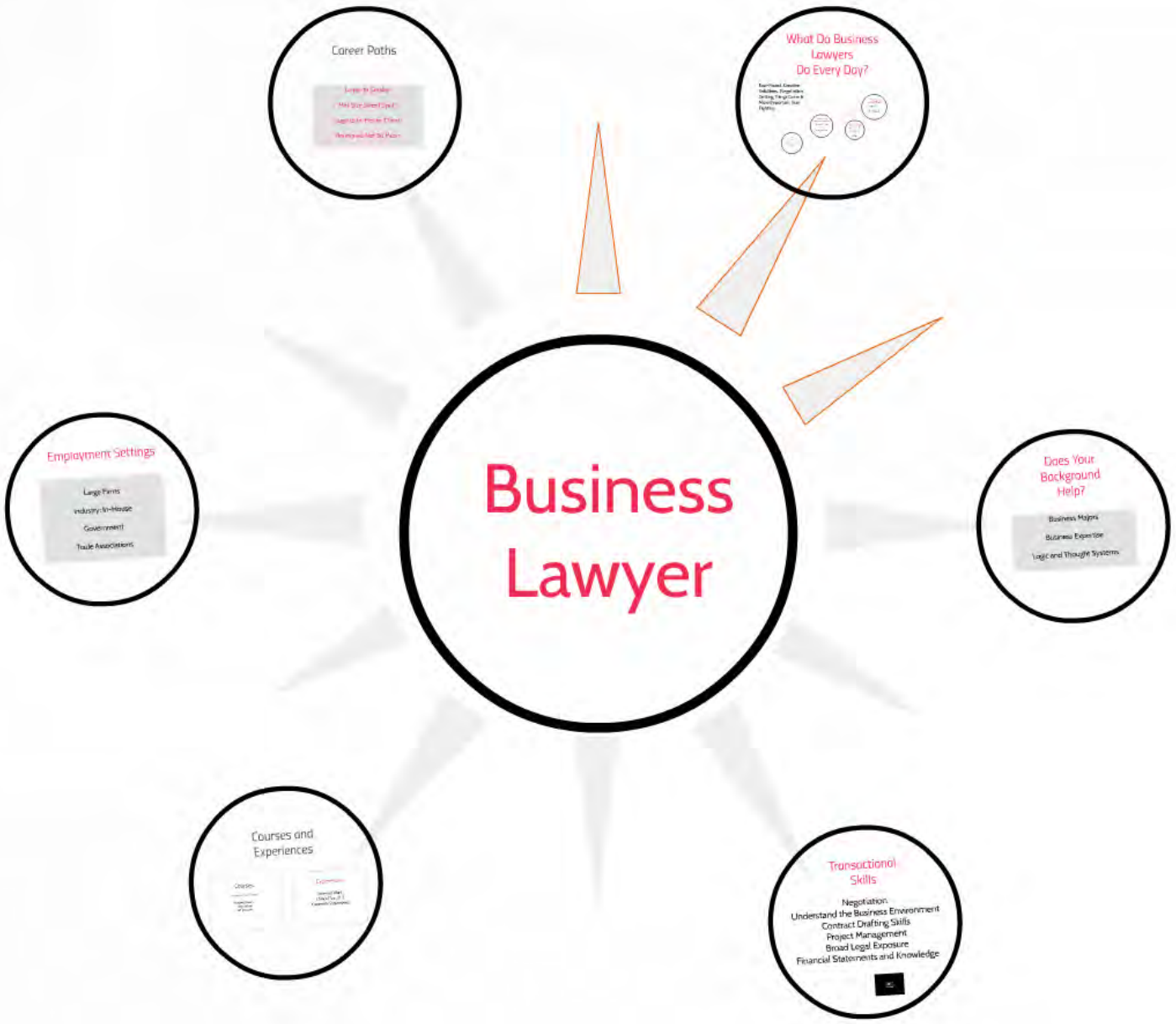
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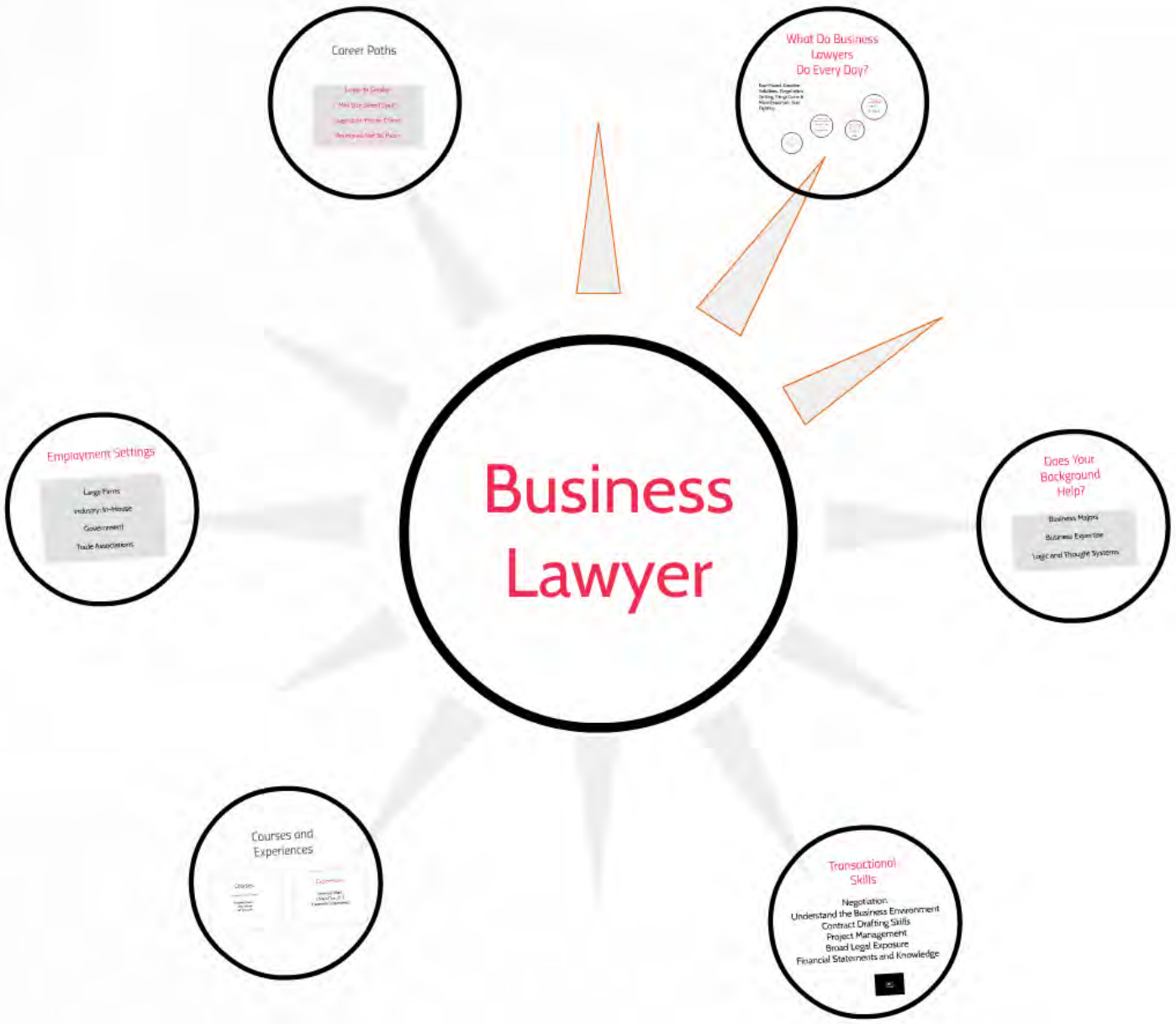
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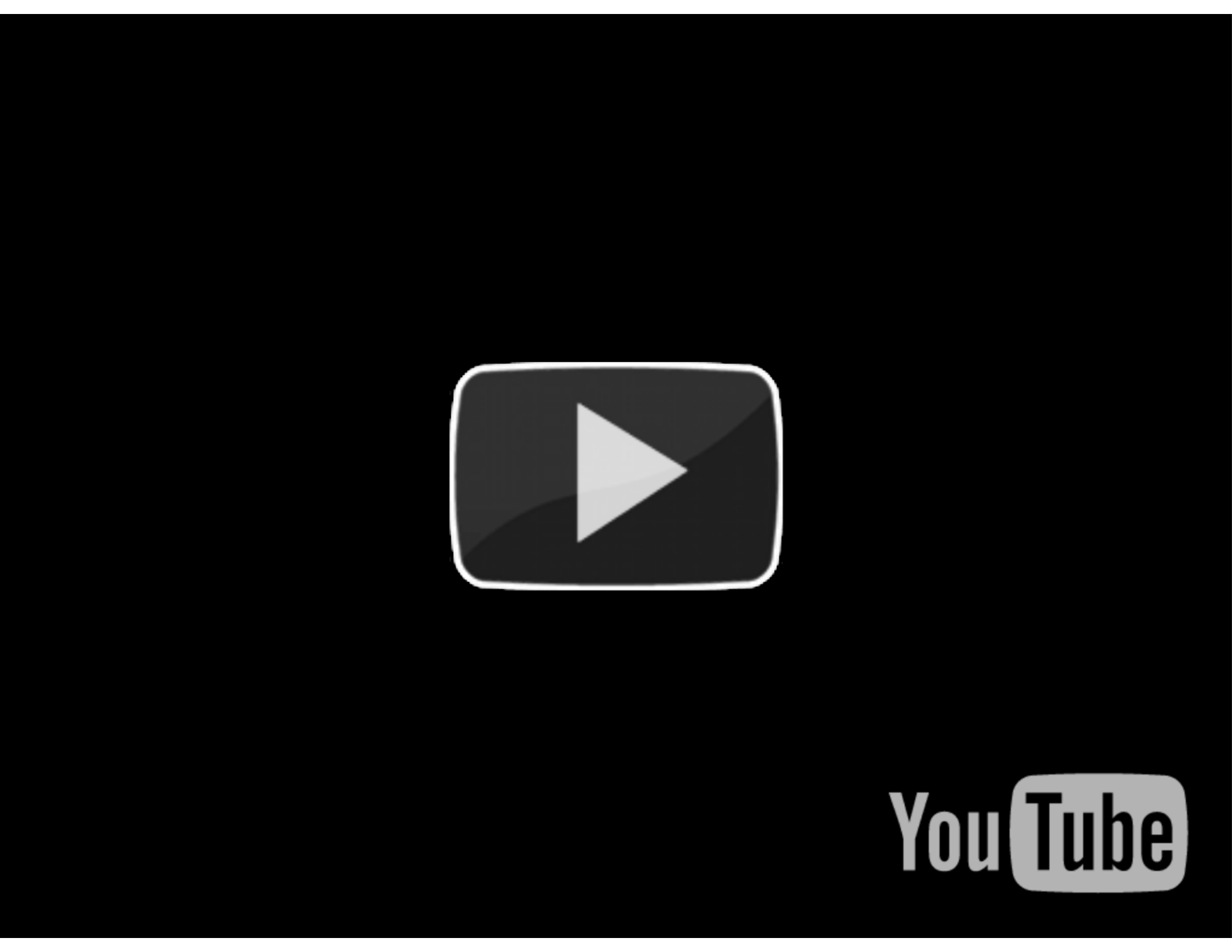
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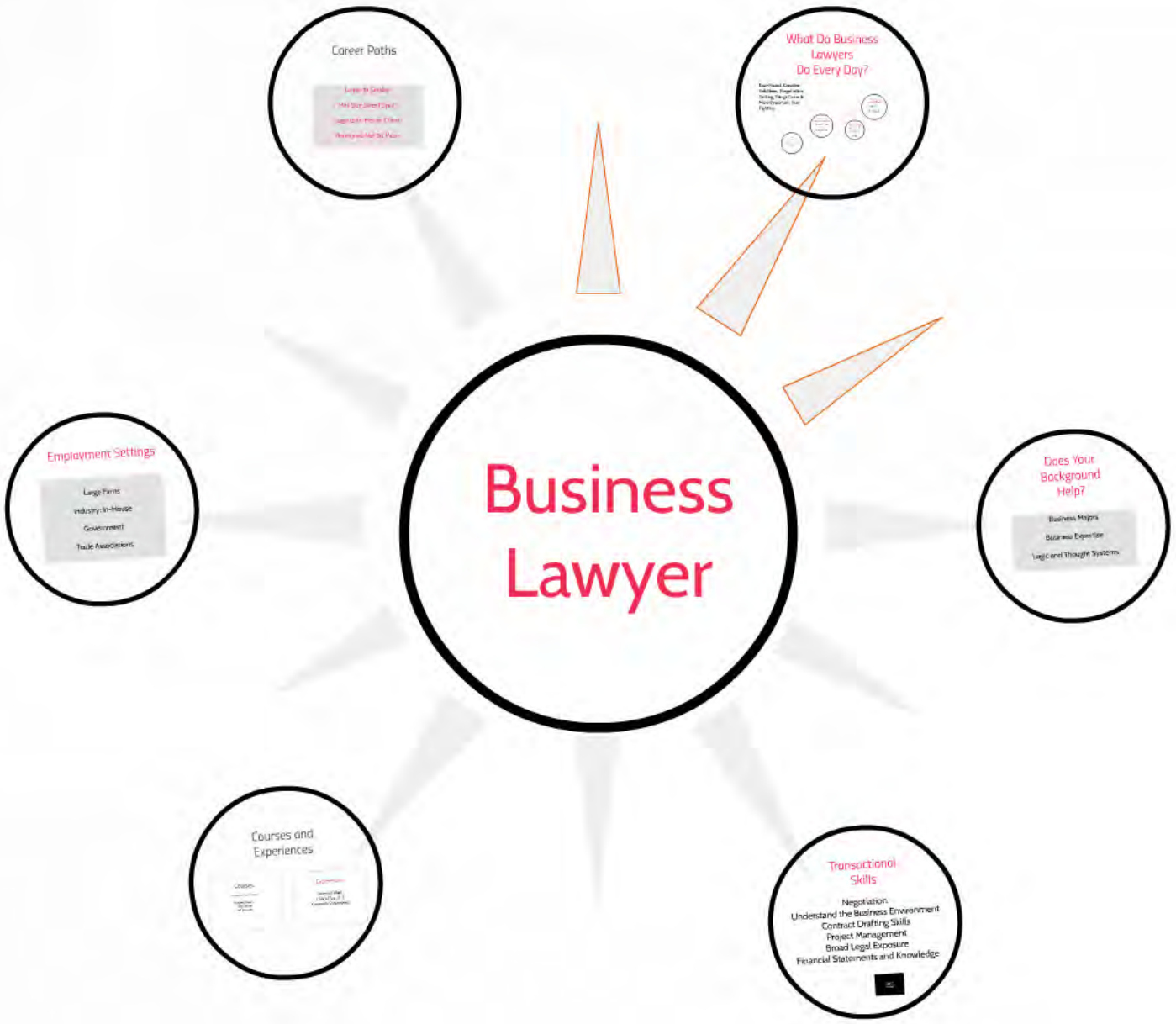
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Courses and Experiences

Courses

Business Law Program

Business Basics
Negotiation
Trial Advocacy

Experiences

Summer Work
Clinics (Tax...IP...)
Corporate Externships

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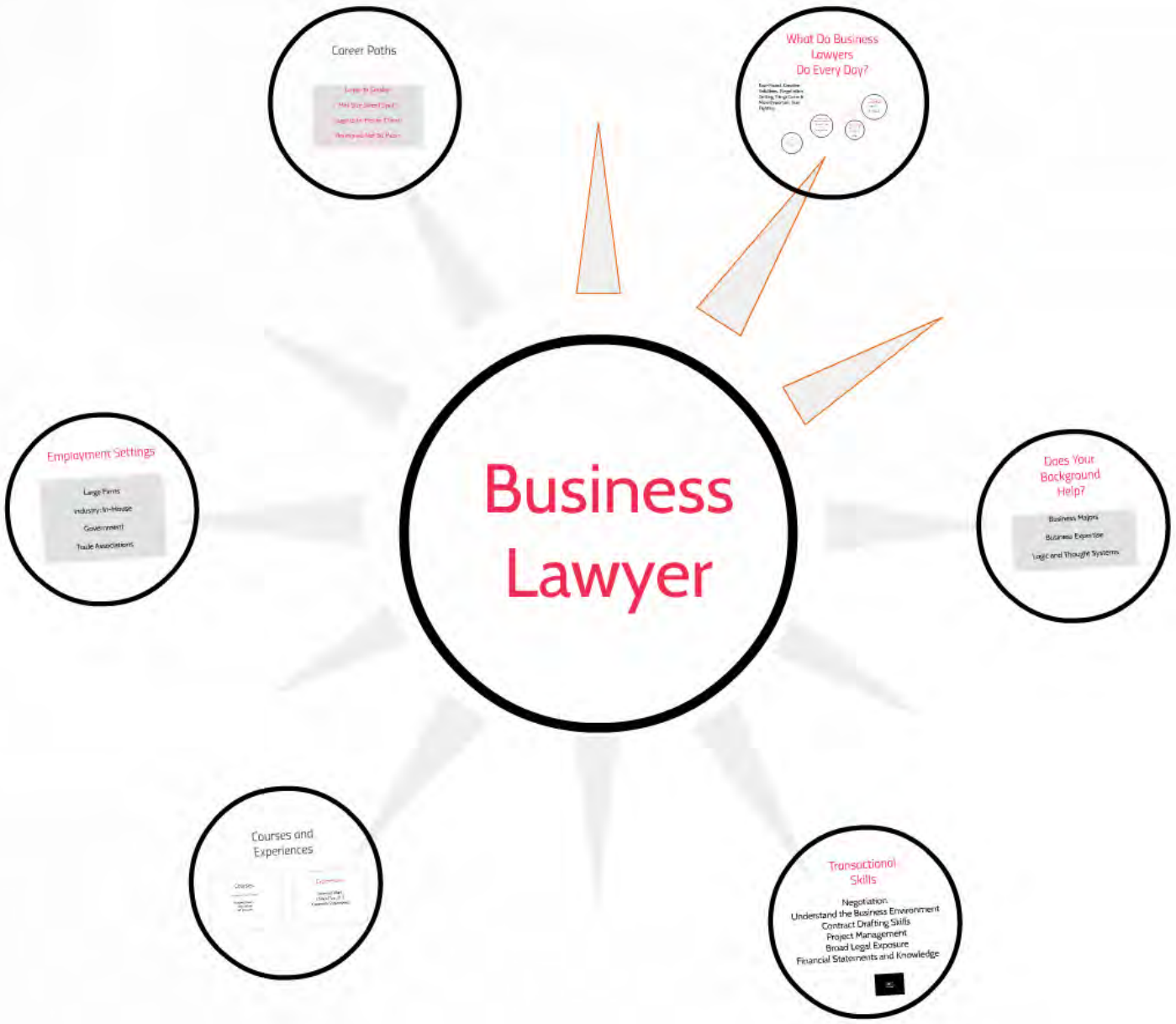
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Large Firms

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Government

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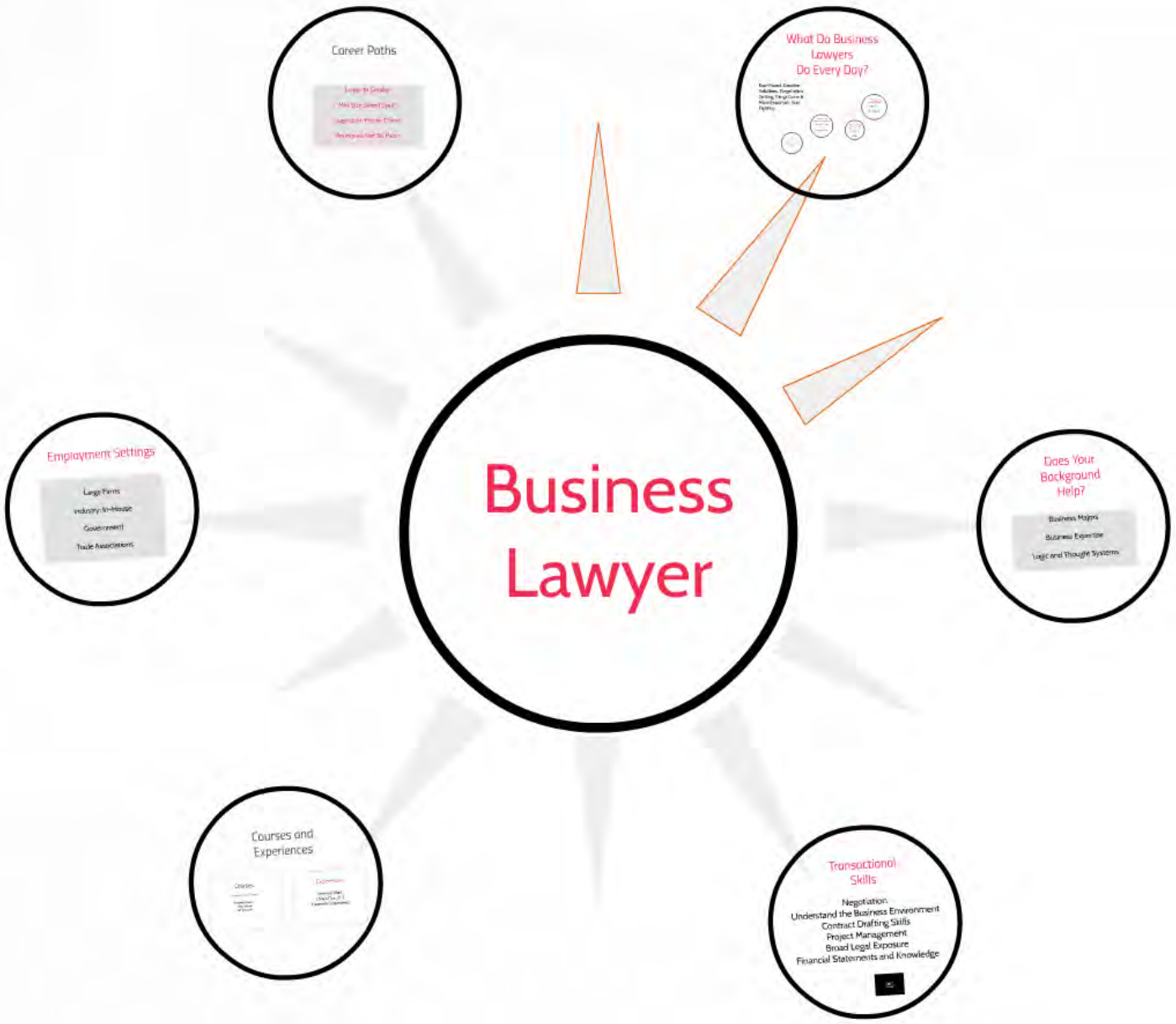
Career Paths

Larger to Smaller

Mid-Size Sweet Spot?

Large to In-House (Client)

Boutiques: Not So Much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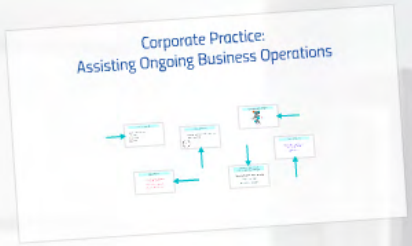

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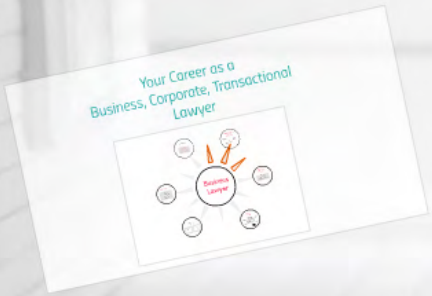

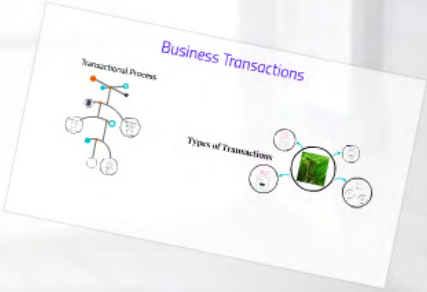

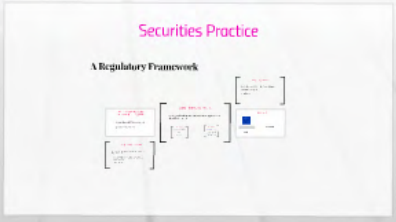

Professionalism in Transactional Practice

Winning or Not?

A Common View

Maximize Benefits

Sharing the Load?

Disclosing Hidden Defects

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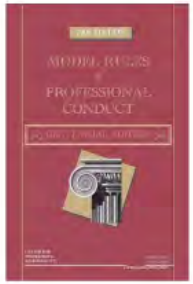

Disclosing Hidden Defects

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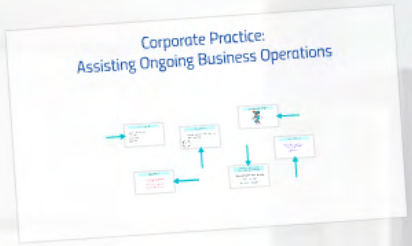
Business, Corporate and Transactional Practice



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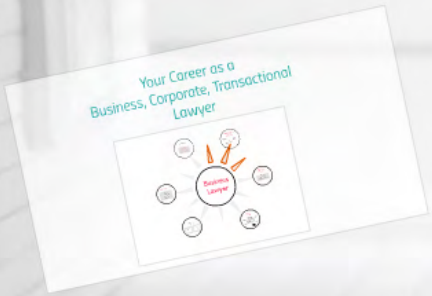

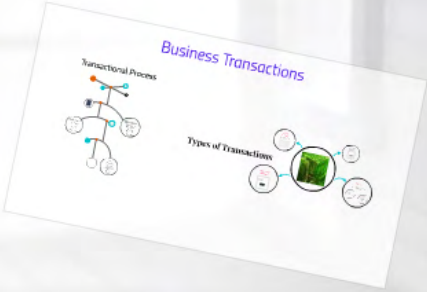

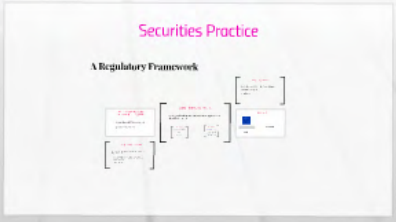

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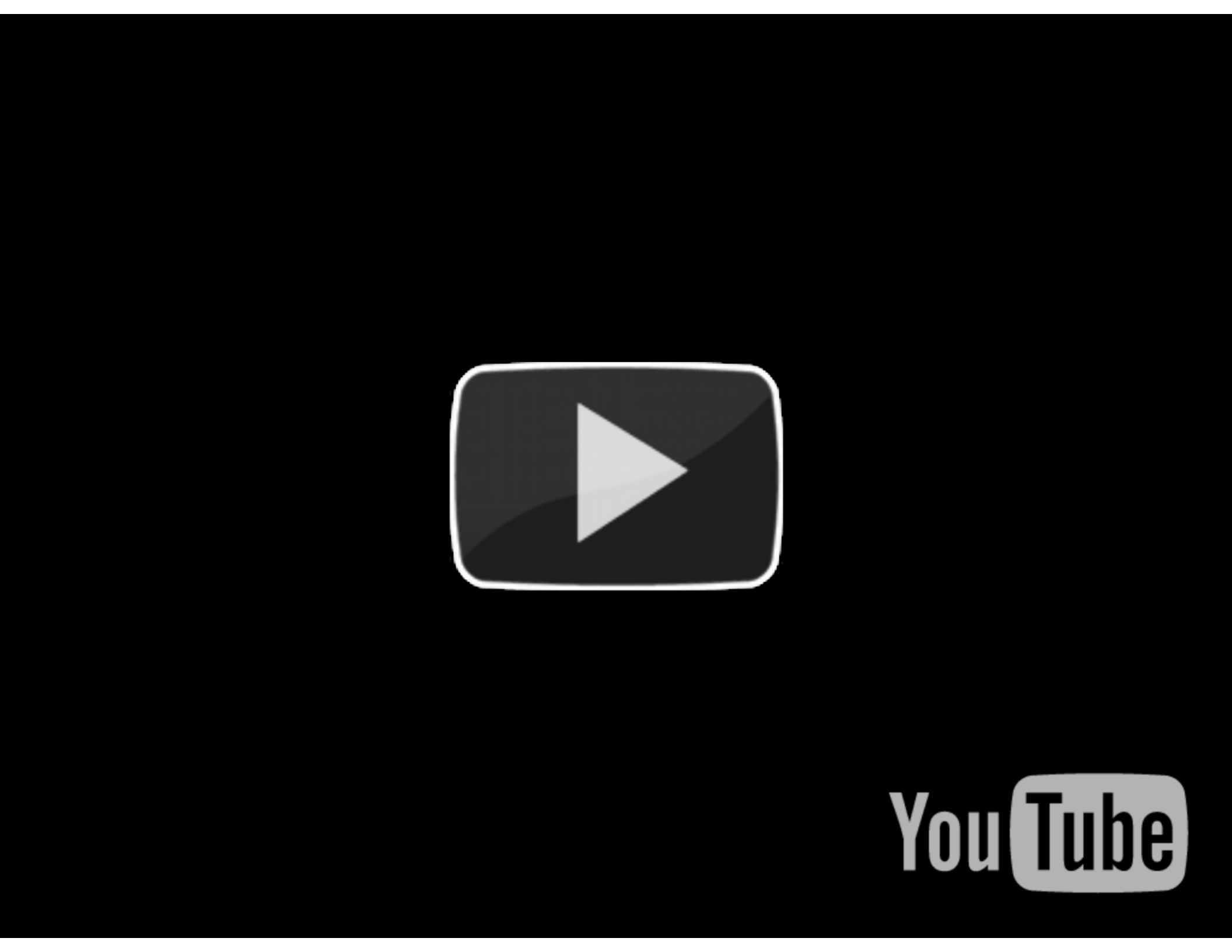
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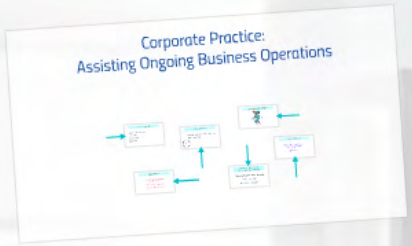

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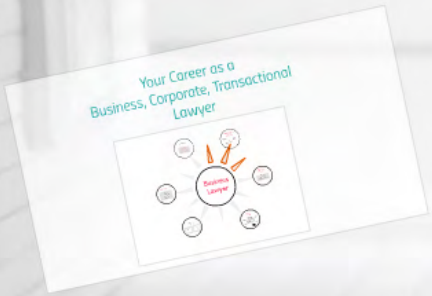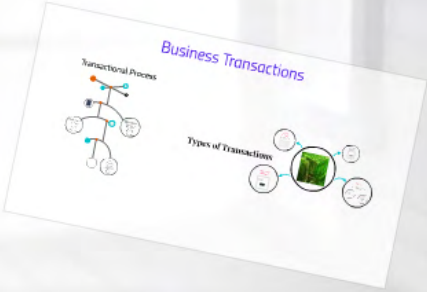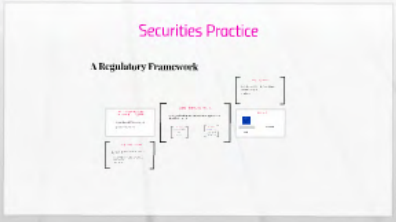
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