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# Structuring Venture Capital, Private Equity, and Entrepreneurial Transactions

*Jack S. Levin*  
*Kirkland & Ellis LLP*

2010



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# Structuring Venture Capital, Private Equity, and Entrepreneurial Transactions

2010 Edition

**Jack S. Levin**

*Kirkland & Ellis LLP*

**Special Editors**

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*Georgetown University Law Center*

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Professor Ginsburg, the finest tax lawyer and human being of all time, passed away on 6/27/10.

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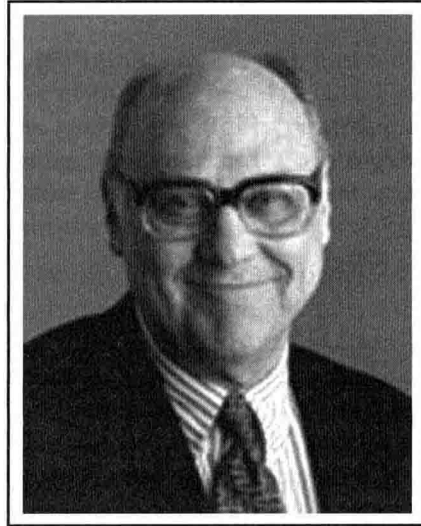
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## **In Memoriam**



**Martin D. Ginsburg**

This edition is dedicated to Professor Martin D. Ginsburg, the finest tax lawyer and human being of all time, who passed away on June 27, 2010.  
Marty will be dearly missed by all who knew him, especially by Jack Levin.

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# About the Author

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**Jack S. Levin**, disguised as a professional corporation, is a senior partner in the international law firm of Kirkland & Ellis LLP, where it is widely rumored that the professional corporation does more of the work than does Mr. Levin.

In person Mr. Levin has also long been a lecturer at the University of Chicago Law School and the Harvard Law School, teaching a course on *Structuring Venture Capital, Private Equity, and Entrepreneurial Transactions*, indoctrinating thousands of young minds in the devious art of combining complex business, legal, tax, and accounting concepts.

Mr. Levin graduated summa cum laude from the Northwestern University School of Business in 1958, where unlike Professor Ginsburg—whose meager lifetime accomplishments are painstakingly chronicled under Special Editors below—Mr. Levin was regrettably not on the golf team. In May 1958 Mr. Levin won the Illinois Gold Medal on the CPA examination, an accomplishment secretly admired by Professor Ginsburg.

In 1961 Mr. Levin graduated summa cum laude from the Harvard Law School, ranking first in a class of 500, and served as Recent Case Editor of the Harvard Law Review, accomplishments that required no athletic prowess at all.

After graduation Mr. Levin served as law clerk to Chief Judge J. Edward Lumbard of the United States Court of Appeals for the Second Circuit and later as Assistant to the Solicitor General of the United States for tax matters under Archibald Cox and Thurgood Marshall, where he argued numerous cases to the U.S. Supreme Court and various Federal Courts of Appeals, while slowly developing the modest tennis game in which he still takes immodest pride.

Mr. Levin is co-author (along with Professor Ginsburg) of an exciting 5,000 page multi-volume treatise *Mergers, Acquisitions, and Buyouts* (Aspen Publishers), which they have updated and republished semi-annually since 1989, allowing Professor Ginsburg to claim credit for the many creative and few well written portions.

Mr. Levin is a frequent speaker at major tax institutes, Practising Law Institute programs, and ALI-ABA seminars, mainly in warm climates, and private equity/venture capital conferences, principally at ski resorts, and has authored more than 60 inspiring articles and book chapters on a variety of captivating tax, M&A, and private equity topics, although to the best of anyone's knowledge no one has ever read any of them.

In May 2000 the American Jewish Committee bestowed on Mr. Levin the Learned Hand Award for contributions to the legal profession and the community. Although disagreeing with AJC's selection, Professor Ginsburg nevertheless delivered a warm keynote address entitled *A Salute To Imperfection*, while Justice Ruth Bader Ginsburg, the family's better part, presented the award.

In December 2002 the Illinois Venture Capital Association gave Mr. Levin a lifetime achievement award for service to the private equity/venture capital industry, which was presented by Senator (now President) Barack Obama, an honor Professor Ginsburg questioned, only in small part because not invited to speak at the awards dinner.

## About the Authors

In May 2005 Chambers, running low on more distinguished attorneys, bestowed on Mr. Levin its global attorney lifetime achievement award, which was presented by U.K. Prime Minister Tony Blair's spouse at a black tie dinner in London attended by 800 cheering attorneys and their guests.

In November 2005 the Illinois Holocaust Museum and Education Center honored Mr. Levin with its Humanitarian of the Year award at a dinner attended by 1,200 paying guests. Frugally unwilling to become a paying guest, Professor Ginsburg boycotted the dinner but was reported to have remarked with surprise on the apparent dearth of Illinois humanitarians.

Mr. Levin is a member of the Illinois State Treasurer's Advisory Board on Technology Investing (2004–present), the American College of Tax Counsel, the American Jewish Committee's National Board of Governors as well as the Chicago Chapter's Board of Directors and Executive Committee, and the American Israeli Public Affairs Committee's Illinois State Council Executive Board.

Mr. Levin has testified before Congress on tax legislation, most recently in 9/07 to the House Ways & Means Committee on taxation of private equity funds.

Over past times Mr. Levin has also served as Advisor (on business and entity taxation) to Pres. Bush's 2005 Tax Reform Panel, a member of the Harvard Board of Overseers Committee for Visiting the Harvard Law School, Chair of the ABA Subcommittee on Corporate Distributions, Chair of the Chicago Federal Tax Forum, Chair of Harvard Law School Fund Raising Drives in 1986, 1991, 1996, 2001, and 2010–11 Mid-West co-chair of Harvard Law School's 2004–08 Capital Campaign, a member of Little, Brown and Company's and CCH's Tax Advisory Boards, a member of the Tax Advisory Group to the American Law Institute's Federal Income Tax Project on Revision of Corporate Tax Laws, an Executive Committee member of the Chicago Bar Association's Taxation Committee, Chair of the Lawyers Division of the Chicago Jewish United Fund, president of the Birchwood Club, board member of the Mid-America Club, and, more important, for 13 years as Parliamentarian of the Winnetka Town Meeting (Winnetka, Illinois, being for the very few who do not know, the nation's model for honest and efficient government as described further below).

Through many patient years of practice and the selection of an extraordinary partner, Mr. Levin won the Kirkland & Ellis LLP doubles tennis tournament four successive times during the summers of 1987 through 1991, and it has been downhill ever since.

Overcoming a lifetime of fear, Mr. Levin some years ago at age 45 (through his professional corporation, in case of debilitating injury) took up downhill skiing, a sport he enthusiastically pursues shoulder-to-shoulder with a number of his private equity clients, who (unlike Mr. Levin) are professional risk takers.

While neither Mr. Levin nor Professor Ginsburg has ever achieved election to any public office, Mr. Levin's wife Sandy (the family's socially useful member and a bridge Silver Life Master) has at various times been elected President of the Winnetka Public School Board and a Trustee of the Winnetka Village Council. As Winnetka elected officials serve without monetary recompense and Sandy does not play bridge for money, Mr. Levin devotes most of his time to the remunerative practice of law, less to teaching, none to the professional tennis or skiing circuits.



## About the Authors

Jack and Sandy have four daughters, two with law degrees and three with MBAs, three sons-in-law, one with a law degree and two with MBAs, and ten grandchildren, one of whom has successfully graduated from grammar school.

## About the Special Editors

**Martin D. Ginsburg** is Professor of Law at Georgetown University Law Center in Washington, D.C. His professional corporation is of counsel to the firm of Fried, Frank, Harris, Shriver & Jacobson LLP.

Professor Ginsburg attended Cornell University, stood very low in his class, and played on the golf team. He graduated magna cum laude from Harvard Law School which, in those years, did not field a golf team.

Professor Ginsburg entered private practice in New York City in 1958. Although beloved by partners, clients, and opposing counsel, including Mr. Levin, he withdrew from full-time practice when appointed the Beekman Professor of Law at Columbia Law School. He moved to Georgetown University in 1980 when his wife obtained a good job in Washington.

In addition to Columbia and Georgetown, Professor Ginsburg has taught at New York University School of Law, Stanford Law School, the University of Leiden in Holland, the Salzburg Seminar in Austria, Harvard Law School, and the University of Chicago Law School.

In 1986, someone who probably prefers never to be identified endowed a Chair in Taxation in his name at Georgetown; no one appears willing to occupy the Ginsburg Chair, and it remains vacant. In 1993 the National Women's Political Caucus gave Professor Ginsburg its "Good Guy" award; history reveals no prior instance of a tax lawyer held to be a "Good Guy," or even a "Decent Sort."

Professor Ginsburg is co-author (along with Mr. Levin) of a multi-volume treatise *Mergers, Acquisitions, and Buyouts* (first published in January 1989 and currently updated and republished semiannually by Aspen Publishers), in which he claims to have written all the entertaining and intellectually challenging portions. He is a frequent speaker at tax seminars mainly in warm climates, and the author of a ghastly number of articles on corporate and partnership taxation, business acquisitions, and other stimulating things. Professor Ginsburg has served on many bar association and government advisory committees, managing in each case to perform no useful service at all. Perhaps in recognition of this extraordinary achievement, in 2006 the American Bar Association presented him a lifetime Distinguished Service Award.

Professor Ginsburg's spouse was a lawyer before she found better work. Their older child was a lawyer before she became a schoolteacher. The younger child, when he feels grumpy, threatens to become a lawyer.

Professor Ginsburg, the finest tax lawyer and human being of all time, passed away on 6/27/10.
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## About the Authors

**Donald E. Rocap** is a partner in the Chicago office of Kirkland & Ellis LLP, where he specializes in the tax aspects of complex transactions. He is a lecturer at the University of Chicago Law School.

Mr. Rocap received his undergraduate degree from Duke University and his J.D. from the University of Virginia Law School, where he was a member of the Order of the Coif and, more noteworthy, a member of the Law School's championship soccer team. Prior to joining Kirkland & Ellis LLP, Mr. Rocap was Deputy Tax Legislative Counsel (Regulatory Affairs) at the U.S. Treasury Department's Office of Tax Policy. Since joining Kirkland & Ellis LLP, he has studiously avoided playing competitive tennis with Mr. Levin.

**Russell S. Light** is a partner in the New York office of Kirkland & Ellis LLP where he concentrates his practice on the tax aspects of mergers, acquisitions, buyouts, and venture capital investing, on tax planning for public and closely held entities, and on transactions involving real estate investment trusts, and also represents taxpayers in complex tax controversy matters in court and before the IRS. Mr. Light received Master of Engineering and Bachelor of Science degrees from the Massachusetts Institute of Technology and a J.D. degree from the University of Chicago Law School, where he graduated with High Honors and served as Managing Editor of the *University of Chicago Law Review*. Mr. Light is author, co-author, or contributor to several tax publications. Mr. Light would never even think of playing competitive tennis against Mr. Levin or competitive soccer against Mr. Rocap.

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### Structuring Start-Up Transaction

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