

M&A – SPRING 2018

LAW 6067 - 3 credits

Prof. Seth Chertok
Visiting Associate Professor
University of Florida Law School

Course Duration: Monday, Jan. 8 – Monday, Apr. 23

Cancelled Classes: Monday, Jan. 15 (MLK day) + week of March 5-9 (spring break)

Class Meeting Times and Place: Mondays + Wednesdays at 3:00 – 4:15 pm in Room 355D – BUT COURSE SCHEDULE IS SUBJECT TO CHANGE, IF NEEDED!

Office Hours: Friday afternoons – to be decided

Exam Date: Tuesday, May 8, at 1:00 PM

Required Text: William J. Carney, *Mergers and Acquisitions* (3rd ed. 2011)

Statutory Supplement: My version will be the latest version of: *Commentaries and Cases on the Law of Business Organizations, Statutory Supplement*, by William T. Allen, Reinier Kraakman and Guhan Subramanian, but you should feel free to use another if you so desire

Suggested Additional Readings (all on reserve in the library):

- Reinier Kraakman, et al., *The Anatomy of Corporate Law: A Comparative and Functional Approach* (3rd ed. 2017) (*my favorite theoretical corporate law treatise*)
(available as e-book from Oxford University Press - <http://uf.catalog.fcla.edu/permalink.jsp?20UF035138809>)
- Charles M. Fox, *Working with Contracts: What Law School Doesn't Teach You* (2d ed. 2008) (*for students interested in how real lawyers would draft corporate contracts – useful to hit the ground running as corporate associates*)
(available as e-book from Bloomberg, w/ password - <http://uf.catalog.fcla.edu/permalink.jsp?20UF032817458>)

Contacting Prof. Chertok

You can reach me by e-mail at schertok@law.ufl.edu. If you have any questions about the material, I encourage you to please either e-mail me, ask me questions after class or drop by my office hours.

I will work with you all to set up a mutually convenient time for office hours. My office is in 312H across from the Tax Office. If you need to see me outside of office hours, please send me an e-mail so that we can schedule an appointment.

Welcome to M&A. I hope that you will all enjoy the semester as much as getting one step closer to becoming excellent corporate lawyers!!!

About M&A

Course Overview

The central question in corporate law is, from an internal corporate governance perspective, how to make the American corporate system successful, for both the shareholder owners of the corporation, and the broader society. The answers, obtained primarily from a mix of state and federal statutory and case law, derive primarily from our understanding of economics, and the ethical issues relating to corporate fiduciaries managing others' property.

This M&A course is meant to be a class in advanced corporate governance law, which will focus on advanced M&A topics only lightly touched upon in the basic Corporations class.

Course Objectives

General thinking skills

- Learn to piece together the individual “trees” that we study to develop a compass to find your own “stars”
- Understand the interrelationships of the different M&A topics that we study, and how you might apply those interrelationships to novel problems in law and business, and on an exam
- Improve critical thinking skills, so that you will have the intellectual foundation to quickly learn additional business law areas as well as new areas, beyond business
- Develop comparative knowledge, skills, and attitudes that improve inter-cultural competence
- Learn to find ex ante solutions for clients – in short, learn how to counsel corporate clients

Corporate law skills

- Read, understand, apply and strategize about how to proceed in the face of Delaware and MBCA corporate law statutes and cases, which are essential for corporate lawyers, like physicians that need to understand physiology and pathology, i.e. the law of the body, to diagnose and solve problems
- Learn how to evaluate the theoretical soundness of corporate law, in the light of its purposes, and think about how the law might change in relation to other countries' corporate law purposes
- Master the higher-level principles prized by senior corporate counselors - the federal securities, plus state corporate law corporate governance rights, duties and responsibilities of those who are part of the corporation (shareholders, controlling shareholders, boards, executives and stakeholders), in the face of corporate M&A transactional decision making

M&A law skills

- “Act I” – Board “takeover defense” issues:
 - *The Unocal doctrine* – board powers and duties, when the corporation “defends” against hostile takeovers – shark repellents, poison pills, stock repurchases, white knights, etc.
 - Insurgent shareholders - counter-tactics against the board’s “takeover defenses” – proxy fights
- “Act II” - Board “sale” issues:
 - *The Revlon/Time/Omnicare doctrine* – board “sale” + “takeover defense” powers and duties, in M&A “sale” situations – takeover versus non-takeover contexts
- Controlling shareholder “sale” issues:
 - Controlling shareholder decisions to sell, or to oppose deals that benefit minority shareholders
 - Board rights and duties with respect to pushing through or opposing sales, against the interests of controlling shareholders
 - Cleansing with “process” suspect transactions when controlling shareholders are involved – differential consideration, freeze-outs, on both sides of the transaction, etc.

Grading and Testing

Course Grading

The projected weight of each of the components of your Course Grade is as follows:

	Weighting
Class Participation	Roughly 9-14% (<i>though I reserve the right to make a slightly different adjustment</i>)
Torts Final	Roughly 86-91%

This class adheres to UF's posted grading policy:

Letter Grade	Point Equivalent
A (Excellent)	4.0
A-	3.67
B+	3.33
B	3.0
B-	2.67
C+	2.33
C (Satisfactory)	2.0
C-	1.67
D+	1.33
D (Poor)	1.0
D-	0.67
E (Failure)	0.0

Further information for UF grading policies for assigning points can be found at:

<https://catalog.ufl.edu/ugrad/current/regulations/info/grades.aspx>

Testing Objectives

The goal of reading the leading cases together with the notes is to help you paint a picture of the Torts field, seeing the whole “forest” apart from just individual “trees”, so to speak. In preparation for the exam, the most important thing for you to understand is how all aspects of the field that we cover in class work as a whole, as instruments of an orchestra, or organs of a super-organism. One of the key differences between class preparation and exam taking is that in class, we will discuss some particular concept within the field, while on an exam, you will be responsible for knowing not just the separate pieces, but for understanding the field as a whole, like a shortsighter with naked eyes versus a farsighter with binoculars.

A good lawyer needs to understand both the trees and the forest in order to navigate through the law, as all experts in every field. As a law professor, I will help you build the toolbox that you will need to understand both and see as much under your nose as on the horizon. However, it will take hard work on

your part to sail through the sea. A famous Chinese saying reads: “The sea of knowledge is boundless, and trudge through it with hard rowing of your boat.” Good luck to all your voyages!

More succinctly, I basically teach what I teach - nothing more nor less. The key is to understand the most important things, and whittle everything down to an essential form that makes sense to you, which you can use to explain, analyze and solve problems.

About the Exam

1. The Exam is limited open-book. **You are allowed only to use a 25-page single sided outline with regular size pages, with anything you want written on it in any size font that you choose (if you stay within the page limits, you are permitted to bring in Prof. Chertok’s suggestions about exam taking, etc.).** The outline can be flagged and have index tabs, etc. **All other reference materials are prohibited, including, without limitation, other notes, casebooks, hornbooks or treatises.**

2. **The Exam typically consists of (A) a Fact Pattern, and (B) and one comprehensive Question about the Fact Pattern:**

“Considering good policy, economics theory and business acumen, IDENTIFY and ANALYZE the corporate and securities law issues pertaining to all relevant parties in this fact pattern. The State of Professoria is open to the corporate and securities law state and federal legal principles that you have studied in America, and even foreign jurisdictions. The company charter may or may not have an exculpation clause, so feel free to address how your analysis would be different with or without an exculpation clause.”

3. **Points on the Exam will particularly be awarded for excellent ISSUE SPOTTING and ANALYSIS, in the light of good policy, economics theory and business acumen, etc.!** While an excellent answer will be a comprehensive and deep answer, you will likely receive partial points if you are able to answer part of the IRAC formula.

Other UF Policies

Honesty Policy

UF students are bound by The Honor Pledge which states, “We, the members of the University of Florida community, pledge to hold ourselves and our peers to the highest standards of honor and integrity by abiding by the Honor Code. On all work submitted for credit by students at the University of Florida, the following pledge is either required or implied: ‘On my honor, I have neither given nor received unauthorized aid in doing this assignment.’”

The Honor Code (<http://www.dso.ufl.edu/sccr/process/student-conduct-honor-code/>) specifies a number of behaviors that are in violation of this code and the possible sanctions. Furthermore, you are obligated to report any condition that facilitates academic misconduct to appropriate personnel. If you have any questions or concerns, please consult with Prof. Chertok.

Class Attendance, Make-Up Exams, Etc.

Per ABA requirements, please attend all classes, unless you e-mail me in advance with a legitimate excuse. “Requirements for class attendance and make-up exams, assignments, and other work in this course are consistent with university policies that can be found at:

<https://catalog.ufl.edu/ugrad/current/regulations/info/attendance.aspx>

ABA Standard 310 Policy

Students should expect to spend, on average, approximately two hours preparing for every hour of class. It is expected that you will spend time preparing the Q&A in the Pre-Class Slides, as well as the readings, all per the Syllabus.

Disability Policy

Students with disabilities requesting accommodations should first register with the Disability Resource Center (352-392-8565, www.dso.ufl.edu/drc/) by providing appropriate documentation. Once registered, students will receive an accommodation letter which must be presented to Student Affairs (Dean Rachel Inman). Students with disabilities should follow this procedure as early as possible in the semester. Please don't e-mail your request to Prof. Chertok, to preserve student anonymity.

Online Course Evaluations Policy

Students are expected to provide feedback on the quality of instruction in this course by completing online evaluations at <https://evaluations.ufl.edu>. Evaluations are typically open during the last two or three weeks of the semester, but students will be given specific times when they are open. Summary results of these assessments are available to students at <http://evaluations.ufl.edu/results/>.

Technical Issues

If you have technical problems, please contact the UF Help Desk at <http://helpdesk.ufl.edu>

Wellness

If you or a friend is in distress, please contact umatter@ufl.edu or 352-392-1575 so that a team member can reach out to you or your friend.

Syllabus

Preliminary Notes

- Reading assignments are supplemented with my own slides about the materials, which will be posted on the course portal – to prepare for each class, please work through the questions and problems in my slides, apart from the readings
- Please read all post-case casebook questions + notes + problems, if those items fall within the page ranges assigned below
- Section assignments below WILL NOT track how much we'll cover each class – estimate our pace, by preparing typically up to 60-65 slides in advance, per class

Class	Assignment
1	Introduction – skim p. 2-68 + Lesson 1 Pre-Class Slides
2	“Act I” – Board “Takeover Defenses”: <ul style="list-style-type: none">a. Introduction, skim p. 20-23; 62-65; 273-281 + Lesson 2 Pre-Class Slidesb. Unocal, p. 281-294 + Lesson 2 Pre-Class Slidesc. Contracting for Loyalty, p. 294-297 + Lesson 2 Pre-Class Slidesd. Shark Repellents, p. 315-318 + Lesson 2 Pre-Class Slidese. Seibert, p. 318-325 + Lesson 2 Pre-Class Slidesf. Blasius, p. 325-339 + Lesson 2 Pre-Class Slidesg. Proxy Fights, p. 339-343 + Lesson 3 Pre-Class Slidesh. Filling Vacancies on the Board, p. 343-344 + Lesson 3 Pre-Class Slidesi. Hollinger, p. 344-349 + Lesson 3 Pre-Class Slidesj. Poison Pills, p. 349-401 + Lesson 3 Pre-Class Slidesk. Staggered Boards, p. 401-403 + Lesson 3 Pre-Class Slidesl. Stock Repurchases, p. 403-427 + Lesson 3 Pre-Class Slidesm. White Knights, p. 427-438 + Lesson 3 Pre-Class Slides
3	“Act II” - Board “Sales”: <ul style="list-style-type: none">a. Van Gorkom – p. 501-517 + Lesson 4 Pre-Class Slidesb. Revlon – p. 517-527 + Lesson 4 Pre-Class Slidesc. Barkan – p. 527-537 + Lesson 4 Pre-Class Slidesd. Dollar – p. 537-543 + Lesson 5 Pre-Class Slidese. Time – p. 562-576 + Lesson 5 Pre-Class Slidesf. QVC – read 537 A.2d 34 + Lesson 5 Pre-Class Slidesg. Problems – p. 576-569 + Lesson 5 Pre-Class Slidesh. Omnicare, p. 659-683 + Lesson 5 Pre-Class Slides

- 4 Controlling Shareholder “Sales”:
- a. Sale Decisions, p. 706-707 + Lesson 6 Pre-Class Slides
 - b. Hollinger, p. 707-719 + Lesson 6 Pre-Class Slides
 - c. Orman, p. 719-730 + Lesson 6 Pre-Class Slides
 - d. Sales of Control / Emerson, p. 730-741 + Lesson 6 Pre-Class Slides
 - e. Freeze-outs / Weinberger, p. 815-828 + Lesson 7 Pre-Class Slides
 - f. Cleansing + Bypassing Weinberger:
 - a. Independent Committees, p. 828-831 + Lesson 7 Pre-Class Slides
 - b. Lynch, p. 831-840 + Lesson 7 Pre-Class Slides
 - c. Article, p. 840-843 + Lesson 7 Pre-Class Slides
 - d. Qualifications for Independence, p. 843-848 + Lesson 7 Pre-Class Slides
 - e. JQH, p. 848-856 + Lesson 7 Pre-Class Slides
 - f. Glassman, p. 857-863 + Lesson 7 Pre-Class Slides
 - g. CNX Gas, p. 863-876 + Lesson 7 Pre-Class Slides
 - h. Cogent, p. 877-883 + Lesson 7 Pre-Class Slides
 - g. Statutory Appraisal:
 - a. MBCA – Exclusivity of Appraisal / Grace Bros., p. 808-812 + Lesson 7 Pre-Class Slides
 - b. Appraisal Exceptions / Crawford, p. 812-815 + Lesson 7 Pre-Class Slides

Extra-class final review session – Prepare Final Practice Problem answer + work through Final Review Session Pre-Class Slides