

## **Law 7931: Taxation of Financial Instruments**

Credit Hours. 2

Course Prerequisites. This course has no prerequisites for LLM students. Other students may enroll with permission of the instructor.

Course Description. From the UF Website:

“This course covers the U.S. taxation of financial instruments, including debt instruments, options, futures, forwards, swaps, and other “derivatives.” Roughly the [first] half of the course is about debt instruments, beginning with an examination of interest and the time value of money and continuing with the tax consequences of issuing or holding a debt instrument that is issued or purchased at a price differing from the instrument’s face value.”

Course Objectives/Learning Outcomes.

Students successfully completing the course will gain an understanding of:

- The economics of and federal income tax rules applicable to debt instruments.
- The tax rules applicable to the holding and trading of non-U.S. currencies.
- The tax rules applicable to virtual currencies, such as Bitcoin.
- The tax rules applicable to many “derivative” transactions, including futures, forwards, swaps and contingent-payment debt instruments.
- The tax rules applicable to certain avoidance transactions, including wash sales, straddles and hedging transactions

More generally, a principal objective of the course is to understand the financial aspects of these arrangements as well as their tax aspects.

Required Materials.

IRC and Treasury Regulations. Peroni, Selected Federal Taxation Statutes and Regulations (2022-23 edition) (“Peroni”).

Texts. There is no required textbook to purchase for this course. Instead, we will read from portions of Bittker and Lokken, Federal Taxation of Income, Estates & Gifts (B&L). It is available on Westlaw:

Home > Secondary Sources > Tax > WG&L > Business Entities Treatises.

Slides. PowerPoint Slides from John Hull, Options, Futures and Other Derivatives (11<sup>th</sup> ed.) serve as background to some of the material as indicated on the schedule. The slides are available at no cost [here](#).

Financial Calculator. You should have and be able to use a financial calculator or an app, such as Excel, that enables you to calculate present and future values, amortization and other financial items. Note that there are many apps on line that perform some or all of these functions (e.g., <https://www.calculatorsoup.com/calculators/financial/present-value-cash-flows-calculator.php>).

### Statement on Workload.

Students should expect to spend, on average, at least two full hours preparing for every 55 minutes of class, and often more.

### Readings.

The attached schedule lists readings. In addition, from time to time you may need to read other Code or Regulations sections to understand the material.

### Problems.

A set of problems is typically assigned for class. These problems will be posted on the course's Canvas web page under the Assignments tab at least one week before the class for which they are due. You are required to prepare the problems for class. You are NOT required to turn in your answers. We will spend a significant portion of class time doing assigned problems.

### Attendance and Final Exam.

You are expected to attend class. It is strongly recommended, but not required, that you take notes by hand.

You are on call every class unless you notify me before class by email that you would like to pass. Each student may take one pass at no penalty during the semester without offering any reason ("free pass"). There is no need to let me know your reason for taking the free pass. If you believe that you need to pass more frequently or on an extended basis, please see me outside of class or email me. Students who are excused on the basis of a free pass are effectively present as visitors and may not participate in the discussion.

The final will be a limited open-book, in class exam of approximately three hours on a fixed date. The final will consist of multiple choice questions and possibly one or more essay questions.

Exam delays: The Law School policy on exam delays and accommodations can be found [here](#).

### Grading.

Grades will be awarded in accordance with the College of Law's posted grading policy (available at <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/academic-policies>). Grades are based primarily on performance on the final exam, but your grade may be adjusted upward or downward up to two steps (e.g., B to A-, or B+ to B-) based on class participation. In addition, unexcused absences or excessive passes can result in a reduction in your grade, and unexcused absences from more than six hours of class (i.e., three full class meetings) will result in your being disallowed from taking the final exam and receiving a grade of E for the course.

Letter grades correspond to grade points as follows:

Letter Grade	Point Equivalent
A (Excellent)	4.0
A-	3.67
B+	3.33
B (Good)	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

**Note that the mandatory Law School mean does not apply to LLM students.**

#### Office Hours.

Mon., 4:30 – 5:30 (in person in my office), and Wed. 3:20 – 4:20 (via Zoom except 4/5 and 4/12, which will be in person in my office). I strongly encourage you to see me if you have questions about the material. I am also happy to discuss any aspect of tax law or tax practice with you.

#### Course Policies.

1. Accommodations. Students requesting accommodation for disabilities must first register with the Dean of Students Office (<https://disability.ufl.edu/students/accommodations/>). The Dean of Students Office will provide documentation to the student, who must then provide this documentation to Student Affairs (Dean Rachel Inman) when requesting accommodation. You must submit this documentation prior to submitting assignments or taking the quizzes or exams. Accommodations are not retroactive. Therefore, students should contact the office as soon as possible in the term for which they are seeking accommodations.
2. University Policy on Academic Misconduct. Academic honesty and integrity are fundamental values of the University community. Students should be sure that they understand and comply with the UF Student Honor Code, available at: <https://www.dso.ufl.edu/%20sccr/process/student-conduct-honor-code>. Failure to comply can result in sanctions, as described in the UF Student Honor Code.
3. Netiquette: Common Courtesy. All members of the class are expected to follow rules of common courtesy in all email messages, threaded discussions and chats. They also are advised to adhere to the guidelines and rules set forth in the University's policy, available at <https://teach.ufl.edu/resource-library/syllabus/>. Students who consistently or intentionally fail to follow these rules may be subject to discipline, including but not limited to grade reduction and referral to the Law School or University for further disciplinary action.

4. Online Course Evaluation. 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 <https://evaluations.ufl.edu/results/>.

SCHEDULE

<b>Date</b>	<b>Unit</b>	<b>Topics</b>	<b>Readings</b>
Week 1	I II.A	I: Introduction: debt and derivatives  II.A: Interest, OID, dispositions of debt instruments	Unit I: B&L ¶¶53.1, 53.2, 57.1; Hull slides: Chapters 1, 4 (slides 1-16 only)  Unit II: §§1272, 1273(a), (b), 1275(c), 6041(a), (c), (d) Reg. §§1.1272-1(a), (b)(1), (j) <i>Examples 1 &amp; 2</i> , 1.1273-1(b), (c)(1)(i), 1273-2(a) B&L ¶¶53.3—53.6
Week 2	II.A (cont'd)	Interest, OID and dispositions of debt instruments (cont'd)	§§61(a), 163(a), (e), (f), 1271, 1272, 1273, 1275 Reg. §§1.446-2, 1272-1, 1273-1 B&L ¶¶52.1.1—52.1.4, 53.3—53.6
Week 3	II.A (cont'd), B	Interest, OID and dispositions of debt instruments (cont'd); market discount	II.B: §§171, 1276-78 B&L ¶56.4
Week 4	II.C, D	Short-term obligations, stripped bonds, below-market loans	II.C: §§163(e)(2)(C), 1271(a), 1272(a)(2)(C) B&L ¶56.5  II.D: §§1281-83 B&L ¶56.6.1 <a href="https://www.newyorkfed.org/aboutthefed/fedpoint/fed42.html">https://www.newyorkfed.org/aboutthefed/fedpoint/fed42.html</a>  II.F.: §7872 B&L ¶¶55.1-55.5
Week 5	III.A	Foreign currencies	§§985-87, 988(a)-(c)(1)(C), (c)(2)-(5) B&L ¶¶74.1, 74.2, 74.6
Week 6	III.B	Virtual and crypto currencies	IRS Notice 2014-21 Rev. Rul. 2019-24 B&L ¶40.8.7 2020 NYSBA Tax Section Commentary on Hard Forks, Parts I-III.A. Omri Marian, “Law, Policy, and the Taxation of Block Rewards,” 175 <i>Tax Notes Federal</i> 1493 (June 6, 2022) Chamberlain, <i>Forking Belief in Cryptocurrency</i> , 24 <i>Fl. Tax Rev.</i> 651 (2021)
Week 7	IV	Short sales and related issues	§§1233, 1259 Reg. §1.1233-1 Rev. Rul. 2003-7 <a href="https://www.sec.gov/investor/pubs/regsho.htm">https://www.sec.gov/investor/pubs/regsho.htm</a> B&L ¶¶57.7, 57.8.2

SCHEDULE

Week 8	V	Options	<p>§§1234, 1234A, 1256, 1259  <u>Fed. Home Loan Mortgage Corp. v. Comm’r</u>,  125 TC 248 (2005)  Rev. Rul. 58-234  B&amp;L ¶57.3  Hull slides: Chapter 8</p>
Week 9	VI	Futures and forwards	<p>§§1234B, 1256, 1258  <u>McKelvey’s Est. v. Comm’r</u>, 906 F.3d 26 (2<sup>nd</sup>  Cir. 2018)  Rev. Ruls. 2008-1, 2003-97  Notice 2008-2  B&amp;L ¶¶57.2, 57.8  Hull slides: Chapters 2, 5, 6</p>
Week 10	VII	Notional principal contracts, contingent payment debt instruments	<p>§1260  Reg. §1.446-3  <u>Bank One Corp. v. Comm’r</u>, 120 TC 174  (2003) (Part II only)  Notice 2002-35, Notice 2006-9  B&amp;L ¶57.4  Hull slides: Chapter 7</p>
Week 11	VIII.A VIII.B	Contingent payment debt instruments, wash sales, straddles	<p>Unit VIII.A: Reg. §§1.1275-4(a), (b), (e)  Rev. Rul. 2002-31  Notices 2002-31, 2008-2  B&amp;L ¶ 56.1</p> <p>Unit VIII.B: §§1091, 1223(3)  Reg. §§1.1012-1(c), 1.1091-1, -2  Rev. Rul. 2008-5  B&amp;L ¶44.8</p>
Week 12	VIII.C	Straddles	<p>§§263(g), 1092  Reg. §§1.1092(b)-1T, -2T(a), 1.1092(d)-1  <u>Cemco Investors, LLC v. U.S.</u> 505 F.3d 749  (7<sup>th</sup> Cir. 2008)  Rev. Rul. 88-31  B&amp;L ¶57.6</p>
Week 13	IX	Hedging transactions	<p>§§1221(a)(7), (b)(2)  Reg. §§1.446-4, 1.1221-2  <u>Arkansas Best Corp. v. Comm’r</u>, 485 U.S. 212  (1988)  Notice 2004-52  B&amp;L ¶57.5  Hull slides: Chapter 3</p>