**UNIVERSITY OF FLORIDA LEVIN COLLEGE OF LAW**

**CORPORATE LITIGATION**

**SPRING 2022**

Vice Chancellor Sam Glasscock III – Delaware Court of Chancery

Jason Hilborn – Deputy Solicitor General, Florida Office of the Attorney General (jhhilborn@gmail.com)

**MEETING TIME AND ATTENDANCE POLICY**

Thursday, January 13 (1pm–4:50pm); Friday, January 14 (9am–3:50pm); and Saturday, January 15 (9am–12:50pm)

Given the very short time that we have together, students are expected to attend all class sessions to receive credit for the course, absent good cause. Attendance will be taken in each class session.

**COURSE DESCRIPTION**

This course will explore corporate litigation in the Court of Chancery in the context of mergers, acquisitions, and other transactional structures.

The course is divided into four parts. Part I will introduce the course material, beginning with a discussion of Delaware’s place in the world of corporate litigation and then turning to a review of the fundamental corporate-law principles underpinning all the cases we will discuss.

Part II will focus on expedited M&A litigation. This will include the mechanics of suing to challenge a deal, together with the Court’s role in resolving preliminary and logistical issues, before turning to the substantive law governing motions for expedition and motions for preliminary or permanent injunctive relief. Finally, we will discuss the plaintiff’s role in corporate governance and recent issues in class-action settlements.

Part III will focus on derivative litigation and statutory proceedings, in theory and in practice. We will discuss high-profile company catastrophes and the role of derivative litigation in that context, and then turn to the complex derivative puzzles created by transactions and corporate structures. We will also introduce you to the assortment of specialized summary legal proceedings in the Court of Chancery made available to stockholders of Delaware corporations under Delaware’s corporate code, the Delaware General Corporation Law.

Finally, in Part IV, we will discuss another route to redress in connection with M&A transactions, one that has attracted much attention in recent years: appraisal. We will spend time deconstructing the appraisal statute to understand who can pursue appraisal and how. We will also discuss the rise of appraisal arbitrage and explore the role of the merger price in appraisal.

Corporations is a pre-requisite for this course and it is assumed that students have a familiarity with the general principles covered in that class. Should you feel you need a refresher, there will be optional background materials posted to the course website. Grading will be based on participation and a take-home final exam. Students will be expected to sign up in advance on Canvas for a particular topic they will be prepared to discuss in detail, as discussed in the Assignment section of the Syllabus, below.

**STUDENT LEARNING OUTCOMES**

After completing this course, students should be able to:

* correctly identify and analyze many legal issues relating to corporate litigation;
* analyze various statues and cases in the corporate-litigation context;
* understand the mechanics of corporate litigation, including the Court’s role of resolving corporate issues; and
* be better prepared to argue motions in the Delaware Court of Chancery.

**ASSIGNMENT**

This course will feature recent and landmark cases in the Court of Chancery and Delaware Supreme Court highlighting common and developing issues arising in corporate-transactional litigation. Students will be assigned readings consisting of the briefs and opinions in these cases, and class will consist of discussing the issues and arguments raised in these cases.

In recognition of the large amount of course material and to facilitate meaningful discussion, we will use an “On Call List” and require that **each student complete at least one assignment**. The assignments, which are listed in the Course Schedule, below, will take the form of either: (i) a “Presentation,” for which the student will be expected to read and discuss a judicial opinion, using the traditional law school Socratic method; or (b) an “Argument,” for which the student will be expected to review trial or appellate court briefs for one side and then present a brief (informal) in-class oral argument based on those briefs to Vice Chancellor Glasscock. **Students must sign up for assignments in advance using the course Canvas page**. Given the class size, there will be no more than one student assigned to each assignment. Additionally, if necessary, certain students may be asked to sign up for another assignment for extra participation credit.

Finally, on top of these oral assignments, **there are a few readings assigned to the entire class**, which are shown in the Course Schedule, below.

**LAPTOP AND RECORDING POLICY**

Students are allowed to record video or audio of class lectures. However, the purposes for which these recordings may be used are strictly controlled.  The only allowable purposes are (1) for personal educational use, (2) in connection with a complaint to the university, or (3) as evidence in, or in preparation for, a criminal or civil proceeding.  All other purposes are prohibited.  Students may not publish recorded lectures without the written consent of the instructor.

A “class lecture” is an educational presentation intended to inform or teach enrolled students about a particular subject, including any instructor-led discussions that form part of the presentation, and delivered by any instructor hired or appointed by the University, or by a guest instructor, as part of a University of Florida course. A class lecture does not include lab sessions, student presentations, clinical presentations such as patient history, academic exercises involving solely student participation, assessments (quizzes, tests, exams), field trips, private conversations between students in the class or between a student and the faculty or lecturer during a class session.

Publication without permission of the instructor is prohibited. To “publish” means to share, transmit, circulate, distribute, or provide access to a recording, regardless of format or medium, to another person (or persons), including, but not limited to, another student within the same class section. Additionally, a recording, or transcript of a recording, is considered published if it is posted on or uploaded to, in whole or in part, any media platform, including, but not limited to, social media, book, magazine, newspaper, leaflet, or third party note/tutoring services. A student who publishes a recording without written consent may be subject to a civil cause of action instituted by a person injured by the publication and/or discipline under UF Regulation 4.040 Student Honor Code and Student Conduct Code.

We will allow laptops/tablets **solely** for viewing the reading materials electronically but any notes you wish to take should be handwritten (*i.e.*, **no typing during class**).

**FINAL EXAM**

Any topic discussed in class is fair game for the final exam. The exam will be a take-home exam administered via Canvas.

**GRADING**

Grades will be weighted 50% for the in-class assignment and 50% for the final exam.

The Levin College of Law’s mean and mandatory distributions are posted on the College’s website, and this class adheres to that posted grading policy. The following chart describes the specific letter grade/grade point equivalent in place:

|  |  |
| --- | --- |
| 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 |

The law school grading policy is available at: https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/uf-law-student-handbook-and-academic-policies.

**ACADEMIC HONESTY**

Academic honesty and integrity are fundamental values of the University community. Students should be sure that they understand the UF Student Honor Code at http://www.dso.ufl.edu/students.php.

**POLICY RELATED TO MAKE-UP EXAMS**

The law school policy on delay in taking exams can be found at: http://www.law.ufl.edu/student-affairs/current-students/forms-applications/exam-delays-accommodations-form

**STATEMENT RELATED TO ACCOMODATIONS FOR STUDENTS WITH DISABILITIES**

Students requesting accommodation for disabilities must first register with the Disability Resource Center (http://www.dso.ufl.edu/drc/). Once registered, students will receive an accommodation letter which must be presented to the Assistant Dean for Student Affairs (Dean Mitchell) when requesting accommodation. Students with disabilities should follow this procedure as early as possible in the semester.

**ONLINE COURSE EVALUATION PROCESS**

Students are expected to provide professional and respectful feedback on the quality of instruction in this course by completing course evaluations online via GatorEvals. Guidance on how to give feedback in a professional and respectful manner is available at https://gatorevals.aa.ufl.edu/students/. Students will be notified when the evaluation period opens and can complete evaluations through the email they receive from GatorEvals in their Canvas course menu under GatorEvals or via https://ufl.bluera.com/ufl/. Summaries of course evaluation results are available to students at https://gatorevals.aa.ufl.edu/public-results/.

**COURSE WORKLOAD AND CLASS PREPARATION**

Students should expect to spend at least two hours outside of class reading and preparing for every hour of class.

**OFFICE HOURS**

Office hours will be held in the same room as class for one hour after the first day (4:50–5:50pm) and one hour during lunch the second day (12:00–1:00pm).

**Course Schedule and Assignments**

**PART I. Introduction**

1. Delaware’s Preeminence in Corporate Law
   1. Why Delaware?
   2. Internal Affairs Doctrine
   3. Delaware’s place in multistate litigation
      1. One-Forum Motions
      2. Forum Selection Bylaws
         1. 8 Del. C. (“DGCL”) § 115
         2. **Assigned reading for entire class**: *Boilermakers Local 154 Ret. Fund v. Chevron Corp.*, 73 A.3d 934 (Del. Ch. 2013)
         3. **Presentation**: *Sciabacucchi v. Salzberg*, 2018 WL 6719718 (Del. Ch. Dec. 19, 2018)
      3. First-filed rule
         1. *Dias v. Purches*, 2012 WL 689160 (Del. Ch. Mar. 5, 2012) (*Optional class reading involving a competing Florida action*)
      4. *Forum non conveniens*
      5. Collateral Estoppel in Derivative Actions
         1. **Presentation:** *Asbestos Workers Local 42 Pension Fund v. Bammann*, C.A. No. 9772-VCG, 2015 WL 2455469 (Del. Ch. May 22, 2015)
2. Review of Breach of Fiduciary Duty Claims
   1. Directors’ and Officers’ Fiduciary Duties
      1. Duty of care
         1. Section 102(b)(7) exculpation
      2. Duty of loyalty
         1. Corporate Opportunity Doctrine
         2. Self-dealing
         3. Duty of good faith
         4. Corporate “Waste”
   2. Judicial Standards of Review
      1. Business judgment review
      2. Entire fairness review
      3. Enhanced scrutiny

**PART II. M&A Litigation**

1. Timeline for Expedited M&A Litigation
2. **Assigned reading for entire class:**  Douglas J. Clark & Dr. Marcia Kramer Mayer, *Anatomy of a Merger Litigation*, NERA (Apr. 4, 2012)
3. Logistics and Class Structuring
4. **Presentation:** *Hirt v. U.S. Timberlands Serv. Co., LLC*, C.A. No. 19575, 2002 WL 1558342 (Del. Ch. July 3, 2002)
5. Types of Claims in Expedited Deal Litigation
   1. Price and Process Claims (so*-*called “*Revlon*” claims)
      1. **Assigned reading for entire class** (SKIM TO REVIEW ONLY): *Revlon v. MacAndrews & Forbes Holdings, Inc.*, 506 A.2d 173 (Del. 1986)
      2. **Presentation**: *C & J Energy Servs., Inc. v. City of Miami Gen. Emps. & Sanitation Emp. Ret. Bd.*, 107 A.3d 1049 (Del. 2014) (https://courts.delaware.gov/supreme/oralarguments/download.aspx?id=1310)
6. Motion to Expedite
7. **Argument:** *In re Riverbed Tech. Inc. S’holder Litig.*, C.A. No. 10484-VCG
8. Plaintiffs’ Opening Brief (February 5, 2015) & Reply Brief (February 12, 2015)
9. Defendants’ Answering Brief (February 11, 2015)
10. TROs
    1. **Argument:** *Vintage Rodeo Parent, LLC v. Rent-A-Center*, C.A. No. 2018-0927-SG
       1. Plaintiffs’ Complaint (includes TRO request in request for relief) (Dec. 21, 2018)
       2. Defendant’s Answering Brief (Jan. 8, 2019)
11. Preliminary Injunctions
    1. **Presentation:** *Vento v. Curry*, C.A. No. 2017-0157-AGB, 2017 WL 1076725 (Del. Ch. Mar. 22, 2017)
12. Settlements & Corporate Benefit
13. Pre-*Trulia* – Court-approved settlements
    * 1. **Presentation:** *In re Trulia, Inc. S’holder Litig.*,129 A.3d 884 (Del. Ch. 2016)
14. Post-*Trulia* – Mootness fee applications
15. **Argument:** *Stein v. Blankfein,* 2018 WL 527958 (Del. Ch. Oct. 23, 2018)
    * + 1. Objector’s Objection to Proposed Settlement (June 5, 2018) & Sur-Reply Brief (Aug. 6, 2018)
        2. Defendants’ Response to Objection (July 16, 2018)
        3. Plaintiff’s Response to Objection (July 17, 2018)
        4. (Optional background reading for Objector, Defendants, and Plaintiff): Plaintiff’s Brief in Support of Settlement (May 25, 2018)
16. Post-Closing Claims for Damages
17. Controller Transactions
    * 1. Who is a controlling stockholder?
         1. **Presentation:** *Kahn v. M&F Worldwide Corp*., 88 A.3d 635 (Del. 2014) (https://courts.delaware.gov/supreme/oralarguments/download.aspx?id=207)
      2. Standards of Review in Controlling Stockholder Transactions
         1. **Assigned reading for entire class*:*** *In re Cornerstone Therapeutics Inc. S’holder Litig.*, 115 A.3d 1173 (Del. 2015) (https://courts.delaware.gov/supreme/oralarguments/download.aspx?id=1505)
18. Non-Controller Transactions
    * 1. Standard of review
      2. Dismissal of fiduciaries in the context of entire fairness
      3. Cleansing effect of stockholder ratification
19. **Assigned reading for entire class:** *Corwin v. KKR Financial Holdings, LLC*, 125 A.3d 304 (Del. 2015) (https://courts.delaware.gov/supreme/oralarguments/download.aspx?id=1604)
20. **Presentation**: *Singh v. Attenborough*, 137 A.3d 151 (Del. 2016) (https://courts.delaware.gov/supreme/oralarguments/download.aspx?id=1960)
    * 1. Bringing a claim post-*Corwin*
         1. Misleading or Inadequate Disclosures
            1. **Presentation**: *In re Xura, Inc. S’holder Litig.*, 2018 WL 6498677 (Del. Ch. Dec. 10, 2018)
         2. Stockholder Vote was Coerced
            1. Situational Coercion in the *Corwin* context

**Assigned reading for entire class**: *In re Saba Software Inc. S’holder Litig.*, 2017 WL 1201108 (Del. Ch. Mar. 31, 2017)

* + - * 1. Structural Coercion in the *Corwin* context

**Presentation:** *Sciabacucchi v. Liberty Broadband Corp.*, 2017 WL 2352152 (Del. Ch. May 31, 2017)

* + - 1. Aiding and Abetting Breach of Fiduciary Duty
         1. **Assigned reading for entire class**: *In re PLX Technology Inc. S’holders Litig.*, 2018 WL 5018535 (Del. Ch. Oct. 16, 2018)

**PART III. Derivative Litigation & Statutory Proceedings**

1. Derivative Litigation: What happens when catastrophe strikes the company?
   1. Direct vs. Derivative Claims
      1. **Assigned reading for entire class:** *Alfred v. Walt Disney Co.*, 2015 WL 177434 (Del. Ch. Jan. 14, 2015)
         1. (Optional reading for entire class): Complaint, *Alfred v. Walt Disney Company*, C.A. No. 10211-VCG (Oct. 8, 2014)
      2. **Presentation**: *In re Straight Path Communications Consolidated S’holder Litig.*, 2018 WL 3120804 (Del. Ch. June 25, 2018)
   2. Demand Requirement
      1. **Assigned reading for entire class:** *United Food and Commercial Workers Union and Participating Food Industry Employers Tri-State Pension Fund v. Zuckerberg et al.*, 2021 WL 4344361 (Del. 2021).
   3. Section 220 – Books and Records Inspection (Tools at Hand)
      1. **Presentation:** *Se. Pa. Transp. Auth. v. AbbVie Inc.*, C.A. No. 10374-VCG, 2015 WL 1753033 (Del. Ch. April 15, 2015) (consolidated Chancery Court opinion with *Rizzolo v. Abbvie, Inc.*, C.A. No. 10408-VCG)
   4. Oversight Liability
      1. *Caremark* claims and business judgment
         1. **Assigned reading for entire class**: *Oklahoma Firefighters Pension & Ret. System v. Corbat,* 2017 WL 6452240 (Del. Ch. Dec. 18, 2017).
         2. **Presentation**: *Marchand v. Barnhill*, 212 A.3d 805 (Del. 2019). (https://courts.delaware.gov/supreme/oralarguments/download.aspx?id=3084)
      2. Intentional illegality
      3. Waste
         1. **Assigned reading for entire class**: *Seinfeld v.* *Slager*, 2012 WL 2501105 (Del. Ch. June 29, 2012)
   5. Director Independence
      1. **Assigned reading for entire class**: *Sandys v.* *Pincus*, 152 A.3d 124 (Del. 2016) (https://courts.delaware.gov/supreme/oralarguments/download.aspx?id=2113)
      2. **Presentation**: *In re Oracle Corp. Derivative Litig.*, C.A. No. 2017-0337-SG (Del. Ch. Mar. 19, 2018).
2. Statutory Summary Proceedings Authorized by the DGCL
   1. Overview of Statutory Proceedings
      1. Section 225 – Actions to determine validity of stockholder vote
      2. Section 211 – Actions to compel annual meeting of stockholders
      3. Section 204/205 – Actions to ratify defective corporate act
      4. Section 145 – Actions for advancement and indemnification
      5. Section 220 – Action for inspection of books and records

**PART IV. Appraisal**

1. Background of Appraisal Statute
   1. 8 Del. C. § 262
   2. History and purpose – the joint property problem
   3. Scope and operation
      1. Market-out exception (Section 262(b))
      2. Exclusive jurisdiction of Court of Chancery (Section 262(e)-(k))
      3. Rate of interest & prepayment of interest (Section 262(h))
   4. Appraisal arbitrage
2. Standing
   1. Holding requirement (Section 262(a))
      1. Record holder vs. beneficial owner
   2. Demand requirement (Section 262(d))
   3. **Presentation:** *In re Appraisal of Ancestry.com, Inc.*, C2015 WL 66825 (Del. Ch. Jan. 5, 2015)
3. Fair Value
   1. Going concern value (Section 262(h))
   2. Financial valuation v. deal price v. stock price
      1. **Presentation:** *Huff Fund v. CKx*, 2013 WL 5878807 (Del Ch., Nov. 1, 2013)
      2. **Presentation:** *DFC Glob. Corp v. Muirfield Value Partners*, 172 A.3d 346 (Del. 2017) (https://courts.delaware.gov/supreme/oralarguments/download.aspx?id=2374)
      3. **Argument:** *Verition Partners Master Fund Ltd. v. Aruba Networks*, *Inc.*, No. 368, 2018 (https://courts.delaware.gov/supreme/oralarguments/download.aspx?id=3048)
         1. Appellants’ Opening Brief (Sept. 17, 2018) & Reply Brief (Nob. 19, 2018)
         2. Appellee’s Answering Brief (Nov. 1, 2018)
   3. Synergies