**Mergers & Acquisitions**

**Law 6067 (27664-27718)**

**University of Florida, Levin College of Law**

**Spring 2021**

Professor Andrew Winden

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CLASSROOM: MLAC – 106

CLASS TIME: Tuesday & Thursday: 4:45 p.m. to 6:10 p.m.

OFFICE HOURS: Wednesday: 3:00 p.m. to 5:00 p.m.

or by appointment

FINAL EXAM: Flexible (4 hours)

**TEXTS & MATERIALS:**

Claire A. Hill, Brian JM Quinn and Steven Davidoff Solomon, *Mergers and Acquisitions: Law, Theory and Practice* (West Academic, 2nd Ed. 2019)

I will also post statutes, articles, case studies and other materials on CANVAS from time to time.

I will post reading and other assignments on CANVAS a week in advance of class. An outline of the class and the assignments for the first two classes are below at the end of the syllabus.

**COURSE OVERVIEW**

This course is a comprehensive introduction to the law and practice of mergers and acquisitions. In addition to the relevant laws, regulations and fiduciary standards, the course will cover important aspects of the deal-making process, including the key provisions of typical M&A agreements, takeover defenses, mechanisms for protecting a preferred transaction and increasing deal certainty, and deal structuring alternatives. The course will include some practical exercises in addition to reading and lectures.

**COURSE OBJECTIVES and STUDENT LEARNING OUTCOMES**

Upon completion of this course, students should be able to:

Knowledge-Related Learning Outcomes:

Identify the state and federal laws applicable in M&A contexts

Identify and explain the rules and principles that determine:

* Choice of M&A structure
* Timing of M&A closing
* Choice of corporate defenses
* Choice of deal protections
* Choice

Skill-Related Learning Outcomes:

* Understand basic structure and key provisions of merger, stock and asset purchase agreements for acquisitions of both public and private companies
* Apply rules and principles of state corporate and federal securities laws to different corporate acquisition and defense scenarios
* Develop ability to consider and apply ethical, legal and strategic considerations to real-world M&A scenarios
* Learn to negotiate NDA agreements for M&A scenarios

**RESOURCES**

***Resources if you feel lost:***

Come to office hours, e-mail me, call me or come see me after class.

Accounting and Finance:

* Howell Jackson, et al., *Analytical Methods for Lawyers* (any edition), Chapters 4 & 5.
* William A. Klein & John C. Coffee, Jr., *Business Organizations and Finance*

Corporate Law:

* Stephen Bainbridge, *Corporate Law* (4th Ed. 2020), available in various forms on Amazon.

M&A Law & Terminology:

* Wachtell, Lipton, Rosen & Katz, *Takeover Law and Practice* (on CANVAS)

**COURSE GRADING**

Grading will be consistent with College of Law policy. Your grade will be based on a final exam (100% of the final grade) and class participation. The final exam will be a time-limited open-resource exam. **[**The exam will include multiple-choice questions, an issue-spotter transactional essay and a policy essay.**][TBD]** Exam grades are done on a blind basis. All grades are final. I will not regrade exams, except to correct any mathematical or clerical errors in computing the final score. As explained below under “Attendance, Preparation and Participation”, I may raise or lower your grade by a third of a letter grade (e.g., from B to B+ or B -) based on exemplary or poor class participation. Because the course must adhere to a mandatory mean grade, participation may also be used to differentiate among students with equal final exam grades. The law school policy on exam delays and accommodations can be found [here](http://www.law.ufl.edu/student-affairs/current-students/forms-applications/exam-delays-accommodations-form).

**ASSIGNMENTS**

The reading and questions/problem assignments for the first two weeks are included in the Class Outline attached hereto. The Class Outline also includes the topics to be covered in the course and the casebook chapters to be covered. I will supplement the casebook readings with additional materials when necessary. Such additional materials will be distributed via CANVAS.

I will assign questions and problems from the casebook via CANVAS (the Class Outline attached hereto includes the assignments for many classes). I will cold-call you on these questions, so be prepared to answer them in class. Your responses to these questions will be included in your class participation grade.

I will occasionally assign homework in the form drafting projects and case studies. These assignments will be distributed through CANVAS. These assignments will be graded on a pass-fail basis and included in your class participation grade.

**ATTENDANCE, PREPARATION AND PARTICIPATION**

You will be requested to record your attendance and preparation by signing in to class. **By signing in,** **you confirm that you are prepared for class.** It is your responsibility to sign in before class begins. **You may not sign in if you arrive in class after I have begun teaching.** It is a serious violation of the Academic Honesty policy to sign in for another person or to have others sign in for you.

**If you fail to sign in (either because you are absent or because you are unprepared) more than four times during the semester, I will lower your final grade by at least one-third of a point.**

You do not need to tell me why you are absent or unprepared. If, however, you expect to be absent from class more than four times due to a family emergency or medical situation, please notify me. Observance of a University-recognized religious holiday does not count as an absence. However, please notify me of such absences in advance.

I expect each of you to attend class prepared. Preparation includes completing the assigned reading and thinking through assigned questions and problems. Consistent with American Bar Association Standard 310, you should expect to spend at least *six hours* per week preparing for this three-hour course. **I expect you to come to class prepared to discuss how you would answer the questions and problems I assign from the casebook. I will cold call on these questions and problems.** Sometimes, I will ask you to discuss problems in groups in class before I call on someone.

Your grade may be affected by the quality of your participation in class. Exemplary participation means offering a few thoughtful comments or questions in more than half of all classes (at least 13 classes), listening to and engaging with ideas raised by other students, and exercising judgment to foster participation by your classmates. You do not have to agree with your classmates, but I expect you to treat them with respect.

**USE OF LAPTOPS**

You are permitted to use laptops to take notes in class, however any other use of laptops during class is prohibited. Impermissible uses include, but are not limited to, looking at emails or instant messages, visiting social media sites, or any other use of the Internet, unless I explicitly invite you to look something up. **Misuse of laptops during class may result in you losing the privilege of using a laptop in the classroom and may negatively affect the class participation portion of your grade.** I will make the PowerPoint slides used in class available to you on CANVAS. Studies have shown that students taking notes by hand perform better than students taking notes on computers.

**UNIVERSITY 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>.

**Grading information and grading scale:**

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 table describes the specific letter grade/grade point equivalent in place:

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

The law school grading policy is available at: <http://www.law.ufl.edu/student-affairs/current-students/academic-policies#9>.

**Accommodations:**

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/>.

**COVID-19 Related Matters:**

Many students will have face-to-face instructional sessions to accomplish the student learning objectives of this course. In response to COVID-19, the following policies and requirements are in place to maintain your learning environment and to enhance the safety of our in-classroom interactions. I may take noncompliance into account when grading students or determining if a student may remain in the course.

* You are required to wear approved face coverings at all times during class and within buildings. Following and enforcing these policies and requirements are all of our responsibility. Failure to do so will lead to a report to the Office of Student Conduct and Conflict Resolution. You also will no longer be permitted on the UF Law campus. Finally, Dean Inman will also report your noncompliance to the relevant state board of bar examiners.
* This course has been assigned a physical classroom with enough capacity to maintain physical distancing (6 feet between individuals) requirements. Please utilize designated seats and maintain appropriate spacing between students. Please do not move desks or stations.
* Sanitizing supplies are available in the classroom if you wish to wipe down your desks prior to sitting down and at the end of the class.
* Be mindful of how to properly enter and exit the classroom.  Practice physical distancing to the extent possible when entering and exiting the classroom.
* If you are experiencing COVID-19 symptoms (<https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>), please do not come to campus or, if you are already on campus, please immediately leave campus. Please use the UF Health screening system and follow the instructions about when you are able to return to campus.  (See <https://coronavirus.ufhealth.org/screen-test-protect/covid-19-exposure-and-symptoms-who-do-i-call-if/>.)
* Course materials will be provided to you with an excused absence, and you will be given a reasonable amount of time to make up work. (See <https://catalog.ufl.edu/UGRD/academic-regulations/attendance-policies/>).”

**Photos & Videos**:

Students may not take, circulate, or post photos or videos of classroom discussions, whether they are in-person, hybrid, or completely online. Students failing to follow this rule will be referred to the College of Law Honor Code Council and the University’s Office of Student Conduct and Conflict Resolution.

**CLASS OUTLINE**

The following outline provides a general overview of the topics we will cover throughout the semester. Reading assignments, questions and other assignments for each class will be posted on CANVAS approximately one week in advance. References to “Chapter” are to chapters of Hill, Quinn and Davidoff Solomon’s *Mergers and Acquisitions* text. Other materials will be available on CANVAS.

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| --- | --- | --- |
| **Class** | **Topic** | **Readings, Questions, Problems, Case Studies and Practice Assignments** |
| **Class 1**  **Tuesday,**  **January 19** | **Introduction to M&A**  **Deciding to do a Deal**  **Important Actors & Roles** | * Reading: * Chapter I, pp. 15-27 * Chapter XI * Chapter XII, pp. 279-287; 299-304 * Questions/Problems: * Chapter I, Questions 2, 4 * Chapter XI, Questions 1, 2, 3, 4 |
| **Class 2**  **Thursday, January 21** | **Rules of M&A: State Corporate Law** | * Reading: * Chapter II * Questions/Problems: * Chapter II, Questions 1, 3, 4, 5, 7, 11 * Problem 3 |
| **Class 3**  **Tuesday,**  **January 26** | **Rules of M&A: Federal Securities Laws – The Williams Act:**  **Share Acquisition Reporting**  **Tender Offers** | Reading:  Chapter IV  Chapter V  Questions/Problems:  Chapter IV: Questions 2, 3, 4  Problems 1, 4  Chapter V: Questions 2, 3  Problems 1 – 5 |
| **Class 4**  **Thursday, January 28** | **Rules of M&A: Federal Securities Laws -**  **Proxy Rules for Shareholder Votes**  **Registration of Stock Consideration** | Reading:  Chapter VI  Chapter VII  Questions/Problems:  Chapter VI: Questions 1, 2, 3, 4  Problems 1, 2  Chapter VII: Questions 1, 2, 3  Problems 1 – 3 |
| **Class 5**  **Tuesday, February 2** | * **Doing Deals: Preliminary Steps** | * Reading: * Chapter XIII * Questions/Problems:   Chapter XIII, Questions 2 – 7, 12  Practice Project:  NDA Negotiation Exercise Assigned |
| **Class 6**  **Thursday, February 4** | **Doing Deals: Additional Steps**  **Antitrust Clearance**  **Board Approval** | Reading:  Chapter VIII, Section A  Chapter XVII, Sections B & C  Gotts, US Merger Review 2019 (on CANVAS)   * Questions/Problems:   Chapter VIII, Questions 1, 2  Chapter XVII, Questions 5, 6, 7, 9, 10 |
| **Class 7**  **Tuesday, February 9** | **Doing Deals: Merger Agreement**  **General Provisions I** | Reading:   * Chapter XIV, Sections A, B, C, E, F,   Questions/Problems: TBD  NDA Negotiation Exercise Due |
| **Class 8**  **Thursday, February 11** | **Doing Deals: Merger Agreement**   * **General Provisions II** | * Reading: * Chapter XIV, Sections G, H 1&2, I, M * Law Firm article on *Akorn* TBD * Article on Anbang Case TBD   Questions/Problems: TBD |
| **Class 9**  **Tuesday, February 16** | **Unsolicited Bids: Defenses** | * Reading: * Chapter XV, Sections A – F   Questions/Problems:  Chapter XV, Questions 1, 2, 3, 6  Debrief on NDA Negotiation Exercise |
| **Class 10**  **Thursday, February 18** | **Unsolicited Bids: Fiduciary Duties** | Reading:  Chapter XVI, Sections A, D (intro only – skip *Unitrin*), E, F  Questions/Problems:  *Airgas* Questions 1-3  Problem, p. 571 |
| **Class 11**  **Tuesday, February 23** | * **Unsolicited Bids: Practice**   **Morev Case Study**  **(Defense Tactics, Poison Pills)** | * Reading: * Morev Case Study Materials   Assignment: Case Study Prep  Chapter XV, Problem 1 |
| **Class 12**  **Thursday, February 25** | * **Unsolicited Bids: Practice**   **Broadcom-Qualcomm Case Study**  **(Proxy Contests, CFIUS)**  **Special Guest: Ron Chen, Partner, Wachtell, Lipton** | * Reading: * Chapter VIII, Sections B & C * Broadcom-Qualcomm Case Study Materials   Assignment: Case Study Prep |
| **Class 13**  **Tuesday, March 2** | **Deal Protections: Fiduciary Duties** | * Reading: * Chapter XVIII, Sections A 1, C (skip *Lyondell,* read notes), D – G   Questions/Problems: TBD |
| **Class 14**  **Thursday, March 4** | * **Deal Protections: Contractual Provisions** | * Reading: * Chapter XIV, Sections H (3-5), J, K * Chapter XVI, Sections G, H   Questions/Problems: TBD |
| **Class 15**  **Tuesday, March 9** | **Friendly Public Merger Case Study** | Reading:  Deal documents – deal to be voted on by class |
| **Class 16**  **Thursday,**  **March 11** | **Friendly Public Tender Offer Case Study** | * Reading: * Salesforce – Tableau Tender Offer Documents |
| **Class 17**  **Tuesday, March 16** | **Private Company Acquisitions:**  **Mergers and Stock Purchases** | * Reading: * Chapter XIV, Sections D and L * WLRK, Takeover Law, IV. A. * Articles on Private Deals (on CANVAS)   Questions/Problems: TBD |
| **Class 18**  **Thursday, March 18** | **Private Company Acquisitions**  **Private Acquisition Case Study** | * Reading: * Deal documents – deal to be voted on by class. Candidates: * Google – YouTube * Facebook – Instagram * Facebook – WhatsApp * Others? |
| **Class 19**  **Tuesday, March 23** | * **Private Company Acquisitions**   **Asset Purchases & Carve-outs** | * Reading: * Articles on Asset & Carve-out Deals (on CANVAS)   Questions/Problems: TBD |
| **Class 20**  **Thursday, March 25** | **Conflict Transactions: Freeze-outs** | * Reading: * Chapter XIX, B 1, 7-14   Questions/Problems: TBD |
| **Class 21**  **Tuesday, March 30** | **Conflict Transactions: MBOs**  **Background and Dell Case Study** | Reading:  Chapter XIX, Sections A, C, D  Dell Deal Documents  Questions/Problems: TBD |
| **Class 22**  **Thursday, April 1** | **International Issues** | Reading:  Chapter XXI  Questions/Problems: TBD |
| **Class 23**  **Tuesday, April 6** | **Appraisal** | Reading:  Chapter III, Sections A, B, C  Articles on Appraisal Arbitrage  Questions/Problems: TBD |
| **Class 24**  **Thursday, April 8** | * **Appraisal** | * Reading: * Chapter III, Sections D, E, F * Litigation Updates   Questions/Problems: TBD |
| **Class 25**  **Tuesday, April 13** | **Shareholder Activism** | * Reading: Chapter XX, Sections A-E   Questions/Problems: TBD |
| **Class 26**  **Thursday, April 15** | * **Shareholder Activism** | * Reading: Chapter XX, Sections F, G   Questions/Problems: TBD |
| **Final Exam: Flexible (4 Hours)** | | |