**MERGERS & ACQUISITIONS**

**Law 6067 (24754)**

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

**Spring 2022**

Professor Andrew Winden

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(352) 273-0978

CLASSROOM: HH-283

CLASS TIME: Tuesday & Thursday: 10:30 a.m. – 11:55 a.m.

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

by appointment or open door

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. 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.

**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.

**PREFERRED NAME AND PRONOUNS**

It is important to the learning environment that you feel welcome and safe in this class; and that you are comfortable participating in class discussions and communicating with me on any issues related to the class.  If your preferred name is not the name listed on the official UF roll, please let me know as soon as possible by e-mail or otherwise.  I would like to acknowledge your preferred name, and pronouns that reflect your identity.  Please let me know how you would like to be addressed in class, if your name and pronouns are not reflected by your UF-rostered name. I welcome you to the class and look forward to a rewarding learning adventure together.

You may also change your “Display Name” in Canvas. Canvas uses the "Display Name" as set in myUFL.  The Display Name is what you want people to see in the UF Directory, such as "Ally" instead of "Allison."   To update your display name, go to one.uﬂ.edu, click on the dropdown at the top right, and select "Directory Proﬁle." Click "Edit" on the right of the name panel, uncheck "Use my legal name" under "Display Name," update how you wish your name to be displayed, and click "Submit" at the bottom.  This change may take up to 24 hours to appear in Canvas.   This does not change your legal name for ofﬁcial UF records.

**Discourse, Inclusion, and the Classroom Ethos**

As a law student and future lawyer, it is important that you be able to engage in rigorous discourse and critical evaluation while also demonstrating civility and respect for others. This is even more important in the case of controversial issues and other topics that may elicit strong emotions.

As a group, we are likely diverse across racial, ethnic, sexual orientation, gender identity, economic, religious, and political lines. As we enter one of the great learning spaces in the world—the law school classroom—and develop our unique personality as a class, I encourage each of us to:

* commit to self-examination of our values and assumptions
* speak honestly, thoughtfully, and respectfully
* listen carefully and respectfully
* reserve the right to change our mind and allow for others to do the same
* allow ourselves and each other to verbalize ideas and to push the boundaries of logic and reasoning both as a means of exploring our beliefs as well as a method of sharpening our skills as lawyers

As part of my commitment to teaching and serving the diverse UF Law community, I have signed the UF Law Anti-Racism Resolution.

**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: <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/uf-law-student-handbook-and-academic-policies>.

“The law school policy on exam delays and accommodations can be found [here](https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/forms-applications/exam-delays-accommodations-form).”

**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/>.

**Audio & Video Recordings**:

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.  Specifically, 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 notinclude 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.

**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* 2nd ed. Other reading materials will be available on Canvas. Questions/Problems will be in Canvas Assignments.

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| **Class** | **Topic** | **Readings, Questions, Problems, Case Studies and Practice Assignments** |
| **Class 1**  **Tuesday,**  **January 18** | **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 20** | **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 25** | **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 27** | **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 1** | * **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 3** | **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 8** | **Doing Deals: Merger Agreement**  **General Provisions I** | Reading:   * Chapter XIV, Sections A, B, C, E, F, |
| **Class 8**  **Thursday, February 10** | **Doing Deals: Merger Agreement**   * **General Provisions II** | * Reading: * Chapter XIV, Sections G, H 1&2, I, M   Law firm articles on *Akorn*  Law firm articles on *Anbang* |
| **Class 9**  **Tuesday, February 15** | **Unsolicited Bids: Defenses** | * Reading: * Chapter XV, Sections A – F   Chapter XV, Sections A-F  NYT articles on bear hugs and tin cups  [NDA Negotiation Exercise Due] |
| **Class 10**  **Thursday, February 17** | **Unsolicited Bids: Fiduciary Duties** | Reading:  Chapter XVI, Sections A, D (intro only – skip *Unitrin*), E, F  PLC & NYT articles on *Airgas* case study |
| **Class 11**  **Tuesday, February 22** | * **Unsolicited Bids: Practice**   **Morev Case Study**  **(Defense Tactics, Poison Pills)** | * Reading: * Morev Case Study Materials   Questions/Problems:  Case Study Questions/Quiz  [NDA Negotiation Debrief] |
| **Class 12**  **Thursday, February 24** | * **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   Questions/Problems:  Case Study Questions |
| **Class 13**  **Tuesday, March 1** | **Deal Protections: Fiduciary Duties** | * Reading:   Chapter XVI, Section H (re Omnicare)  Chapter XVIII, Sections A (Intro only, skip Revlon), C (skip Lyondell, read notes), D through G.  Chapter XIX, Section A.2. only (re Corwin).  HQS 2020 Update Chapter XVIII |
| **Class 14**  **Thursday, March 3** | * **Deal Protections: Contractual Provisions** | * Reading:   Chapter XIV, Sections H (3 - 5), I (review), J, K  Chapter XVI, Section G (1-3)  Optional: ABA 2016 Strategic Buyer/Public Target M&A Deal Points Study |
| **Class 15**  **Tuesday, March 15** | **Friendly Public Merger Case Study**  (Student group led presentations) | Reading:  Deal documents  Questions/Problems:  Case Study Questions |
| **Class 16**  **Thursday,**  **March 17** | **Friendly Public Tender Offer Case Study**  (Professor led discussion of Case Study) | * Reading: * Salesforce – Tableau Tender Offer Documents   Questions/Problems:  Case Study Questions |
| **Class 17**  **Tuesday, March 22** | **Conflict Transactions: Freeze-outs** | * Reading:   Chapter XIX, Sections B.1, B. 7 through 14  HQS 2020 Update, Chapter XIX  Delaware Standards of Review (Troutman) |
| **Class 18**  **Thursday, March 24** | **Conflict Transactions: MBOs**  **Background and Dell Case Study** | Reading:  Chapter XIX, Sections A & C  Law firm update articles re *MFW* interpretation  Dell MBO case study documents |
| **Class 19**  **Tuesday, March 29** | **Private Company Acquisitions:**  **Mergers and Stock Purchases** | * Reading:   Chapter XIV, Sections D and L  Law firm earn-out articles  Law firm closing adjustment articles  PLC/SRS deal studies |
| **Class 20**  **Thursday, March 31** | * **Private Company Acquisitions**   **Asset Purchases & Carve-outs** | * Reading:   PLC, Asset Acquisitions: Overview  S&C (PLC), Carve-Out Transactions: Key Seller Considerations  Blassberg & Schmidt, Special Problems in Acquisitions of Divisions & Subsidiaries  Cooley, Reps & Warranties Insurance - Current Market Trends |
| **Class 21**  **Tuesday, April 5** | **Private Company Acquisitions**  **Private Acquisition Case Study**  (Student group led presentations) | * Reading: * Deal documents   Student chosen deals   * Ideas: Google – YouTube; Facebook – WhatsApp   Questions/Problems:  Case Study Questions |
| **Class 22**  **Thursday, April 7** | **Private Company Acquisitions**  **Private Acquisition Case Study**  (Student group led presentations) | * Reading: * Deal documents   Student chosen deals  Questions/Problems:  Case Study Questions |
| **Class 23**  **Tuesday, April 12** | **Appraisal** | Reading:  Chapter III, Sections A, B, C  HQS 2020 Supp., Chapter III  Article on Appraisal Arbitrage |
| **Class 24**  **Thursday, April 14** | * **Appraisal** | * Reading:   Chapter III, Section C. 2. & 3.  Chapter X, Section C. 2.  HQS 2020 Supp., Chapter III  HLSFCG Blogs on Appraisal “Fair Value”  Law firm updates |
| **Class 25**  **Tuesday, April 19** | **Shareholder Activism** | * Reading: Chapter XX, Sections A-E, G   HQS Supp., Chapter XX  Lazard Activism Reports (2019, 2020) |
| **Class 26**  **Thursday, April 21** | * **Shareholder Activism** | * Reading: Chapter XX, Sections F   Cleary on *Williams Companies* |
| **Final Exam: Flexible (4 Hours)** | | |