

# SYLLABUS

## MERGERS & ACQUISITIONS (Spring 2024)

PROFESSOR:	Robert J. Rhee
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CLASSROOM:	Holland 345
CLASS TIME:	Wednesday: 4:30pm to 6:30pm (2 hours) (two 55-minute sessions, and 10-minute break between)
OFFICE HOURS:	Monday: 3:30pm to 4:30pm Wednesday: 3:20pm to 4:20pm
FINAL EXAM:	TBD (3 hours)

### UF LEVIN COLLEGE OF LAW STANDARD SYLLABUS POLICIES

This syllabus contains information about UF Levin College of Law policies, including compliance with the UF Honor Code, Grading, Accommodations, Class Recordings, and Course Evaluations can be found at this link: <https://ufl.instructure.com/courses/427635/files/74674656?wrap=1>.

### TEXTBOOKS

Claire Hill, Brian Quinn & Steven Solomon, Mergers and Acquisitions: Law, Theory, and Practice (West **third edition** 2023) (please make sure to buy the **third edition**)

Additionally, M&A deals are enabled by statutes and rules. The core substantive rules come from state corporation statutes. We will study principally Delaware General Corporation Law (DGCL). When the book refers to statutes, students should refer to the statute. It is the responsibility of students to review key provisions in the statute. The DGCL can be accessed at: <https://delcode.delaware.gov/title8/c001/>. The merger provisions are found in Subchapter IX.

### COURSE DESCRIPTION

Mergers & Acquisitions (LAW 6067): This course is an advanced corporate transactional course. It teaches the legal aspects of corporate combinations including mergers and acquisitions. Prerequisite: prior completion of Corporations or Business Associations, or concurrent with these courses with professor permission.

## **STUDENT LEARNING OUTCOMES**

Mergers and acquisitions transactions are some of the most important corporate transactions in the practice of business and corporate law. Whenever a corporate seeks to do an M&A transaction, the laws of mergers and acquisitions are always involved. This course teaches the basic legal and business issues involved in these kinds of transactions.

After completing this course, students should be able to:

1. Know and analyze the legal issues related to various kinds of M&A transactions and deal structures.
2. Consider issues related to advising the board and officers of matters arising under M&A deals, including issues related to their fiduciary duties.
3. Know basic aspects of transaction structures including statutory mergers, triangular mergers, sale of all or substantially all assets.
4. Know and apply basic business concepts in accounting, finance, and economics specifically relevant and related to the understanding of corporations and transactions, including accounting and valuation issues.
5. Read and analyze essential corporate documents such as merger proxies and acquisition agreements.

## **COURSE EXPECTATIONS AND GRADING EVALUATIONS**

Students will be evaluated based upon on a final exam. Grading will be consistent with College of Law policy. Your grade will be based on a final exam (100% of the final grade). Exam grades are done on a blind basis. All grades are final. There will be no regrading or revisions from me, except to correct any mathematical or clerical errors in computing the final score.

## **FINAL EXAM FORMAT**

The final exam will follow UF's "online open-book" policy. This is an open book online exam. Students can use their textbooks and any other source including the internet, with two exceptions: (1) students may not contact any person for assistance during this exam (contact means asking a person via phone, text, chat, or any other communication means); (2) students may not use any artificial intelligence platforms, software, or services, such as for example ChatGTP or similar kinds of products or services. This exam must be a solo effort by the student without the assistance from any persons or artificial intelligence products. Your professor has chosen the "Fixed (Pre-scheduled Set Date and/or Time)" option. The final exam will be a one-day remote exam that is scheduled on a fixed date, just like an in-class exam (subject to any approved accommodation by exam administrators, such as time conflicts and approved delays).

The final exam may have essay, short answer, and multiple choice questions. Essay questions will be an issue-spotting, analysis, or problem-solving format typically seen in most law school exams. The issues and topics for exam questions will come from the course readings and class discussions. The exam will fairly reflect the work that is done

in the course. This means that the best way to prepare for the exam is to do the class readings and to attend class.

*Makeup Exam Policy:* see <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/forms-applications/exam-delays-accommodations-form>.

## **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>.

## **ABA OUT-OF-CLASS HOURS REQUIREMENTS**

ABA Standard 310 requires that students devote 120 minutes to out-of-class preparation for every “classroom hour” of in-class instruction. It is anticipated that you will spend approximately 2 hours out of class reading and/or preparing for in class assignments for every 1 hour in class. Outside of class including reading the assigned materials and developing your critical analyses of the materials.

## **ONLINE COURSE EVALUATIONS**

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 can be found here: <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 [ufl.bluera.com/ufl/](http://ufl.bluera.com/ufl/). Summaries of course evaluation results are available to students can be found here: <https://gatorevals.aa.ufl.edu/public-results/>.

## **CLASS ATTENDANCE POLICY**

Attendance in class is required by both the ABA and the Law School. Attendance will be taken at each class meeting. Students are allowed three (3) absences during the course of the semester. Students are responsible for ensuring that they are not recorded as absent if they come in late. A student who fails to meet the attendance requirement will be dropped from the course. The law school’s policy on attendance can be found [here](#).

## **RECORDING CLASS SESSIONS**

Class sessions are not generally recorded by the law school. If you plan to be absent, please make arrangement to obtain class notes or recording from your fellow students.

Students are allowed to record video or audio of class lectures consistent with Florida law. 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, and doing so violates the terms of this syllabus. Permitted “personal educational use” includes sharing with students who are currently enrolled in their class for personal educational use so long as the sharing is not through a public medium as defined below including internet posting or social media. Students who receive recorded lectures from another student in the class are subject to the same permissions and prohibitions specified in this section.

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 strictly 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), but not including another student within the same class section so long as the sharing is not through a public medium such as internet postings or social media. 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, internet posting, 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.”

## **COURSE SCHEDULE OF TOPICS AND ASSIGNMENTS**

This syllabus is offered as a guide to the direction of the course. Our pace will depend in part on the level of interest and the level of difficulty of each section and is subject to change.

## **ONLINE (ZOOM) CLASS SESSIONS**

Classes may be held on Zoom as announced. These class sessions will be recorded.

# ASSIGNMENTS

## IMPORTANT NOTES TO STUDENTS:

1. The syllabus may be continuously updated throughout the course. Please read at least 15 pages ahead of the current assignment for the class session in the event that a particular class moves faster than anticipated.
2. Questions and Problems are at the end of each chapter. Please prepare to discuss them at the end of each chapter. We may not cover all of them, but we will try to cover them.
3. When the casebook cites key statutory provisions, students should review them. The DGCL can be accessed at: <https://delcode.delaware.gov/title8/c001/>.

Class #	Topics, Issues, and Cases	Text pages
1	<p><b>Chapter 1: Introduction</b></p> <ul style="list-style-type: none"> <li>• Section A: History               <ul style="list-style-type: none"> <li>○ Skim read this section, pages 1-15 (we will briskly cover this material in class)</li> </ul> </li> <li>• Section B: Drivers of Mergers and Acquisitions</li> <li>• Section C: Note on Applicable Law</li> <li>• Section D: Introduction Note on Valuation</li> <li>• Section E: The Deals in This Casebook</li> </ul> <p><b>Chapter 2: Deal Structures: Introduction to Mergers and Asset Sales</b></p> <ul style="list-style-type: none"> <li>• Section A: Building Your Deal Vocabulary</li> <li>• Section B: Statutory Merger</li> </ul>	<p>1-28</p> <p>31-46</p>
2	<p><b>Chapter 2: Deal Structures: Introduction to Mergers and Asset Sales</b></p> <ul style="list-style-type: none"> <li>• Section C: Mergers in Practice, The Fitbit Example</li> <li>• Section D: Sale of All or Substantially All Assets</li> <li>• Section E: Tax Considerations</li> </ul> <p><b>Chapter 3: Appraisal Rights</b></p> <ul style="list-style-type: none"> <li>• Section A: Perfecting Appraisal Rights</li> <li>• Section B: The Market Out Exception</li> <li>• Section C: Appraisal Arbitrage and “Fair Value”</li> </ul>	<p>46-63</p> <p>65-87</p>

<p>3</p>	<p><b>Chapter 3: Appraisal Rights</b></p> <ul style="list-style-type: none"> <li>Section C: Appraisal Arbitrage and “Fair Value”             <ul style="list-style-type: none"> <li><i>DFC Global Corp. v. Muirfield Value Partners</i></li> </ul> </li> <li>Section D: Quasi-Appraisal Proceedings             <ul style="list-style-type: none"> <li><i>Berger v. Pubco Corp.</i></li> </ul> </li> <li>Section E: Appraisal Rights and Other Remedies, When Are Appraisal Rights Exclusive?</li> <li>Section F: Delaware and MBCA Compared</li> </ul> <p><b>Note: In light of the fact that this course is 2 credits only, we will skip Chapters 4 through 8 (aspects of federal securities laws including proxy regulation).</b></p> <p><b>Chapter 9: Accounting</b></p> <ul style="list-style-type: none"> <li>Section A: Introduction</li> <li>Section B: Balance Sheet</li> <li>Section C: Income Statement</li> </ul> <p><b>Note: On Twitter’s Form 10-K uploaded on Canvass, find “Item 8” and then quickly review “Consolidated Balance Sheets” and “Consolidated Statements of Operations.” Review them in light of the lesson learned in Chapter 9.</b></p>	<p>87-108</p> <p>217-221</p>
<p>4</p>	<p><b>Chapter 9: Accounting</b></p> <ul style="list-style-type: none"> <li>Section D: Note on Goodwill</li> <li>Section E: Note on Contingencies and Reserves</li> <li>Section F: How Is Accounting Used in M&amp;A?</li> <li>Section G: Purchase Accounting</li> </ul> <p><b>Chapter 10: Valuation</b></p> <ul style="list-style-type: none"> <li>Section A: Introduction</li> <li>Section B: Valuation Techniques</li> </ul>	<p>222-230</p> <p>231-248</p>
<p>5</p>	<p><b>Chapter 10: Valuation</b></p> <ul style="list-style-type: none"> <li>Section C: Valuation in Practice             <ul style="list-style-type: none"> <li><i>Doft &amp; Co. v. Travelocity Inc.</i></li> </ul> </li> </ul> <p><b>Chapter 11: Deciding to Do a Deal</b></p> <ul style="list-style-type: none"> <li>Section A: Make or Buy Decisions</li> <li>Section B: How to Sell a Company</li> </ul> <p><b>Chapter 12: Important Actors and Their Roles</b></p> <ul style="list-style-type: none"> <li>Section A: Attorneys</li> <li>Section B: Investment Bankers and Deal-Makers</li> <li>Section C: Other Professionals</li> </ul> <p><b>CANVAS: Delaware “Fair Value” Cases (Robert Rhee)</b></p>	<p>248-265</p> <p>269-283</p> <p>285-310</p>

6	<p><b>Chapter 13: Preliminary Negotiations</b></p> <ul style="list-style-type: none"> <li>• Section A: Investment Banker Engagement Letter</li> <li>• Section B: Non-Disclosure and Confidentiality Agreements <ul style="list-style-type: none"> <li>◦ <i>Martin Marietta Materials, Inc. v. Vulcan Materials Co.</i></li> </ul> </li> <li>• Section C: Standstill</li> <li>• Section D: Letter of Intent/Memo of Understanding (MOU)</li> <li>• Section E: Due Diligence</li> </ul>	311-354
7	<p><b>Chapter 14: Documentation and Negotiations: The Merger Agreement</b></p> <ul style="list-style-type: none"> <li>• Section A: Overview</li> <li>• Section B: Landscape of Merger Agreement</li> <li>• Section C: Pricing Formulas, Collars, and Risk Allocation</li> <li>• Section D: Earnouts</li> <li>• Section E: Information Production and Risk Allocation: Representations and Warranties</li> <li>• Section F: Representations and Warranties Generally</li> <li>• Section G: Covenants and Additional Agreements</li> </ul>	355-403
8	<p><b>Chapter 14: Documentation, Negotiations: The Merger Agreement</b></p> <p>Section H: Closing Conditions  Section I: Termination Provisions  Section J: Termination Fees  Section K: Risk Allocation and Material Adverse Change Clause  Section L: Allocating Risk in Private Company Sale: Escrow, Indemnification, and Insurance  Section M: Return to Contract Principles: Drafting and Negotiating the Merger Agreement</p> <p><b>Note: In light of the fact that this course is 2 credits only, we will skip Chapters 15 and 17 (materials on hostile acquisitions and defenses).</b></p>	403-458

9	<p><b>Chapter 16: Fiduciary Duty Litigation</b></p> <ul style="list-style-type: none"> <li>• Section A: Overview of Fiduciary Duty Lawsuits</li> <li>• Section B: Fiduciary Duties</li> <li>• Section C: Standards of Review</li> <li>• Section D: How the Standard of Review Affects Transaction Structuring</li> <li>• Section E: Disclosure</li> <li>• Section F: Remedies</li> </ul> <p><b>Chapter 18: The Sale Process</b></p> <ul style="list-style-type: none"> <li>• Section A: <i>Smith v. Van Gorkom</i> and the Board’s Duty of Care <ul style="list-style-type: none"> <li>○ <i>Smith v. Van Gorkom</i></li> </ul> </li> <li>• Section B: The Legislative Response to <i>Van Gorkom</i></li> <li>• Section C: <i>Van Gorkom</i> and Duty of Care in Modern Times</li> </ul> <p><b>Chapter 19: Selling the Corporation</b></p> <ul style="list-style-type: none"> <li>• Section A: Maximizing Shareholder Value: Revlon Duties <ul style="list-style-type: none"> <li>○ <i>Revlon Inc. v. MacAndrews &amp; Forbes Holdings Inc.</i></li> </ul> </li> </ul>	<p>507-525</p> <p>603-625</p> <p>627-636</p>
10	<p><b>Chapter 19: Selling the Corporation</b></p> <ul style="list-style-type: none"> <li>• Section B: What Triggers Revlon? <ul style="list-style-type: none"> <li>○ <i>Paramount v. Time</i></li> <li>○ <i>QVC v. Paramount</i></li> </ul> </li> <li>• Section C: Revlon Today <ul style="list-style-type: none"> <li>○ <i>Lyondell Chemical v. Ryan</i></li> </ul> </li> <li>• Section D: Go-Shops</li> <li>• Section E: Revlon and Deal Protections</li> <li>• Section F: Revlon in Mixed Stock / Cash Transactions</li> <li>• Section G: Revlon in Other States, and Other Constituency Provisions</li> <li>• Section H: Other issues</li> </ul>	637-699
11	<p><b>Chapter 20: Conflicts of Interest: Director, Officer, and Shareholders Conflicts</b></p> <ul style="list-style-type: none"> <li>• Section A: Origins of Conflict of Interest Regulation</li> <li>• Section B: Freeze-outs <ul style="list-style-type: none"> <li>○ <i>Weinberger v. UOP</i></li> <li>○ <i>In re Pure Resources Inc. Shareholder Litigation</i></li> <li>○ <i>Kahan v. M&amp;F Worldwide Corp.</i></li> </ul> </li> <li>• Section C: Management Buyouts</li> <li>• Section D: Other Conflict Transactions <ul style="list-style-type: none"> <li>○ <i>In re MultiPlan Corp. Shareholders Litigation</i></li> </ul> </li> </ul>	701-767



12	<p><b>Elon Musk's acquisition of Twitter</b></p> <ul style="list-style-type: none"> <li>• Read Twitter Definitive Proxy Statement <ul style="list-style-type: none"> <li>○ Front matter and the CEO's and Board's letter to shareholders <ul style="list-style-type: none"> <li>▪ Skip the notice of the special meeting on the front matter</li> </ul> </li> <li>○ "Transaction Summary" at pp. 1-19</li> <li>○ "Questions and Answers" at pp. 20-32 <ul style="list-style-type: none"> <li>▪ Skip (do <u>not</u> read) "Forward-Looking Statements" and "The Special Meeting" on pp. 33-41</li> </ul> </li> <li>○ "The Merger" at pp. 42-134</li> <li>○ "The Merger Agreement" at pp. 138-162</li> <li>○ Annex A: Agreement and Plan of Merger, at pp. A-1 to A-63 (skim read overall, but read more carefully the portions of the agreement dealing with topics covered in this course such as: <ul style="list-style-type: none"> <li>▪ Definitions section</li> <li>▪ "Representations and Warranties"</li> <li>▪ "Restrictions on Solicitations of Other Acquisition Offers"</li> <li>▪ "The Twitter Board Recommendation; Board Recommendation Change"</li> <li>▪ "Efforts to Close the Merger"</li> <li>▪ "Conditions to the Closing of the Merger"</li> <li>▪ "Termination of the Merger Agreement"</li> <li>▪ "Termination Fees and Remedies".</li> </ul> </li> </ul> </li> <li>• Answer the questions posted on Canvass</li> </ul>	
13	<p><b>Open class</b></p> <ul style="list-style-type: none"> <li>• Finish the Twitter acquisition</li> <li>• Discuss final exam</li> </ul>	
	<p><b>FINAL EXAM: TBD</b></p>	