

### **Law 7630: 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. The first part 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. Subsequent topics include the tax treatment of options, futures, forwards, swaps and other "derivatives."

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 U.S. federal income tax rules applicable to:
  - the holding and trading of non-U.S. currencies.
  - virtual currencies, such as Bitcoin.
  - many "derivative" transactions, including futures, forwards, swaps and contingent-payment debt instruments.
  - certain tax 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 U.S. federal income tax aspects.

Required Materials.

IRC and Treasury Regulations. These materials are available online.

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. The path on Westlaw is 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](#). These slides will download as a .zip file names OFOD\_11e\_slides.zip, containing 37 files. Each chapter file is labeled as such.

Financial Calculator. You also 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. Websites that offer financial calculators

include:

<https://www.mortgagecalculator.org/calcs/bonds.php>

<https://www.fncalculator.com/financialcalculator?type=bondCalculator>

#### 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. Attendance in class is required by both the ABA and the Law School. Attendance will be taken at each class meeting. Students are allowed two unexcused absences during the course of the semester at no penalty. 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](#).

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 two hours on a fixed date. The final will consist of multiple choice questions, possibly one or more short essay questions, or both, and may also include a True/False section.

#### **UF ACADEMIC POLICIES AND RESOURCES:**

Other information about UF academic policies and resources can be found at [this link](#).

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 C+) based on class participation. In addition, more than two 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.

By appointment. Please email me to arrange for office hours. My office is not located on the Law School campus so Zoom may be preferable but we can arrange whatever works best for both of us.

Course Policies.

1. Accommodations. Students requesting accommodation for disabilities must first register with the Dean of Students Office (<http://www.dso.ufl.edu/drc/>). 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 the UF Law Honor Code located [here](#). 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 <http://teach.ufl.edu/wp-content/uploads/2012/08/NetiquetteGuideforOnlineCourses.pdf>. 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.

### Recordings of Class

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 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 guest 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 and Student Conduct Code.

- 4.
5. 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/>.
6. UF Law respects students' observance of religious holidays. Students, upon prior notification to their instructors, shall be excused from class or other scheduled academic activity to observe a religious holy day of their faith.

7. Students shall be permitted a reasonable amount of time to make up the material or activities covered in their absence.
8. Students shall not be penalized due to absence from class or other scheduled academic activity because of religious observances.

SCHEDULE

Date	Unit	Topics	Assignment
Week 1	I II.A	Introduction: debt and derivatives  Interest, OID, dispositions of debt instruments	Unit I: B&L ¶¶53.1, 53.2, 57.1; Hull slides: Chapters 1, 4 (slides 1-17 only) Unit I: all problems  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 Unit II.A: Problems 1 and 2
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 Unit II.A: Problems 3-8
Week 3	II.A (cont'd), B	Interest, OID and dispositions of debt instruments (cont'd); market discount	Unit II.A: Problems 9-15  II.B: §§171, 1276-78 B&L ¶56.4 Unit II.B: Problems 1-4
Week 4	II.C, D, F	Short-term obligations, stripped bonds, below-market loans	II.C: §§163(e)(2)(C), 1271(a), 1272(a)(2)(C) B&L ¶56.5 Unit II.C: Problems 1-3  II.D: §§1281-83, 1286 B&L ¶56.6.1  “The Fed Explained,” Chapters 1 and 2 (available under the Files tab on Canvas) Unit II.D: Problem 1  II.F: §7872 B&L ¶¶55.1-55.5 Unit II.F: Problems 1-3
Week 5	III.A	Foreign currencies	§§985-87, 988(a)-(c)(1)(C), (c)(2)-(5), 989 B&L ¶¶74.1, 74.2, 74.6, 74.7, 74.8, 74.9 Unit III.A: Problems 1, 2

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Week 6	III.B	Virtual and crypto currencies	<p>IRS Notice 2014-21  Rev. Rul. 2019-24  B&amp;L ¶40.8.7  2020 NYSBA Tax Section Commentary on Hard Forks, Parts I-III.A.  Chamberlain, <i>Forking Belief in Cryptocurrency</i>, 24 <u>Fl. Tax Rev.</u> 651 (2021)</p> <p>Problems: To be distributed</p>
Week 7	IV	Short sales and related issues	<p>§§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&amp;L ¶¶57.7, 57.8.2  Unit IV: Problems 1-5</p>
Week 8	V	Options	<p>§§1233(a)–(c), 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 10–12  Unit V: Problems 1-9</p>
Week 9	VI	Futures and forwards	<p>§§163(I), 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  Unit VI: Problems 1-7</p>

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Week 10	VII	Hedging transactions	§§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&L ¶57.5 Hull slides: Chapter 3 Problems 1-5
Week 11	VIII	Notional principal contracts, constructive ownership transactions	§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&L ¶57.4 Hull slides: Chapter 7 Problems 1-8
Week 12	IX.A, IX.B	Contingent payment debt instruments, wash sales,	Unit VIII.A: Reg. §§1.1275-4(a), (b), (e) Rev. Rul. 2002-31 Notices 2002-36, 2008-2 B&L ¶ 56.1 Unit VIII.A: Problems 1-3  Unit VIII.B: §§1091, 1223(3) Reg. §§1.1012-1(c), 1.1091-1, -2 Rev. Rul. 2008-5 B&L ¶44.8 Unit VIII.B: Problems 1-2
Week 13	IX.C	Straddles	§§263(g), 1092 Reg. §§1.1092(b)-1T, -2T(a), 1.1092(d)-1 IRS Notice 2000-44 <u>Cemco Investors, LLC v. U.S.</u> , 99 AFTR 2d 2007-1882 (E.D. Ill.); IRS Notice 2000-44, 2000-2 Cum. Bull. 255; Rev. Rul. 88-31 B&L ¶57.6 Unit VIII.C: Problems 1-3