

Corporate Taxation II (LAW 7613)
T 1:45-3:10 p.m. & Th 1:15-2:40 p.m. (HOL 359)
Spring 2024 Syllabus

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(1) W 12:30 – 1:30 p.m. & Th 11:30 a.m.–12:30 p.m.; meetings will be in my office, but I will also keep a Zoom link open on my desktop for students who prefer to meet virtually (<https://ufl.zoom.us/j/3910352185>).

(2) By appointment.

Course Description and Preparation Time:

This course focuses on taxable and nontaxable mergers, acquisitions, divisions, and other restructurings involving U.S. “C” corporations. This course focuses on U.S. domestic law and does not examine the issues that would be raised by cross-border transactions. This course is 3 credits. You should spend at least 2 full hours preparing for each hour of class time. This is the minimum preparation time needed for you to be able to follow class discussion; the material is complex and will require many more hours of study for mastery. You will need to review concepts discussed in Corporate Taxation I; specifically, you are expected to be able to recall and apply §§ 243, 301, 302, 306, 312, 316, 318, 331, 332, 334, 336, 337, 351, 357, 358, 362, 1032, and 1059. Slides reviewing these provisions will be posted to Canvas, and the first topic of the course (Code § 304) will facilitate a review of several of these Code provisions.

Course Expectations and Learning Outcomes:

- Apply a selection of Internal Revenue Code provisions relating to C corporation acquisitions and divisions.
- Explain the difference between a taxable and nontaxable acquisition or division; explain the types of nontaxable acquisitive reorganizations (e.g., type A, reverse triangular merger, type B) and the forms of nontaxable corporate divisions (e.g., spin-off).
- Improve ability to interpret and apply tax statutes and regulations.
- Establish a base from which to acquire further tax expertise.

Course Prerequisite:

You must have taken Corporate Taxation I or receive permission from Professor Luke.

Methodology & Course Materials:

Class meetings will be spent primarily on discussing Problem Sets. Some materials will be covered through asynchronous lectures and required quizzes that will be posted to Canvas. Such asynchronous lectures and quizzes will factor into your participation grade (see below).

A slideshow review of the key concepts discussed during class and in the asynchronous lectures will be made available through Canvas for each course segment, but it will not be made available until after a segment is completed in class. Class time will not be used to review the slides (or other review materials that may be provided).

Optional quizzes that review the basic concepts through multiple choice questions will be posted to Canvas (note: the final exam will not contain multiple choice). Optional review sessions will be scheduled in connection with the final exam and may also be scheduled during the semester as needed.

The casebook is *Federal Income Taxation of Corporations* (5th ed., McMahon, Simmons, Luke & Wells). You are also required to study various provisions of the current Internal Revenue Code and Treasury regulations. If there are changes to the law, there may be changes to the assigned material, and additional reading may be added to Canvas.

If you wish to consult a supplementary book on corporate tax, I recommend (1) Leandra Lederman & Michelle Kwon, *Understanding Corporate Taxation* (4th ed.) (this is a relatively short overview book with examples); and (2) *Bittker & Eustice: Federal Income Taxation of Corporations and Shareholders* (this is a WG&L treatise, available on Westlaw by navigating to:

[https://www.westlaw.com/Browse/Home/SecondarySources/TaxSecondarySources/WarrenGorhamLamontWGL/BusinessEntitiesTreatisesWGL/BittkerEusticeFederalIncomeTaxationofCorporationsShareholdersWGL?transitionType=Default&contextData=\(sc.Default\)&VR=3.0&RS=cbtl1.0](https://www.westlaw.com/Browse/Home/SecondarySources/TaxSecondarySources/WarrenGorhamLamontWGL/BusinessEntitiesTreatisesWGL/BittkerEusticeFederalIncomeTaxationofCorporationsShareholdersWGL?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=cbtl1.0)).

Notice of Recording and Conduct Rules Relating to Photos and Recordings

Students are allowed to record video or audio of “class lectures.” The entirety of our class sessions will also be audio visually recorded using Zoom, and I will provide access to these recordings through Canvas to all students. However, the purposes for which student recordings and Zoom 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 student presentations, academic exercises involving solely student participation, assessments (quizzes, tests, exams), private conversations between students in the class, or between a student and the faculty or lecturer during a class session. Please note that the Zoom recordings will record conversations with students in the class as those will record the entirety of 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.

Evaluation, Etiquette & Class Attendance Policy

Grade

25 percent: Participation & Attendance

75 percent: Final Exam

Participation & Attendance Expectations

Students are expected to treat each other with respect at all times. You are required to attend during regular class times. Attendance will be taken each day and spot checks for attendance may be taken, including through the use of Canvas surveys. Students are expected to be prepared to respond to questions about the assigned problems and reading.

If you experience a personal difficulty that impacts your ability to participate in and attend class, please talk to someone. If you are not comfortable talking with me, please reach out to Student Affairs, which includes Mental Health Counselor Ritzy Ettinger on its team. If you are in need of an accommodation, please see the link included in “Other Policies” below.

As many as five (5) and at least two (2) of our regularly scheduled class sessions will be held through asynchronous lectures. The dates we will not meet will be announced as the semester progresses. You will be responsible to complete assigned asynchronous lectures and related quizzes as part of your participation and attendance grade. If we have a guest speaker who is participating virtually, the class may be held virtually to facilitate interactions with the guest (this will occur no more than 2 times and may not occur at all).

A student's participation grade will be reduced by 5 percentage points per unexcused absence (but not below 0). Failure to complete an asynchronous lecture and related quiz by April 22, 2024 (the day before the reading period begins) will reduce a student's participation grade by 5 percentage points per missing lecture/quiz (but not below 0). Repeated lack of preparedness or participation, including not responding to in-class Canvas surveys, may reduce a student's participation grade by 5 percentage points per incident. Repeated class disruption (e.g., excessive noise, texting, personal internet use, leaving early or arriving late) may also reduce a student's participation grade by 5 percentage points per incident, the same amount as for an unexcused absence. You will receive a warning prior to having your participation grade reduction on account of an incident relating to lack of preparedness and/or disruptive behavior.

If you are planning to miss class for a religious holiday, please let me know. Absences taken for observance of religious holidays will be excused, but the participation grade will be reduced by 5 percentage points **unless** there is satisfactory completion of a makeup assignment. For UF's policy on religious holidays, please see the link included in "Other Policies" below.

If you are absent because of a special situation (sickness, family emergency, job interview, etc.), the absence will be excused after you have provided satisfactory documentation of the situation as requested by me or by Student Affairs, but the participation grade will still be reduced by 5 percentage points **unless** there is satisfactory completion of a make-up assignment.

Makeup assignments will generally consist of watching the Zoom recording of the missed class and turning in notes and questions from that viewing. Makeup assignments must be completed by April 22, 2023 (the day before the reading period begins).

If your participation/attendance grade is 0 before the exam period begins, you *may* be barred from taking the final exam, and you *will* be barred from participating in the retesting process (see below).

Additional Expectations: Zoom Etiquette

Unless you have been accepted into the remote option for part-time students, you are required to attend in person in the designated classroom. With **advance** permission, in-person students may be permitted to attend through Zoom; permission will only be granted in situations that would warrant an excused absence after completion of a makeup assignment.

If you attend over Zoom (whether as a part-time remote option student or as a full-time student with advance permission), please ensure your Zoom name matches your preferred name and with your last name also shown. You are expected to turn on video of yourself at the beginning of class (while attendance is noted) and when responding to or asking questions. You do not need to have video on when taking notes and listening to the class, but you need to be ready to respond to questions, whether directed to you individually or

in the form of class surveys. You are expected to keep your microphone on mute unless you have been called on to ask or answer a question. Please do not use the chat function to ask questions directed to me during class; it will not be monitored by me, and students attending in person will not be able to see it. If you are trying to ask a question, but your “virtual hand” is not being seen by me, please unmute yourself and indicate you have had your virtual hand raised if more than 5 minutes have passed without acknowledgement. If you have a technical problem during the class, please contact UF IT (<https://www.law.ufl.edu/technology-services>).

Final Exam

The final exam will be 4 hours and will consist of mix of short questions and longer essays. The exam is currently scheduled to take place on Friday, April 26. You will be required to use the software and process designated by the law school when taking the exam. The exam will be open book, but any form of communication about the exam contents with anyone or any interaction with AI will be prohibited and will violate the Honor Code.

Exam delays and accommodations must be arranged through the Student Affairs Office; please see “Other Policies” and go to the link.

Retesting Process

Students who receive a grade in the course lower than a B **and** who have a participation and attendance grade higher than 0 before the final exam period starts (see above) will have the opportunity to retest for a grade increase. The highest possible exam grade obtainable through the retesting process will be the lower of (1) a B or (2) one full grade increase from the initial grade earned in the course. For example, a student receiving a B- and who has met the participation/attendance grade requirement would be eligible to retest for a course grade no higher than a B. A student receiving a C- and who has met the participation/attendance requirement would be eligible to retest for a grade no higher than a B-. The retesting process will not be used to lower grades. Re-testing is scheduled through discussion between the individual student and Prof. Luke, but re-testing must be completed no later than 2 months after grades are posted (note, this is separate from any requirement imposed by UF for graduation).

Other Polices:

Other 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>. You will need to log into UF e-learning to see the document. **Note that the mandatory mean does not apply to LL.M. students.**

Topic Assignments & First Class Meeting

For the first class meeting, (1) read the syllabus, and (2) complete Topic I, Problem Set 6, Problems 1–2.

The problem and reading assignments are listed below. You are also responsible for reading the related Code provisions and Treasury regulations. The schedule may be revised to reflect the pace of class discussion or any new legal developments. Unless otherwise advised, you should assume that 2–5 problems will be covered per class session, and you should prepare accordingly. An announcement will be posted to Canvas after each class with an estimate of how many problems will be covered at the next session. Some topics will be covered quickly, while some topics will take multiple weeks.

You are expected to be able to recall and apply §§ 243, 301, 302, 306, 312, 316, 318, 331, 332, 334, 336, 337, 351, 357, 358, 362, 1032, and 1059 from Corporate Tax I. Slides reviewing these provisions will be posted to Canvas, and the first topic of the course (Code § 304) will facilitate a review of several of these Code provisions.

I. Code § 304

Reading: Chapter 5, pgs. 320–22 (omit *Fehrs* case), 328–337

Problem Set: Chapter 5, Problem Set 6

II. Qualifying Type “A” (Asset) and Type “B” (Stock) Reorganizations

Reading: Chapter 10, pgs. 510–512, 518–599

Problem Sets: Chapter 10, Problem Sets 2–7

III. Taxable Asset and Stock Acquisitions

Reading: Chapter 8

Problem Sets: All Chapter 8 Problem Sets

IV. Qualifying Type “C,” Triangular, and Acquisitive Type “D” Reorganizations

Reading: Chapter 10, pgs. 510–16, 599–646

Problem Sets: Chapter 10, Problem Sets 8–10

V. Judicial Doctrines and Limitations

Reading: Chapter 10, pgs. 659–694

Problem Set: Chapter 10, Problem Set 11

VI. Corporate Divisions

Reading: Chapter 12

Problem Sets: All Chapter 12 Problem Sets

If time permits, the additional topics described below will be covered.

A. Single-Corporation Reorganizations

Reading: Chapter 11

B. Corporate Attributes in Reorganizations

Reading: Chapter 13

C. Affiliated Corporations

Reading: Chapter 15