

SYLLABUS

MERGERS & ACQUISITIONS (Spring 2023)

PROFESSOR:

Robert J. Rhee

CONTACT:

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CLASSROOM:

Holland 345

CLASS TIME:

Monday 3:30pm to 5:30pm

(two 55-minute sessions, and 10-minute break between)

OFFICE HOURS:

Mondays & Tuesdays 12:00pm to 1:00pm

- Office hours will always be consistent with the prevailing UF policy.
- Office hours can be through Zoom, telephone, or in person (if UF policy permits), and there are no restrictions on any of these methods.

FINAL EXAM:

TBD (3 hours)

TEXTBOOKS

Claire Hill, Brian Quinn & Steven Solomon, *Mergers and Acquisitions: Law, Theory, and Practice* (West 2d edition 2019)

The online appendix for the Hill, Quinn & Solomon casebook is found at: http://www.hillmergersandacquisitions.com/public_resources.asp?ID=44. See pages 833-34 of the casebook.

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.

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.

REQUIRED READING MATERIALS

Please be sure to register for the Canvas course and have any required materials with you in print or easily accessible electronic form in class. You are responsible for checking your Canvas page and the e-mail connected to the page on a regular basis for any class announcements or adjustments.

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.

COMPLIANCE WITH UF HONOR CODE

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](#). The UF Law Honor Code also prohibits use of artificial intelligence, including, but not limited to, ChatGPT and Harvey, to assist in completing quizzes, exams, papers, or other assessments.

FINAL EXAM FORMAT

The final exam will follow UF's "limited open-book" policy for in-class exams. That policy reads: **"If a professor chooses this option, students may reference their**

assigned casebook(s), supplements, or rulebooks in the course, as well as any handouts provided by the instructor during the course. Students may not bring notes or outlines to the exam, although books that are annotated by hand in the margins may be used. Students will not be permitted to access the internet or any of their computer files during the exam." This means that "students may NOT bring notes or outlines to the exam" but MAY use "assigned casebook(s) . . . as well as any handouts provided by the instructor during the course." Handouts provided by the instructor includes the PPT slides that the professor provided (but you may NOT annotate these handouts, and you are **only permitted to have hand annotations in your textbook**). Students will not have access to their computer programs such as Word, PowerPoint, or Excel. You **MAY** use a handheld calculator if you wish.

The final exam will have essay or essays, 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.

EXAM DELAYS AND ACCOMMODATIONS

The law school policy on exam delays and accommodations can be found [here](#).

GRADING INFORMATION

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

Letter Grade	Point Equivalent	Letter Grade	Point Equivalent
A (Excellent)	4.00	C (Satisfactory)	2.00
A-	3.67	C-	1.67
B+	3.33	D+	1.33
B	3.00	D (Poor)	1.00
B-	2.67	D-	0.67
C+	2.33	E (Failure)	0.00

The law school grading policy is available [here](#).

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. For each 1 credit hour in the course, students are expected to devote at least 2 hours of out-of-class preparation including reading the assigned materials, writing critical analyses (if any), and developing your final paper (if any).

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 **six** 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](#).

The single best thing that a student can do to maximize the possibility of doing well in the course in terms of a grade is to keep up with the class reading assignments and to attend class regularly. The final exam will draw from the work done in course and the class discussion.

Attendance will be taken online. A student may access the online attendance form at the beginning of class from the law school quick links page: <https://www.law.ufl.edu/student-life> or the <https://www.law.ufl.edu/attendance>. You will enter the requested information, including your UFID number, name and attendance code. Your professor will provide the attendance code for each class. The submissions are recorded. It is an Honor Code violation for giving the attendance code to a student who is not present in the class, either in person or online. Please do not violate this policy.

OBSERVANCE OF RELIGIOUS HOLIDAYS

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

STATEMENT RELATED TO ACCOMODATIONS FOR STUDENTS WITH DISABILITIES

Students requesting accommodations for disabilities must first register with the Disability Resource Center (<https://disability.ufl.edu/>). Once registered, students will receive an accommodation letter, which must be presented to the Assistant Dean for Student Affairs (Assistant Dean Brian Mitchell). Students with disabilities should follow this procedure as early as possible in the semester. It is important for students to share their accommodation letter with their instructor and discuss their access needs as early as possible in the semester. Students may access information about various resources on the UF Law Student Resources Canvas page, available at <https://ufl.instructure.com/courses/427635>.

STUDENT 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. Click

[here](#) for guidance on how to give feedback in a professional and respectful manner. Students will be notified when the evaluation period opens and may 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 [here](#).

RECORDING OF CLASS

All classes will be recorded via Mediasite in case students must miss class for health reasons. The Office of Student Affairs will work with faculty to determine when students may have access to these recordings, and the recordings will be password protected. It is the student's responsibility to contact the Office of Student Affairs as soon as possible after an absence.

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 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."

COVID POLICY

The Covid-19 policy for the course is the prevailing University of Florida's policy in effect during the entire pendency of the course. If the UF policy changes, the policy in effect for the course will also change.

ONLINE (ZOOM) CLASS SESSIONS

Per law school policy, our course must be mostly in-person class sessions, at least 2/3 of all class sessions. Consistent with this policy, we can have up to 1/3 of class sessions online through Zoom or other means. The following are scheduled Zoom classes.

February 6, Monday

February 9, Thursday (makeup class)

February 16, Thursday (makeup class)

March 20, Monday

CLASS CANCELLATION AND MAKEUP CLASSES

Class on Monday, February 13 (Class #4) is cancelled. Makeup class is on Thursday, February 9, 3:30pm to 5:50pm, via Zoom (this class session will be recorded and made available to all students).

Class on Monday, April 24 (Class #13) is cancelled. Makeup class is on Thursday, February 16, 3:30pm to 5:50pm, via Zoom (this class session will be recorded and made available to all students). By cancelling the last class and doing a makeup earlier in the semester, students will end this course 1 week earlier than under the regular UF Law schedule, which will permit earlier exam preparation.

ASSIGNMENTS

IMPORTANT NOTES TO STUDENTS:

1. 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.
2. The syllabus may be continuously updated throughout the course. Please read at least 10 pages ahead of the current assignment for the class session in the event that a particular class moves faster than anticipated.
3. 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.
4. 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 Jan. 23	Chapter 1: Introduction <ul style="list-style-type: none">Section A: History<ul style="list-style-type: none">Skim read this section, pages 1-15 (we will briskly cover this material in class)Section B: Drivers of Mergers and AcquisitionsSection C: Note on Applicable LawSection D: Introduction Note on ValuationSection E: The Deals in This Casebook Chapter 2: Deal Structures: Introduction to Mergers and Asset Sales <ul style="list-style-type: none">Section A: Building Your Deal VocabularySection B: Statutory Merger	1-28 31-46
2 Jan. 30	Chapter 2: Deal Structures: Introduction to Mergers and Asset Sales <ul style="list-style-type: none">Section C: Mergers in Practice, The Dell ExampleSection D: Sale of All or Substantially All AssetsSection E: Tax Considerations Chapter 3: Appraisal Rights <ul style="list-style-type: none">Section A: Perfecting Appraisal Rights?Section B: The Market Out ExceptionSection C: Appraisal Arbitrage and "Fair Value"	46-61 63-87

3 Feb. 6 ZOOM	<p>Chapter 3: Appraisal Rights</p> <ul style="list-style-type: none"> Section C: Appraisal Arbitrage and “Fair Value” <ul style="list-style-type: none"> <i>DFC Global Corp. v. Muirfield Value Partners</i> Section D: Quasi-Appraisal Proceedings <ul style="list-style-type: none"> <i>Berger v. Pubco Corp.</i> Section E: Appraisal Rights and Other Remedies, When Are Appraisal Rights Exclusive? Section F: Delaware and MBCA Compared <p>Note: We will skip Chapters 4 through 8 (aspects of federal securities laws including proxy regulation).</p> <p>Chapter 9: Accounting</p> <ul style="list-style-type: none"> Section A: Introduction Section B: Balance Sheet Section C: Income Statement <p>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 these financial statements in light of the lesson learned in Chapter 9.</p>	87-106 211-215
4 Feb. 9 ZOOM (Makeup)	<p>Chapter 9: Accounting</p> <ul style="list-style-type: none"> Section D: Note on Goodwill Section E: Note on Contingencies and Reserves Section F: How Is Accounting Used in M&A? Section G: Purchase Accounting <p>Chapter 10: Valuation</p> <ul style="list-style-type: none"> Section A: Introduction Section B: Valuation Techniques 	216-224 225-242
5 Feb. 16 ZOOM (Makeup)	<p>Chapter 10: Valuation</p> <ul style="list-style-type: none"> Section C: Valuation in Practice <p>Chapter 11: Deciding to Do a Deal</p> <ul style="list-style-type: none"> Section A: Make or Buy Decisions Section B: How to Sell a Company <p>Chapter 12: Important Actors and Their Roles</p> <ul style="list-style-type: none"> Section A: Attorneys Section B: Investment Bankers and Deal-Makers Section C: Other Professionals 	242-259 263-277 279-305

6 Feb. 20	Chapter 13: Preliminary Negotiations <ul style="list-style-type: none"> • Section A: Investment Banker Engagement Letter • Section B: Non-Disclosure and Confidentiality Agreements • Section C: Standstill • Section D: Letters of Intent / Memorandum of Understanding (MOU) • Section E: Due Diligence 	307-350
7 Feb. 27	Chapter 14: Documentation and Negotiations: The Merger Agreement <ul style="list-style-type: none"> • Section A: Overview • Section B: Landscape of Merger Agreement • Section C: Pricing Formulas, Collars, and Risk Allocation • Section D: Earnouts • Section E: Information Production and Risk Allocation: Representations and Warranties • Section F: Representations and Warranties Generally • Section G: Risk Allocation and Material Adverse Change Clause 	351-403
8 Mar. 6	Chapter 14: Documentation, Negotiations: The Merger Agreement <p>Section H: Covenants and Additional Agreements</p> <p>Section I: Closing Conditions</p> <p>Section J: Termination Provisions</p> <p>Section K: Termination Fees</p> <p>Section L: Allocating Risk in Private Company Sale: Escrow</p> <p>Section M: Return to Contract Principles: Drafting and Negotiating the Merger Agreement</p> <p>Note: We will skip Chapters 15 and 16 (materials on hostile acquisitions and defenses).</p>	403-446
9 Mar. 20 ZOOM	Chapter 17: The Sale Process <ul style="list-style-type: none"> • Section A: <i>Smith v. Van Gorkom</i> and the Board's Duty of Care <ul style="list-style-type: none"> ◦ <i>Smith v. Van Gorkom</i> • Section B: The Legislative Response to <i>Van Gorkom</i> • Section C: <i>Van Gorkom</i> and Duty of Care in Modern Times <ul style="list-style-type: none"> ◦ <i>McPadden v. Sidhu</i> Chapter 18: Selling the Corporation <ul style="list-style-type: none"> • Section A: Maximizing Shareholder Value: Revlon Duties <ul style="list-style-type: none"> ◦ <i>Revlon Inc. v. MacAndrews & Forbes Holdings Inc.</i> • Section B: What Triggers Revlon? <ul style="list-style-type: none"> ◦ <i>Paramount v. Time</i> 	573-604 605-623

10 Mar. 27	Chapter 18: Selling the Corporation <ul style="list-style-type: none"> Section B: What Triggers Revlon? <ul style="list-style-type: none"> <i>QVC v. Paramount</i> Section C: Revlon Today <ul style="list-style-type: none"> <i>Lyondell Chemical v. Ryan</i> Section D: Go-Shops Section E: Revlon and Deal Protections Section F: Revlon in Mixed Stock / Cash Transactions Section G: Revlon in Other States, and Other Constituency Provisions 	624-673
11 Apr. 3	Elon Musk's acquisition of Twitter <ul style="list-style-type: none"> Materials posted on Canvass Background, facts, deal structure, and valuation 	
12 Apr. 10	Elon Musk's acquisition of Twitter <ul style="list-style-type: none"> Materials posted on Canvass Acquisition agreement and the lawsuit 	
13 Apr. 17	Open class <ul style="list-style-type: none"> Finish the Twitter acquisition Discuss final exam 	
	FINAL EXAM: TBD	