

SYLLABUS

MERGERS & ACQUISITIONS (Spring 2024)

PROFESSOR:	Robert J. Rhee
CONTACT:	Holland Hall # 312C 352-273-0958 rhee@law.ufl.edu
CLASSROOM:	Holland 283
CLASS TIME:	Wednesday: 1:15pm to 3:15pm (2 hours) (two 55-minute sessions, and 10-minute break between)
OFFICE HOURS:	Tuesdays & Wednesdays: 11:00am 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)

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.

GRADING

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>.

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.

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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.

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](#).

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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	Chapter 1: Introduction • Section A: History ◦ Skim read this section, pages 1-15 (we will briskly cover this material in class) • Section B: Drivers of Mergers and Acquisitions • Section C: Note on Applicable Law • Section D: Introduction Note on Valuation • Section E: The Deals in This Casebook	1-28
	Chapter 2: Deal Structures: Introduction to Mergers and Asset Sales • Section A: Building Your Deal Vocabulary • Section B: Statutory Merger	31-46
2	Chapter 2: Deal Structures: Introduction to Mergers and Asset Sales • Section C: Mergers in Practice, The Dell Example • Section D: Sale of All or Substantially All Assets • Section E: Tax Considerations	46-63
	Chapter 3: Appraisal Rights • Section A: Perfecting Appraisal Rights? • Section B: The Market Out Exception • Section C: Appraisal Arbitrage and “Fair Value”	65-87
3	Chapter 3: Appraisal Rights • Section C: Appraisal Arbitrage and “Fair Value” ◦ <i>DFC Global Corp. v. Muirfield Value Partners</i> • Section D: Quasi-Appraisal Proceedings	87-108

	○ <i>Berger v. Pubco Corp.</i> • Section E: Appraisal Rights and Other Remedies, When Are Appraisal Rights Exclusive? • Section F: Delaware and MBCA Compared 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). Chapter 9: Accounting • Section A: Introduction • Section B: Balance Sheet • Section C: Income Statement 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.	217-222
4	Chapter 9: Accounting • 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 Chapter 10: Valuation • Section A: Introduction • Section B: Valuation Techniques	222-230 231-248
5	Chapter 10: Valuation • Section C: Valuation in Practice ○ <i>Doft & Co. v. Travelocity Inc.</i> Chapter 11: Deciding to Do a Deal • Section A: Make or Buy Decisions • Section B: How to Sell a Company Chapter 12: Important Actors and Their Roles • Section A: Attorneys • Section B: Investment Bankers and Deal-Makers • Section C: Other Professionals CANVAS: Delaware "Fair Value" Cases (Robert Rhee)	248-265 269-283 285-310
6	Chapter 13: Preliminary Negotiations • Section A: Investment Banker Engagement Letter	311-354

[illegible]

	- Section C: Van Gorkom and Duty of Care in Modern Times Chapter 19: Selling the Corporation - Section A: Maximizing Shareholder Value: Revlon Duties <i>Revlon Inc. v. MacAndrews & Forbes Holdings Inc.</i>	627-636
10	Chapter 19: Selling the Corporation - Section B: What Triggers Revlon? <i>Paramount v. Time</i> <i>QVC v. Paramount</i> - Section C: Revlon Today <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 - Section H: Other issues	637-699
11	Chapter 20: Conflicts of Interest: Director, Officer, and Shareholders Conflicts - Section A: Origins of Conflict of Interest Regulation - Section B: Freeze-outs <i>Weinberger v. UOP</i> <i>In re Pure Resources Inc. Shareholder Litigation</i> <i>Kahan v. M&F Worldwide Corp.</i> - Section C: Management Buyouts - Section D: Other Conflict Transactions <i>In re MultiPlan Corp. Shareholders Litigation</i>	701-767
12	Elon Musk's acquisition of Twitter - Read Twitter Definitive Proxy Statement - Front matter and the CEO's and Board's letter to shareholders - Skip the notice of the special meeting on the front matter "Transaction Summary" at pp. 1-19 "Questions and Answers" at pp. 20-32 - Skip (do <u>not</u> read) "Forward-Looking Statements" and "The Special Meeting" on pp. 33-41 "The Merger" at pp. 42-134 "The Merger Agreement" at pp. 138-162 - 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:	

	▪ Definitions section ▪ “Representations and Warranties” ▪ “Restrictions on Solicitations of Other Acquisition Offers” ▪ “The Twitter Board Recommendation; Board Recommendation Change” ▪ “Efforts to Close the Merger” ▪ “Conditions to the Closing of the Merger” ▪ “Termination of the Merger Agreement” ▪ “Termination Fees and Remedies”. • Answer the questions posted on Canvass	
13	Open class • Finish the Twitter acquisition • Discuss final exam	
	FINAL EXAM: TBD	