

UNIVERSITY OF PENNSYLVANIA

Deals:

The Economic Structure of Transactions and Contracts

LAW 720/MGMT 717

Spring 2018

Mondays and Wednesdays 3:00 to 4:20 PM

Room TBA in the Law School

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This course will focus on the creation of value through transaction and contract design. The goals of the course are to explain how private parties structure and negotiate their commercial interactions, to discuss theories of how they ought to do so, and to give students a thorough understanding of the deal-making process.

The first two months will be devoted to discussion of barriers to transacting -- including information problems and strategic behavior -- and a range of techniques to respond to them as well to other practical aspects of the deal process. In the final five weeks of the course, student teams will apply the tools developed in Part I to a series of recent and particularly interesting completed transactions. This syllabus covers the first of these two parts in tentative detail. The second part will be described once the semester is underway.

Required reading: Christopher S. Harrison, *Make the Deal: Negotiating Mergers and Acquisitions*, course materials on Canvas and in the syllabus, and occasional in-class handouts.

Grading bases: Individual transactional analysis paper (30%), Team's Part II deal-related responsibilities (class presentation and secondary roles) (30%), Individual Part II deal paper (20%), Individual class participation (10%), Problem sets and exercises (10%).

Course mechanics are described in a separate memo, a preliminary version of which appears below following the syllabus proper.

REGULAR ATTENDANCE IS EXPECTED. YOU MAY WORK ALONE OR IN PAIRS ON ALL HOMEWORK PROBLEMS BUT THE INDIVIDUAL PAPERS MUST BE WRITTEN BY YOU ALONE. THE UNIVERSITY ACADEMIC INTEGRITY RULES BEAR ON ALL WRITTEN SUBMISSIONS.

Class 0 (January 8)
LAW STUDENTS ONLY—WHARTON TERM NOT YET COMMENCED
Some Economics Background

The readings below for Class 0 are strictly optional, but deeply thought provoking:
Royal Swedish Academy of Sciences, Press Release 15 October 1985 (Announcement of the Nobel Prize in Economics for 1985)
Royal Swedish Academy of Sciences, Press Release 16 October 1990 (Announcement of the Nobel Prize in Economics for 1990)
(If you are curious, Franco Modigliani and Merton H. Miller, The Cost of Capital, Corporation Finance, and the Theory of Investment, American Economic Review 48(3) (June, 1958): 261-297)
Ronald H. Coase, The Nature of the Firm, 4 *Economica* 386 (1937).

Class 1 (January 10)
ALL, THIS CLASS AND HEREAFTER
Introduction

Josh Levin, Bullpen Market, (A minor-league pitcher named Randy Newsom is selling shares of his future earnings. Should I invest?)
A Note on Implied Warranties
Potato Chip Supply Agreement (How might you modify this agreement if you represented a major national snack food company and wanted supplier to be a major supplier to you of potato chips?)

NB: NO CLASS (NO CLASSES) ON MONDAY, JANUARY 15 DUE TO MARTIN LUTHER KING HOLIDAY

Class 2 (January 17)
The Reverse Modigliani-Miller Theorem, Part I teams setup, and an introduction to mergers and acquisitions

Pfizer-Wyeth Merger Agreement, January 25, 2009 [any would do, this one is the handiwork of Casey Cogut, L '73] (skim Article I)
Peter Huang and Michael Knoll, Corporate Finance, Corporate Law, and Finance Theory, 74 *Southern California Law Review* 175 (2000), pages 177-80.
Robert Bruner, Applied Mergers and Acquisitions, pages 531-38.
William J. Carney, Essentials of Mergers and Acquisitions, pages 13-25

Class 3 (January 22)
Informational Asymmetry: Adverse Selection I

James Freund, Anatomy of a Merger, pages 1-51 (1975).

Problem to be handed in before class: Real Estate Deal with Free Look Clause

Class 4 (January 24)
Informational Asymmetry: Adverse Selection II

Pfizer-Wyeth Merger Agreement, Sections, Article III.

Ronald Gilson, Value Creation by Business Lawyers: Legal Skills and Asset Pricing, 94 Yale Law Journal 239, pages 269 – 280 (1984) (Value Creation).

James Freund, Anatomy of a Merger, pages 242-248 (1975).

Grumman v. Rohr 748 F.2d. 729

Class 5 (January 29)
Agency Costs: Moral Hazard I

Pfizer-Wyeth Merger, Articles V, VII, and VIII (sections on covenants, closing conditions, termination).

Tom Baker, “On the Genealogy of Moral Hazard,” 75 Texas Law Review 237-292

Illinois Lottery Sale

Class 6 (January 31)
Agency Costs: Moral Hazard II

Ronald Gilson, Value Creation, pages 280 - 293.

Ronald Gilson and Reiner Kraakman, Mechanisms of Market Efficiency, 70 Virginia Law Review 549, pages 613 – 621 (1984).

A note on Hotel Management and Ownership.

Problem to be handed in before class: San Francisco Luxury Hotel Development.

Class 7 (February 5)
Asset Specificity I

Apple-SCI turnkey agreement

Fountain Manufacturing Agreement

Indicative Summary of Terms for GM Temporary Loan Facility

Problem to be handed in before class: Pay or Play, Take or Pay.

Class 8 (February 7)
Asset Specificity II

Levi's-Designs Joint Venture Part I: Put-Call Provision (Be prepared to answer questions at end of the case – do not hand in).

Levi's-Designs Joint Venture Part II: Rights of First Refusal (Be prepared to answer questions at end of the case – do not hand in).

Problem to be handed in before class: Miami Dolphins Case Study: Right of First Refusal (Again, you may work alone or in pairs).

Class 9 (February 12)
Exogenous Risk

Materials to be distributed.

Class 10 (February 14)
Taxation: Basic Principles
Guest lecturer: Michael Knoll (University of Pennsylvania Law School)

Myron Scholes et al., Taxes and Business Strategy, pages 1-8, 118-27, 130-32.

Guy Baehr, NJ Transit Getting Foreign Firms to Pay the Fare: Overseas lease-back tax shelters proving profitable for agency, The Newark Star Ledger, July 25, 1995.

Andrew McIntosh, Governor in the Jet-Lease Business, Sacramento Bee, January 3, 2006.

Bob Turner et al., Transfer Pricing Gets More Scrutiny, Financial Executive, May 1, 2004.

"Explanation of Calculations in PAI Leasing Example."

Class 11 (February 19)
Taxation: Mergers and Acquisitions and related matters I
(Readings [and possibly specific topics] to be updated)
Guest lecturer: Rick d'Avino (General Atlantic and PwC)

H. David Rosenbloom and Rick d'Avino, Will the Rush to Invert Spur Corporate Tax Reform? A Conversation, Tax Notes International 76(11) (December 15, 2014)

Allan Sloan's congressional testimony on tax inversions

Joint Committee on Taxation Staff, Present Law and Selected Policy Issues in the U.S. Taxation of Cross-Border Income (March 16, 2015)

John Schwartz, Just Send the Tax Bill to My Personal Irish Subsidiary, New York Times, February 19, 2016

Kimiko de Freytas-Tamura, Welsh Town Leads a British Revolt Against the Tax System and Corporations, New York Times, February 21, 2016

Class 12 (February 21)

Taxation: M&A and related matters II

(Readings [and possibly specific topics] to be updated)

Guest lecturer: Rick d'Avino (General Atlantic and PwC)

Vindu Goel and Michael J. de la Merced, Yahoo to Spin Off Its Stake in Alibaba, New York Times, January 27, 2015

Stephen Gandel, Yahoo Shareholders Still Expect a Massive Alibaba Tax Bill, New York Times, September 29, 2015

Allan Sloan, GE Perfects the Fine Art of Tax Savings, Washington Post, December 13, 2005

Myron Scholes, Introduction to Tax Strategy, 1-8 and 118-132

Andrew MacIntosh, Tax Shelters for the Rich Only, Sacramento Bee, January 3, 2006

Class 13 (February 26)

(Readings [and possibly specific topics] to be updated)

Guest lecturer: Rick d'Avino (General Atlantic and PwC)

Allan Sloan, How Warren Buffett and Don Graham Are Saving \$675 Million in Taxes, Fortune, April 9, 2014

NB: NO CLASS ON WEDNESDAY, FEBRUARY 28.

CLASS WILL NOT MEET ON MARCH 5 OR MARCH 7 DUE TO SPRING VACATION.

Class 14 (March 12)

Putting It All Together in an exercise: Contingent Contracts

Robert Bruner, Applied Mergers and Acquisitions, pages 609-22.

Problem: Contingent Compensation Problem: Sports Apparel Licensing (Be prepared to answer the questions in class).

Problem to be handed in before class: Sale of a Regional Brewer.

Class 15 (March 14)

Putting It All Together in the world: A report from one frontier

Guest lecturer: Lewis Steinberg (Head of Structured Solutions, Bank of America Merrill Lynch)

Classes 16-25 (March 19 through April 18)

The Deals

Materials to be distributed

Deals: The Economic Structure of Transactions and Contracts (LAW 720/MGMT 717)

Memorandum: Course Mechanics and Deliverables

Version of November 13, 2017

NB that the deliverable dates are to be confirmed once the course gets under way

1. Basic course structure

The course is divided into two parts.

Part I occupies the first 13 classes running from the beginning of term through spring vacation. During Part I we will develop and flesh out some mid-level theory. This Part relies intensively on instructor-led discussions. Problem sets and exercises will be assigned as well as readings.

The class is more fun for everyone the more students actively engage in the classroom discussions, particularly in Part I. Be bold!

Part II occupies the final 12 classes. The first two of these classes will be transitional material. The final ten classes will be focused on five recent actual transactions (i.e. in all their real-world complexity), one week for each deal. In each of these weeks, there will be a presentation by a team of students on the Monday and a presentation from professionals involved in the transaction on the Wednesday.

2. The deal teams and the deals

Later in Part I, the instructor will divide the class into five “deal teams.” Each team will have primary responsibility for one of the five transactions (for more on which see below) and secondary responsibility (ditto) for another.

Membership of each deal team will involve both Law and Wharton students. Sometimes students want to arrange transfers between deal teams because of company or industry particulars or because of unambiguously urgent extracurricular responsibilities (domestic responsibilities following from pregnancy due dates, for example). Students can arrange such transfers if they can find willing counterparties from the same school and then register the arrangement in writing with the instructor.

There will be memoranda, circulated later this term, giving deal team make-up and information on the roster of the deals themselves.

3. The deal classes and related process

Each deal gets two classes i.e. one week of the course. The team with primary responsibility for the deal is in charge of the first class (i.e. on the Monday). They will receive the original (i.e. full) set of transaction documents. The team then identifies and assigns a shorter set of readings (no more than 60 pages) for the rest of the class—to

introduce the context, the deal, and the issues or documents on which the presentation will focus—and conducts the class. The objective for the class is to motivate and describe the transaction and to clarify the issues facing the professionals as they worked to structure the transaction.

Individuals who actually did the deal will conduct the second class, on the Wednesday, that week. They will make a presentation and then take questions. In this class, the team with primary responsibility has the job of making sure there are enough questions to keep things moving.

During the class presentation by the primary team, the team with secondary responsibilities has the job of providing a particularly thoughtful and interactive audience, coming to class having prepped the pre-circulated materials and perhaps explored others particular carefully and coming armed with questions. During the presentation by the deal participants, the team with secondary responsibilities will also be responsible for having questions and keeping the discussion time lively. (This is not to say that participation and interventions by others will go unnoticed by the instructor—quite the contrary. It is merely to identify responsibilities.)

Note well that the class conducted by the deal participants provides an excellent opportunity to get outstanding question about the deal logic, the significance of drafting strategies, peculiarities of process, and the like addressed before drafting the term paper.

The team with secondary responsibility will provide brief written comments to the primary team within ten (10) days of the primary team's in-class presentation. Those written comments will also be sent to the instructor. Please put the names of all team members on all group work.

4. The (individual) deal paper

Each individual will prepare a final written report (in term paper format) of 1200 words maximum analyzing the deal they worked on or a portion of that deal by applying the framework developed in the course of Part I. That assignment is due via electronic submission in the course drop box not later than 5 pm on **Friday, April 27th**.

5. The (individual) transaction analysis paper

In addition to the team's term paper, each registered student will write a solely-authored paper applying the framework we develop over Part I to examine a specific transaction or institutional structure. The business pages of the *New York Times*, the *Wall Street Journal*, and the *Financial Times* are very good (though hardly exclusive) sources for interesting material. These transaction analysis papers should be 1500 words maximum, not including the original news story (which should be submitted along with the paper). There will be electronic submission via a drop box on the course portal. (Please put your name and whether you are registered through Law or Wharton on your paper.)

Students are encouraged to look for a novel or otherwise topical structure to write about and not an M&A transaction. We will cover M&A in class.

The transaction analysis paper due dates are staggered so as to conflict minimally with the Part II team responsibilities outlined above. Transaction analysis papers from members of Deal Teams 4 and 5 will be due as of close of business on **Friday, March 23rd**. The papers from members of Deal Teams 1, 2 and 3 will be due as of close of business on **Friday, April 20th**.

6. Homework assignments

Homework problems will be assigned over the course of Part I. Students may work alone or in pairs on all homework assignments. Homework assignments should be handed in through the drop box before the start of the class for which they are assigned. Please make sure to put the names of the students and the school through which the students are registered on all homework assignments.

7. Evaluation criteria for course grading.

The team performance of each individual's team on Part II deal-related responsibilities—class presentation, secondary roles, and written report—will count for 30% of each individual's grade. The individual's transaction/institution analysis paper will count for 30% of the grade and the individual's paper analyzing part or all of the individual's team's Part II deal will count for 20%. Individual class participation will count for 10% of the grade. Problem sets and exercises will count for 10% of the grade. (Full credit will be given for making a serious effort on these.)

There is a natural concern about the possibility of free-riding in team work and intra-team evaluations offer an over-ride criterion for the team performance portion of the course grade. Each team member will allocate among team members a number of points equal to the total number of team members times ten. If everyone pulls their own weight, the allocation should be ten points each. If this is the consensus allocation across team members, there will be no over-riding of the outcome of the scheme given above. If a substantial number of team members believe that an individual has either not participated fully or has carried a more than proportional share of the workload, the instructors will take that assessment into account when formulating final grades.

8. General classroom expectations

The course is designed to support an active learning model. Please come prepared and come to work. Attendance is very important in this model and is therefore required. Class performance is an important part of your evaluation.

Please bring name cards (tents) if you have them. (If not enough students already have them, we can have a complete set created.)

Homework assignments should be handed in on time i.e. before the start of the class in question.

Homework will not be graded, but students will be marked down for late homework or for not making a serious effort on the homework.

9. Materials and class preparation

Course readings will be posted in advance on the course portal (the Law School's Canvas course website host). Slides will be posted after class. Other materials will be distributed via the course portal or in hard copy in class.

To access the course portal, go to www.courses.law.upenn.edu (it's on the Law School server). Law students can log on as usual. Wharton students should be able to log in straightforwardly, using their PennKey user id and password. (Please send up a flare asap if you can't.) Students for whom the drop box is not active should hand in any assignments due by hand but retain a machine-readable copy.

10. Scheduling notes and related matters

Note that there will be no class on **January 15th** (Martin Luther King Day), **February 28th** (longstanding prior obligation of the instructor), or on **March 5th or 7th** (spring vacation). There will be a party (a garden party if the weather is nice) after the final meeting on **April 18th**. (Bring your partner if you like.)

On Wednesdays in Part II, guest presentations may conceivably extend beyond the official class period. Be prepared to run fifteen minutes late. (This would be rare at worst but it is not utterly not unimaginable.) Throughout, please behave in a professional and gracious fashion.

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