

DOING DEALS
Spring 2022

Professor Maierson
Professor Moll

I. Course Description

This two-hour class will take students through the life cycle of private and public company mergers and acquisitions from the perspective of a practicing lawyer. Using actual deal documents, we will analyze how the business agreement between the parties gets translated into contract terms, as well as the role of the M&A lawyer in advising, negotiating and documenting the transaction.

II. Learning Outcomes and Assessment Method

As a result of this course, students will be able to: (1) recognize the stages of private and public company mergers and acquisitions; (2) evaluate the strengths and weaknesses of various methods for converting the business arrangement into actual contract terms; and (3) demonstrate understanding of deal terminology and procedures for accomplishing client goals.

Your grade in this class is based entirely upon an open-book exam given at the end of the semester, less any adjustment for unacceptable panel performance (see below).

III. Office Hours

Professor Maierson: Please feel free to call or e-mail me to discuss any matters in the course. My telephone number is 713-546-7420, and my e-mail address is ryan.maierson@lw.com.

Professor Moll: My office hours are by appointment. Please feel free to call or e-mail me to make an appointment. My office is located in TUII 220, my telephone number is 713-743-2172, and my e-mail address is dmoll@central.uh.edu. My assistant, Jessica Rodriguez, can be reached at 713-743-6407 or at jestrad2@central.uh.edu.

IV. Course Materials

The course materials will consist of multiple copy center packets that will be available at various times throughout the semester. We will announce when a new packet is ready for pickup. Similarly, we will announce specific reading assignments via email and/or at the end of each class.

V. Class Participation

At the Law Center, we are committed to ensuring inclusive online and classroom learning spaces, where you'll be treated with respect and dignity, and where everyone is provided the equitable opportunity to participate, contribute, and succeed. We encourage you to speak up and to share your views, but also understand that you are doing so in a learning environment in which we're all expected to engage respectfully and with regard to the dignity of all others.

To facilitate our discussion and analysis of the assigned materials, we will question students in panels of 5-6 students per class. We will pass around a sign-up sheet periodically throughout the course and each student will be required to sign up for a designated number of panels.

If for some reason you are unable to be present or prepared on your panel day, it is ***your responsibility*** to switch days with someone else and to inform us of the switch ***before the class begins***. If a class is cancelled for some reason, the panel for that day will be rescheduled. All other panels will keep their previously assigned days. As mentioned, we will announce the specific reading assignments that the panel is responsible for via email and/or at the end of each class.

Participation by non-panel members is welcomed and encouraged. Pursuant to Law Center guidelines, we reserve the right to lower your final grade by one notch (e.g., from a B to a B-) if you are absent or unprepared on any of your assigned panel days. Any student who is absent or unprepared on two panel days will be dropped from the course.

We will gladly honor your request to address you by an alternate name or gender pronoun. Please advise us of this preference early in the semester so that we may make appropriate changes to our records.

VI. Class Attendance

The Law Center requires students to attend at least 80% of the scheduled classes. Any student who attends fewer than the minimum percentage of classes is to be automatically dropped from the course. We will take attendance by passing around a roll sheet at the beginning of each class. Each student should initial by his or her name. Not surprisingly, initialing for another student is unacceptable. It is your responsibility to ensure that you have initialed the roll sheet before we leave the classroom each day. This is particularly important if you arrive after class has begun. PLEASE NOTE: You can only sign the attendance sheet for a particular day if you were present for at least half of that day's class.

VII. Examination and Grading

The examination in this course will be "open book." You will likely be able to use any material that you wish, whether prepared by you or by someone else. Depending on the nature of the exam, we may have to prohibit certain materials from being brought to the examination room. If that occurs, we will let you know in advance of the examination. Your grade in this course will be derived from your examination score less any adjustment for unpreparedness (see above). The examination itself will be discussed as the semester progresses.

VIII. Instructor Evaluations

We welcome any comments or suggestions that you may have regarding our teaching style, class presentation, or any other subject. Please feel free to provide us with such comments during the course of the semester as they will help us to improve our teaching. We will carefully consider all of the comments and suggestions that we receive.

IX. Syllabus Changes

Due to the changing nature of the COVID-19 pandemic, please note that we may need to make modifications to the course syllabus and may do so at any time. Such modifications may include changes to the mode(s) of assessment for the course. Notice of such changes will be announced as quickly as possible.

X. Recording of Class

Students may not record all or part of class, livestream all or part of class, or make/distribute screen captures, without our advanced written consent. If you have or think you may have a disability such that you need to record class-related activities, please contact the [Center for Students with DisABILITIES](#). If you have an accommodation to record class-related activities, those recordings may not be shared with any other student, whether in this course or not, or with any other person or on any other platform.

Classes may be recorded by the instructors. Students may use instructors' recordings for their own studying and notetaking. Instructors' recordings are not authorized to be shared with *anyone* without the prior written approval of the instructors. Failure to comply with requirements regarding recordings will result in a disciplinary referral to the Dean of Students Office and may result in disciplinary action.

XI. UH Resources

Counseling and Psychological Services (CAPS) can help students who are having difficulties managing stress, adjusting to the demands of a professional program, or feeling sad and hopeless. You can reach CAPS (www.uh.edu/caps) by calling 713-743-5454 during and after business hours for routine appointments or if you or someone you know is in crisis. No appointment is necessary for the "Let's Talk" program, a drop-in consultation service at convenient locations and hours around campus. <https://uh.edu/caps/outreach/lets-talk/index.php#hours>

The Texas Lawyers' Assistance Program ("TLAP") also supports law students who are dealing with stress, anxiety, depression, substance abuse, and other mental health problems. You can reach TLAP at any time at 1-800-343-8527. TLAP's website includes a page with links to sources about mental health that are of interest to law students: <https://www.tlaphelps.org/law-students>

The University and the Law Center are committed to maintaining and strengthening an

educational, working, and living environment where students, faculty, staff, and visitors are free from discrimination and sexual misconduct. If you have experienced an incident of discrimination or sexual misconduct, there is a confidential reporting process available to you. For more information, please refer to the University System's Anti-Discrimination Policy SAM 01.D.07 and Sexual Misconduct Policy SAM 01.D.08, available here:

<http://www.uhsystem.edu/compliance-ethics/uhs-policies/sams/01-general-information/index.php>

<http://www.uhsystem.edu/compliance-ethics/docs/sam/01/1d7.pdf> (antidiscrimination)

<http://www.uhsystem.edu/compliance-ethics/docs/sam/01/1d8.pdf> (sexual misconduct)

Please be aware that under the sexual misconduct policy, SAM 01.D.08, faculty and other University employees are required to report to the University any information received regarding sexual misconduct as defined in the policy. Due to this reporting requirement, faculty members and other employees are not a confidential resource. The reporting obligations under the sexual misconduct policy extends to alleged conduct by University employees and students.

XII. Special Disclosures for the Spring 2022 Semester

1. As a result of the COVID-19 pandemic, we will be teaching this class in both an in-person and virtual manner. **[10/20/21 note: This is tentative – we may eliminate the virtual option depending on public health conditions at the start of the spring semester.]** In other words, you have your choice of attending in-person or virtually on any given class day. If you decide to attend virtually, we will meet on Zoom, and we expect you to adhere to the following guidelines:

a. The attendance policy and the panel requirements will be enforced as described above. As a consequence, you must attend 80% of the classes, which means that you must appear in the Zoom classroom at our regularly scheduled time for at least 80% of the classes. We will use a Google document rather than a hard copy for the attendance each day as well as for the panel sheet.

b. Each class will be recorded. The Law Center will record class sessions with audio and video for the sole and limited educational purpose of allowing students to stream the recorded sessions for review or to enable students who missed a class to hear the class presentation. Any recordings created will be deleted and destroyed shortly after the final exam for the class. There is a chance that your contributions to class discussion, whether voluntary or while on call, may be included in the recording. Your continued registration in this class indicates your acquiescence to any such incidental recording for the purposes described above.

c. The virtual classroom only works if your video is turned on during the class. Thus, your computer must have a working video camera and quality audio capability. We expect your video to remain on for the entire class period with the exception of short breaks for using the bathroom, screaming at misbehaving family members, picking your nose, or similar events

that no one would want you to broadcast. In all seriousness, with the exception of issues such as the above, we expect your video to remain on during the class.

d. Please identify yourself with your class roll name in the Zoom software. Changing your name to something humorous was funny last year when we hadn't seen it 100 times; at this point, it is just annoying and confusing to your professors. Please use your class roll name.

e. Please manage your "mute" button so that the class remains a professional space. It is very distracting when there are background noises.

2. ***It is possible that we will have to convert the course to an entirely virtual (Zoom) class, taught from our homes, with no in-person option.*** This may occur on very short notice for several reasons, including (1) public health conditions worsen; (2) the technology, in our discretion, is inadequate for running both in-person and virtual options; or (3) very few people are attending the in-person classes. We hope to avoid this, but, as you know, circumstances can change quickly.

3. **VERY IMPORTANT DISCLOSURES ABOUT THE EXAM**

a. ***We plan to give a proctored, hard copy exam at the Law Center on the scheduled date and time. You will NOT have the option to take the examination online or in a separate location. If this poses problems for you, you will need to drop the class.***

b. If the Law Center prevents in-person exams due to public health conditions, then you will need to take the examination online. In that event, we will be using Respondus LockDown Browser and Respondus Monitor through Blackboard for your exam. If this occurs, you will be required to practice with the software, possibly on a somewhat expedited basis, so that you will avoid problems on the actual exam.

The below instructions are only necessary to follow if we have to switch to an online exam, which we very much hope will not happen. We are leaving the instructions here just in case:

i. You are responsible for reviewing the Student Guide for both programs (LockDown Browser and Monitor), which can be found at the following link (the link goes automatically to the Student Guide for Monitor; scroll down at that page to see a link to the Student Guide for Browser):

<http://www.instruction.uh.edu/knowledgebase/taking-a-test-with-respondus-monitor-student-guide/>

Please also review:

<https://web.respondus.com/wp-content/uploads/2019/08/RLDB-Quick-Start-Guide-Bb->

[Student.pdf](#)

ii. In brief, LockDown Browser is a secure browser for taking exams that will prevent you from printing, copying, going to another URL, or accessing applications during an exam. Monitor is a program that uses your webcam to essentially record you taking the exam to ensure that you are complying with the Law Center's Honor Code. ***Both of these programs are mandatory for each student and any efforts to evade or circumvent either program are violations of the Honor Code and will be punished accordingly. In addition, you may be reported to the Texas bar.***

iii. You must have a computer with a working webcam to take the exam in this course. You must also download the LockDown Browser; a link can be found in the Browser Student Guide.

iv. You are required to participate in "practice runs" that we will schedule to make sure that the programs are working for everyone and that we won't run into any problems during the actual exam. We will let you know when these practice runs will occur.

v. We are still researching the programs to see how they can best be used. ***At this point, we know that you will be reading the exam off of your computer screen and will not have a hard copy. You will not be able to underline, highlight, or otherwise notate the exam problems on your screen, as the programs do not allow for such editing. We will allow you to use scratch paper, however, so you will be able to jot things down (but the scratch paper must be disposed of at the end of the exam). If these circumstances will be a problem for you, you will likely need to drop the class.***

c. There will be further announcements about the exam procedure as the semester proceeds. We will, of course, also discuss the exam substance towards the end of the semester.

COURSE OUTLINE

NOTE: *Portions of this Course Outline may be altered or deleted depending upon the amount of material that we are able to cover during the semester.*

- 1. *Introduction, Part I* - Goals, Terminology, Refresher on Corporate Law, Transaction Structures**
- 2. *Introduction, Part II* – Life Cycle of a Deal, Roles of Parties, Refresher on Fiduciary Duties**
- 3. *Fiduciary Duties (cont'd); Confidentiality Agreements***
- 4. *Confidentiality Agreements (cont'd)***
- 5. *Due Diligence; Letters of Intent***
- 6. *Letters of Intent (cont'd); Negotiation Process***
- 7. *The Transaction Agreement, Part I* - Purchase Price Provisions**
- 8. *The Transaction Agreement, Part II* – Representations & Warranties; Material Adverse Effect**
- 9. *The Transaction Agreement, Part III* – Indemnification; Covenants**
- 10. *The Transaction Agreement, Part IV* – Deal Protection**
- 11. *The Transaction Agreement, Part IV* - Deal Protection cont'd; Closing the Deal**
- 12. *Securities Law Issues; Hostile Transactions and Takeover Defenses***
- 13. *Hostile Transactions and Takeover Defenses, cont'd***