Syllabus

Mergers, Acquisitions & Split-ups
Harvard Law School – Fall 2015

Robert C. Clark and
Leo E. Strine, Jr.

Classroom: Austin East/101

Coursewide Resource: Wachtell, Lipton, Rosen & Katz, Takeover Law and Practice 2015 (Posted on course website)

Class One (Tuesday, September 8, 2015): M&A Economics: Reasons, patterns, assessments (RC)


Skadden, Mid-Year Outlook: Continued Corporate Focus on Strategic Growth Drives M&A Market (June 21, 2011), pp. 1-3. Note: the other 3+ pages of this memo may be useful in reviewing cases covered in later parts of the course.


Ed Hammond, Encouraging signs that 2014 M&A spree is the real deal, Financial Times (April 27, 2014). Contrast types of deals and forms of consideration with earlier waves.

Class Two (Monday, September 14, 2015): *Foundations* (LES)

8 Del. C. §§ 251, 253, 271.


Class Three (Tuesday, September 15, 2015): *Securities Law Overview: Registrations, Rights, Proxies* (RC)


Note: The key statutes and rules cited at the beginning of the sections in Carney’s chapter 10 will be posted on the course website as a supplement to class 3. You may also be able to find them in whatever statutory supplement you used in your corporations course. You should refer to them as you study this chapter.

Class Four (Monday, September 21, 2015): *The Core Delaware Cases* (LES)


Class Five (Tuesday, September 22, 2015): Williams Act Basics and Key Issues (RC)


Note: The key statutes and rules cited at the beginning of this casebook chapter will be posted on the course website. You may also be able to find them in whatever statutory supplement you used in your corporations course. You should refer to them as you work through the authors’ problems.

Bebchuk & Jackson, Should the SEC Tighten 13d Rules Summary

Emmerich, et al, Blockholder Disclosure abstract

WLRK memo, Fight Over Prompter 13d Filing

WLRK memo, Activist Hedge Fund Abuses Require Immediate SEC Action to Modernize Section 13(d) Reporting Rules etc. (3/28/2014)


Class Seven (Tuesday, September 29, 2015): Tax and Accounting Overview (RC)


HOWARD E. ABRAMS, RICHARD L. DOERNBERG, & DON A. LEATHERMAN, FEDERAL CORPORATE TAXATION (Foundation Press, 7th ed, 2013), section introducing liquidations, pp. 205-07; ch. 9, Taxable Acquisitions, pp. 227-55; and ch. 10, Reorganizations, pp. 257-319. Dense but important; some parts can be skinned.


*Paramount Commc’ns, Inc. v. QVC Network Inc.*, 637 A.2d 34 (Del. 1994) *(excerpted version)*.

Leo E. Strine, Jr., *The Story of Blasius Industries v. Atlas Corp.: Keeping the Electoral Path to Takeovers Clear*, in *CORPORATE LAW STORIES* (J. Mark Ramseyer ed. 2009)


Class Nine (Tuesday, October 6, 2015): *Corporate Financial Policy: Debt, Buybacks, Acquisitions* (RC)

BREALEY, MYERS, & ALLEN, cited *supra* for class 1, pp. 400-78. This excerpt includes ch. 16, Payout Policy; ch. 17, Does Debt Policy Matter?; and ch. 18, How Much Should a Corporation Borrow? It is long but clear. You can skip all the long problem sets at the ends of chapters (pp. 421-26, 443-47, 474-78) and need only get the gist of the occasional formulas.

Class Ten (Monday, October 19, 2015): *The Death of “Enhanced” Scrutiny?* (with guest panelists: Ted Mirvis, WLRK; Paul Rowe, WLRK) (LES)


Class Eleven (Tuesday, October 20, 2015): *Conglomerate Discounts & De-Diversifications* (RC)

BREALEY, MYERS, & ALLEN, cited *supra* class 1, ch. 32, pp. 841-50. Quick but good overview of spin-offs, carve-outs, conglomerates, and PE firms viewed as “today’s conglomerates.” You may also wish to read the short excerpt on sales and breakups in chapter 11 bankruptcy proceedings, pp. 850-56, which are included for the diligent.


**Class Twelve (Monday, October 26, 2015):** *Contract v. Fiduciary Duty Principles? Deal Protections* (with guest panelists: John Finley, Blackstone; Scott Davis, Mayer Brown; Susan Hassan, Valor Equity Partners) (LES)

*In Re Toys “R” Us, Inc. Shareholder Litigation*, 877 A.2d 975 (Del. Ch. 2005).


**Class Thirteen (Tuesday, October 27, 2015):** *Spin-offs in Practice: Goals, Rules, and Problems* (with guest panelists: Paul Cappuccio, Time Warner; Annaliese Kambour, Time Warner; Doug Phillips, Time Warner; Priya Dogra, Time Warner) (RC)


**Class Fourteen (Monday, November 2, 2015):** *The Metaphysics Of Fiduciary Outs: The Intricacies Of A Concept Run Amok* (with guest panelists: Greg Varallo, RLF; Patricia Vella, MNAT; Rachelle Silverberg, WLRK; Mark Morton, Potter Anderson) (LES)


*In re NCS HealthCare, Inc. S’holders Litig.*, 825 A.2d 240 (Del. Ch. 2002) rev’d.


* Omnicare Inc. v. NCS Healthcare, Inc.*, 818 A.2d 914 (Del. 2003).

*CA, Inc. v. AFSCME Employees Pension Plan*, 953 A.2d 227 (Del. 2008).


**Class Fifteen (Tuesday, November 3, 2015): Activism and § 13(d) – Groups, Short-Swing Trading, and Derivatives (RC)**

*William C. Carney, Mergers and Acquisitions: Cases and Materials* (Foundation Press, 3d ed. 2011), ch. 11, The Williams Act, pp. 914-61. First 9 pages review Williams Act basics; the rest are key for this class.

*Roth v. Jennings*, 489 F.3d 499 (2d Cir. 2007).


WLRK memo, Decision in CSX on Derivatives and Beneficial Ownership Reporting Requirements – Extreme Caution Flag and Roadmap for Regulatory Reform (June 12, 2008). 2-page memo on the district court opinion excerpted in Carney’s book.

WLRK memo, Appellate Decision in the CSX Case Highlights Need for SEC Action on Derivatives in Section 13(d) Reporting Requirements (July 22, 2011). Should SEC now take up the “modest proposal”?  

For reference: Securities Exchange Act Sections 13(d) & 13(g), Regulation 13D, the Hart Scott Rodino Act, and Schedules 13D & 13G.

**Class Sixteen (Monday, November 9, 2015): The Merger Agreement as a Contract I (with guest panelists: Brandon Van Dyke, Skadden, Arps; Lande Spottswood, Vinson & Elkins) (LES)**


Class Seventeen (Tuesday, November 10, 2015): *The Merger Agreement As A Contract II* (with guest speaker: Rick Climan, Weil, Gotshal) (LES)


Class Eighteen (Monday, November 16, 2015): *Certainty versus Nominal Price* (Lou Kling, Skadden, Arps; Eileen Nugent, Skadden, Arps; Faiza J. Saeed, Cravath; Rob Spatt, Simpson, Thacher & Bartlett) (LES)

*Hexion Specialty Chems., Inc. v. Huntsman Corp.*, 965 A.2d 715 (Del. Ch. 2008).


Class Nineteen (Tuesday, November 17, 2015): *Evolutions In The Pill And Related Case Law* (RC)


*Yucaipa American Alliance Fund II, L.P. v. Riggio*, 1 A.3d 310 (Del. Ch. 2010). (For this class as well as class 20.)


Class Twenty (Monday, November 23, 2015):  *Nuts and Bolts of Comparative US/EU M&A Law* (with guest panelists: David Katz, WLRK; Toby Myerson, Paul Weiss; Scott Simpson, Skadden, Arps) (LES)


BONELLI EREDE PAPPALARDO, ET AL., *GUIDE TO PUBLIC TAKEOVERS IN EUROPE* (De Brauw Blackstone Westbroek, 2013) (excerpted).


Class Twenty-One (Tuesday, November 24, 2015):  *Cross-Border Deals in the EU* (with guest panelists: David Katz, WLRK; Toby Myerson, Paul Weiss; Scott Simpson, Skadden, Arps) (RC)

Readings listed under Class 20 above.

Class Twenty-two (Monday, November 30, 2015):  *Recent Forms of Shareholder Activism* (with guest panelists: William [Bill] Lafferty, MNAT; Bill Savitt, WLRK; Tariq Mundiya, Wilkie, Farr & Gallagher; Josh Targoff, Third Point; Domenico De Sole, Tom Ford Brand) (LES)


*Yucaipa American Alliance Fund II, L.P. v. Riggio*, 1 A.3d 310 (Del. Ch. 2010), aff’d, 15 A.3d 218 (Del. 2011). (*also assigned for class 19*)

Class Twenty-three (Tuesday, December 1, 2015):  *Review Session: Specifics TBD* (RC)


No assigned readings.