

Sample Syllabus for Deals Course – This was the 2011 Syllabus

UNIVERSITY OF SOUTHERN CALIFORNIA
MARSHALL SCHOOL OF BUSINESS
GOULD SCHOOL OF LAW

**Deals:
The Economic Structure of Transactions and Contracting**

**FBE599/LAW815
Spring 2011**

Thursdays at 5

Professor Mark Weinstein, HOH713, 213-740-6499, mark.weinstein@marshall.usc.edu

This course will focus on the role of professionals in creating value through transaction engineering. The first half will be devoted to barriers to transacting, including information problems, transaction costs, enforceability, strategic behavior, contracting over time and a range of responses, such as option theory, decision theory, risk management, reputation markets, incentive alignment, and techniques for eliminating information asymmetries. The second half will entail student teams applying the tools developed in the first half to a series of real transactions. This portion of the course is described in a separate memorandum. The goal of the course is to explain both how private parties actually order their commercial interactions and to develop a systematic theory of how they ought to do so.

The barriers include:

- Information asymmetry (“adverse selection”)
- Incentive problems (“moral hazard”)
- Enforceability
- Strategic behavior (opportunism)
- Valuation
- Financing
- Risk allocation

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The responses include:

- Option theory
- Decision theory
- Risk management
- Reputation markets
- Incentive alignment
- Exit mechanisms and buy-sell setups
- Signaling
- Due diligence, pricing, and other techniques for overcoming information asymmetry

The first part of the course will be a standard lecture/discussion course addressing these topics through readings, cases, and lecture and discussion. There will also be occasional written problem assignments. The second half of the course will entail student teams applying the tools developed in the first half to a series of (real or fictional) complex business transactions such as a corporate acquisition, a joint venture, movie production, sports licensing, setting up a franchise, or venture capital financing. Each team will receive written background to its deal and will be charged with planning the deal, negotiating it, presenting it to the class, and submitting a written report on it.

We will assign students to groups using a random device.

Grading:

Grades are based on (1) written problem assignments (15%), (2) class participation (10%), (3) written documents and oral presentations prepared for the transactions (40%), (4) an individually written deal write-up that will be distributed at the end of the course and will serve as a final project (35%).

The interdisciplinary combination of law and business students on transaction teams emulates the real world, and challenges students in both schools to reach beyond their narrow disciplines to contribute effectively to the deal-doing process. Lawyers must focus on the needs of the clients. Business students must engage legal expertise to structure and consummate value-creating transactions.

We reserve the right to modify this syllabus as the semester progresses. The order of sessions may change, and some topics may be substituted for topics on this syllabus.

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Class 1 (January 11)

Introduction

Problem: Value Creation through Contracting

1. *Business Research Corporation (A)* (case)
2. Note on Pareto and Coase (edited)
3. Can NBC Live Without ER?

Read this case before class. Imagine yourself to be Bill Benjamin. You want capital and the two proposals described in the case lie before you. What should you do? Why?

Class 2 (January 18)

Value Creation through Organizational Design

The Structure of Transactions Costs

A Soupçon of Games

1. Jonathan Barron Baskin & Paul J. Miranti, Jr., *A History of Corporate Finance* (1997), pp. 37–47, Appendix A (pp. 313–321)
2. Henry Hansmann, Reinier Kraakman & Richard Squire, “Law and the Rise of the Firm” (2005) (pay special attention to sections I – III)
3. Margaret M. Blair, “Locking in Capital: What Corporate Law Achieved for Business Organizers in the Nineteenth Century,” 51 *UCLA Law Review* 387 (2003) (pay special attention to Sections I, IV)
4. Mark Weinstein, “Share Price Changes and the Arrival of Limited Liability in California,” 32 *Journal of Legal Studies* 1 (2003) (pay special attention to Sections 1, 4.1, 5)
5. Mark Weinstein, “Limited Liability in California 1928–193,” 7 *American Law and Economics Review* 439 (2005) (pay special attention to Sections 1, 2, 4, 5.4, 6)
6. Adolph A. Berle & Gardiner C. Means, *The Modern Corporation and Private Property*, Chapter 6 (1932)
7. Ronald J. Gilson, “Engineering a Venture Capital Market: Lessons from the American Experience,” 55 *Stanford Law Review* 1067 (2003)
8. *United States of America v. Visa U.S.A. Inc., Visa International Corp., and Mastercard International Incorporated* (Direct Expert Testimony of Ronald J. Gilson)
9. A Quick Introduction to Transaction Costs and Asset Specificity
10. Problem: Pay or Play/Take or Pay (to be handed in on January 25)
11. Avinash K. Dixit & Barry J. Nalebuff, *Thinking Strategically: The Competitive Edge in Business, Politics, and Everyday Life* 89–115 (1991)
12. Barry J. Nalebuff & Adam M. Brandenburger, *Co-Opetition: A Revolution Mindset That Combines Competition and Cooperation* 41–47 (1996)

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Class 3 (January 25)

The Business Combination Agreement

Read carefully:

Edward D. Herlihy et al., *Financial Institutions M&A 2009: Convergence, Consolidation, Consternation and Complexity in an Industry in Transition* (2009)

Brock Romanek et al., “Negotiating Public-Private Mergers,” *The M&A Lawyer*, July/August 2002

Then skim:

1. Andrew Morse, “Cardinal Sin,” 19 *Corporate Control Alert*, December 2002, at 4
2. Kenneth A. Adams, “Understanding “Material Adverse Change” Provisions,” *The M&A Lawyer* (June 2006)
3. Frank Aquila & Lisa DiNoto, “Opening Pandora’s Box? Johnson & Johnson Learns the Hard Way That Playing the MAE Card Is a Risky Gamble,” *The M&A Lawyer*, February 2006, at 1
4. CommScope Merger Agreement,
<http://www.sec.gov/Archives/edgar/data/1035884/000119312510239011/dex21.htm>

Class 4 (February 1)

Motivation and Valuation in a Business Combination Context

Case: Dow’s Bid for Rohm and Haas

You should prepare for this case discussion in the groups that we have assigned. Thought questions:

1. Why does Dow want to buy Rohm and Haas? Was the \$78 per share bid reasonable?
2. What are the major legal, financial, and deal risks inherent in a merger transaction? How and to whom does the merger agreement assign these risks? Hint: Analyze the various provisions in Exhibit 4. What risk does each address and who bears that risk?
3. As of early February, 2009, what should Andrew Liveris do and what should Raj Gupta do?
4. If you were Chancellor Chandler, how would you resolve the legal dispute?

Each group must send Prof. Weinstein an email no later than 3:00 pm on the day of class containing (1) per-acquisition-share valuation for Rohm as a standalone company based on the original forecasts in Exhibit 7A; (2) the per-acquisition-share value of the projected synergies outlined on p. 3 of the case; (3) the per-acquisition-share value of the growth synergies outlined on p. 3 of the case; and (4) the total per-acquisition-share value of Rhom. We have posted an Excel spreadsheet with the case exhibits.

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Class 5 (February 8)

Venture Capital

1. Therese H. Maynard & Dana M. Warren, *Business Planning: Financing the Start-Up Business and Venture Capital Financing* (Aspen Publishers, 2010). Read the following pages:
 - Chapter 8: pages 419–37, 448 (middle)–453
 - Chapter 9: pages 469–72, 482–87, 517, 527–31, 543 (bottom)–549 (read one full ratchet example and one weighted average example), 579–92
 - Chapter 10: pages 647–66
2. Writing assignment: InkJet’s private placement. The assignment is due by 15:00 on Tuesday by e-mail to both instructors. Each team will submit a one-page term sheet, which will be graded.

Class 6 (February 15)

Information Based Barriers to Transacting: Adverse Selection and Moral Hazard Principles of Design in Incentive Contracts

1. George Akerlof, “The Market for Lemons,” *Quarterly Journal of Economics* (1970)
2. Mark V. Pauly, “The Economics of Moral Hazard: Comment” *American Economic Review* 531 (1968)
3. Free Look clause and Victor P. Goldberg, “Economic Reasoning and the Framing of Contract Law: Sale of an Asset of Uncertain Value,” *92 Revue d’Economie Industrielle* 112–18 (2000)
4. Problem: Default on Loan Repayment (not to be handed in; will be discussed in class)
5. Problem: Contingent Compensation (work on this problem in groups; hand in at start of class)

No class on February 22

Monday classes meet instead to make up for Presidents’ Day

Class 7 (March 1)

Guest Lecture: Negotiating TV Sports Deals Robert A. Hacker, VP Business and Legal Affairs, Fox Sports

1. Robert Hacker & Vered Yakovee, “Legal Aspects of Big Sports Event Management — Part IV: Broadcasting,” *25:3 Entertainment and Sports Lawyer* (Fall 2007)
2. Harold L. Vogel, *Entertainment Industry Economics: A Guide for Financial Analysis*, Chapters 7, 8, 12 (8th ed. 2011)

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Class 8 (March 8)

Guest Lecture: Negotiating Movie Deals
Michael M. Baranov, Baranov & Wittenberg, LLP

1. Harold L. Vogel, *Entertainment Industry Economics: A Guide for Financial Analysis*, Chapters 4.1-4.4 (pp. 114-147) and 5.1-5.3 (pp. 178-208) (8th ed. 2011)
2. Redacted contracts

Class 9 (March 22)

Risk, Capital and Organizational Structure
Taxation and Organizational Structure

1. Michael C. Jensen, “The Eclipse of the Public Corporation,” *67 Harvard Business Review* 61 (1989)
2. Alfred Rappaport, “The Staying Power of the Public Corporation,” *68 Harvard Business Review* 96 (1990)
3. Ronald L. Gilson & Charles K. Whitehead, “Deconstructing Equity: Public Ownership, Agency Costs, and Complete Capital Markets,” *108 Columbia Law Review* 231 (2008)
4. Bengt R. Holmstrom & Jean Tirole, “The Theory of the Firm III. Capital Structure,” in *1 Handbook of Industrial Organization* 79-86 (Richard L. Schmalensee & Robert Willig eds., 1989)
5. Kenneth Froot, David S. Scharfstein & Jeremy C. Stein, “Framework for Risk Management,” *72 Harvard Business Review* 91 (1994)

Class 10 (March 29)

The WorldMate Private Placement, Group Presentations
Guest Speaker: Nadav Gur, Founder, WorldMate, Inc.

Class 11 (April 5)

Forming a Professional Rugby League, Group Presentations
Guest Speaker: Robert A. Hacker, VP Business and Legal Affairs, Fox Sports

Class 12 (April 12)

The Acquisition of Univision, Group Presentations
Guest Speaker: Stephen P. Rader, Managing General Partner, Clarity Partners

Class 13 (April 19)

The Acquisition of Miramax, Group Presentations
Guest Speakers: Richard D. Nanula and Justin Chang, Principals, Colony Capital, LLC

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Class 14 (April 26)

The Acquisition of Tadiran, Group Presentations

Guest Speaker: Stanley P. Gold, Gang, Tyre, Ramer & Brown, Inc.