

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

**DEALS**

FBE515, LAW815  
Spring 2016

Professor Mark Weinstein  
Professor Jonathan Barnett

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***We reserve the right to modify this syllabus as the semester progresses. The order of sessions may change, readings may change, and some topics may be modified or replaced. In general, all readings, pre-class exercises and other materials will be posted on Blackboard.***

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Any deal is the result of firms seeking to achieve business objectives and lawyers translating those objectives into contract language. This course examines that collaboration. How can lawyers help the businessperson achieve the business objective? What business objectives can the businessperson reasonably expect to achieve through contract?

The course will be co-taught by Prof. Mark Weinstein (Marshall and Gould), who specializes in finance, and Prof. Jonathan Barnett (Gould), who specializes in contracts and intellectual property, and worked previously in a Wall Street mergers and acquisitions practice. Students will be drawn from both Marshall and Gould.

The course has three parts.

The first part will consist of lectures, class discussion and exercises on the core economic concepts that underlie all deal structures, including risk allocation, hold-up, information asymmetry and moral hazard.

In the second part, students will apply these concepts by analyzing the structures and contract documentation behind deals drawn from various industries, covering acquisition, joint venture, venture capital, financing and restructuring transactions.

In the third part, students will simulate actual deals by forming teams comprising both business students and law students. Each team will be given background documents from a business deal based on an actual transaction. The teams will negotiate the deal terms and present the agreed-upon terms to a lawyer and/or businessperson who negotiated the actual deal.

**Prerequisite (Law Students Only):** Business Organizations.

**Assignments:** Coursework consists of problems to be analyzed in preparation for class discussion; group written assignments and in-class presentations (including the deal simulation exercise); and a final take-home exam. For most classes prior to the deal simulations, you will be assigned one or two problems to consider and analyze. You should be prepared to discuss all assigned problems in class.

**Grading:** Grades are based on the following allocation: (1) in-class discussion (10%), (2) group “entity analysis” (10%); (3) written documents and oral presentations prepared by deal teams (40%); (4) final take-home exam (40%). So the final course grade is divided equally between individual work and group work. For purposes of the final course grade, law students and business students will be graded on separate curves, in each case in conformity with the grading parameters of their respective schools.

**Take-Home Exam.** The exam will be a take-home exam and will require you to develop a transactional structure to address the objectives of a hypothetical client. The format will resemble the complex cases that we will analyze in the sessions just prior to spring break.

**Schedule:** For the first 9 weeks, the class meets each Tuesday and Thursday, 9:30-10:45am in rm. [ ]. For the remaining five weeks (the deal simulations), the class will meet only on Tuesday, 6-9pm in rm. [ ].

**Attendance and Participation; Laptop Use:** This course relies on active student engagement at each session. Students are expected to attend and participate actively in all class sessions, including all deal presentations. We request that students do not use laptops, tablets, smartphones or other electronic devices while class is in session.

**Communications:** This class is paperless (mostly). All readings, problems and announcements will be available through Blackboard.

**Consultation:** Students are welcome to meet with Prof. Weinstein or Barnett by appointment. Please see email addresses above.

<u>Session #;</u> <u>Class</u> <u>Date</u>	<u>Topics</u>	<u>Readings and Problems</u>
1: 1/12	Introduction	<i>Exercises:</i> Barbie/Ken Merger Negotiation; Farmer/Landlord.
<b>PART ONE: FUNDAMENTAL CONCEPTS</b>		
2: 1/14	Value Creation	<i>Exercise:</i> ARROW case
3: 1/19	Value Distribution	<i>Reading:</i> Brandenburger & Nalebuff, <i>The Right Game: Use Game Theory to Shape Strategy</i> (excerpt) <i>Exercises:</i> United-Continental Airlines Merger Dynegy Recapitalization (Chevron Exchange)
4: 1/21	Transactional Design: Information Asymmetry	<i>Reading:</i> Klausner, <i>Ex Ante Information Asymmetry</i> <i>Exercises:</i> Representations and Warranties from United-Continental Merger Agreement Genre Productions Movie Financing: Pre-Arranged Distribution
5: 1/26	Transactional Design: Moral Hazard	<i>Reading:</i> Klausner, <i>Moral Hazard and Incentive Contracts</i> <i>Exercises:</i> Genre Production--Movie Financing Genre Productions--Movie Distribution
6: 1/28	Asset Specificity and Hold-Up	<i>Readings:</i> Klausner, <i>Contractual Governance Mechanisms in Long-Term Contracts</i> <i>Exercises:</i> Pay or Play Take or Pay Levi's-Designs Joint Venture Part I
7: 2/2	Response to Asset Specificity – Preserving Exit	<i>Exercises:</i> Levi's Designs Joint Venture Part II: Rights of First Refusal Miami Dolphins & Wayne Huizenga – Rights of First Refusal
<b>PART TWO: ENTITY AND DEAL STRUCTURES</b>		
8: 2/4	Organizational Design: Agency Costs, Tax Costs and Liquidity Costs	<i>Readings:</i> Ribstein, <i>The Rise of the Uncorporation</i> (excerpt)
9: 2/9	Entity Analysis	Group Presentations
10: 2/11	Risk Allocation in M&A: Earn-Outs, Break-Up Fees, Damage Caps	<i>Readings:</i> Hall, <i>Addressing Valuation Uncertainty in M&amp;A Negotiations.</i> <i>Exercises:</i> Asurion Corp.-Lumitrend Inc. Earnout Hudson Highland Group Earnout
11: 2/18	Hold-Up and Informational Asymmetry in M&A: The Signing/Closing Gap	<i>Readings:</i> Deal documents from United Rentals and Frontier Oil transactions. <i>Problem:</i> Hypotheticals based on deal documents.
12: 2/23	Tax Planning Issues in M&A Transactions	<i>Guest speaker:</i> Prof. Ed Kleinbard, former Partner and Head of Tax Department, Cleary, Gottlieb, Steen & Hamilton LLP [to confirm]
13: 2/25	Options	<i>Readings:</i> Option Readings from Corporate Finance Text; Climan, Pricing Formulations in Stock-for-Stock Mergers <i>Problem:</i> TBD
14: 3/1	Venture Capital	<i>Problem:</i> “Jane Bonda” Case <i>Guest speaker:</i> Yael Lustmann

<u>Session #;</u> <u>Class</u> <u>Date</u>	<u>Topics</u>	<u>Readings and Problems</u>
15: 3/3	Reorganization	<b>Problem: TBD</b> <i>Guest speaker:</i> Prof. Bob Rasmussen [To be confirmed]
16: 3/8	Joint Venture	<b>Problem: Mobi Case</b>
17: 3/10	Joint Venture/M&A	<b>Problem: Cyclops Case</b>
<b>Week of 3/14: SPRING BREAK</b>		
18: 3/22	Disney/Pixar Transaction	<b>Guest Speaker:</b> Brian McCarthy, Skadden Arps (note that this date is tentative)
<b>PART THREE: DEALS</b>		
19: 3/29	Deal #1	We are currently in the process of getting final commitments from the involved parties. Deal simulations will cover M&A, project finance, reorganization and other complex business scenarios.
20: 4/5	Deal #2	
21: 4/12	Deal #3	
22:4/19	Deal #4	
23: 4/26	Deal #5	