

**ANTONIN SCALIA LAW SCHOOL
GEORGE MASON UNIVERSITY
SPRING 2026
CORPORATE ACQUISITIONS
Thursdays and Fridays, 1:50PM to 3:15PM
Robert T. Miller**

Overview and Learning Objectives:

This course treats the law of mergers and acquisitions, including business combination agreements, the structuring of business combination transactions, the fiduciary duties of target directors in both friendly and hostile deals, the regulation of tender offers under the Williams Act and the Securities and Exchange Commission's tender offer rules, hostile takeovers, anti-takeover defenses and their regulation, deal protection devices and their regulation, and freezeout mergers.

Students completing this course should (a) understand the economic rationales for business combination transactions, (b) understand how the due diligence process leading to a business combination transaction is structured by preliminary agreements between the parties, (c) understand the key economic differences between stock purchases, asset purchases, and statutory mergers (including triangular mergers) and be able to explain why parties would choose to structure a particular business combination transaction in one way rather than another, (d) be able to read and understand stock purchase agreements, asset purchase agreements, and merger agreements, and be able to determine a party's rights and obligations under such an agreement in given factual circumstances, (e) understand the legal differences between the various kinds of provisions found in such agreements, including the operative provisions, representations and warranties, covenants, rights, and conditions, (f) understand how parties and investment bankers use discounted cash flow analyses to value companies and how deal structures such as earnouts and purchase price adjustments create value for parties to business combination transactions, (g) understand how public company transactions differ from private company transactions, how one-step transactions differ from two-step transactions, how strategic transactions differ from financial (private-equity) transactions, how simultaneous signing-and-closing transactions differ from non-simultaneous transactions, and how stock deals differ from cash deals, (h) understand how tender offers work, how they can be structured to be coercive, and how they are legally limited by the Williams Act and the rules promulgated thereunder by the Securities and Exchange Commission, (i) understand the duties of corporate directors under Delaware law, including in relation to both friendly deals and deal protection devices as well as hostile deals and antitakeover devices, and (j) understand freezeout mergers, including *MFW* transactions and the safe-harbors under Section 144 of the Delaware General Corporation Law.

Course Requirements, Grades and Prerequisites:

The requirements for this course include informed and intelligent participation in classroom discussion and a three-hour final examination consisting of multiple short essay questions, each of which will require you to provide a legal analysis of a problem involving a business combination transaction. The examination will be open-book but without internet access. Your grade on the final examination may be adjusted upward or downward to reflect the quality of your participation in class, but, absent the most extraordinary justification, such adjustments

will not exceed three-tenths of a grade (e.g., from 3.5 to 3.8). Grading will be in accordance with applicable policies of the law school and the university. *Business Associations* is a prerequisite to this course.

Course Materials:

The required materials for this course comprise (a) William J. Carney & Robert T. Miller, *Mergers & Acquisitions: Cases and Materials* (6th ed., 2022), which is available in the law school's bookstore, and (b) four volumes of supplemental materials available for free in electronic format on the CANVAS site for this course.

Reading Assignments:

Reading assignments for the semester appear below. In these assignments, the letters “CB” refer to the Carney & Miller casebook and are followed by the applicable page numbers. Readings from the volumes of supplemental course materials are indicated by the letter “V” and two Arabic numerals indicating the volume and tab within the volume where the reading can be found. For example, “V2-3” refers to the third item in the second volume. The exception to this concerns sections of the Delaware General Corporation Law and the federal securities laws, which are all collected in Volume 4; when the readings include such provisions, they are indicated by statutory section (e.g., “DGCL 203”) or rule number (e.g., “Rule 14d-10”).

Note that, as set out on the table below, *some of the documents in the supplemental material reproduce the appendixes in the casebook*. In particular,

| <u>Appendix</u> | <u>Document</u> | <u>Supplemental Reading</u> |
|------------------------|--|------------------------------------|
| A | Sample Confidentiality Agreement | V1-2 |
| B | Sample Stock Purchase Agreement | V1-3 |
| C | Sample Asset Purchase Agreement | V1-8 |
| D | Amazon-Whole Foods Merger Agreement | V2-2 |
| E | Cigna-Express Scripts Merger Agreement | V2-4 |

I shall not generally announce reading assignments from class to class; you are responsible for consulting the syllabus to determine the readings for the next meeting of the class.

Some Useful References:

Below are listed some standards reference works related to the law of mergers and acquisitions that you may find helpful:

1. James C. Freund, *Anatomy of a Merger* (1975). A minor classic, this book is probably the best book ever written about business combinations. It is much shorter and more accessible than the ponderous Kling & Nugent treatise described below and a thoroughly entertaining read. Now fifty years old, the book is unfortunately becoming dated in some respects, but it is still the best starting point for anyone who wants to understand mergers and acquisitions.

Wachtell, Lipton, Rosen & Katz presents all new associates with a copy. The author, now retired, was a partner at Skadden, Arps, Slate, Meagher & Flom. The text is available on LEXIS.

2. Lou R. Kling, Eileen T. Nugent & Brandon A. Van Dyke, *Negotiated Acquisitions of Companies, Subsidiaries and Divisions*, (2024). Constantly updated, this indispensable treatise is the best and most comprehensive reference work on negotiated business combination transactions (i.e., “friendly” deals). Among many other things, it covers all aspects of business combination agreements. The authors are leading mergers and acquisitions practitioners at Skadden, Arps, Slate, Meagher & Flom, LLP. The treatise is available on LEXIS.

3. Martin Lipton & Erica H. Steinberger, *Takeovers and Freezeouts* (7 vols., 2024). Also constantly updated, this seven-volume work comprehensively treats, among other things, all aspects of tender offers and hostile transactions. The primary author is the legendary corporate lawyer Martin Lipton, a founding partner of Wachtell, Lipton, Rosen & Katz and the inventor of the poison pill. The treatise, which includes a great many forms as well, is available on LEXIS.

4. R. Franklin Balotti, Jesse A. Finkelstein, John Mark Zeberkiewicz & Blake Rohrbacher *The Delaware Law of Corporations & Business Organizations* (3 vols., 4th ed., 2024). Constantly updated, this is the standard, comprehensive reference work on Delaware corporate law. It covers both the statutory provisions of the DGCL and Delaware case law, including, the law of directors’ fiduciary duties in connection with business combination transactions. The authors are leading Delaware practitioners and partners at Richards, Layton & Finger. The treatise is available online through VitalLaw.

5. ABA Model Agreements. The Committee on Negotiated Acquisitions of the American Bar Association has published a Model Stock Purchase Agreement, Model Asset Purchase Agreement, and Model Merger Agreement, each with a section-by-section commentary. These are excellent resources for understanding provisions in business combination agreements. All are available on Bloomberg Law.

Contact Information and Office Hours:

My office is in Room 415. My usual office hours for the Spring 2026 semester will be (a) on Thursdays from 3:30PM to 6:00PM, and (b) on Fridays, from 3:30PM to 4:30PM. I will also be available by appointment, including by Zoom or telephone. My office telephone number is (703) 993-8639. Rather than via voicemails, however, I strongly prefer that you communicate with me by email, and my email address is rmille59@gmu.edu.

My assistant is Yen Kha. Her office is in Room 443N; her office phone is 703-993-8065; and her email address is ykha@gmu.edu.

Artificial Intelligence Policy:

Other than in taking the final examination during the three-hour examination period, you may use any artificial intelligence software in any manner you choose in connection with this course.

GMU Policies:

The George Mason University [Common Addendum](#) for all course syllabi is incorporated herein by reference.

Outline of Course and Reading Assignments

| <u>Class</u> | <u>Date</u> | <u>Assignment</u> |
|---------------------|--------------------|--|
| | | <u>Part I: The Transaction Process Begins: Confidentiality Agreements and Due Diligence</u> |
| 1 | R,1-15 | Introduction to Transactional Law and Mergers & Acquisitions. Economic Rationales for Business Combination Transactions. The Transaction Process Begins: Confidentiality Agreements and Due Diligence. Readings: CB 3-20, 177-181, 192-201; <i>K&L Gates Sample Due Diligence Checklist</i> (V1-1) (skim); Sample Confidentiality Agreement (V1-2). |
| 2 | F,1-16 | More on Confidentiality Agreements. Representations and Warranties in Business Combination Agreements and the Problem of Extracontractual Misrepresentations. <i>RAA Management v. Savage Sports</i>. Qualifying Representations and Warranties. Indemnification Provisions and R&W Insurance. Readings: CB 388-395; 182-192; Sample Stock Purchase Agreement (V1-3) (pay special attention to articles on representations and warranties and indemnification; find the integration clause); PLI, <i>Indemnification in Private M&A Deals</i> (V1-5). |
| | | <u>Part II: Private Company Deals, including Stock Deals, Pricing Mechanisms, Indemnification, Asset Deals, and TOASAs</u> |
| 3 | R,1-22 | Private Company Deals. Valuing Companies. Private Company Stock Purchase Agreement. Operative Provisions, Purchase Price Adjustments, Escrows, and Earnouts. Valuing Companies. Readings: CB 21-60; 201-214; Sample Stock Purchase Agreement (V1-3) (especially purchase price, purchase price adjustment, escrow, and earnout provisions); PLI, <i>Representations, Warranties, Covenants, Rights, and Conditions</i> (V1-4); Sample Escrow Agreement (V1-7). |

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| 4 | F,1-23 | <p>Assets Deals. Buying Assets vs. Buying Stock. Asset Purchase Agreements. Transferring Assets and Assuming Liabilities. Assumption of Liabilities vs. Indemnification for Breaches of Representations. Successor Liability.</p> <p>Readings: DGCL 271; Sample Asset Purchase Agreement (V1-8); CB 156-170.</p> |
| 5 | R,1-29 | <p>DGCL 271 and “All or Substantially All” the Corporate Assets. TOASAs. <i>Gimbel v. Signal Cos. Hollinger v. Hollinger International.</i></p> <p>Readings: DGCL 271; CB 106-139.</p> |
| | | <p><u>Part III: Statutory Mergers, Merger Mechanics, Triangular Mergers and the Independent Legal Significance Doctrine</u></p> |
| 6 | F,1-30 | <p>Statutory Mergers. <i>Krull v. Celotex.</i> Triangular Mergers: Reverse and Forward. Introduction to Public Company Deals. Cash Mergers and Stock-for-Stock Mergers. Pricing, Dilution and Exchange Ratios in Stock-for-Stock Mergers. Review of Stock Deals vs. Asset Deals vs. Statutory Mergers.</p> <p>Readings: CB 60-69; DGCL 251, 259-262, 271; NYSE Listed Company Manual 312.03 (V1-9); Sections 1.1 and 4.1 of Amazon-Whole Foods Markets Merger Agreement (V2-2); “Opinion of Whole Food Markets Financial Advisor” in Proxy Statement of Whole Foods Markets, Inc. (V2-1, pages 37-45).</p> |
| 7 | R,2-5 | <p>CLASS ON ZOOM: <i>De Facto</i> Merger Doctrine vs. Independent Legal Significance Doctrine. Appraisal Rights under DGCL 262 and the Market Exception. NYSE 312.03. <i>Hariton v. Arco Electronics. LAMPERS v. Crawford.</i></p> <p>Readings: CB 139-155; DGCL 262; NYSE Listed Company Manual 312.03 (V1-9); “Summary” in Proxy Statement of Whole Foods Market, Inc. (V2-1, page 1-9); “Summary” in Joint Proxy-Statement Prospectus of Cigna and Express Scripts (V2-3, pages 13-28). For both Amazon-Whole Foods and Cigna-Express Scripts, determine from the disclosure document which party’s shareholders, if any, are entitled to appraisal rights.</p> |
| | | <p><u>Part IV: Public Company Transactions, including Public Company Merger Agreements, Problems Arising Between Signing and Closing, and MAEs</u></p> |
| 8 | F,2-6 | <p>CLASS ON ZOOM: Public Company Merger Agreements. Non-Simultaneous Signing and Closing. Interim Covenants and Shareholder</p> |

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| | | <p>Approvals and Regulatory Consents. Closing Conditions. Drop Dead Dates, Fiduciary Outs, Terminations Provisions, and Break Fees.</p> <p>Readings: <i>PLI, Representations, Warranties, Covenants, Rights, and Conditions</i> (V1-4) (pages 20-24); Amazon-Whole Foods Market Merger Agreement, Sections 5.1-8.2 (V2-2); Cigna-Express Scripts Merger Agreement, Sections 3.1-9.4, (V2-4). Read the two agreements side-by-side to compare their structure regarding closings, closing conditions, interim covenants, and ways the agreement may be terminated without closing.</p> |
| 9 | R,2-12 | <p>Broken Deals. Failure of Conditions to Close, Terminating the Agreement. Material Adverse Effects. MAEs in Representations and MAEs in Closing Conditions. The Double Materiality Problem and Materiality Scrapes.</p> <p>Readings: CB 280-283, 333-341; Amazon-Whole Foods Market Merger Agreement (V2-2) and Cigna-Express Scripts Merger Agreement (V2-4) (in each agreement, find the definition of MAE, the MAE representation, and the MAE closing conditions).</p> |
| 10 | F,2-13 | <p>MAE Litigations. <i>In re IBP Shareholders Litigation</i> and <i>Akorn v. Fresenius</i>.</p> <p>Readings: CB 283-333, 341-360.</p> |
| | | <u>Part V: Review of the Business Judgment Rule</u> |
| 11 | R,2-19 | <p>Review of the Business Judgment Rule. Standard of Conduct Versus Standard of Review. Duty of Care. <i>Smith v. Van Gorkom</i>. Exculpation and Section 102(b)(7) Provisions. <i>Malpiede v. Townson</i>.</p> <p>Readings: DGCL 141; CB 623-664; DGCL 102(b)(7); <i>Malpiede v. Townson</i> (V3-2).</p> |
| 12 | F,2-20 | <p>Review of the Business Judgment Rule: Duty of Loyalty. <i>Orman v. Cullman</i>, <i>Beam v. Stewart</i>, and DGCL 144 on independence of directors.</p> <p>Readings: <i>Orman v. Cullman</i> (V3-3); <i>Beam v. Stewart</i> (V3-4).</p> |
| | | <u>Part VI: Hostile Transactions and Antitakeover Defenses</u> |
| 13 | R,2-26 | <p>Introduction to Hostile Deals. Tender Offers, the Williams Act and the Tender Offer Rules. Section 13(d) Groups. Business Combination Statutes and DGCL 203.</p> <p>Readings: CB 1055-1060; Securities Exchange Act Sections 13(d)-(e), 14(d)-(f); SEC Rules 13d-1, 13d-2, 13d-3, 14d-1, 14d-3, 14d-7, 14d-8, 14d-10, and 14e-1; CB 1061-1073; DGCL 203.</p> |

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| 14 | F,2-27 | Directors' Duties in Responding to Hostile Offers: The <i>Unocal</i> Standard. Readings: CB 397-414. |
| 15 | R,3-5 | Shareholder Rights Plans/Poison Pills. Technical Operation and Anti-Takeover Effect. Classified Boards. <i>Unitrin</i> and the Development of the <i>Unocal</i> Standard. Readings: CB 446-449; DGCL 102, 109, 141-142, 151, 157, 211-212, 214, 216, 219, 220, 222-223, 228, and 242; <i>Unitrin v. American General</i> (V3-4). |
| 16 | F,3-6 | Legality of the Poison Pill. <i>Moran v. Household International</i> . Using Poison Pills. <i>Air Products v. Airgas</i> . Dead-Hand Pills, Slow-Hand Pills, Shadow Pills, and Anti-Activist Pills. Readings: CB 458-528. |
| | M,3-9 to F,3-13 | SPRING BREAK. NO CLASSES. |
| | | <u>Part VII: Fiduciary Regulation of Friendly Transactions and Deal Protection Devices</u> |
| 17 | R,3-19 | Introduction to Regulation of Friendly Deals. <i>Revlon</i> and <i>Revlon</i> Duties. Development of <i>Revlon</i> and the Content of <i>Revlon</i> duties. Readings: CB 664-678. |
| 18 | F,3-20 | More on the Content of <i>Revlon</i> Duties. <i>Mills Acquisition v. Macmillan</i> . <i>Barkan v. Amsted Industries</i> . Readings: CB 679-710. |
| 19 | R,3-26 | Triggering of <i>Revlon</i> Duties in <i>Time-Warner</i> and <i>QVC</i> . "Just Say No." Readings: CB 711-744. |
| 20 | F,3-27 | <i>Time-Warner</i> and <i>QVC</i> Continued. Termination Fees and their Economic Effects. Regulation of Deal Protection Devices under <i>Unocal</i> . No Talks. No Shops and Go Shops. Fiduciary Outs. <i>Phelps Dodge v. Cyprus Amax</i> . Match Rights. Readings: CB 824-826; Amazon-Whole Foods Market Merger Agreement (V2-2) and Cigna-Express Scripts Merger Agreement (V2-4) (in each agreement, find the deal protection devices and fiduciary outs). |

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| 21 | R,4-2 | CLASS ON ZOOM: More on Deal Protection Devices. <i>Omnicare</i> . Readings: CB 836-864. |
| | F,4-3 | Class Canceled. |
| 22 | M,4-6 | MAKE-UP CLASS FROM 1:50PM to 3:15PM ON ZOOM: The <i>Corwin</i> Doctrine. <i>Corwin v. KKR Financial Holdings</i> . Attacking Shareholder Votes Post- <i>Corwin</i> . <i>Appel v. Berkman</i> , <i>Morrison v. Berry</i> and <i>Delaware County Employees v. Sanchez</i> . Readings: CB 757-782; <i>Delaware County Employees v. Sanchez</i> (V3-6). |
| 23 | R,4-9 | <i>Revlon</i> Cases After <i>Corwin</i> . Readings: <i>Larkin v. Shah</i> (V3-7); <i>In re PLX Technology</i> (V3-8); <i>In re Mindbody</i> (V3-9). |
| | | <u>Part VIII: Entire Fairness, Freezeout Mergers and MFW Transactions, and Controlling Shareholders</u> |
| 24 | F,4-10 | Entire Fairness, Controlling Shareholders, and Freezeout Mergers. <i>Weinberger v. UOP</i> . <i>Lynch</i> Transactions and <i>Siliconix</i> Transactions. Readings: CB 961-998. |
| 25 | R,4-16 | <i>Kahn v. M&F Worldwide</i> , MFW Transactions and Problems Obtaining MFW Treatment and MFW Creep. <i>Match Group</i> . <i>Tornetta v. Musk</i> . Readings: CB 998-1017; <i>In re Match Group</i> (V3-10); <i>Tornetta v. Musk</i> (V3-11). |
| 26 | R,4-17 | Transaction-Specific Controller Doctrine, SB 21 and DGCL 144. Readings: Pollman & Will, <i>The Lost History of Transaction-Specific Control</i> (V3-12); DGCL 144; Cunningham, <i>What is the Furor Behind Delaware SB 21?</i> (V3-13). |