

Introduction to U.S. Mergers and Acquisitions
Professor Robert J. Jackson, Jr.
Columbia Law School

Course for Peking University Faculty of Law
June 2 through June 6, 2014
Leo KoGuan Building, 12:30 PM until 2:00 PM

Welcome. In this course we will consider the law of mergers and acquisitions in the United States—that is, the rules that govern the combination of business enterprises under American law. We begin with basic background in U.S. corporate law, including why economic actors use corporations to pursue business affairs, how the separation of ownership and control of the corporation gives rise to agency costs, how shareholder voting to elect the corporation's directors influences those costs, and the fiduciary duties of directors under Delaware law, the dominant source of state corporate law in the United States.

We will then turn to mergers and acquisitions, and the typical structure and regulation of those transactions under Delaware law. Next we will introduce contests for corporate control, Delaware law governing takeover defenses, and the private-law innovation that now dominates contests for control in the United States, the poison pill. Then we will consider the role of directors' fiduciary duties as the sale of the corporation becomes increasingly likely. Finally, we will conclude our work by turning to the acquisition of control through proxy fights, the escalating takeover arms race in the United States, and several important recent developments that will shape the future law of mergers and acquisitions in the United States.

Class structure. Each class will be held from 12:30 PM until 2:00 PM. I expect to meet throughout that time in an active discussion with the class. In an effort to provide you with as much background as possible in this area, we expect to cover as much material as our time will allow. Active participation is encouraged and expected.

Required readings. For each of our five sessions, I have selected Reading Materials for our consideration, and a separate Reading Materials packet will be provided to you for each of our sessions with a cover page describing the required reading. The materials are drawn principally from WILLIAM T. ALLEN, REINIER KRAAKMAN AND GUHAN SUBRAMANIAN, COMMENTARIES AND CASES ON THE LAW OF BUSINESS ORGANIZATION (3d ed. 2009) ("AKS").

Statutory and regulatory background. Occasionally your reading in AKS will refer to regulations and statutes that will provide helpful background for our discussion. For example, AKS may refer to regulations promulgated by the United States Securities and Exchange Commission ("SEC"), which govern virtually all large American corporations. In addition, AKS will often refer to statutes enacted by American state legislatures, and particularly the Delaware General Corporation Law ("DGCL"), because the majority of large U.S. public companies are subject to Delaware law. In those cases, I have noted the relevant regulations are statutes that you should review and have provided the text of those regulations or statutes in a separate part of the Reading Materials entitled ***Statutory and Regulatory Background***.

Additional materials on recent developments. Although you will be reading a relatively recent edition of AKS, U.S. corporate law is constantly changing, and in many cases there are

new developments of which you should be aware. In these cases, I have described these recent developments in the cover page to the Reading Materials and included the text of relevant judicial decisions or announcements in a separate part of the Reading Materials entitled *Additional Materials on Recent Developments*.

PowerPoint slides. I will provide the PowerPoint slides that I will use for each session in advance of our lectures. You may find it helpful to have these slides handy during our sessions so that you can follow our discussion.

Contact information. My email address is robert.jackson@law.columbia.edu, and my faculty webpage is available at http://www.law.columbia.edu/fac/Robert_Jackson. Should you have any questions on our material, or if you would find it helpful to discuss our work outside of class, please feel free to email me at your convenience.

Syllabus

Although I will endeavor to follow the schedule below precisely, we may proceed more quickly or slowly than is indicated. So long as you have completed the assigned readings before each session as indicated below, you will be prepared for our discussion.

Part One: Introduction to U.S. Corporate Law (One Class)

Class	Date	Topics	Assigned Readings
1	Monday, June 2	Economic Theory; Shareholder Voting; Directors' Fiduciary Duties Under the Law of Delaware	<i>Reading Materials, Session One:</i> Selected Pages from AKS (41 pages) <i>Statutory and Regulatory Background:</i> Securities and Exchange Rule 14a-8 DGCL §§ 109, 102(b)(7), 141

Part Two: Economics and Mechanics of U.S. Mergers and Acquisitions (One Class)

Class	Date	Topics	Assigned Readings
2	Tuesday, June 3	Economic Reasons for Mergers; Transactional Structure and Related Legal Rules	<i>Reading Materials, Session Two:</i> Selected Pages from AKS (34 pages) <i>Statutory and Regulatory Background:</i> DGCL § 251

Part Three: Contests for Control (Three Classes)

Class	Date	Topics	Assigned Readings
3	Wednesday, June 4	Defensive Tactics, the Poison Pill, and Related U.S. Corporate Law	<i>Reading Materials, Session Three:</i> Selected Pages from AKS (15 pages)
4	Thursday, June 5	Directors' Fiduciary Duties and the Sale of the Firm	<i>Reading Materials, Session Four:</i> Selected Pages from AKS (35 pages)
5	Friday, June 6	The Proxy Fight and Contests for Corporate Control; the Takeover Arms Race Continues; and the Future of the Law of U.S. Mergers and Acquisitions	<i>Reading Materials, Session Five:</i> Selected Pages from AKS (19 pages) <i>Additional Materials on Recent Developments:</i> Trilogy, Inc. v. Selectica Air Products and Chemicals, Inc. v. Airgas Wachtell, Lipton, Rosen & Katz, <i>Delaware Court Reaffirms the Poison Pill</i>