
CONTENTS

<i>Preface</i>	xix
<i>Acknowledgments</i>	xxi
An Introduction to Mergers and Acquisitions	1
A. Acquisition Methods	1
B. Acquisition Rationales	5
1. Economies of Scale	5
2. Synergies	5
3. Market Power	5
4. Diversification	6
5. Technology	6
6. Regulatory Arbitrage	6
7. Empire Building	7
C. A Brief History of M&A	7
PART I	
ACQUISITION STRUCTURES	13
CHAPTER 1	
Mergers	15
A. Effect of Mergers on Assets	20
<i>PPG Industries, Inc. v. Guardian Industries Corp.</i>	20
Notes	27
<i>Great Hill Equity Partners IV, LP v. SIG Growth Equity Fund I, LLLP</i>	28
Notes	33
B. Effect of Mergers on Liabilities	34
<i>Fitzsimmons v. Western Airlines, Inc.</i>	35
Notes	37
C. Reverse Triangular Mergers	38
<i>Meso Scale Diagnostics, LLC v. Roche Diagnostics GmbH</i>	38
Notes	44
D. Freeze-Out Mergers	45

<i>Weinberger v. UOP, Inc.</i>	45
Notes	54
<i>Kahn v. M&F Worldwide Corp.</i>	55
Notes	59
E. Appraisal Rights	61
<i>DFC Global Corp. v. Muirfield Value Partners</i>	62
Notes	67
 CHAPTER 2	
Stock Purchases	71
A. Equal Treatment	72
<i>Perlman v. Feldmann</i>	72
Notes	79
B. Advance Notice	80
<i>Rondeau v. Mosinee Paper Corp.</i>	80
Notes	87
<i>SEC v. First City Financial Corp.</i>	89
Notes	96
C. Tender Offers	98
<i>SEC v. Carter Hawley Hale Stores, Inc.</i>	98
Notes	105
 CHAPTER 3	
Asset Purchases	107
A. All or Substantially All	108
<i>Gimbel v. Signal Companies, Inc.</i>	108
Notes	111
<i>Hollinger Inc. v. Hollinger International, Inc.</i>	112
Notes	123
B. Successor Liability	124
<i>Kaminski v. Western MacArthur Co.</i>	124
Notes	129
<i>Ramirez v. Amsted Industries</i>	130
Notes	143
C. De Facto Mergers	144
<i>Farris v. Glen Alden Corp.</i>	145
Notes	150
<i>Hariton v. Arco Electronics, Inc.</i>	150
Notes	152

PART II	
ACQUISITION AGREEMENTS	153
CHAPTER 4	
Preliminary Agreements	155
A. Letters of Intent	155
1. Intent to Be Bound	156
<i>Arnold Palmer Golf Co. v. Fuqua Industries, Inc.</i>	157
Notes	162
<i>Texaco, Inc. v. Pennzoil, Co.</i>	162
Notes	176
2. The Duty to Negotiate in Good Faith	177
<i>Venture Associates v. Zenith Data Systems</i>	177
Notes	183
3. Disclosure Obligations for Preliminary Negotiations	184
<i>Basic, Inc. v. Levinson</i>	184
Notes	190
4. After the Letter of Intent	191
<i>Turner Broadcasting System, Inc. v. McDavid</i>	191
Notes	195
B. Due Diligence	196
1. Due Diligence Failures	197
<i>Escott v. BarChris Construction Corp.</i>	197
Notes	206
2. Non-Reliance Clauses	207
<i>RAA Management, LLC v. Savage Sports Holdings, Inc.</i>	207
Notes	217
C. Investment Bank Engagements	217
1. Investment Bank Conflicts—Sell-Side Financing	218
<i>In Re Del Monte Foods Co. Shareholder Litigation</i>	218
Notes	231
2. Investment Bank Conflicts—Ownership Interests	232
<i>In Re El Paso Corp. Shareholder Litigation</i>	232
Notes	242
D. Confidentiality Agreements	243
1. Use and Disclosure Restrictions	244
<i>Martin Marietta Materials, Inc. v. Vulcan Materials Co.</i>	245
Notes	256
2. Standstills	256
<i>In Re Complete Genomics, Inc. Shareholder Litigation</i>	257
Notes	259

CHAPTER 5	
The Acquisition Agreement	261
A. Price	262
1. Purchase Price Adjustments	264
<i>Chicago Bridge & Iron Co. N.V. v. Westinghouse Electric Co. LLC</i>	264
Notes	273
2. Indemnification	274
<i>LPPAS Representative, LLC v. ATH Holding Company, LLC</i>	274
Notes	283
3. Earn-outs	284
<i>O'Tool v. Genmar Holdings, Inc.</i>	284
Notes	290
B. Representations and Warranties	291
1. Reliance	292
<i>CBS Inc. v. Ziff-Davis Publishing Co.</i>	292
Notes	300
2. Fraudulent Representations	301
<i>ABRY Partners V, L.P. v. F&W Acquisition LLC</i>	301
Notes	318
3. Material Adverse Change Clauses	318
a. Heightened Standard	319
<i>Hexion Specialty Chemicals, Inc. v. Huntsman Corp.</i>	319
Notes	334
b. Meeting the Standard	335
<i>Akorn, Inc. v. Fresenius Kabi AG</i>	335
Notes	353
4. Survival	353
<i>Western Filter Corp. v. Argan, Inc.</i>	354
Notes	358
C. Covenants	359
1. Ordinary Course Covenant	360
<i>AB Stable VIII LLC v. MAPS Hotels and Resorts One LLC</i>	361
Notes	373
2. Efforts Clauses	374
<i>In Re Chateaugay Corp.</i>	374
Notes	379
D. Conditions	380
<i>Northern Heel Corp. v. Compo Industries, Inc.</i>	381
Notes	391
E. Deal Protections	392
1. Termination Fees	393
<i>Brazen v. Bell Atlantic Corp.</i>	394
Notes	399

2. Match Rights	401
<i>In Re Lear Corp. Shareholder Litigation</i>	401
Notes	408
PART III	
FIDUCIARY DUTIES	411
CHAPTER 6	
Fiduciary Duties: Takeover Defenses	413
A. The <i>Unocal</i> Standard	414
1. The Standard Established	415
<i>Unocal Corp. v. Mesa Petroleum Co.</i>	415
Notes	422
2. Poison Pills	423
<i>Moran v. Household International, Inc.</i>	423
Notes	431
3. The <i>Unocal</i> Standard Refined	433
<i>Unitrin v. American General Corp.</i>	434
Notes	446
4. Poison Pills and Hostile Offers	447
<i>Air Products & Chemicals, Inc. v. Airgas, Inc.</i>	447
Notes	456
5. Illegal Poison Pills	457
<i>Dynamics Corp. of America v. CTS Corp.</i>	457
Notes	465
B. The <i>Blasius</i> Standard	466
<i>Blasius Industries, Inc. v. Atlas Corp.</i>	466
Notes	474
CHAPTER 7	
Fiduciary Duties: Due Care	477
A. Informed Decision Making	477
<i>Smith v. Van Gorkom</i>	477
Notes	498
B. Acquiror Decision Making	500
<i>Ash v. McCall</i>	500
Notes	504
C. Exculpatory Provisions	506
<i>McPadden v. Sidhu</i>	506
Notes	514
CHAPTER 8	
Fiduciary Duties: Sale Process	517
A. The <i>Revlon</i> Standard	517
<i>Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc.</i>	518
Notes	526

B. <i>Revlon</i> Triggers	528
1. Sales and Break-Ups	528
<i>Paramount Communications, Inc. v. Time Inc.</i>	528
Notes	536
2. Changes of Control	537
<i>Paramount Communications, Inc. v. QVC Network, Inc.</i>	537
Notes	551
C. <i>Revlon's</i> Substantive Requirements	553
<i>In Re Dollar Thrifty Shareholder Litigation</i>	553
Notes	558
 CHAPTER 9	
Fiduciary Duties: Deal Protections	559
A. General Framework	559
<i>In Re Toys "R" Us, Inc. Shareholder Litigation</i>	560
Notes	569
B. Fully Locked-Up Deals	571
<i>Omnicare, Inc. v. NCS Healthcare, Inc.</i>	571
Notes	593
 PART IV	
SPECIAL ISSUES	597
CHAPTER 10	
Securities Regulation	599
A. Coverage of the Securities Laws	600
<i>SEC v. Datronics Engineers, Inc.</i>	600
Notes	602
<i>Gustafson v. Alloyd Co.</i>	602
Notes	608
B. Buyer Disclosure Obligations	609
<i>Flynn v. Bass Brothers Enterprises, Inc.</i>	609
Notes	618
C. Target Disclosure Obligations	619
<i>Minzer v. Keegan</i>	620
Notes	627
D. Insider Trading	629
<i>United States v. O'Hagan</i>	629
Notes	638
 CHAPTER 11	
Taxation	645
A. Taxable Transactions	647
<i>Commissioner v. Court Holding</i>	648
Notes	650

B. Tax-Free Reorganizations	653
1. Type A: Mergers	653
<i>McDonald's Restaurants of Illinois v. Commissioner</i>	654
Notes	661
2. Type B: Stock Purchases	662
<i>Chapman v. Commissioner of Internal Revenue</i>	662
Notes	672
3. Type C: Asset Purchases	672
<i>Bausch & Lomb Optical Co. v. Commissioner</i>	672
Notes	674
C. Inversion Transactions	677
<i>Chamber of Commerce v. Internal Revenue Service</i>	677
Notes	680
 CHAPTER 12	
Antitrust	683
A. Horizontal Mergers	684
<i>Federal Trade Commission v. Whole Foods Market, Inc.</i>	684
Notes	695
B. Vertical Mergers	696
<i>United States v. AT&T, Inc.</i>	696
Notes	705
C. Gun Jumping	706
<i>United States v. Computer Associates International, Inc.</i>	706
Notes	714
 CHAPTER 13	
Private Equity	717
A. Leveraged Buyouts	718
1. Financing Contingencies	718
<i>United Rentals, Inc. v. RAM Holdings, Inc.</i>	718
Notes	731
2. Effect on Bondholders	733
<i>Metropolitan Life Insurance Co. v. RJR Nabisco, Inc.</i>	733
Notes	745
B. Portfolio Companies	746
<i>Kodiak Building Partners, LLC v. Adams</i>	746
Notes	750
C. Exits	750
<i>Manti Holdings, LLC v. Carlyle Group Inc.</i>	751
Notes	762

CHAPTER 14	
Cross-Border Deals	765
A. National Security	765
<i>Ralls Corp. v. Committee on Foreign Investment in the United States</i>	766
Notes	773
B. Foreign Subsidiaries	774
<i>Cooper Tire & Rubber Co. v. Apollo (Mauritius) Holdings Pvt. Ltd.</i>	774
Notes	781
C. Foreign Takeover Regulators	781
<i>Kraft Foods Inc. Offer for Cadbury PLC</i>	782
Notes	785
D. Conflicting Antitrust Jurisdictions	786
<i>FTC Statement in the Matter of Boeing/McDonnell Douglas</i>	787
<i>EC Commission Decision in the Matter of Boeing/McDonnell Douglas</i>	789
Notes	793
<i>Index</i>	797