

SYLLABUS

DEALS: THE ECONOMICS OF STRUCTURING TRANSACTIONS

Hebrew University of Jerusalem, Faculty of Law
Visiting Professor Joshua C. Teitelbaum
Spring 2012 – 1 credit

Course Description: This short course examines how attorneys and other professionals create value through transaction engineering. We will study various barriers to transacting—including collective action problems, information problems, and risk, uncertainty, and time—and a range of responses grounded in game theory, contract theory, and decision theory. We will toggle between theory and practice, reading and discussing both scholarly articles and real-world transaction documents. Grades will be based on class participation and a take-home examination.

Class Schedule: There will be four class sessions as follows:

Day	Date	Time	Classroom Number
Monday	28 May 2012	16:15 – 19:15	308
Wednesday	30 May 2012	18:15 – 21:15	403
Monday	4 June 2012	16:15 – 19:15	308
Wednesday	6 June 2012	18:15 – 21:15	403

Professor Information: Visiting Professor Joshua Teitelbaum, jct48@law.georgetown.edu.

Course Website: The materials for the course—including this syllabus, the reading list, and links to the readings—will be available on the course website (on Moodle).

Class Format: The class format will combine lecture and discussion. Students are expected to attend all class meetings, and to prepare for and participate in class discussions.

Grading: Grades will be based on class participation (10%) and a take-home final examination (90%). Administrative details regarding the final examination will be provided at the appropriate time.

Reading List: The reading list and links to the readings will be posted on the course website.

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READING LIST

Monday, 28 May 2012

Introduction

Ronald J. Gilson, [Value Creation by Business Lawyers: Legal Skills and Asset Pricing](#), *Yale Law Journal*, Vol. 94, No. 2 (Dec. 1984), pp. 239-313.

[Please read the introduction and Parts I, II, & IV (pp. 239-256 & 294-303).]

Holdouts and Free Riders

Lloyd Cohen, [Holdouts and Free Riders](#), *Journal of Legal Studies*, Vol. 20, No. 2 (June 1991), pp. 351-362.

Debt tender offers:

Press Release, [HealthSouth Commences Cash Tender Offer and Consent Solicitation](#), Nov. 16, 2009.

HealthSouth Corporation, [Offer to Purchase and Consent Solicitation Statement](#), Nov. 16, 2009.

[Please read the Summary, pp. 1-5.]

Press Release, [HealthSouth Announces Completion of Refinancing](#), Dec. 15, 2009.

M&A transactions:

Ian Ayres, [Analyzing Stock Lock-Ups: Do Target Treasury Sales Foreclose or Facilitate Takeover Auctions?](#), *Columbia Law Review*, Vol. 90, No. 3 (Apr. 1990), pp. 682-718.

[Please read pp. 682-698.]

Wednesday, 30 May 2012

Moral Hazard

Mark V. Pauly, [The Economics of Moral Hazard: Comment](#), *American Economic Review*, Vol. 58, No. 3, Part 1 (June 1968), pp. 531-537.

Debt covenants:

William J. Whelan, III, [Bond Indentures and Bond Characteristics](#), in *Leveraged Financial Markets: A Comprehensive Guide to High-Yield Bonds, Loans, and Other Instruments*, ed. William F. Maxwell and Mark R. Shenkman (McGraw-Hill, 2010), pp. 171-196.

Netflix, Inc., [Offer to Exchange](#), Dec. 21, 2009.

[Please skim the Description of Notes. I have included it only as an example of typical bond terms.]

Netflix Inc., [Indenture](#), Nov. 6, 2009.

[This is optional. It is summarized by the Description of Notes in the Offer to Exchange. I have included it only as an example of a typical bond indenture.]

Underwriting contracts:

Christine Hurt, [Moral Hazard and the Initial Public Offering](#), *Cardozo Law Review*, Vol. 26, No. 2 (Jan. 2005), pp. 711-790.

[Please read the front cover and pp. 711-771.]

Ancestry.com Inc., [Prospectus](#), Nov. 4, 2009.

[Please read the front cover and pp. 121-123.]

Ancestry.com Inc., [Underwriting Agreement](#), Nov. 4, 2009.

[This is optional. I have included it only as an example of a typical underwriting agreement.]

M&A contracts:

Ronald J. Gilson and Alan Schwartz, [Understanding MACs: Moral Hazard in Acquisitions](#), *Journal of Law, Economics, & Organization*, Vol. 21, No. 2 (Oct. 2005), pp. 330-358.

[Please read §§ 1 & 2 (pp. 330-340).]

Pfizer, Inc., [Agreement and Plan of Merger](#), Jan. 25, 2009.

[Please read Article V, §§ 6.2, 6.3, 6.8, & 6.12, and Article VII.]

The Stanley Works, [Agreement and Plan of Merger](#), Nov. 2, 2009.

[Please read Article VII.]

Monday, 4 June 2012

Adverse Selection

George A. Akerlof, [The Market for “Lemons”: Quality Uncertainty and the Market Mechanism](#), *Quarterly Journal of Economics*, Vol. 84, No. 3 (Aug. 1970), pp. 488-500.

M&A transactions:

Ronald J. Gilson, [Value Creation by Business Lawyers: Legal Skills and Asset Pricing](#), *Yale Law Journal*, Vol. 94, No. 2 (Dec. 1984), pp. 239-313.

[Please read Parts III.A & III.D (pp. 257-262 & 267-294).]

Stanley, Inc., [Agreement and Plan of Merger](#), June 10, 2008.

[Please read the preamble, §§ 2.6(a) & 2.11, §§ 3.1 to 3.33, and §§ 9.1 & 9.2.]

Financing transactions:

Ronald J. Mann, [Verification Institutions in Financing Transactions](#), *Georgetown Law Journal*, Vol. 87, No. 7 (July 1999), pp. 2225-2272.

[Please read the Introduction and Parts I & III.]

Avery Weiner Katz, [An Economic Analysis of the Guaranty Contract](#), *University of Chicago Law Review*, Vol. 66, No. 1 (Winter 1999), pp. 47-116.

[Please read the Introduction and Part II.A (pp. 47-52 & 62-86).]

Gilead Sciences, Inc., [Parent Guarantee Agreement](#), Dec. 18, 2007.

[Please read the preamble and §§ 2.01, 2.02, 2.04, 4.01, & 5.09.]

Ronald J. Gilson and Reinier H. Kraakman, [The Mechanisms of Market Efficiency](#), *Virginia Law Review*, Vol. 70, No. 4, (May 1984), pp. 549-644.

[Please read pp. 549-554 & 609-621.]

Wednesday, 6 June 2012

Risk, Uncertainty, and Time

David A. Cather, [A Gentle Introduction to Risk Aversion and Utility Theory](#), *Risk Management and Insurance Review*, Vol. 13, No. 1, pp. 127-145.
[Please read pp. 127-136.]

Underwriting contracts:

Steven N. S. Cheung, [Transaction Costs, Risk Aversion, and the Choice of Contractual Arrangements](#), *Journal of Law and Economics*, Vol. 12, No. 1 (Apr. 1969), pp. 23-42.
[Please read the introduction and Part I (pp. 23-30).]

Ancestry.com Inc., [Underwriting Agreement](#), Nov. 4, 2009.
[Please the preamble and ¶¶ 3, 4, & 5.]

H&R Block, Inc., [Placement Agent Agreement](#), Oct. 28, 2008.
[Please read ¶¶ 1 & 2.]

M&A earnouts and collars:

Ronald J. Gilson, [Value Creation by Business Lawyers: Legal Skills and Asset Pricing](#), *Yale Law Journal*, Vol. 94, No. 2 (Dec. 1984), pp. 239-313.
[Please read Parts III.B & III.C (pp. 262-267).]

Asante Technologies, Inc., [Earn-out Agreement](#), Feb. 25, 2005.

CytRx Corporation, [Agreement and Plan of Merger](#), June 6, 2008.
[Please read Article III.]

Victor I. Lewkow and Sarah G. Koss, [Another Look at Allocating Market Risk in Stock Acquisitions](#), *Insights: the Corporate & Securities Law Advisor*, Vol. 17, No. 8 (Aug. 2003), pp. 6-13.

Denbury Resources, Inc., [Form 8-K](#), Nov. 5, 2009.
[Please read the Form 8-K. You are not required to read Ex-2.1.]

Anti-dilution protections:

Michael A. Woronoff and Jonathan A. Rosen, [Understanding Anti-Dilution Provisions in Convertible Securities](#), *Fordham Law Review*, Vol. 75, No. 1 (Oct. 2005), pp. 129-162.