

**Course Outline:
The Art of the Deal**

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1. Objective

This proposed course represents an effort to provide an integrative experience for senior Osgoode J.D. and Schulich MBA students interested in developing a deeper and more practical understanding of the planning and execution of major business transactions. This is a Schulich course (SGMT 6060) with a sister Osgoode course, with mutual exclusions. Prerequisites for this course include successful completion of Business Associations and Securities Regulation (for law students) and Mergers & Acquisitions (for MBA students).

The central focus of the course is the extensive analysis and appreciation of significant, recent business transactions, such as mergers, acquisitions, joint ventures, initial public offerings and recapitalizations. Joint teams of MBA and J.D. students working with senior legal and investment banking practitioners are exposed to the intricacies and insights of the interaction of legal and business disciplines in practice.

2. Course Format

The course seminar is limited to (approximately) 30 senior year law and MBA students (joint JD/MBA students will be also considered under certain circumstances). An effort will be made to achieve an approximately equal balance between law and business students, in order to facilitate diversity and balance of perspectives. As noted below, students will be divided into groups of four or five with balanced representation from the two programs, for purposes of team assignments, work and presentations.

3. Course Content

The first part of the course is focused on understanding core concepts of transacting - including information problems, strategic behaviour and a range of responses. These are traditional seminar sessions, based on assigned academic readings, lectures, case examples, and discussions.

The second part of the course consists of a team-based analysis of significant recent, high profile transactions. Such analysis is rooted in the transactional documentation, but may include such additional sources as are publicly available and useful. At the beginning of the course, the instructor selects 4 or 5 significant and different types of transactions which have occurred recently. Deal documentation (redacted as required) is supplied by the professionals (lawyers and bankers) who were involved in the transaction on behalf of one or other of the parties. These professionals, identified and enlisted by the course instructor, also volunteer to participate as mentors to the student teams by committing to consult with the members of the team assigned to their transaction on the preparation and presentation of a memorandum describing the transaction, the nature of the agreements necessary to effectuate it and the function of each of the agreements in doing so.

The major deliverable for each team consists of a written analysis of the transaction, which is accompanied by a formal presentation to the class. The aim of the report is to “teach” the transaction to the rest of the class – explaining both the business context and purposes of the transaction from the perspectives of the various parties and the particular issues that had to be resolved in order to effect the transaction.

Among the many benefits of this approach, students will be working closely with practitioners to understand the functional aspects of complex transactions. By the conclusion of the course, students should have a sound theoretical understanding of transactional mechanics as well as an in-depth view of the specific transactions to be studied. Students will have worked closely with both professionals and fellow students from different disciplines to tackle complex transactions. Like the transaction, this will be an iterative process over several weeks of intensive effort and feedback.

4. Evaluation

Regular attendance and reading of all assigned materials (including transaction documents/papers) is expected. In addition to classroom participation, student teams will be expected to meet with their practitioner/mentors at least twice (and potentially more often) to interview and consult with them, discuss the particular transaction and review their presentations prior to leading the class and submitting their papers. Practitioners will be available to help the student teams understand their transaction and documents and to provide a “reality check” on the team’s analysis. The practitioners will provide an assessment of the conduct, preparation, progress, and professionalism of the team. They will also attend the team presentation. They will be able to enrich the subsequent discussion with anecdotes, “war stories”, and reflections on the transaction. They are not, however, expected to provide analytical answers.

Grading will have two components. 50% of the final grade will be a team component, consisting of the transaction report and presentation. Intelligibility and insight will be among the features looked to in assigning this grade. All members of the team will receive the same grade.

The remaining 50% of the grade will be individual. Of this, 10% will be assigned to each of two individual submissions which will critique a presentation of another team. The remaining 30% will be based upon class participation. If a student appears to be consistently well prepared for class, engaged and contributing, she will receive an A for class participation. If rarely heard from, she will receive a C for this part of her grade. Intermediate cases will receive a B.

This grading system is meant to reflect the fact that, in practice, most rewards come from being a contributing member of a productive team and that enthusiasm, commitment and participation are often vital characteristics in the absence of which even very talented people may go unrecognized and unrewarded. Moreover, it is the joint and individual responsibility of each student to energize and motivate every other member of the team to achieve results.

5. Detailed Class Outline

Class 1 – January 10, 2011: *The Role of Professionals in Complex Transactions*

- course organization – description of seminar and projects
- overview of role of professional advisors in significant transactions

Assigned Reading:

- Walter Kirn, “The Art of the Deal as Entertainment” N.Y. Times Magazine (July 23, 2010)
- Ronald J. Gilson, “Value Creation by Business Lawyers: Legal Skills and Asset Pricing”, 94 Yale Law Journal 239 (1984)
- Alex Khutovksy, “Role of Financial Advisor in M&A Transactions”
- James Freund. “Smart Negotiating: How to make good deals in the real world” (1992) (excerpts)
- Sarah Jones, “Due Diligence”

Class 2 – January 17, 2011: *The Law and Economics of Contracting*

- the structure of a typical transaction agreement
- demonstrating the allocation of risk

Assigned Reading:

- Louise Goldberg, “Acquisition Agreements from a Business Perspective”
- Lenné Eidson Espenschied, “Demonstrating the Allocation of Risk”
- Forms of Acquisition Agreement (Chicago Blooms, Snail Corporation)

Class 3 – January 24, 2011: *Effective Client Management in Major Transactions* (Dirk Schlimm)

- Understanding and relating to the client perspective
- Using relationship and influencing skills to obtain superior outcomes

Assigned Reading:

- Dirk Schlimm, “Influencing Powerful People” (Chapter 2)
- Dirk Schlimm, “The Whiteboard Transaction: A Case Study in Efficient Client Engagement”

Class 4 - January 31, 2011: *Ethics in Negotiation/Structuring*

Assigned Reading:

- Shell, G. Richard, "When is it Legal to Lie in Negotiations?", Sloan Management Review; Spring 1991 (93)
- Mark Fagan and Tamar Frankel, "Trust and Honesty in the Real World"

Class 5 - February 7, 2011: *Review of initial sessions and Q&A (in preparation for presentations)*

- dynamics of transactions

Assigned Reading:

- Joshua Rosenbaum and Joshua Pearl, "Investment Banking" (Wiley 2009) (Chapter 6, M&A Sale Process)

Class 6 - February 14, 2011: *Assessing/Managing Legal and Regulatory Risk in the Context of Mergers, Acquisitions and Investment Decisions* (Neil and Jonathan Finkelstein)

- Using the concept of expected value (anticipated returns adjusted for probability) to value uncertain events

Assigned Reading:

- [to be assigned]

Classes 7-10 - February 28, March 7, 14 and 21, 2011: *Team transaction presentations*

Team Transaction	Mentors
AbitibiBowater Restructuring	Sean Dunphy (Stikeman Elliott) Mark Caiger (BMO Capital Markets)
BCE Auction	Peter Buzzi (RBC Capital Markets) Sean Vanderpol (Stikeman Elliott)
CCS Income Trust going private transaction	Simon Romano (Stikeman Elliott) CAI, Rothschilds
Magna International/Stronach Trust/Russian Machines Plan of Arrangement	Michael Boyd (CIBC World Markets) Brian Pukier (Stikeman Elliott)
The Thomson Corporation acquisition of Reuters plc	Richard Balfour (Torys) Cornell Wright (Torys)

Class 11 - March 28, 2011: *Wrap-up and review – lessons learned (final reports to be submitted)*

Assigned Reading:

- Michael C. Jensen, “Eclipse of the Public Corporation;”, Harvard Business Review (1989, revised 1997)
- Alfred Rappaport, “The Staying Power of the Public Corporation”, Harvard Business Review (1990)

Class 12 - April 4, 2011: [flexible]

6. Course Scheduling/Credits

The course will be a three-hour evening seminar on Monday evening from 6:30 – 9:30 pm, to be held at the Nadal Centre. Additional meetings will be scheduled by groups with their mentors, as required.

7. Academic Honesty and Integrity

Osgoode students are required to maintain high standards of academic integrity and are subject to the York Senate Policy of Academic Honesty and the relevant Osgoode Academic Rules.

The Senate Policy is available at the following link:

www.yorku.ca/secretariat/policies/document.php?document=69

The York University academic integrity website is available at the following link:

www.yorku.ca/academicintegrity/

The Senate Policy and Osgoode Academic Rules are also found in the Student Handbook, which is available from the Office of Student Services and on the MyOsgoode website.

8. Religious Observation

York University is committed to respecting the religious beliefs and practices of all members of the community, and making accommodations for observances of special significance to adherents.

9. Students with Disabilities

York University has a range of recourses to assist students with physical, mental, psychiatric and learning disabilities in achieving their educational objectives.

Students with disabilities requiring accommodation in the classroom or evaluation process are encouraged to identify themselves to the Osgoode Office of Student Services as soon as possible. All requests for accommodation will be kept confidential. Requests for accommodation must be approved by the Assistant Dean (J.D. Program), Ronda Bessner.

10. Other York University Policies

Further information concerning relevant York University academic policies, such as Ethics Review Process for research involving human participants, is available on the Senate Committee on Curriculum & Academic Standards webpage (see Reports, Initiatives, Documents):

http://www.yorku.ca/secretariat/senate_cte_main_pages/ccas.htm

11. Audio-Recording of Lectures

In accordance with Osgoode's trial 2010/2011 audio-recording policy, I have no objection to students making an audio-recording of my lectures for their personal use, provided that the recording is not posted on the Internet or otherwise distributed to anyone else.