

# TABLE OF CONTENTS

---

PREFACE .....	V
ACKNOWLEDGMENTS .....	VII
TABLE OF CASES .....	XXV
<b>Chapter One. An Introduction to Acquisitions .....</b>	<b>1</b>
A. Introduction .....	1
B. M & A Terminology .....	2
1. Customary Understanding of Basic Terms.....	2
2. The Varying Typologies of M & A Professionals .....	5
C. What Drives M & A Activity? .....	9
D. Introduction to M & A Negotiations .....	12
1. A Classic M & A Deal Timeline .....	13
2. Risk Allocation in Deferred Closing Transactions .....	17
Note: Post-Closing Adjustments.....	23
3. The Deal Price: Valuation.....	25
E. Are Acquisitions Socially Beneficial?.....	30
Questions .....	32
<b>Chapter Two. The Basic Mechanics of the Acquisition Process.....</b>	<b>33</b>
A. State Corporate Codes .....	33
1. Introduction .....	33
2. The Basic Provisions of State Corporate Codes Relevant to Acquisitions.....	36
a. The Three Basic Forms: The Stock Swap Statutory Merger, the Cash-for-Assets Acquisition, and the Cash-for-Stock Acquisition .....	39
i. A Plain Vanilla (or Stock Swap) Statutory Merger .....	39
Note: Class Voting .....	46
ii. Cash-for-Assets Acquisition .....	47
Shidler v. All American Life & Financial Corp.....	51
Note: “Substantially All” .....	54
iii. Cash-for-Stock Acquisition.....	56
Note: Compulsory Share Exchanges .....	58
b. Transaction Planning Alternatives: Change the Consideration Offered .....	59
i. Stock-for-Asset Acquisitions .....	59
Heilbrunn v. Sun Chemical Corporation.....	60
Note: Reverse Asset Sale.....	65
Hariton v. Arco Electronics, Inc.....	66
Note: Stock as Consideration .....	68
ii. Stock-for-Stock Acquisitions .....	68
iii. Cash-Out Mergers.....	69

	Rauch v. RCA Corp. ....	71
	Question.....	75
iv.	Triangular Acquisitions: The Use of Acquisition Vehicles.....	75
	Equity Group Holdings v. DMG, Inc. ....	78
v.	Two-Stage Stock Acquisitions .....	82
	Irving Bank Corp. v. Bank of New York Co., Inc.....	85
vi.	Partnerships and Long-Term Supply Contracts.....	87
c.	Single-Firm Reorganizations, Reincorporations and Conversions .....	88
	Federal United Corp. v. Havender .....	91
	Elliott Assoc. v. Avatex Corp.....	94
	Note: Conversions—Changes in Entity Form.....	98
d.	The Extraterritorial Effect of State Corporate Code Provisions on Shareholder Voting .....	98
	Vantagepoint Venture Partners v. Examen, Inc. ....	100
3.	The Dissenting Shareholders' Appraisal Remedy .....	104
a.	The Availability of the Appraisal Remedy .....	105
	Note: Contractual Modification of Appraisal Rights .....	109
b.	The Appraisal Procedure.....	111
c.	Fair Value .....	113
i.	Minority Discounts and the Appraisal Remedy.....	113
	Cavalier Oil Corp. v. Harnett.....	113
	Note: Problems in Application—Built-in Minority Discounts and Control Premia .....	114
ii.	Joint Gains (Synergies) and the Appraisal Remedy.....	117
	Weinberger v. UOP, Inc.....	117
	Cede & Co. v. Technicolor, Inc. ....	120
	Questions .....	124
iii.	Is “Deal Value” the Best Evidence of “Fair Value”? .....	126
	In re Appraisal of Dell, Inc. ....	126
	Questions .....	137
	Note: Is There a Legal Presumption That “Deal Value” Is the Best Evidence of “Fair Value”? .....	139
iv.	Awarding Interest in Appraisal Proceedings .....	140
	Merion Capital, L.P. v. 3M Cogent, Inc. ....	141
	Note: Interest Rate Arbitrage and Delaware’s Response .....	144
v.	Appraisal Awards and Judicial Review.....	145
d.	The Exclusivity of the Appraisal Remedy .....	147
	Question .....	149
	In re Appraisal of Dell, Inc.....	149
e.	Modern Application .....	152
	M.G. Bancorporation, Inc. v. Le Beau .....	152
	Note: Battle of the Experts .....	160
f.	Appraisal Arbitrage.....	161

4.	The Policy Questions .....	164
a.	California or Delaware? .....	164
b.	Should Shareholder Voting and Appraisal Rules Be Optional? .....	167
c.	The Rational Investor’s Choice of Voting and Appraisal Systems .....	170
B.	Publicly Traded Companies .....	171
1.	Listing Requirements of Stock Exchanges .....	171
2.	Federal Securities Law .....	176
a.	Shareholder Voting: Proxy Solicitation Regulations .....	177
	Note: Pre-Commencement Disclosures .....	182
b.	Tender Offers: <i>The Williams Act</i> .....	182
i.	Overview .....	182
ii.	The Structural Framework of a Tender Offer .....	184
	Note: The Best Price Rule and Severance Payments .....	186
	Note: Market Manipulation and Mini-Tender Offers .....	186
iii.	Bidder and Target Disclosure .....	188
a)	Bidder Disclosure .....	188
b)	Target Disclosure .....	190
iv.	What Is a Tender Offer? .....	192
	Hanson Trust PLC v. SCM Corporation .....	195
	Questions .....	206
v.	Issuer Tender Offers and Going-Private Transactions .....	207
	Note: Critics of the Williams Act .....	209
c.	Stock Deals: Regulation of Public Offerings .....	210
	Note: Going Public with a Reverse Merger .....	215
	Note: Special Purpose Acquisition Companies (SPACs) .....	216
	Note: Securities Act § 3(a)(9) Exchanges .....	217
C.	Buying Distressed Companies .....	218
	In re Chrysler .....	222
	Note: Government Brokered Deals .....	226
	<b>Chapter Three. Successorship to Assets and Liabilities .....</b>	<b>227</b>
A.	Acquisition Negotiation as a Multi-Issue Bargain .....	227
1.	Introduction to Multi-Issue Bargaining Theory .....	227
	Question .....	230
2.	Externalities and Other Forms of Opportunistic Behavior in Acquisitions .....	230
	Question .....	234
B.	Transfer or Vesting of Assets in Acquisitions .....	234
1.	Statutory Mergers: Assets <i>Vest</i> in Survivor .....	234
	PPG Industries, Inc. v. Guardian Industries Corp. ....	235
	Questions .....	239
	Note: Federal Pre-Emption and State “Effect of Merger” Statutes .....	240

2.	Stock Acquisitions: No Vesting or Transfer.....	240
	Branmar Theatre Co. v. Branmar, Inc.....	240
	Note: Control Change Clauses.....	242
	Note: Purchasing High-Tech Companies .....	243
3.	Asset Acquisitions: Transfers and Tradeoffs .....	245
	Chemetall GMBH v. ZR Energy, Inc.....	246
	Sharon Steel Corp v. Chase Manhattan Bank .....	249
C.	Successor Liability .....	254
1.	Asset Acquisitions and State Law on Successor Liability .....	254
	Cargo Partner AG v. Albatrans, Inc.....	255
	Question .....	257
	Ruiz v. Blentech Corporation.....	257
	Note: A Duty to Warn?.....	262
2.	Successor Liability and Federal Statutes .....	262
a.	Labor Law: A New Doctrine.....	262
	Golden State Bottling Co. v. NLRB.....	262
	Fall River Dyeing & Finishing Corp. v. NLRB.....	265
	Question .....	269
	Note: Successorship of a Duty to Arbitrate or a Duty to Bargain .....	269
b.	Environmental Liabilities .....	272
	New York v. National Services Indus., Inc. ....	272
	Note: Successor Liability Under CERCLA—Mere Continuation or Substantial Continuity?.....	276
c.	How Can a Purchaser in an Asset Acquisition Minimize Its Involuntary Exposure to Seller’s Liabilities?.....	280
3.	Purchasing Assets from a Bankrupt Company .....	280
	Ninth Avenue Remedial Group v. Allis-Chalmers Corp. ....	281
	Questions .....	286
	Questions .....	287
D.	Laws Stopping Asset Stripping .....	287
1.	Dissolution Protection .....	288
	In re RegO Company .....	290
2.	Insolvency Statutes .....	292
3.	Fraudulent Conveyance Protection.....	293
	Boyer v. Crown Stock Distr., Inc. ....	296
4.	Bulk Sales Acts.....	302
5.	Subsidiaries and Limited Liability Protections.....	304
	Schmoll v. ACandS, Inc.....	304
	Note: Section 524(g) Proceedings for Asbestos Claims .....	311
	United States v. Bestfoods .....	312
6.	The Debtor’s Residual Strategy: Bleed and Default .....	316
	<b>Chapter Four. Acquisition Documents .....</b>	<b>319</b>
A.	Preliminary Documents .....	320
1.	Confidentiality Agreements.....	320

2.	Letters of Intent.....	323
	Texaco, Inc. v. Pennzoil Co. ....	326
3.	Investment Banker Engagement Letters .....	333
B.	The Acquisition Agreement and Supporting Documents .....	335
1.	The Basic Agreement .....	335
	a. Defined Terms.....	336
	b. The Basic Exchange.....	338
	i. Asset Purchase Agreement .....	338
	ii. Stock Purchase Agreement .....	343
	iii. Merger Agreement.....	344
	c. Representations and Warranties.....	350
	Note: Representations Insurance .....	355
	Note: Let the Risk Shifting Begin—Weaseling out of Reps and Warranties by the Seller .....	355
	d. Covenants and Conditions .....	358
	Note: Acquisition Financing.....	364
	e. Termination and Indemnification Clauses .....	364
	Note: Boundaries to Provisions on Limiting Remedies.....	366
	f. Boilerplate.....	367
	g. Negotiations Over the Documents.....	368
	United Rentals, Inc. v. RAM Holdings, Inc. ....	372
	Question .....	376
2.	Supplemental Documents .....	376
	O’Tool v. Genmar Holdings, Inc.....	378
	Questions .....	385
3.	Acquisition Review Documents .....	385
4.	Contingent Terms in, Amendments to and Abandonment of Acquisition Agreements .....	389
C.	Closing Documents.....	392
	Guidelines for the Preparation of Closing Opinions .....	394
	Dean Foods Company v. Pappathanasi .....	395
D.	Litigation Among Parties to Acquisition Contracts .....	403
1.	Buyer Purchases a <i>Pig in a Poke</i> .....	403
	Medcom Holding Co. v. Baxter Travenol Labs., Inc. ....	403
2.	The Buyer Refuses to Close .....	408
	Note: The Boom and Bust of Private Equity in the Naught Decade .....	408
	Hexion Specialty Chemicals, Inc. v. Huntsman Corp. ....	409
	Question .....	418
	Consolidated Edison, Inc. v. Northeast Utilities .....	418
	Note: Terrorism and MAC Clauses .....	422
3.	Seller Refuses to Close .....	423
	NACCO Industries, Inc. v. Applicia Incorporated.....	423
	Question .....	432
E.	Mergers in Regulated Industries .....	432
	Allegheny Energy, Inc. v. DQE, Inc. ....	433
	Note: Regulatory Extortion? .....	437

<b>Chapter Five. Fiduciary Duty in Negotiated Acquisitions .....</b>	<b>439</b>
A. Introduction .....	439
B. The Duty of Care .....	440
1. The Target Board’s Decision to Sell the Company .....	440
Smith v. Van Gorkom .....	440
Note: The Effect of Van Gorkom on Stock Prices, Fairness Opinions, D & O Insurance, and Shield Statutes .....	449
Note: The Delaware Doctrinal Quagmire—Of Thresholds and Fall-Back Tests .....	451
2. The Purchasing Board’s Decision to Acquire a Company .....	453
Ash v. McCall .....	453
Note: The “Shop ’Til You Drop” ’90s—The Attack on Buyer’s Boards .....	457
Hewlett v. Hewlett-Packard Co. ....	460
Note: Subsequent History in the Hewlett-Packard Case .....	464
Note: Third Party Vote Buying .....	465
C. Duty of Loyalty: Conflict of Interest Transactions .....	466
1. General Principles: When Are Directors Disinterested and Independent? .....	466
Orman v. Cullman .....	467
Note: Sarbanes-Oxley and Listing Requirements on the Definition of Independent .....	477
Questions .....	478
Note: Executives as Loose Cannons in Acquisition Negotiations .....	479
2. Squeeze-out Mergers: Acquisitions of a Minority Interest in a Controlled Subsidiary .....	481
Weinberger v. UOP, Inc. ....	481
Note: Cleansing Processes Effect on the Standard of Review .....	485
Questions .....	487
Kahn v. M & F Worldwide Corp. ....	488
Note: Compensation of Special Negotiating Committees .....	496
3. Tender Offers for Minority Shares by Controlling Shareholders—The <i>Coercion</i> Test .....	497
In re CNX Gas Corporation Shareholders Litigation .....	497
Question .....	501
Note: Empirical Evidence .....	502
Note: Duty of the Special Committee to Exercise Hold up Power in Squeeze-outs .....	502
4. Minority Stock Repurchases in Anticipation of an Acquisition .....	502
Lawton v. Nyman .....	502
5. Recapitalizations .....	508
Levco Alternative Fund v. Reader’s Digest Assoc. ....	508
D. Legal Duties of Controlling Shareholders in Negotiated Acquisitions .....	510

1.	No Obligation to Share Proceeds from the Sale of a Controlling Block of Stock.....	510
	Zetlin v. Hanson Holdings, Inc. ....	510
	Note: The Empirical Evidence on the Effect of Block Trades on Minority Shareholders .....	511
	Note: The Williams Act as an Exception to the Free Trade Rule.....	512
2.	The Duty Not to Sell to a “Looter”.....	512
	Insuranshares Corp. of Del. v. Northern Fiscal Corp. ....	512
3.	The Fiduciary Duty of the Board to Protect Minority Shareholders.....	517
	Questions .....	520
4.	The Duty Not to Sell an Office.....	520
	Essex Universal Corp. v. Yates .....	520
5.	The Duty Not to Usurp Corporate Opportunities .....	524
	Thorpe v. CERBCO, Inc. ....	524
<b>Chapter Six. A Target Board’s Decision to Block a Stock Acquisition .....</b>		<b>531</b>
A.	Introduction to Takeover Defenses .....	531
1.	A Classification of the Defenses .....	531
	Note: The Antidote to Takeover Defenses—Shareholder Resolutions .....	539
	Note: The Antidote to the Antidote? New State Statutes.....	542
2.	Defenses Void “Ab Initio” .....	542
	Quickturn Design Systems, Inc. v. Shapiro.....	542
	Note: Stock Exchange Restrictions on Voting Rights Plans.....	544
3.	Empirical Data on the Use and Effect of the Takeover Defenses .....	546
	Note: High-Tech Company IPOs and Anti-Takeover Defenses.....	548
B.	Fiduciary Duty and a Board’s Decision to Block Takeovers.....	549
1.	Introduction to the Enhanced Scrutiny Test (The <i>Unocal</i> Test) ...	549
	Air Products and Chemicals, Inc. v. Airgas, Inc.....	552
	Questions .....	562
	Note: Empirical Evidence on Blocked Takeovers .....	566
	Omnicare, Inc. v. NCS Healthcare, Inc.....	570
	Questions .....	575
	Brazen v. Bell Atlantic Corp.....	575
	Questions .....	579
2.	Blocking One Bidder to Favor Another: The <i>Revlon</i> Zone.....	579
	Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc.....	579
	Paramount Communications, Inc. v. QVC Network, Inc.....	587
	Lyondell Chemical Co. v. Ryan.....	594
	Question .....	598
	Questions .....	601
	Note: The Beginnings of a Delaware Supreme Court Pull Back? .....	603

	Note: The Disparaging of Financial Buyers—A Media Pastime.....	604
3.	Blocking Proxy Contests: The Blasius Test.....	605
	Note: The New Definition of Hostile.....	606
	Blasius Industries, Inc. v. Atlas Corp. ....	606
	Question.....	611
	Note: Hedge Funds Step up as Shareholder Activists.....	612
4.	Plaintiffs' Lawyers Fees: A Cost in All Negotiated Deals?.....	613
	Question.....	616
C.	State Anti-Takeover Statutes.....	616
	Note: The Go-Go '80s—The Decade of Greed?.....	616
1.	Anti-Takeover Statutes That Strip Purchased Shares of Rights or Powers.....	617
	BNS, Inc. v. Koppers Company, Inc. ....	617
	Note: The Proliferation of Anti-Takeover Statutes.....	628
2.	Statutes Protecting and Enhancing the Discretion of Target Boards.....	630
	Question.....	632
	Sarah S. Nickerson, The Sale of Conrail: Pennsylvania's Anti- Takeover Statutes Versus Shareholder Interests.....	635
	Questions.....	638
	Metropolitan Life Ins. Co. v. RJR Nabisco, Inc. ....	639
	Question.....	645
	McMahan & Company v. Warehouse Entertainment, Inc. ....	646
	Note: Data on Stakeholder Welfare in Acquisitions.....	649
D.	The Performance of the Delaware Courts.....	650
E.	Fiduciary Duty of Acquisition Consultants and Advisors.....	653
	In re Daisy Systems Corporation.....	653
	Questions.....	660
	Note: The History of the Daisy Systems Case.....	661
F.	Takeovers in Bankruptcy: Claims Trading.....	661
	In re Allegheny International, Inc. ....	662
	Questions.....	665
 <b>Chapter Seven. The Disclosure Requirements of the Federal Securities Acts and State Law..... 667</b>		
A.	Disclosure Requirements of the Federal Securities Acts.....	667
1.	Introduction to Mandatory Disclosure Requirements Under Federal Securities Law.....	667
2.	Materiality.....	672
	TSC Industries, Inc. v. Northway, Inc. ....	672
	Questions.....	679
	Lewis v. Chrysler Corporation.....	681
3.	Pleading Standards: The PSLRA.....	685
	Flaherty & Crumrine Preferred Income Fund, Inc. v. TXU Corp. ....	685



4.	Disclosure of an Acquirer’s <i>Plans</i> and <i>Projections</i> .....	689
a.	SEC Forms and Schedules: Disclosures of Forward-Looking Information Required of Firms Executing Acquisitions .....	691
	Note: The Obligation to Disclose Inside and Outside “Reports, Opinions, and Appraisals” .....	695
	Question .....	696
b.	SEC Rules on Optional Disclosure of Projections.....	696
	Note: The Duty to Amend, Correct or Update Projections.....	698
c.	Case Law on Acquisition-Related Projections .....	699
	Virginia Bankshares, Inc. v. Sandberg .....	699
	Walker v. Action Industries, Inc.....	703
	Question .....	708
	Asher v. Baxter Int’l Inc.....	708
5.	The Duty to Disclose Pre-Signing Merger Negotiations .....	716
	Basic, Inc. v. Levinson.....	716
	Note: What Triggers the Duty to Disclose?.....	721
	Management’s Discussion and Analysis of Financial Condition and Results of Operations; Certain Investment Company Disclosures .....	722
	Questions .....	725
	Note: Footnote 17 in <i>Basic v. Levinson</i> —A Confusing Bit of Dicta on the Business Purpose Exception.....	726
	Question .....	728
6.	Gun Jumping: Pre-Filing Announcements .....	731
7.	Section 13(d): Disclosing Stock Purchases of a Public Corporation of More than 5 Percent.....	732
a.	The Early Warning System.....	732
	Question .....	734
b.	The Question of Remedy .....	734
	Rondeau v. Mosinee Paper Corp.....	734
	SEC v. First City Financial Corp., Ltd.....	738
	Questions.....	743
c.	Criticisms of Section 13(d) .....	744
d.	Groups and Beneficial Ownership.....	746
	CSX Corporation v. The Children’s Investment Fund Management (UK) LLP .....	746
B.	Insider Trading in Advance of Acquisitions .....	752
1.	Sec Rules 10b–5 and 14e–3.....	752
	United States v. O’Hagan .....	752
	Note: Insider Trading in Advance of Acquisition Announcements .....	758
2.	Section 16(b) of the Exchange Act: A Trap for Losing Bidders .....	759
	Texas Int’l Airlines v. Nat’l Airlines, Inc. ....	760
	Note: The Short-Swing Profit Rule’s Application to Shares Exchanged by Officers and Directors in Mergers.....	765
C.	State Law.....	765
	In re Pure Resources, Inc., Shareholders Litigation.....	766

<b>Chapter Eight. Accounting and Tax Issues in Mergers and Acquisitions.....</b>	<b>771</b>
A. Accounting for Mergers and Acquisitions .....	772
1. Introduction to Financial Statements .....	772
Note: Don't Look Like a Dummy to Your Client .....	775
2. Introduction to Accounting Issues in Intercompany Ownership...	775
3. Cost Method: Acquisitions of Less than 20 Percent of Target's Outstanding Common Stock .....	777
4. Equity Method: Acquisitions of 20 Percent to 50 Percent of Target's Outstanding Stock .....	781
5. Consolidations: One Company Acquires over 50 Percent of the Stock of Another .....	784
Note: Accounting Rules' Effect on the Size of an Acquisition.....	789
Note: Historical Account of Pooling Accounting .....	790
Note: Goodwill Games .....	792
Note: Acquisition Accounting as a Ponzi Scheme—The WorldCom Example.....	793
B. Tax Treatment of Mergers, Acquisitions, and Reorganizations.....	795
1. Introduction to the Transactional Base of Our Federal Income Tax .....	795
2. Taxable Acquisitions: Cash Deals .....	796
Note: Some Significant Planning Choices for Taxable Stock Acquisitions.....	797
3. Tax-Free Reorganizations: Stock Deals .....	800
Questions on Triangular Deals.....	803
Note: Section 351 Tax-Free Deals .....	804
Internal Revenue Code § 368.....	805
Treas. Reg. § 1.368-1 .....	807
Note: Advance Rulings from the IRS .....	810
Note: Why Use a Taxable Exchange?.....	813
4. The Policy Debate on Tax-Free Reorganizations .....	814
American Law Institute, Federal Income Tax Project, Subchapter C: Proposals on Corporate Acquisitions and Dispositions and Reporter's Study of Corporate Distributions .....	814
Note: 1985 Senate Finance Committee Staff Reform Proposal.....	818
Steven A. Bank, Mergers, Taxes and Historical Realism .....	818
5. When Are Acquisitions Driven Purely by Tax Avoidance?.....	822
a. Survival of Tax Attributes in an Acquisition: NOLs .....	822
Tax Reform Act of 1986.....	823
Note: Federal Takeovers Exempted from I.R.C. § 382.....	825
Omnibus Budget Reconciliation Act of 1989.....	826
b. Leverage in Acquisitions and the Corporate Tax System.....	827
Staff Report, Federal Income Tax Aspects of Corporate Financial Structures.....	827
Comment: Integrated Effects of Corporate Debt Financing on Tax Collections.....	837

Michael C. Jensen, Steven Kaplan & Laura Stiglin, Effects of LBOs on Tax Revenues of the U.S. Treasury.....	838
Alvin C. Warren, Jr., Recent Corporate Restructuring and the Corporate Tax System.....	840
Note: Congress' Attack on Interest Deductions in Leveraged Acquisition Financing .....	841
Omnibus Budget Reconciliation Act of 1989.....	843
Note: 2017 Tax Reform Efforts and Possible Impact on Leveraged Buyouts and Private Equity Deals.....	845
c. Tax-Driven " <i>Inversion</i> " Deals .....	845
i. A Long History .....	847
ii. Congress' First Entry into the Fray .....	848
a) I.R.C. § 7874 .....	848
b) I.R.C. § 4985 .....	849
iii. Use of "Earnings Stripping" .....	850
iv. Treasury Responds .....	850
v. The Tax Cuts and Jobs Act of 2017: Congress' Second Entry into the Fray.....	851
d. Miscellaneous Tax Provisions Relevant to Acquisitions: Golden Parachutes, Greenmail, Poison Pills, and Acquisition Expenses.....	852
i. Golden Parachutes: §§ 280G and 4999.....	852
IRS Proposed Regulations, Golden Parachutes § 1.280G-1 .....	854
Note: Corporations Taking TARP Funds and Shareholder Say on Pay.....	856
Note: Shareholder Say on Pay .....	856
ii. Greenmail: § 5881.....	856
Omnibus Budget Reconciliation Act of 1987.....	856
Question.....	857
iii. Excise Tax on Terminating Overfunded Pension Plans .....	858
iv. Deductibility of Acquisition Fees and Expenses.....	859
INDOPCO, Inc. v. Commissioner .....	859
 <b>Chapter Nine. Protecting Consumer Interests in Mergers and Acquisitions: The Clayton Act .....</b>	
A. The Clayton Act.....	863
Clayton Act, § 7 .....	865
Horizontal Merger Guidelines, U.S. Department of Justice and the Federal Trade Commission .....	866
Questions .....	872
Midwestern Machinery, Inc. v. Northwest Airlines, Inc. ....	872
F.T.C. v. Whole Foods Market, Inc.....	873
Questions .....	886
F.T.C. v. Staples, Inc.....	886
Question.....	898

Clayton Act, § 8 .....	899
B. Price Fixing Among Bidders .....	902
Finnegan v. Campeau Corp. ....	902
Question .....	906
C. Pre-Merger Notification: The Hart-Scott-Rodino Antitrust Improvements Act of 1976 .....	906
Introductory Guide I—What Is the Premerger Notification Program? An Overview.....	906
1. The HSR Notification and Report Form .....	914
2. The HSR Waiting Period.....	915
California v. American Stores Co. ....	919
United States v. Computer Associates Int’l, Inc.....	921
<b>Chapter Ten. Issues in International Acquisitions.....</b>	<b>927</b>
A. Foreign Acquisitions of United States Corporations .....	927
1. Acquisitions That “Impair National Security”—The Exon-Florio Amendment.....	927
a. Introduction and Overview .....	927
b. Statutory Authority for CFIUS and Presidential Review.....	929
Authority to Review Certain Mergers, Acquisitions, and Takeovers .....	929
Question .....	935
Jeremy David Sacks, Monopsony and the Archers: Rethinking Foreign Acquisitions After <i>Thomson-LTV</i> .....	935
Paul Rose, Sovereigns as Shareholders .....	940
Question on Reciprocity.....	941
Note: The Effect of Exon-Florio on Hostile Acquisitions and Acquisition Timing .....	942
Note: The Uranium One Transaction Becomes a Political Football.....	944
c. Judicial Review .....	945
Ralls Corp. v. Committee on Foreign Investment in the United States .....	945
Question .....	958
2. Federal Legislation Specific to Foreign Acquisitions in Particular Industries or Assets .....	960
Note: British Airways Acquisition of USAir .....	961
Note: The BCCI Scandal .....	963
3. Other Countries’ Investment Barriers.....	963
4. International Agreements on Foreign Direct Investment .....	965
American Society of International Law Proceedings (Maurits Lugard Ed., April 9–12, 1997), Implementation, Compliance and Effectiveness: Toward an Effective International Investment Regime.....	965
B. Extra-Territorial Application of United States Laws to Foreign Acquisitions .....	973

1.	Federal Securities Laws.....	973
	Securities and Exchange Commission, Cross-Border Tender and Exchange Offers, Business Combinations and Rights Offerings.....	974
	Questions .....	977
	Consolidated Gold Fields PLC v. Minorco, S.A. ....	978
	Securities and Exchange Commission, Study on Extraterritorial Private Rights of Action .....	981
	Questions .....	983
2.	Antitrust Laws.....	984
	Department of Justice and Federal Trade Commission, Antitrust Guidelines for International Enforcement and Cooperation (Jan. 3, 2017).....	984
	Question .....	991
	Note: Conflicts with Our Trading Partners .....	991
	United Kingdom Protection of Trading Interests Act of 1980.....	992
	Question .....	994
	Mark Leddy, Christopher Cook, James Abell, Georgina Eclair- Heath, Transatlantic Merger Control: The Courts and the Agencies.....	994
	Kevin Arquit, Keynote Address, Symposium Feb. 27, 2009.....	996
	Question .....	999
C.	Comparative Takeover Law.....	999
	Directive 2004/25/EC of the European Parliament and Council of 21 April 2004 on Takeover Bids .....	1000
	Note: The U.K. Takeover Code .....	1006
	Questions .....	1006
	<b>Chapter Eleven. Shareholder Activism.....</b>	<b>1007</b>
A.	Overview .....	1007
B.	Today's Activism Versus Past Activism.....	1010
C.	Performance.....	1011
D.	Activist Strategies .....	1012
	1. Trojan Horse .....	1013
	2. Stock Repurchase Programs .....	1014
	3. Spin-Off Strategy.....	1015
	4. Partnering with Hostile Bidders .....	1016
	5. Wolfpacking .....	1019
	6. Shareholder Referenda .....	1019
	7. Putting the Brakes on a Target's Strategy .....	1020
	Questions .....	1023
	INDEX.....	1025