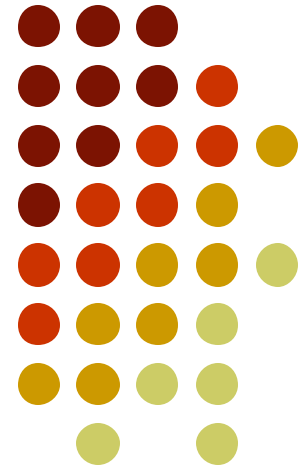


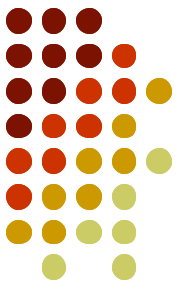
Corporations

Prof. Michael Abramowicz

Mergers and acquisitions

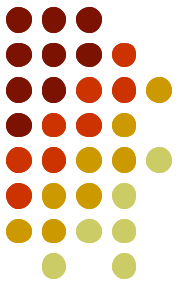


Corporate Control Overview of Issues



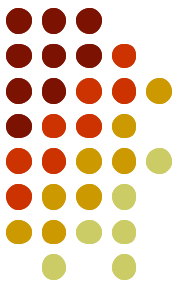
- Mergers and Acquisitions
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Mergers & Acquisitions Transaction Alternatives



- There are a variety of transactions that yield the same results. Each has different advantages/disadvantages.
- Example: Alex owns Acme Inc. He wants to control Target Corp. (through Acme). Suppose Acme is worth \$400 and Target is worth \$100. Each has 100 shares outstanding.
- Alex can make Acme control Target by:
 - Proxy contest
 - Tender offer
 - Stock purchases
 - Sale of assets
 - Merger/Consolidation

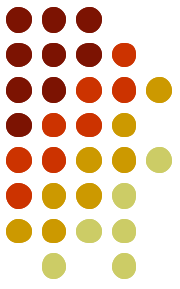
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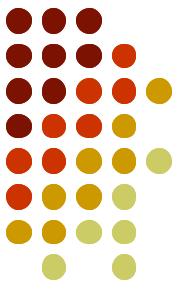
De Facto Merger

Farris v. Glen Alden Corp.



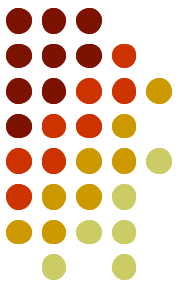
- Facts: List's goal
- Legal requirements
 - Two states: Pennsylvania and Delaware
 - Two approaches: merger and sale of assets
- Different possible ways to structure deal
- De facto merger doctrine
 - The doctrine
 - Application
- Aftermath: *Terry*

De Facto Merger: *Hariton v. Arco Electronics* (p. 725)



- Facts
- Plaintiff's legal theory
- Plaintiff's proposed distinction
- Holding

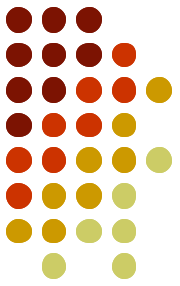
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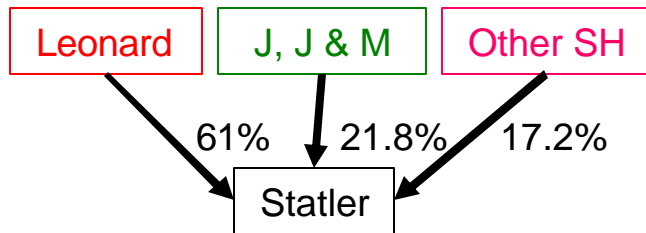
Mergers & Acquisitions

Triangular Mergers

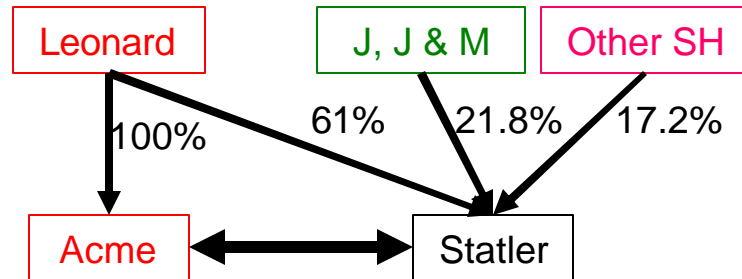


- Execute a triangular merger: Acquirer, Subsidiary, Target.
 - Combine advantages of mergers & asset sales (good not only for freeze outs):
 - Acquirer forms subsidiary (a corporation 100% owned by buyer).
 - Subsidiary is capitalized with the consideration to be paid to the target's SH.
 - Subsidiary merges with target, paying the target's SH.

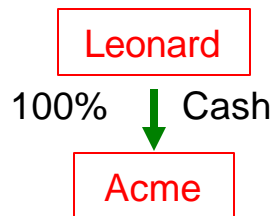
Before Freeze-Out Merger



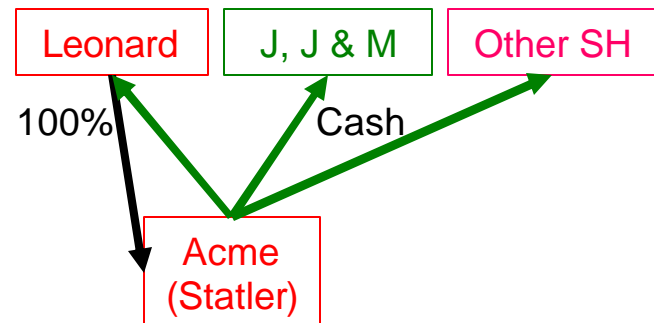
Step 2: Acme has a cash-out merger with Statler



Step 1: Leonard forms Acme

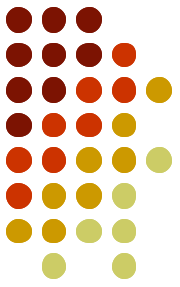


Step 3: After the Freeze-Out Merger



Freeze Out Mergers

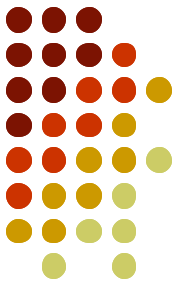
Weinberger v. UOP, Inc.



- Facts
 - Signal's plan
 - UOP directors' actions
- Remedies
- Holding
 - Burden of proof
 - The entire fairness test
 - Fair dealing
 - Fair price
 - Business purpose
- Control premiums in appraisals

Freeze Out Mergers: Bus. Justification

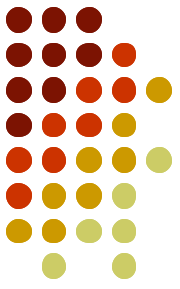
Coggins v. New England Patriots



- Facts
 - Sullivan's rise, fall, and rise
 - The structural challenge and Sullivan's solution
- Holding
 - Business purpose
 - Discussion of *Singer*

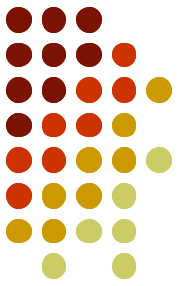
Freeze Out Mergers

Rabkin v. Philip Hunt Chem. Corp.



- Facts
 - Agreement
 - Intentions
 - Special committee
- Holding
- Questions
 - What did Olin do wrong?
 - Was this a way of evading a contractual commitment?
 - What was the contractual commitment?
- Remedy

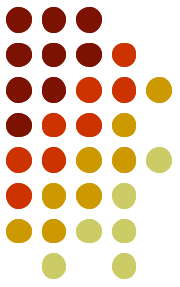
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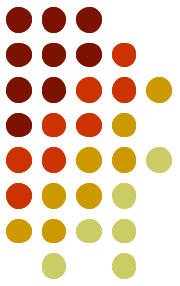
De Facto Non-Merger

Rauch v. RCA Corp.



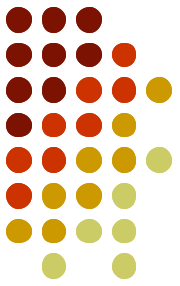
- Facts
 - Two classes of stock
 - Redemption clause
 - Triangular merger
- Questions
 - Does *Hariton* apply?
 - How do Rauch's rights depend on the characterization of the transaction?
- Holding

Corporate Control Overview of Issues



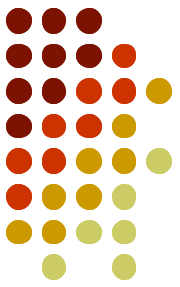
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LLC Mergers: *VGS, Inc. v. Castiel*



- Facts
- Default rule vs. operating agreement provisions
- Holding
 - Literal interpretation
 - Duty of loyalty
- Does the court's ruling accurately capture the parties' intent?

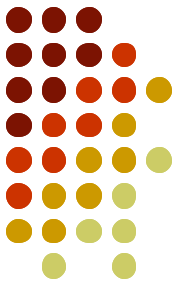
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Williams Act (1968)

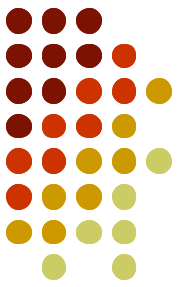
Federal Regulation of Tender Offers & Stock Purchases



- Amendments to §§ 13-14 of the Exchange Act.
 - Apply only to securities registered under the Exchange Act.
 - Anyone who acquires 5% of stock of a firm must file a Schedule 13D disclosure statement within 10 days of acquiring the 5% interest.
 - Anyone making a tender offer must file a detailed set of disclosure documents, including the acquirer's plans for the company [§14(d)(1)].
 - This information is important to SH tendering in a stock-for-stock offer, but not ordinarily in a stock-for-cash offer. (Ironically, the better the plans for the company, the less likely tender is to occur.)
 - The requirement protects incumbent management.
 - If the tender is over-subscribed (i.e., more shares are tendered than the acquirer offered to purchase), acquirer must accept stock on a pro-rata basis [§14(d)(6)].
 - Any acquirer who raises his price during the term of the tender offer must raise it for any stock already tendered [§14(d)(7)].
 - The tender offer must be open for at least 20 business days, and a SH who tendered may withdraw the tendered stock during the first 15 days [§14(e)(1)].

How Can the BoD Resist?

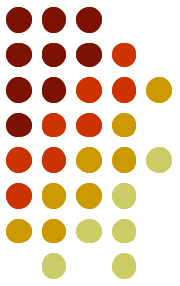
Examples of Takeover Defenses



- Greenmail (*Cheff*)
- Counter-Tender Offers (*Unocal, Time*)
- Poison Pills (*Revlon*)
 - Flip-over plans
 - Flip-in plans
 - Back-end plans
 - Voting plans
 - Poison Debt
- Lock-ups (*Van Gorkom, Revlon, QVC*)
 - No-shop obligation
 - Cancellation fee
 - Stock options

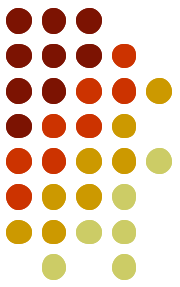
Greenmail

Cheff v. Mathes



- Facts
 - Holland board
 - Maremont's moves
 - Greenmail
- Holding
 - Standard for evaluating defensive tactic
 - Inside vs. outside directors
- Was there a threat?

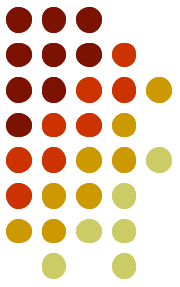
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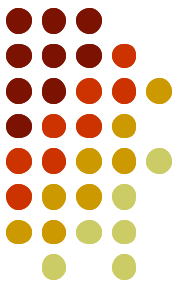
Counter- Tender Offers

Unocal v. Mesa Petroleum



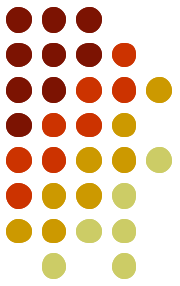
- Facts
 - Mesa's tender offer
 - Unocal's tender offer
 - Waiver of purchase condition
- What is the incentive of a Unocal shareholder?
- Holding
 - Modified duty of care analysis
 - Relevant factors

Poison Pills



- Poison pills are rights the exercise of which makes the takeover less profitable to the acquirer, typically by lowering the value of the target's or the acquirer's shares.
- These rights are distributed to someone (usually, SH other than the acquirer) via a “vehicle”, and cannot be exercised until a triggering event (e.g., a takeover attempt) takes place.
 - Examples of triggering events:
 - The announcement of a tender offer for more than X% of Target's stock;
 - The acquisition, in any way, of X% of Target's stock (or of any stock class)
 - The execution of a merger to which Target is a party.
- The rights are initially “stapled” to another security
 - They are not issued in physical form and cannot be sold separately from the stock. This ensures that there is no secondary market for the rights.
 - Upon occurrence of the trigger event, the rights detach from the security and may be exercised or traded.

Revlon v. MacAndrews & Forbes



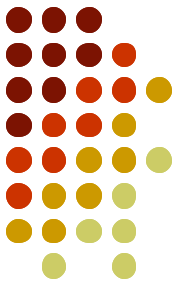
- Facts

- Perelman and Bergerac's discussions
- Investment bank's assessment
- Lawyer's recommendation: Note Purchase Rights Plan
- Poison debt
- Management Buyout
- Lockup

- Holding

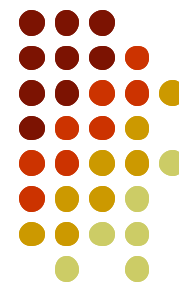
- Independence of Board
- Initial defensive measures
- Duty to auction
- Concern for personal liability

Paramount v. Time



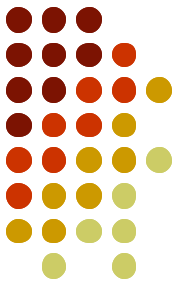
- Facts
 - Time-Warner negotiations
 - Advance defensive tactics
 - Paramount's bid
 - "Pac Man" defense
- Holding
 - Threat
 - Reasonableness of response
 - Clarification of *Revlon*

Paramount v. QVC



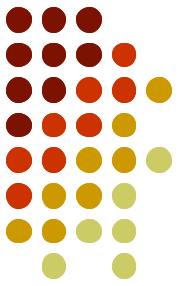
- Facts
 - Hostile tender offer
 - Defenses
 - The QVC-Viacom battle
- Holding
 - Applicability of *Revlon*
 - *Paramount v. Time* distinguished
 - Change-of-control test

Unitrin v. Am. Gen. Corp. (Del. 1995)



- Issue
- New terms
 - “Draconian”
 - “Coercive”
 - “Preclusive”

Dead Hand and No Hand Pills



- Dead hand pills
 - *Toll Brothers*
- No hand pills
 - *Quickturn Design Systems*