

15.617, Spring 2004
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Lecture 7: 2/25/04

Merger: you can merge companies by finding a paper with the Sec of State of Delaware.

- New corporations possess all the rights, privileges, properties.
- Lease goes over to new company
- There is an ongoing debate whether patent law applies to patent licenses (and there are two views federally as well)

	3 rd party consent	Liabilities	SH approval	Dissenters' Rights
Asset	Yes	No, "BUT"	Majority	No (in Delaware), but it depends which state
Buys Stock of Company	You sometimes need consent. It depends on clauses	YES	100%. (you need this much to own all the company)	NO
Merger	???	YES	Majority	YES
Forward Merger	???	YES, but you won't injure parent	Majority	YES
Backward merger	Sometimes?	YES, "BUT"	Majority	YES

- Just because you have to pay the tax man, doesn't mean you can't collect from the seller.
- There's a transfer of all assets
- Employees work for a new company
- Economically efficient: to pass cost of insurance
- Policy is that consumer shouldn't bear blame
- Don't pick upseller's taxes.
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Privately negotiated businesses

Process begins:

- 1.) handshake, agreement on price. Phone to call to lawyer: “We’ve agreed to buy business B for \$x.”
- 2.) Letter of Intent, LOI, (no need to have it). But, it’s a good thing psychologically. There are some provisions, but for the most part is just milk toast.

(Refer to handout)

Part 1: not-binding → not much substance

Part 2: Paragraph B: Seller isn’t going to shop, as buyers does its homework.

- People are very positive during the time of LOI
 - Nothing needs to be spelled out in detail, but there should be important points that may be helpful to you later on.
- 3.) Due Diligence: the selling company gathers up all the papers that relates to its company.
 - Acquisition page checklist page 6: includes contracts, surveys.
 - Don’t hide the fact to employees that you are thinking of selling. If many sales, the CEO should sell each smoothly, do its homework, and avoid the disruption.
 - Fixed asset list (Professor said to ignore this part)
 - Buyer may insist on having their sellers’ financial records audited. But this auditing isn’t a huge concern. They will look at tax reforms, because you get a conservative income.
 - Organization schedules: the meat of the story is told in the disclosures schedule: listing of contracts, law suits, employee-benefit plans
 - Sellers are confused about the “schedule thing”
 - If an important contract isn’t in the schedule → doesn’t count.
 - Schedule is being prepared while most the agreements are
 - Schedule may get a lot of people making additions → lots of changes can mess up things.
 - How long between LOI and signing agreement?
 - 6 weeks (but they are getting longer, but not because they are getting complicated)
 - Mahoney thinks its technology’s fault. The speed of which people are trying to do things is causing careless errors.
 - If one doesn’t fall covenants, one get sued.
 - It takes 30-45 days between signing and closing, because you’re getting regulatory approvals (filing papers, mechanical nature things).