

**SUBJECT DETAILS**

Data on the subject	
Name	Due Diligence Interactive Clinic
Degree	Postgraduate in Masters in International and European Business Law
Year	2018-2019
Nature	Second semester
ECTS Credits	1 credit
Department	Law
Area	Law
Teaching staff	Shared, see below

Data on the teaching staff	
Teaching staff	Steve J. Hess
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Tutoring Schedule	Upon request from students

Data on the teaching staff	
Teaching staff	Carlos Franco Duque
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Tutoring Schedule	Upon request from students

## SPECIFIC DATA ON THE SUBJECT

### Pre-requisites

General knowledge of corporate law generally and M&A transactions specifically.

### Contribution of the degree to the professional profile

The due diligence clinic will provide students with an opportunity to broaden and deepen their understanding of the M&A transaction process by means of case studies and interactive exercises. The discursive nature and practical focus of the clinic will serve to develop key professional skills of critical analysis, communication and negotiation, thereby enhancing students' professional profiles.

## COMPETENCES TO BE IMPROVED

### Generic Competences

#### Instrumental

GC 4: Problem solving skills

GC 5: Decision making skills

GC 6: Team work skills

### Specific competences of the subject

#### Conceptual (knowing)

SC 14: Developing practical skills, especially in negotiation of contracts and complex disputes, and developing legal audit or due diligence abilities.

## THEMATIC AREA AND CONTENT

### AREA 1

#### Theme 1: Overview of the acquisition process

- 1.1 Principal ways to acquire a business
- 1.2 Different types of acquisition process
- 1.3 Role of M&A intermediaries

#### Theme 2: Due diligence

- 2.1 Purpose and limitations

#### Theme 3: Legal due diligence

- 3.1 What information is of interest?
- 3.2 How to find it
- 3.3 Presentation of legal due diligence
- 3.4 Potential issues

#### Theme 4: Transfer of undertaking: what to look for

4.1 Importance of understanding “the numbers”
4.2 Specific areas of interest
<b>Theme 5: General / suggested due diligence process</b>
5.1 Initiating the process
5.2 Briefing meeting
5.3 Summary of the due diligence
<b>Theme 6: Due diligence report</b>
6.1 Overview of contents of the report
<b>Theme 7: Impact on the purchase agreement</b>
7.1 Structure of the transaction
7.2 Conditions precedent
7.3 Representations and warranties
7.4 Indemnification
<b>Theme 8: Exercise</b>
8.1 Interactive group exercise: representations and warranties
<b>AREA 2</b>
<b>Theme 1: Overview of auction sales</b>
1.1 Introduction: what is an auction sale and when is it used?
1.2 Seller vs. Buyer: contrasting perspectives
1.3 Bilateral vs. auction
1.4 Overview of the process
<b>Theme 2: Vendor’s due diligence</b>
2.1 Concept
2.2 Benefits
2.3 Problems
2.4 Complexities for law firms
<b>Theme 3: Approach to the SPA</b>
3.1 “Auction draft”: striking the balance
3.2 Private equity sales
3.3. Ancillary documents
<b>Theme 4: Evaluation of offers</b>
4.1 Review of assumptions
4.2 Assessment of execution risk
4.3 Review of SPA mark-up
<b>Theme 5: Release and reliance letters</b>
5.1 Overview of purpose and contents of each
5.2 Controversial issues in negotiation

## Theme 6: Exercise

### 6.1 Interactive group exercise: due diligence report and risk management

#### BIBLIOGRAPHY AND RESOURCES

The due diligence clinic is specifically designed as a practical, hands-on and interactive workshop and therefore predominantly comprises various group exercises intended to test and apply students' knowledge, critical analysis and communicative skills. There is therefore no required reading.

#### Optional reading:

For students looking to delve deeper into the subject matter, we may recommend the following articles:

- Vendors Due Diligence: What, Why & How? By: Salvador Sánchez-Terán and Stephen J. Hess. This article will be posted in Moodle. It was originally prepared as a paper given at the 4th International Mergers and Acquisitions Conference of the International Bar Association in New York, June 2005. ©International Bar Association.
- Due Diligence and Disclosure in Private Acquisitions and Disposals. Slaughter and May, August 2007.  
[https://www.slaughterandmay.com/media/39323/due\\_diligence\\_and\\_disclosure\\_in\\_private\\_acquisitions\\_and\\_disposals.pdf](https://www.slaughterandmay.com/media/39323/due_diligence_and_disclosure_in_private_acquisitions_and_disposals.pdf)
- A Look at Due Diligence. Francis J. Aquila (partner, Sullivan & Cromwell). In: Business Due Diligence Strategies: Leading Lawyers on Conducting Due Diligence in Today's M&A Deals. Aspatore, 2012.  
<https://www.sullcrom.com/siteFiles/Publications/Aquila-Inside-Minds-April-2012.pdf>
- Business Acquisition Agreements.. William F. Griffin (Davis, Malm & D'Agostine). In: Drafting & Negotiation Massachusetts Contracts, 2013.  
[http://www.davismalm.com/1BE153/UploadedDocuments/Articles/Griffin\\_CH12\\_Business\\_Acquisition\\_Agreements\\_2013.pdf](http://www.davismalm.com/1BE153/UploadedDocuments/Articles/Griffin_CH12_Business_Acquisition_Agreements_2013.pdf)

#### TEACHING METHODOLOGY

General methodological aspects of the subject

Contact hours methodology: Activities

Highly participate class involving due diligence exercises. Short lectures will be given by the professor but the bulk of the educational experience will be through hands-on exercises.

Independent study methodology: Activities

Readings will be assigned.

SUMMARY OF STUDENT WORK HOURS			
Activity	Number of contact hours	Number of independent study hours	Total number of hours
Lecture	3		
Practical class	7	15	
Debate			
In class presentation			
Individual work			
Work in collaboration			
Evaluation: one minute paper			
Evaluation: class test			
Evaluation: exam			25
Evaluation: exam review			
Others			
<b>ECTS Credits:</b>	<b>10 (+3)</b>	<b>15</b>	<b>25 +3</b>

## GRADE EVALUATION AND CRITERIA

Evaluation Activities	Indicators	Generic Competences	Evaluation Weighting
Attendance		Attendance	10%
Individual work	GC 4: Problem solving skills	Participation in the clinic; critical analysis; value adds	40%
Work in collaboration	GC 4: Problem solving skills GC 5: Decision making skills GC 6: Team work skills	Ability to work in teams and build rapports with others	
Debate	GC 4: Problem solving skills GC 5: Decision making skills GC 6: Team work skills	Participation in group discussions; clarity and effectiveness of communication	
Exercises		Performance on series of in-class exercises designed to apply the concepts explained during the clinic	
Final exam	GC 4: Problem solving skills GC 5: Decision making skills	Given during the final session. Tests students' knowledge of the concepts and methodologies taught during the clinic	50%

