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)

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

- 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.

Privately negotiated businesses

Process begins:
1.) Handshake, agreement on price. Phone to call to lawyer: “We’ve agreed to busy 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).