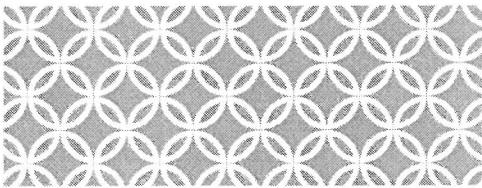

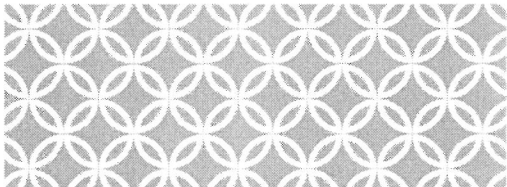
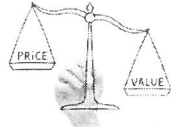


中國文化大學 111 年度教育部高等教育深耕計畫 計畫成果紀錄表

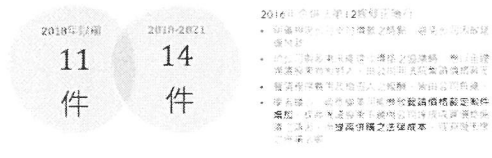
子計畫	子計畫 B
具體作法	B4-1 法學院「企業法務人才跨域培育計畫」
主題	B4-1 法學院「企業法務人才跨域培育計畫」
內容 (活動 內容 簡述/ 執行 成效)	<p>主辦單位：法律學系 活動日期：111 年 10 月 7 日 (五) 13:00-15:00 活動地點：大新館 301 教室 授課課程：比較商事法專題 主講者：陳盈如 業師今日分享[Appraisal Rights and “Fair Value”]</p> <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;">  <p style="text-align: center;">APPRAISAL RIGHTS AND “FAIR VALUE”</p> <p style="text-align: center; font-size: small;">Ying-Ju Chen Associate Professor</p> </div> <div style="width: 45%;"> <p>APPRAISAL RIGHTS & FAIR VALUE</p> <ul style="list-style-type: none"> ➤ Appraisal rights entitle a shareholder to the judicially determined “fair value” of her shares upon the occurrence of a merger that she does not support. ➤ Given that any dissenting shareholder does not support the merger, legislatures sensibly exclude from the “fair value” determination any element of value arising from the expectation or accomplishment of the merger. </div> </div> <div style="display: flex; justify-content: space-between; margin-top: 20px;"> <div style="width: 45%;">  <p style="text-align: center;">APPRAISAL RIGHTS 8 DEL. C. § 262(H).</p> <p style="font-size: x-small;">“After the Court determines the stockholders entitled to an appraisal, the appraisal proceeding shall be conducted in accordance with the rules of the Court of Chancery, including any rules specifically governing appraisal proceedings. Through such proceeding the Court shall determine the fair value of the shares exclusive of any element of value arising from the accomplishment or expectation of the merger or consolidation, together with interest, if any, to be paid upon the amount determined to be the fair value. In determining such fair value, the Court shall take into account all relevant factors.”</p> </div> <div style="width: 45%;">  <p style="text-align: center;">DEAL PRICE?? MARKET PRICE??</p> </div> </div> <div style="display: flex; justify-content: space-between; margin-top: 20px;"> <div style="width: 45%;"> <p>DFC CASE</p> <ul style="list-style-type: none"> ➤ The transaction resulted from a robust market search that lasted approximately two years in which financial and strategic buyers had an open opportunity to buy without inhibition of deal protections. ➤ The company was purchased by a third party in an arm’s length sale, and ➤ There was no hint of self-interest that compromised the market check. </div> <div style="width: 45%;"> <p>DELL CASE: FAIR VALUE</p> <p style="font-size: x-small;">Fair value entails or minimum a price some buyer is willing to pay—not a price at which no class of buyers in the market would pay. The Court of Chancery ignored an important reality: if a company is not that strategic buyer is interested in buying, it does not suggest a higher value, but a lower one.</p> </div> </div> <div style="display: flex; justify-content: space-between; margin-top: 20px;"> <div style="width: 45%;"> <p>STILLWATER CASE FIVE KEY OBJECTIVE INDICATORS</p> <ul style="list-style-type: none"> ➤ The Merger was an arm’s length transaction with a third party; ➤ The Board did not labor under any conflicts of interest; ➤ The buyer conducted due diligence and received confidential information about the Company’s value; ➤ The Company “negotiated ... multiple price increases; and ➤ No bidders emerged during the post-signing phase. <p style="font-size: x-small;">“Brigade Leveraged Capital Structures Fund Ltd. v. Stillwater Mining Co., 240 A.3d 3 (Del. 2020).</p> </div> <div style="width: 45%;"> <p>COURT’S DUTY IN APPRAISAL PROCEEDING</p> <p style="font-size: x-small;">Section 262(h) unambiguously calls upon the Court of Chancery to perform an independent evaluation of “fair value” at the time of a transaction... Requiring the Court of Chancery to defer—conclusively or presumptively—to the merger price, even in the face of a pristine, unchallenged transactional process, would contravene the unambiguous language of the statute and the reasoned holdings of our precedent. It would inappropriately shift the responsibility to determine “fair value” from the court to the private parties.</p> <p style="font-size: x-small;">~Golden Telecom, Inc. v. Global GT LP, 11 A.3d 214, 217-218 (Del. 2010)</p> </div> </div>



股份收買價格裁定

2016年合併、終止營業或清算方式，全數公司採現金收購情形，受影響股東不願出售股份，少數股東請求法院介入裁決收買價格？公司既無「相對收買價格」，受影響股東在法定期間的股東會議，由他人控制或影響，價格是否變更。

我國近年上市櫃公司裁定案件量大增



公平價格定義

公平價格應為公司作為繼續經營企業 (going concern) 對股東的價值，而不是合併對於收購方之價值。

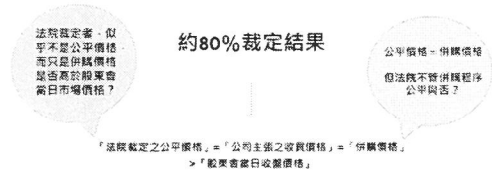
我國公平價格之決定標準

最高法院71年度台抗字第212號裁定意旨闡釋：所謂「當時公平價格」係指股東會決議之日，該股份之市場價格。

我國股份收買裁定價格統計

上市上櫃與興櫃公司(共14件)

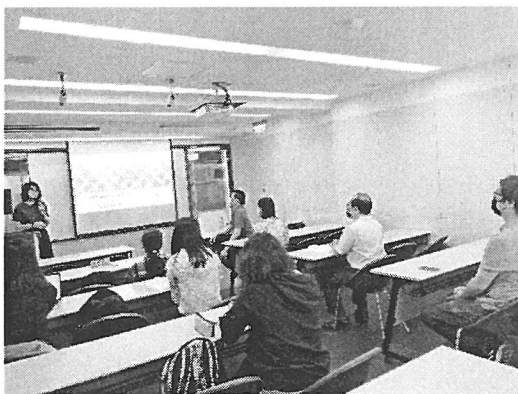
- 9件 「法院裁定之公平價格」=「公司主張之收買價格」=「併購價格」>「股東會當日收盤價格」。
- 2件 「法院裁定之公平價格」=「股東會當日收買價格」>「股東會當日收盤價格」。
- 2件 「法院裁定之公平價格」=「公司主張之收買價格」=「股東會當日收盤價格」。
- 1件 「法院裁定之公平價格」>「公司主張之收買價格」=「股東會當日收買價格」>「併購價格」。



執行成效：

藉由業師分享探討「異議股東收買請求權價格裁定」的議題，可以讓學生從業師簡報中透過現況跟介紹，了解有關股份收買裁定價格統計及公平價格如何定義及標準為何？經過裁定案件分析及實務案例分享，師生討論熱烈，也讓學生可以從不同角度切入思考，易使學生容易理解且感興趣，加上授課教師補充說明互動，讓學生受益匪淺。

相關圖片



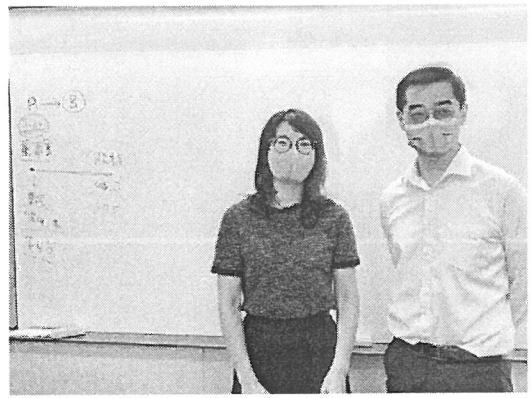
業師講授課程



介紹業師



業師授課



合照



業師授課、合照



業師授課