

Syllabus

Law of Corporate Management and Finance in Global Perspective

LGST 202/802

Classes: Tuesdays, 3:00 to 6:00 pm, JMHH F55

Prof. Eric Orts

Legal Studies and Business Ethics Department
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Course description: This course provides an introduction to the law of corporate management and finance. It covers the basic law of business organization, including agency, partnerships, and corporations, with an emphasis on the governance of large publicly held corporations. The course covers the basic obligations of corporate directors and managers under state corporate law and the federal securities laws in the United States, including the substantive areas of fiduciary duties, insider trading, shareholder voting, and mergers and acquisitions. The rights and responsibilities of major players in corporate governance, including managers, shareholders, bondholders, and employees are considered, as well as the roles of investment bankers, corporate lawyers, and accountants. A comparative perspective includes a discussion of the law of corporate governance in other leading countries, though the focus in terms of details remains on U.S. law. Issues of social policy concerning large business corporations are also discussed.

Required texts:

William A. Klein, J. Mark Ramseyer & Stephen M. Bainbridge, *Business Associations: Cases and Materials on Agency, Partnerships, and Corporations* (Foundation Press, 7th ed. 2009).

William A. Klein, John C. Coffee, Jr. & Frank Partnoy, *Business Organization and Finance: Legal and Economic Principles* (11th ed. 2010).

Jonathan Charkham, *Keeping Better Company: Corporate Governance Ten Years On* (Oxford University Press 2005).

Handouts: Any handouts provided in class are also considered required course materials.

Note on coverage for accountants and lawyers (or future accountants and lawyers): This course, in addition to being required in some states, covers a number of areas on the CPA exam. This

course covers many of the topics that would also be covered in a basic corporate law course in law school, though with an emphasis on business rather than legal lessons for practice.

Office hours: to be announced and by appointment.

Quality circle: A small quality circle of student representatives may be used to provide mutual feedback on teaching, classroom issues, and class performance. No extra credit in terms of grading will be given for representatives in the quality circle (though a “not-really-free lunch” may be provided).

Class format and student participation: Classes will combine lecture, Socratic dialogue, and group discussion. Students will be expected to have read material assigned for class and to be prepared to discuss it.

Exams and grading: There will be one required exam covering materials formally assigned for the class primarily on U.S. law (but not including materials presented by students). In addition, there will be required student team presentations on selected topics in corporate governance, focused especially on covering international dimensions. Final grades for the course will be based on performance on the exam (one-third), team presentation (one-third), and class participation (one-third).

Exam: The scheduled in-class exam will be open-book and open-notes (only a student’s own materials of course). It will include fact-based scenarios (including an expectation of “issue spotting”) calling for assessments of legal and business actions to take. A policy question is also possible. The exam will require essay-style responses in blue books.

Individual or Group Presentation: A primary component of the course is an individual or group presentation. Students should begin to consider a topic that they would like to investigate relatively early in the semester. Possible topics are indicated on the syllabus and in reading materials, but most of the presentations will be scheduled near the end of the semester. Departures from the syllabus-listed topics are possible and even encouraged, and topics must be cleared with the professor in advance. A group presentation is limited to two students (a partnership in which students divide work according to informal arrangement and share the same grade for the result). Grades for the individual and group projects will be based on the quality of the final presentation itself, as well as any supplementary written or other submissions provided indicating sources and research.

Class participation: Students are expected to come to class prepared to discuss the assigned material. A ranking for attendance and participation will be assessed for each class session with the final grade determined by an accumulation of credits by the end of the course. Regular and excellent class participation and attendance will therefore increase a student’s final grade. Poor attendance, unpreparedness, or failure to participate in class will reduce a student’s final grade.

Course outline

Specific assignments will in general follow the outline provided below. Any changes will be announced in class. Any revised versions of the syllabus will reflect changes. Required assignments in bold without attribution are to the hardcover Klein, Ramseyer, and Bainbridge text or its supplement.

INTRODUCTION

1. Introduction to the course and overall review of coverage, requirement, and mutual expectations; notes on reading legal cases; introduction to the basic players in business organization (including owners, managers, creditors, and employees); discussion of the nature of business firms and their variations. *[Jan. 17]*

Klein, Coffee & Partnoy, pp. iii-iv, 1-14.

I. AGENCY LAW

2. Agency Costs, Agency Law, and Liabilities of Principals to Third Parties in Contract (including themes of actual authority, apparent authority, and ratification) *[Jan. 24]*

Ch. 1, pp. 1-26 [omit *Watteau*], pp. 31-35.

Klein, Coffee & Partnoy, pp. 14-26.

3. Liabilities of Principals to Third Parties in Tort (including treatment of employees, independent contractors, and franchises) and Fiduciary Duties of Agents (including corporate fiduciary duties) *[Jan. 31]*

Ch. 1, pp. 42-59, 71-86.

Klein, Coffee & Partnoy, pp. 27-45.

II. PARTNERSHIPS (AND VARIATIONS)

4. Introduction to Partnerships and Fiduciary Obligations of Partners *[Feb. 7]*

Ch. 2, pp. 87-117, 125-31.

Klein, Coffee & Partnoy, pp. 51-79.

5. Partnership Property and Management; Limited Partnerships and Limited Liability Companies *[Feb. 14]*

**Ch. 2, pp. 132-35, 140-49, 173-74 (note on Buyout Agreements), 179-81;
Ch. 4, pp. 281-93, 299-304.**

Klein, Coffee & Partnoy, pp. 79-105.

III. CORPORATIONS

6. Introduction to the Corporation as a Business Organization: History, Role, Structure and Purposes (including discussion of *Citizens United*) [Feb. 21]

Klein, Coffee & Partnoy, pp. 106-46.

Ch. 3, pp. 264-80.

Handout: *Citizens United v Federal Election Commission*, 129 S. Ct. 2893 (2009).

7. Limited Liability and Shareholder Litigation (including distinction between direct and derivative lawsuits) [Feb 28]

Ch. 3, pp. 189-200, 203-11; Ch. 4, pp. 294-98.

Ch. 3, pp. 214-37, 251-63.

Klein, Coffee & Partnoy, pp. 146-56, 207-13.

- Spring Break -

IV. FIDUCIARY AND OTHER DUTIES OF CORPORATE DIRECTORS, OFFICERS, AND MANAGERS

8. Duty of Care, Duty of Loyalty, and Obligation of Good Faith and Oversight [Mar. 13]

Ch. 5, pp. 310-57 [omit problems]; 370-403 [omit problems].

Klein, Coffee & Partnoy, pp. 156-70.

9. Duties of Disclosure and Fairness: Introduction to Securities Law [Mar. 20]

Ch. 5, pp. 375-406 [omit *Robinson*], 412-13 [omit *Doran*], 419-21 [note only], 435-57 [omit problems].

Klein, Coffee & Partnoy, pp. 170-73, 402-55.

10. Insider Trading (and Indemnification/Insurance Notes) [Mar. 27]

Ch. 5, pp. 467-98 [omit problems], 508-09, 520 [notes on indemnification and insurance].

Klein, Coffee & Partnoy, pp. 170-77.

V. CORPORATE CONTROL

11. Proxy Fights, Shareholder Proposals, and Takeovers (including enhanced duty of care, duty to auction, and antitakeover statutes) *[Apr. 3]*

Ch. 6, pp. 521-35 [omit problems], 547-56, 743-836.

Klein, Coffee & Partnoy, pp. 124-29, 185-207.

VI. Legal Exam

12. In-class exam on U.S corporate law *[Apr. 10]*

VII. Comparative and Global Corporate Governance

General background reading for all students: Charkham (entire book or selected chapters)

13. Student Presentations [to be scheduled and announced] *[Apr. 17]*
14. Student Presentations [to be scheduled and announced] *[Apr. 24]*

BIOGRAPHY OF INSTRUCTOR

Eric Orts is the Guardsmark Professor at the Wharton School of the University of Pennsylvania. He is a full professor in the Legal Studies and Business Ethics Department with a joint appointment in the Management Department. He directs the Initiative for Global Environmental Leadership (IGEL) at Penn/Wharton. He serves also as an academic co-director of the FINRA at Wharton certificate program for securities compliance and regulatory professionals. His primary research and teaching interests are in corporate governance, securities regulation, environmental law and policy, and professional ethics.

Prior to joining Wharton's faculty in 1991, Prof. Orts practiced law as a litigation associate at Paul, Weiss, Rifkind, Wharton & Garrison in New York City and was a Chemical Bank fellow in corporate social responsibility at Columbia Law School. He teaches also at the University of Pennsylvania Law School and has been a visiting professor at the NYU School of Law, UCLA School of Law, University of Michigan Law School, Sydney Law School, and Tsinghua University School of Economics and Management. He has also been a visiting Fulbright professor in the law department of the University of Leuven, the Eugene P. Beard Faculty Fellow at Harvard University's Center for Ethics and the Professions, and a faculty fellow in the Center for Business and Government at the Kennedy School at Harvard. Prof. Orts is a graduate of Oberlin College (BA), the New School for Social Research (MA), the University of Michigan (JD), and Columbia University (JSD). He is a member of the bar of New York and the District of Columbia, an elected member of the American Law Institute, and belongs to several other professional and academic associations.