



LAW OF CORPORATE MANAGEMENT AND FINANCE
GLOBAL CORPORATE GOVERNANCE

SPRING 2019

LGST 202 / 802

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<https://canvas.upenn.edu/courses/1431030>

Class Meetings Mondays & Wednesdays, 1:30 – 2:50, Room TBD
Office Hours Mondays, 3:00 – 5:00. Or email to arrange a meeting. Or stop by any time:
my door is open if I'm around.

Course Description

The corporation, a principal driver of economic development for more than two centuries, is among the most important institutions in modern life. This course surveys the law governing the American corporation, with a focus on the implications of Delaware and federal policy for entrepreneurs, managers, and investors. In the first half of the course, we consider the conflicts inherent in the “separation of ownership from control” and study the basic tools law and market institutions have developed to ameliorate them: voice, vote, suit, and sale. In the second half of the course, we consider how the law impacts managers and investors in a handful of important, concrete contexts, including mergers and acquisitions and insider trading.

Required Text

Hamilton, Macey & Moll, *The Law of Business Organizations: Cases, Materials, and Problems* (12th ed. 2014)

Exams and Grading

Grades are based the results of midterm (35%) and final (50%) exams, the format of which will be discussed in class, as well as on professionalism (15%).

Class Format and Policies

This course will involve a combination of lecture, discussion, and “Socratic” questioning. Cold calling will be a regular feature of class. Therefore, students are expected to read the assigned materials carefully and be ready to discuss them critically.

Three notable policies:

1. *Electronic devices.* Electronic devices will not be permitted in class. Shopping, texting, and gaming negatively affect group dynamics. If an emergency requires that you have connectivity, confer with me before class.
2. *Unfinished reading.* It is not always feasible to complete readings before class. If you cannot finish an assignment, please let me know by email at least an hour before class, and I will not call on you (max four times during the semester). Please do not pretend to have read what you haven't.
3. *Regrading.* All exam grades are final. Complaints about grades will result in a one-step grade reduction for the course.

More generally, students are expected to behave professionally. Shirking and whining are especially discouraged. A secondary goal of this course is to develop social intuitions about how to create a strong reputation within a business organization. Teaser: everyone likes someone who is courteous, punctual, engaged, and positive; everyone dislikes the opposite.

Informal Get-Togethers

Let's get coffee or lunch!

Readings

Tentative reading assignments are listed below. If there is a change, I will let you know in class and post the updated assignment on Canvas. All readings can be found either in the assigned text (abbreviated “HMM”), on the course's Canvas site, or with a simple web search. Please note that “DGCL” stands for the Delaware General Corporation Law.

1. 1.16.19 — introduction: what is a firm?

Readings Google articles of association (skim) [Canvas]
 HMM, pp. 1-14

- 2. 1.23.19** — agency and partnership: some fundamentals
Readings HMM, pp. 38–41; 58–60; 61–68 (accounting basics); 83–89; 96–99
- 3. 1.28.19** — attributes of the corporate form: some fundamentals
Readings DGCL §§ 141(a), 101(a)–(b), 102(a)–(c) [online]
HMM, pp. 273–81
- 4. 1.30.19** — director elections
Readings DGCL §§ 212, 141(k), 141(d)
HMM, 401–09; 495–503
Starboard Darden Presentation (skim) [Canvas]
<http://www.bloomberg.com/news/articles/2014-10-10/starboard-wins-all-12-seats-on-darden-s-board-after-proxy-fight>
<http://www.cnbc.com/2016/04/14/yahoo-will-likely-pay-millions-for-proxy-fight.html>
Dual-Class Companies List (skim) [Canvas]
- 5. 2.4.19** — shareholder voice
Readings SEC Rule 14a-8
HMM, pp. 534–40; 547–48
<https://www.sec.gov/News/Speech/Detail/Speech/1365171515808>
- 6. 2.6.19** — business judgment and directors’ duty of care
Readings HMM, pp. 551–56; 578–88
- 7. 2.11.19** — duty of loyalty
Readings Guth v. Loft [Canvas]
- 8. 2.13.19** — derivative suits and special litigation committees
Readings HMM, pp. 689–99; 699–708

9. **2.18.19** — other constituencies

Readings Berle, *Corporate Powers as Powers in Trust* [Canvas]
Dodd, *For Whom Are Corporate Managers Trustees?* [Canvas]
Macey, *An Economic Analysis ...* [Canvas]

10. **2.20.19** — controlling shareholders' obligations

Readings HMM, pp. 650–55 (Sinclair Oil Corp. v. Levien)

11. **2.25.19** — hostile takeovers i: tender offer theory and mechanics

Readings HMM, pp. 1010–14
Easterbrook & Fischel, *The Proper Role of a Target's Management* [Canvas]

12. **2.27.19** — hostile takeovers ii: defensive measures

Readings HMM, pp. 1036–46; 1062–78

13. **3.11.19** — jurisdictional competition

Readings Cary, *Federalism and Corporate Law* [Canvas]
Winter, *State Law and Shareholder Protection* [Canvas]

14. **3.13.19** — **midterm exam**

15. **3.18.19** — friendly m&a: mechanics overview and due care

Readings DGCL § 251(a)–(c)
HMM, pp. 560–76

16. **3.20.19** — friendly m&a: auctions and loyalty

Readings Revlon v. McAndrews & Forbes [Canvas]
Lyondell Chemical v. Ryan [Canvas]
Corwin v. KKR Financial Holdings [Canvas]

17. **3.25.19** — appraisal

Readings DGCL § 262(a), (d)–(i)
Korsmo & Myers, *Appraisal Arbitrage* (pp. 1551–83) [Canvas]
Dell v. Magnetar [Canvas]

18. 3.27.19 — controlling shareholder take-private transactions

Readings Jensen & Meckling, *Theory of the Firm* (pp. 312–33) [Canvas]
Weinberger v. UOP [Canvas]
Kahn v. M&F Worldwide [Canvas]
DGLC § 253(a)

19. 4.1.19 — creditors' rights: asset substitution and asset stripping

Readings Jensen & Meckling, *Theory of the Firm* (pp. 333–43) [Canvas]
DGCL §§ 170, 154
Baird & Jackson, *Fraudulent Conveyance Law and Its Proper Domain* [Canvas]

20. 4.3.19 — creditors' rights: financial distress

Readings NACEPF v. Gheewalla [Canvas]
Bratton, *Bond Covenants and Creditor Protection* [Canvas]

21. 4.8.19 — insider trading: basics of manipulation and deception law

Readings Exchange Act of 1934, § 10(b) (HMM, p. 819)
SEC Rule 10b-5 (HMM, pp. 819–20)
HMM, pp. 845–53

22. 4.10.19 — insider trading and tender offers

Readings HMM, pp. 858–66 (Chiarella v. United States)
HMM, pp. 869–71 (note 6)

23. 4.15.19 — insider trading and tipper-tippee liability

Readings HMM, pp. 887–98
United States v. Salman

24. 4.17.19 — managerial trading: problems, solutions, inferences

Readings HMM, pp. 885–87
Fried, *Insider Trading Via the Corporation* (pp. 803–35)
HMM, pp. 855–56

25. 4.22.19 — LPs and LLCs

Readings HMM, pp. 1115-18; 1122-26; 1128; 1199-1203; 1287-91

26. 4.24.19 — comparative governance: europe and elsewhere

Readings TBD

27. 4.29.19 — corporate governance in the future: what to expect

Readings Roe, *Delaware's Competition* [Canvas]

28. 5.1.19 — review

Readings none / everything

FINAL EXAM

TBD