



LAW OF CORPORATE MANAGEMENT AND FINANCE
GLOBAL CORPORATE GOVERNANCE

SPRING 2020

LGST 202 / 802

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

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 business 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. In the second half of the course, we consider how the law impacts managers and investors (including creditors and employees) 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 or 13th ed.; either edition is fine)

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 are not be permitted in class. 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 have coffee or lunch. We can but needn’t talk about corporate law!

Agenda and Assigned Readings

Tentative reading assignments are listed below. If there is a change, I will say so in class and through Canvas. All readings can be found either in the assigned text (abbreviated “HMM,” 13th ed. pagination in highlighted yellow), on the course’s Canvas site, or with a simple web search. Note that “DGCL” stands for the Delaware General Corporation Law.

1. 1.15.20 — introduction: what is a firm?

Readings Google articles of association (skim) [Canvas]
HMM, pp. 1-14 [1-7]

2. 1.22.20 — agency and partnership: some fundamentals

Readings HMM, pp. 38-41 [28-30]; 58-60 [46-47]; 61-68 [48-55] (accounting basics); 83-89 [67-71]

3. **1.27.20** — attributes of the corporate form: some fundamentals

Readings DGCL §§ 141(a), 101(a)–(b), 102(a)–(c) [online]
HMM, pp. 273–81 [225–32]

4. **1.29.20** — director elections

Readings DGCL §§ 212, 141(k), 141(d)
HMM, 401–09 [318–24]; 495–503 [389–95]
Starboard Darden Presentation (skim) [Canvas]
[Starboard wins](#)
[Yahoo proxy fight](#)
Dual-Class Companies List (skim) [Canvas]

5. **2.3.20** — shareholder voice

Readings SEC Rule 14a-8
HMM, pp. 534–40 [413–20]; 547–48 [420–21]
[Aguilar speech](#)

6. **2.5.20** — business judgment and directors' duty of care

Readings HMM, pp. 551–56 [425–29]; 578–88 [447–55]

7. **2.10.20** — duty of loyalty; derivative suits

Readings Guth v. Loft [Canvas]
HMM, pp. 689–99 [534–42]

8. **2.12.20** — derivative suits and special litigation committees

Readings HMM, 699–708 [543–50]
In re Oracle Derivative Litigation [Canvas]
In re Oracle Derivative Litigation—Letter to Court [Canvas]

9. **2.17.20** — other constituencies

Readings Dodd, *For Whom Are Corporate Managers Trustees?* [Canvas]
Berle, *For Whom Are Corporate Managers Trustees? A Note* [Canvas]
Macey, *An Economic Analysis ...* [Canvas]

10. 2.19.20 — controlling shareholders' obligations

Readings HMM, pp. 650–55 [490–95]

11. 2.24.20 — hostile takeovers i: tender offer theory and mechanics

Readings HMM, pp. 1010–14 [769–72]

Easterbrook & Fischel, *The Proper Role of a Target's Management* [Canvas]

12. 2.26.20 — hostile takeovers ii: defensive measures

Readings HMM, pp. 1036–46 [786–93]; 1062–78 [800–10]

13. 3.2.20 — jurisdictional competition

Readings Cary, *Federalism and Corporate Law* [Canvas]

Winter, *State Law and Shareholder Protection* [Canvas]

14. 3.4.20 — **midterm exam**

15. 3.16.20 — friendly m&a: mechanics and due care

Readings DGCL § 251(a)–(c) [merger, general]

DGCL § 253(a) [merger, cleaning up tender offer]

DGCL § 251(h) [merger, cleaning up tender offer]

HMM, pp. 560–76 [432–46], including DGCL § 102(b)(7)

16. 3.18.20 — friendly m&a: auctions and loyalty

Readings Revlon v. McAndrews & Forbes [Canvas]

Lyondell Chemical v. Ryan [Canvas]

Corwin v. KKR Financial Holdings [Canvas]

17. 3.23.20 — friendly m&a: controlling shareholder take-private transactions

Readings Jensen & Meckling, *Theory of the Firm* (pp. 312–33) [Canvas]

HMM, pp. 656–70; [495–507]

Kahn v. M&F Worldwide [Canvas]

DGCL § 253(a)

18. 3.25.20 — friendly m&a: disclosure litigation, appraisal

Readings In re Trulia [Canvas]
DGCL § 262(a), (d)–(i)
DFC Global v. Muirfield [Canvas]
Dell v. Magnetar [Canvas]
Verition v. Aruba Networks [Canvas]

19. 3.30.20 — insider trading: foundations and tender offers

Readings HMM, p. 819 [637] (Exchange Act of 1934, § 10(b))
HMM, pp. 819–20 [637–38] (SEC Rule 10b-5)
HMM, pp. 845–53 [SEC v. Tex. Gulf Sulphur not in 13th ed.; see Canvas]
HMM, pp. 858–66 [654–61]
HMM, pp. 869–71 [663–64] (note 6)

20. 4.1.20 — insider trading: tipper-tippee liability

Readings HMM, pp. 887–98 [683–90]
United States v. Salman [Canvas] [edited version in 13th ed.: 701–04]
[Galleon article](#)

21. 4.6.20 — insider trading: managing material nonpublic information

Readings HMM, pp. 885–87 [675–77]
HMM, pp. 855–56 [652–53]

22. 4.8.20 — creditors' interests: asset stripping and delaware law

Readings Jensen & Meckling, *Theory of the Firm* (pp. 333–43) [Canvas]
DGCL §§ 170, 154
NACEPF v. Gheewalla [Canvas]

23. 4.13.20 — creditors' interests: other sources of commercial law

Readings Baird & Jackson, *Fraudulent Conveyance and Its Proper Domain* [Canvas]
Bratton, *Bond Covenants and Creditor Protection* [Canvas]
U.S. Bank v. Windstream [Canvas]

24. 4.15.20 — human capital i: employee governance

Readings Blair & Stout, *A Team Production Theory of Corporate Law* [Canvas]
Roe, *German Codetermination and German Securities Markets* [Canvas]
Warren, “Accountable Capitalism Act” Summary [Canvas]

25. 4.20.20 — human capital ii: trade secrets, non-competes, innovation assignments

Readings Defend Trade Secrets Act of 2016 (selections) [Canvas]
Waymo v. Uber [Canvas]
Bishara, *Covenants Not to Compete* (pp. 295–313) [Canvas]
Mattel v. MGA [Canvas]

26. 4.22.20 — political economy

Readings TBD

27. 4.27.20 — “uncorporations”: LPs and LLCs

Readings HMM, pp. 1115–18 [841–44]; 1122–26 [847–51]; 1128 [852]; 1199–1203 [911–14];
1287–91 [986–89]

28. 4.29.20 — review

Readings none / everything

FINAL EXAM

TBD