



AS OF: NOV. 16, 2020

LAW OF CORPORATE MANAGEMENT AND FINANCE
GLOBAL CORPORATE GOVERNANCE
LGST 202 / 802
SPRING 2021

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Canvas <https://canvas.upenn.edu/courses/1555404>

Class Meetings Mondays & Wednesdays, 1:30 – 2:50
[zoom link TBD]

Student Hours TBD, or by appointment
[zoom link TBD]

Course Description

[Note that regrettably this course will be offered online only in Spring 2021.]

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.

Assessment

- Professionalism (15%)
- Midterm exam (35%)
- Final exam (50%)

Idiosyncratic 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 policies to note:

- *Electronic devices.* Electronic devices are not permitted in class. If an emergency requires that you have connectivity, confer with me before class.
- *Cold calling.* 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 have read the assigned materials carefully before class and to be ready to discuss them critically.
- *Unfinished readings.* Students should generally be in class and prepared to participate critically. 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.

More generally, students are expected to behave like adults. 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!

Text

Hamilton, Macey & Moll, *The Law of Business Organizations: Cases, Materials, and Problems* (12th or 13th ed.; either edition is fine)

// agenda on next page

Agenda (subject to change by announcement on Canvas)

Tentative reading assignments are listed below. 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. **1.20.21** — introduction: what is a firm?

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

2. **1.25.21** — 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. **1.27.21** — attributes of the corporate form: some fundamentals

Readings DGCL §§ 141(a), (b); 142; 101(a), (b); 102(a)–(c); 109; 242 [online]
HP certificate of incorporation (skim for structure / subject-matter) [Canvas]
HP bylaws (skim for structure / subject-matter) [Canvas]
HMM, pp. 273–81 [225–32]

4. **2.1.21** — 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](#)
[Xerox – HP proxy fight](#) (better, but gated, [WSJ recap](#))
HP certificate of incorporation (Articles VI and VII) [Canvas]
HP certificate of incorporation amendment [Canvas]
HP bylaws (§§ 2.2(b), (e), (f), and (h); 2.9; 2.13) [Canvas]
Dual-Class Companies List (skim) [Canvas]

5. **2.3.21** — shareholder voice

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

6. **2.8.21** — business judgment and directors' duty of care
Readings HMM, pp. 551–56 [425–29]; 578–88 [447–55]
 Marchand v. Barnhill [Canvas]

7. **2.10.21** — duty of loyalty; derivative suits
Readings Guth v. Loft [Canvas]
 HMM, pp. 689–99 [534–42]

8. **2.15.21** — 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. **2.17.21** — other constituencies
Readings Berle, *Corporate Powers as Powers in Trust* (pp. 1049–50, 1072–74) [Canvas]
 Dodd, *For Whom Are Corporate Managers Trustees?* [Canvas]
 Berle, *For Whom Are Corporate Managers Trustees? A Note* [Canvas]

10. **2.22.21** — controlling shareholders' obligations
Readings HMM, pp. 650–55 [490–95]

11. **2.24.21** — hostile takeovers i: tender offer theory and mechanics
Readings HMM, pp. 1010–14 [769–72]

12. **3.1.21** — hostile takeovers ii: defensive measures
Readings HMM, pp. 1036–46 [786–93]; 1062–78 [800–10] {Next year: 1062–72; 1036–46; 1072–78.
 Possibly put *Unocal* in the day before.}

13. **3.3.21** — jurisdictional competition
Readings Cary, *Federalism and Corporate Law* [Canvas]
 Winter, *State Law and Shareholder Protection* [Canvas]

14. **3.8.21** — **midterm exam**

15. 3.15.21 — 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. 3.17.21 — friendly m&a: auctions and loyalty

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

17. 3.22.21 — 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. 3.24.21 — 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. 3.29.21 — 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. **3.31.21** — insider trading: tipper-tippee liability
- Readings* HMM, pp. 887–98 [683–90]
 United States v. Salman [Canvas] [edited version in 13th ed.: 701–04]
 United States v. Blaszczak [Canvas]
 [Galleon article](#)
21. **4.3.21** — insider trading: managing material nonpublic information
- Readings* HMM, pp. 885–87 [675–77]
 HMM, pp. 855–56 [652–53]
22. **4.7.21** — 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. **4.12.21** — 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. **4.14.21** — 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. **4.19.21** — human capital ii: trade secrets, non-competes, innovation assignments
- Readings* Uniform Trade Secrets Act §§ 1–3 [Canvas]
 Waymo v. Uber [Canvas]
 Bishara, *Covenants Not to Compete* (pp. 295–313) [Canvas]
 Mattel v. MGA [Canvas]
26. **4.21.21** — political economy
- Readings* TBD

27. 4.26.21 — “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. 4.28.21 — review

Readings none / everything

FINAL EXAM

Date / Time TBD