

CORPORATIONS

Summer, 2010

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SYLLABUS

The texts for the course are O'Kelley & Thompson, *Corporations and Other Business Associations* (Aspen 6th ed. 2010), and Eisenberg, ed., *Corporations and Other Business Organizations, Statutes, Rules, Materials and Forms* (Foundation latest ed.). The page references in the syllabus are to O'Kelley & Thompson, *although students are also required to read those statutory and regulatory materials to which the casebook refers*. The statutory and regulatory materials may be found in the *Eisenberg-edited supplement*, which *should be brought to class at all times*. At times, cases not found in the casebook are assigned for reading; citations for these cases are given, and students should print out these cases and bring copies to class for discussion. At other times, certain additional cases and other material are *suggested* for reading ("SAR"). Do not feel intimidated – reading any of the material listed under SAR is wholly optional, and students should determine whether they desire or need the additional reading to enhance their understanding of the material. The syllabus is subject to revision, and, as the quarter proceeds, cases and materials may be added or subtracted.

The course has a TWEN website, "Corporations, Summer, 2010." Certain required or suggested material may be posted on the website. You can also post questions and/or add comments in the discussion forum.

Assignment #	Outline	Readings
1	A. General	
	1. What is a firm? What is a corporation? What is corporate law?	1-20; 153-62
	SAR: Cary, <i>Federalism and Corporate Law</i> , 83 Yale L.J. 663 (1974); Winter, <i>State Law, Shareholder Protection and the Theory of the Corporation</i> , 6 J. Legal Stud. 251 (1977); Roe, <i>Delaware's Competition</i> , 117 Harv. L. Rev. 588 (2003) Bebchuk, <i>Federalism and the Corporation: The Desirable Limits of State Competition in Corporate Law</i> , 105 Harv. L. Rev. 1435 (1992)	
2	2. Distinguishing the corporation from other legal forms, including the partnership, limited partnership, limited liability company, and limited liability partnership	51-60; 65-9; 87; 98-100; 109-10; 126-35; 143
	SAR: Phillips, <i>The Pyrrhic Liability Explosion</i> (TWEN)	

- 3 3. What is the firm's mission? Corporate purposes and powers;
 the corporation's social responsibility
 686-88; 272-75;
 A.P.Smith Mfg. Co. v. Barlow, 98 A.2d 581 (N.J. 1953)

SAR:

Phillips & Bohnen, *Corporate Gifts should be Disclosed*, 14 THE CHRONICLE OF PHILANTHROPY 39 (March 21, 2002)(available on TWEN)

B. Capital Structure

- | | |
|---------------|---------------|
| 1. In general | 10-12; 162-66 |
|---------------|---------------|

SAR:

Klein, Coffee & Partnoy, *Business Organization & Finance* 11th ed. 251-319 (Foundation Press 2010)

- | | | |
|----|---|----------------|
| 4. | 2. Protection of corporation's creditors on account of unpaid capital and distributions to shareholders | 593-99; 604-06 |
|----|---|----------------|

SAR:

Manning & Hanks, Legal Capital (3d ed. 1990)

3. Protection of corporation's creditors on account of inadequate capitalization 608-40; 648-51; 651-57

SAR:

Hansmann & Kraakman, *Toward Unlimited Shareholder Liability for Corporate Torts*, 100 Yale L.J. 1879 (1991)

Posner, Economic Analysis of Law_____

3. Protection of corporation's shareholders through the Securities Act of 1933 196-213;
'33 Act §§2(a)(1),(4) & (11), 3(a)(3) & (11), 3(b), 4(1) & (2), & 5;
SEC Rules 144, 147, & 501-08

C. Control Structure

- 6 1. Duties of Officers and Directors

- a. Duty of loyalty in context of interested transactions
277; 301-12; SecExchAct§13(k)

SAR:

Phillips, *Managerial Misuse of Property: The Synthesizing Thread in Corporate Doctrine*, 32 RUTGERS L. REV. 184 (1979)

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- b. Duty of care and the “business judgment rule”
265-71; 323-57

SAR:

Litwin v. Allen, 25 N.Y.S.2d 667 (Sup. Ct., Special Term, N.Y. Co. 1940); *Francis v. United Jersey Bank*, 432 A.2d 814 (N.J. 1981); Phillips, *Principles of Corporate Governance: A Critique of Part IV*, 52 GEO. WASH. L. REV. 653 (1984)

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- c. Duty of Good Faith, oversight and monitoring
357-74; 375-93; 393-97; 428-32

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- d. Usurpation of corporate opportunities 277-300

SAR:

Brudney & Clark, *A New Look at Corporate Opportunities*, 94 Harv. L. Rev. 998 (1981)

- e. Waste of Corporate Assets – the problem of executive and board compensation 322-23; 422-27

SAR:

Rogers v. Hill, 289 U.S. 582 (1933)

Bebchuk & Fried, *Paying for Performance*, ____ U. Pa. L. Rev. ____ (2010)

10 & 11

- f. Fraud and/or mismanagement under Rule 10b-5
996-1023; 1031-61; *Merrill Lynch...v. Dabit*, 547 U.S. 71 (2006); *Stoneridge Inv. Partners LLC v. Scientific Atlanta*, 552 U.S. 148 (2008)

SAR:

Phillips, *An Essay: The Competing Currents of Rule 10b-5 Jurisprudence*, 21 INDIANA L. REV. 625 (1988);

Affiliated Ute Citizens v. US, 406 U.S. 128 (1972);

Cort v. Ash, 422 U.S. 66 (1975);

Landreth Timber Co. v. Landreth, 471 U.S. 681 (1985);

'34 Act, §21D; '34 Act, §28; S-O Corp. Reform Act, §804

- 12 g. Insider trading
 (1) Common Law 1047-50
 (2) Section 16(a) & (b) 1181
 SAR: 1182-97
 (3) §10(b), Rule 10b-5, Rule 14e-3, §§20A & 21A of '34 Act
 1125-53; 1165-81
2. Shareholders
- 13 a. Voting system
 (1) In general 156-59; 163-72; 172-95; 208-51
 (2) Voting power in the close corporation 445-59; 465-72
- 14 (2) Federal regulation of the proxy process
 939-42; 948; 208-51
 SAR:
 Phillips, *Ethics and Disclosure*, in CORPORATE
 GOVERNANCE AND INSTITUTIONALIZING ETHICS:
 PROCEEDINGS OF THE FIFTH NATIONAL CONFERENCE ON
 BUSINESS ETHICS 107 (W. Hoffman et. al., eds. 1984)
- 15 (3) Liability under Rule 14a-9 949-75
- 16 b. Shareholder litigation
 FRCP Rules 23 & 23.1; 398-446;
Tooley v. Donaldson, Lufkin..., 845 A.2d 1031 (Del. 2004)
 SAR:
Ross v. Bernhard, 396 U.S. 531 (1970); *Gentile v. Rossette*, 906
 A.2d 91 (Del. 2006); *Feldman v. Cutaia*, 951 A.2d 727 (Del. 2008)
- 17 D. Changes of Control, Combinations and Restructurings
 1. In general 689-92; 705-12; 718-45; 752-54; 758-62; Rule 13e-3

SAR:

Cede & Co. v. Technicolor, 745-52

Glassman v. Unocal, 755-58

In re Emerging Communications, 770-87

In re Cox Communications, 788-801

Brudney & Chirelstein, *A Restatement of Corporate Freezeouts*, 87

Yale L.J. 1374 (1978)

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2. Sales of Control

801-19

SAR:

Andrews, *The Stockholder's Right to Equal Opportunity in the Sale of Shares*, 78 Harv. L. Rev. 505 (1965)

Easterbrook & Fischel, *Corporate Control Transactions*, 91 Yale L.J. 698 (1982)

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3. Hostile Acquisitions

(a) Market for Corporate Control

827-37

(b) Federal Regulation – the Williams Act

1077-78; 1089-90; 1096-97

13(d) & (e) and 14(d), (e) & (f) of the '34 Act; Rules 14d-7 & 14d-8 under the '34 Act

(c) State Anti-takeover Statutes

933-38; 1104-1125

(d) Judicial Review of Tender Offer Defenses

838-94

SAR:

Easterbrook & Fischel, *The Proper Role of a Target's Management in Responding to a Tender Offer*, 94 Harv. L. Rev. 1161 (1981)

Bebchuk, *The Case for Facilitating Competing Tender Offers*, 95 Harv. L. Rev. 1028 (1982)