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? 1-20; 153-62

What is corporate law?

SAR:

Cary, *Federalism and Corporate Law,* 83 Yale L.J. 663 (1974);

Winter, *State Law, Shareholder Protection and the Theory of*

*the Corporation,* 6 J. Legal Stud. 251 (1977);

Roe, *Delaware’s Competition,* 117 Harv. L. Rev. 588 (2003)

Bebchuk, *Federalism and the Corporation: The Desirable Limits of State Competition in Corporate Law*, 105 Harv. L. Rev. 1435 (1992)

2 2. Distinguishing the corporation from other 51-60; 65-9;

legal forms, including the partnership, 87; 98-100;109-10;

limited partnership, limited liability 126-35; 143

company, and limited liability partnership

SAR:

Phillips, *The Pyrrhic Liability Explosion* (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\_\_\_\_\_\_\_\_\_\_

5 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

1. 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)

7 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)

8 c. Duty of Good Faith, oversight and monitoring

357-74; 375-93; 393-97; 428-32

9 d. Usurpation of corporate opportunities 277-300

S

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)

118 18 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)

19 3. Hostile Acquisitions

1. Market for Corporate Control 827-37
2. 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

1. State Anti-takeover Statutes 933-38; 1104-1125
2. 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)