

PROBLEMS OF CORPORATE LAW, COURSE 447

FALL 2002

COURSE DESCRIPTION AND SYLLABUS

August 8, 2002

This course is intended to provide deeper coverage of the policy considerations and of special topics covered more lightly in other business courses, and to provide guidance and direction in selecting a paper topic and writing a longer paper. In general, I want you to look behind the popular understanding of these topics to see what's really going on.

Contacting me

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Class

This is an independent study course. Consequently, all of our meetings are by appointment. **Please make an appointment with me to discuss your paper before September 15th.** I shall be on travel from September 17 to October 10, December 6-12, as well as other shorter trips.

Readings

The reading assignments below are suggestive of the kind of background and bibliographies to assist your research.

Suggested references below are the more recent articles in each subject area. Law review articles and cases are generally available on LEXIS or WESTLAW. Working papers designated SSRN are available through the Social Science Research Network web site (<http://papers.ssrn.com>). You can search the database by title or author. Papers published in the Journal of Financial Economics are available from a GMU email account through the Elsevier web site (www.elsevier.com/locate/econbase). Other articles may be available through JStor. Check with a librarian if you can't find sources -- some are available on line through the GMU account. You'll need an Acrobat 4 reader, which can be downloaded free from many web sites. Note that while some of these articles include some math, you can probably get their gist without fully doing the math.

Papers

Topic: The paper must be a policy analysis of a topic related to the law of business associations and approved by me. You can choose a topic from among those suggested on the syllabus or, or you can design one. The suggested topics and topic areas are rather broad and will need to be refined. Choice and refinement of topic may require consultation with me, so be sure to allow enough time for that process. You must submit a topic and one-page outline by October 21, and a detailed outline by November 18th.

Grading: You will be graded on your understanding and clear expression of:

--The law relating to the topic.

--The readings suggested for the specific topic.

--The general policy considerations discussed in the assignments.

--**Length:** Approximately 30-40 pages, formatted, double-spaced, 12-point type.

--**Format:** You should devote approximately one-third of the paper to general law and background relating to your topic; one-third to one-half discussing your specific topic; and the remainder discussing how other topic areas relate to your paper to the extent that you have not discussed those topic areas in connection with your specific topic.

--**Due date:** Final Paper is due by 5:00 p. m. on January 13, 2003.

Possible Topic Areas

1. Limited liability. *Suggested readings:*

Ribstein, Limited Liability Unlimited, 24 Delaware Journal of Corporate Law 407 (1999); Hansmann & Kraakman, The Essential Role Of Organizational Law. 110 Yale L.J. 387 (2000); Bainbridge, Abolishing Veil Piercing (SSRN) (July 21, 2000); Weinstein, Limited Liability in California: 1928-1931 (SSRN) (September 2000); Mendelson, A Control-Based Approach to Shareholder Liability, SSRN May 2001.

Topics: The role of limited liability; extensions of limited liability; limited liability as a default rule; unlimited liability regimes; veil-piercing and other constraints on limited liability.

2. State competition. *Suggested readings:*

Baums, Corporate Contracting Around Defective Regulations: The Daimler-Chrysler Case (SSRN); Ribstein, Statutory Forms for Closely Held Firms: Theories and Evidence from LLCs, 73 Wash. U. L. Q. 369 (1995); Delaware, Lawyers and Choice of Law, 19 Delaware Journal of Corporate Law 999 (1994); Kumar, A Regulatory Competition Theory of Indeterminacy in Corporate Law, 98 Colum. L. Rev. 1908 (1998); Bebchuk & Farrell, Federalism and Takeover Law: The Race to Protect Managers from Takeovers, 99 Colum. L. Rev. 1168 (1999); Fisch, The Peculiar Role of the Delaware Courts in the Competition for Corporate Charters, University of Cincinnati Law Review, 2000 (SSRN) (May 2000); Kahan and Kamar, Price Discrimination in the Market for Corporate Law (SSRN) (2000); Daines, Does Delaware Law Improve Firm Value? 62 J. Finance 525 2001; Choi and Guzman, Choice And Federal Intervention in Corporate Law, 87 Va. L. Rev. 961 (2001); Bebchuk and Ferrell. Federal Intervention to Enhance Shareholder Choice, 87 Va. L. Rev. 993 (2001); Coffee, The Coming Competition among Securities Markets: What Strategies Will Dominate?, SSRN; Bar-Gill, Barzuza & Bebchuk, The Market for Corporate Law, SSRN, June 2001; Romano, The Need for Competition in International Securities Regulation, 2 Theo. Inquiries In Law 387 (2001).

Topics: Uniform business association statutes; federal restrictions on state law, including anti-takeover legislation; the appropriateness of federal regulation of corporations; choice of securities law regime (see also readings on securities disclosure, below).

3. Managerial incentives and fiduciary duties. *Suggested readings:*

Agrawal & Knoeber, Managerial Compensation and the Threat of Takeover, 47 J. Financial Econ. 219 (1998); Bizjak and Marquette, The Impact of Poison Pill Adoption on Managerial Compensation (SSRN); Brickley, Linck & Coles, What Happens to CEOs After They Retire? 52 Journal Of Financial Economics 341 (1999); Chew, Competing Interests in the Corporate Opportunity Doctrine, 67 N.C. L. Rev. (1989); Core, Holthausen and Larcker, Corporate Governance, Chief Executive Officer Compensation, and Firm Performance (Elsevier); Hall & Liebman, Are CEOs Really Paid Like Bureaucrats? Quarterly Journal of Economics, August 1998; Hayes & Schaefer, Implicit Contracts and the Explanatory Power of Top Executive Compensation for Future Performance (SSRN); Jensen & Murphy, Performance Pay and Top Management Incentives, 98 J. Pol. Econ. 225 (1990); Ribstein, Fiduciary Duty Contracts In Unincorporated Firms, 54 Washington & Lee Law Review 537 (1997); Talley, Turning Servile Opportunities to Gold: A Strategic Analysis of the Corporate Opportunities Doctrine, 108 Yale L.J. 277 (1998); Johnson, Stock Compensation: The Most Expensive Way to Pay Future Cash, __SMU L. Rev. __ (July 1999); Murphy, Executive Compensation (SSRN); Himmelberg, Hubbard and Palia, Understanding the determinants of managerial ownership and the link between ownership and performance, 53 J. Financial Economics 353 (1999); Baker & Gompers, An Analysis of Executive Compensation, Ownership, and Control in Closely Held Firms (SSRN); Pritchard, et al, Monitoring by Directors with Multiple Board Appointments: Corporate Performance and the Incidence of Securities Fraud (SSRN); Prevost & Wagster, Impact of the 1992 Changes in the SEC Proxy Rules and Executive Compensation Reporting Requirements (SSRN); Jagannathan & Srinivasan, Does Product Market Competition Reduce Agency Costs (SSRN); Epstein, Contract and Trust in Corporate Law: The Case of Corporate Opportunity, 21 Delaware Journal of Corporate Law 5 (1996); Meulbroek, The Efficiency of Equity-Linked Compensation: Understanding the Full Cost of Awarding Executive Stock Options (SSRN) (March, 2000); Zenner and Perry, CEO Compensation In The 1990s: Shareholder Alignment Or Shareholder Expropriation? (SSRN); Bizjak and Anderson, An Empirical Examination of the Role of the CEO and the Compensation Committee in Structuring Executive Pay (SSRN) April 1, 2000; Core, The Directors' and Officers' Insurance Premium: An Outside Assessment of the Quality of Corporate Governance, 16 Journal of Law, Economics, & Organization 449 (2000); Bertrand and Mullainathan, Do CEOs Set Their Own Pay? The Ones Without Principals Do, (SSRN) (March 2000); Hartzell and Starks, Institutional Investors and Executive Compensation (SSRN) (July 2000); Chalmers, Dann and Harford, Managerial Opportunism? Evidence from Directors' and Officers' Insurance Purchases (SSRN) (August 11, 2000); Himmelberg and Hubbard, Incentive Pay and the Market for CEOs: An Analysis of Pay-For-Performance Sensitivity (SSRN) (June 2000); Williams and Rao, CEO Stock Options and Equity Risk Incentives (SSRN) (July 2000); Bhagat & Romano, Event Studies and the Law - Part I: Technique and Corporate Litigation, SSRN; Guay, Core and Larcker, Executive Equity Compensation and Incentives: A Survey, SSRN; Langevoort, Monitoring: The Behavioral Economics of Inducing Agents' Compliance with Legal Rules, SSRN, June 26, 2001; Rock, Islands of Conscious Power: Law, Norms, and the Self-Governing Corporation, 149 U. Pa. L. Rev. 1619 (2001); Kahan, The Limited Significance of Norms for Corporate Governance, 149 U. Pa. L. Rev. 1869 (2001); Levmore, Puzzling Stock Options and Compensation Norms, 149 U. Pa. L. Rev. 1901 (2001); Talley, Disclosure Norms, 149 U. Pa. L. Rev. 1955 (2001); Thomas & Martin, Litigating Challenges To Executive Pay: An Exercise In Futility? SSRN; Fried, Open Market Repurchases: Signaling or Managerial Opportunism? 2 Theoretical Inquiries L. 865 (2001); Benz, Kucher & Stutzer, Stock Options: The Managers' Blessing - Institutional Restrictions And Executive Compensation, SSRN (October 2000).

Topics: Are corporate executives overpaid and should their compensation be regulated? The appropriate scope of default fiduciary duties and enforceability of waivers; the efficacy of fiduciary litigation; the role of law vs. the role of extra-legal norms.

4. Securities disclosure regulation. Suggested readings:

2 J. Small & Emerging Business Law, no. 2 (Summer 1998) [Langevoort, Angels on the Internet: The Elusive Promise of "Technological Disintermediation," for Unregistered Offerings of Securities, at 1; Choi, Gatekeepers and the Internet: Rethinking the Regulation of Small Business Capital Formation, at 27; Fisch, Can Internet Offerings Bridge the Small Business Capital Barrier?, Black, Information Asymmetry, the Internet, and Securities Offerings; Smith, Venture Capital Contracting in the Information Age at 57; Black, Information Asymmetry, the Internet and Securities Offerings, at 91]; Choi and Guzman, Portable Reciprocity: Rethinking the International Reach of Securities Regulation. 71 S. Cal. L. Rev. 903 (1998); Fuerst, A Theoretical Analysis of the Investor Protection Regulations Argument for Global Listing of Stocks (SSRN); Romano, Empowering Investors: A Market Approach to Securities Regulation, 107 Yale L. J. 2359 (1998); Mahoney, The Exchange as Regulator, 83 Virginia Law Review 1453 (1997); Marcel Kahan, Some Problems With Stock Exchange-Based Securities Regulation, 83 Virginia L. Rev. 1509 (1997); Fox, Securities Disclosure in a Globalizing Market: Who Should Regulate Whom, 95 Mich. L. Rev. 2498 (1997); Fox, The political economy of statutory reach: U.S. Disclosure rules in a Globalizing Market for Securities, 97 Mich. L. Rev. 696 (1998); Jonathan R. Macey and Maureen O'Hara, Regulating Exchanges and Alternative Trading systems: A Law and Economics Perspective, 28 J. Leg. Stud. 17 (1999); Geiger, The Case for the Harmonization of Securities Disclosure Rules in the Global Market (SSRN); Pritchard, Markets as Monitors: A Proposal to Replace Class Actions with Exchanges as Securities Fraud Enforcers, __ U. Va. L. Rev. __ (1999); Fox, Retaining Mandatory Securities Disclosure: Why Issuer Choice is Not Investor Empowerment, 85 U. Va. L. Rev. 1335 (1999) and SSRN; Palmiter, Toward Disclosure Choice in Securities Offerings, 1999 Columbia Business Law Review; Yablon and Hill, Timing Corporate Disclosures to Maximize Performance-Based Remuneration: A Case of Misaligned Incentives? 35 Wake Forest Law Review 122 (2000); Bainbridge, Mandatory Disclosure: A Behavioral Analysis, 68 U. Cin. L. Rev. 1023 (2000); Coates, Private vs. Political Choice Of Securities Regulation: A Political Cost/Benefit Analysis, 41 Va. J. Int'l L. 531 (2001); Licht, Stock Exchange Mobility, Unilateral Recognition, and the Privatization of Securities Regulation, 41 Va. J. Int'l L. 583 (2001); Kitch, Proposals for Reform of Securities Regulation: An Overview, 41 Va. J. Int'l L. 629 (2001); Choi, Assessing the Cost of Regulatory Protections: Evidence on the Decision to Sell Securities Outside the United States, SSRN (March 21, 2001); Fox, The Issuer Choice Debate, 2 Theoretical Inquiries L. 563, (2001); Choi, Assessing Regulatory Responses To Securities Market Globalization, 2 Theoretical Inquiries L. 613 (2001); Jackson, Centralization, Competition, and Privatization in Financial Regulation, 2 Theoretical Inquiries L. 649 (2001); Rock, Greenhorns, Yankees, and Cosmopolitans: Venture Capital, IPOs, Foreign Firms, and U.S. Markets, 2 Theoretical Inquiries L. 711 (2001); Ronen & Yaari, Incentives For Voluntary Disclosure, SSRN 2001; Grundfest, The Future of United States Securities Regulation in an Age of Technological Uncertainty, SSRN (December 2000); Jackson & Pan. Regulatory Competition in International Securities Markets: Evidence From Europe In 1999--Part I, 56 Bus. Law. 653 (2001); Langevoort, Deconstructing Section 11: Public Offering Liability in a Continuous Disclosure Environment, 63 Law & Contemp. Probs. 45 (2000); Mahoney, The Political Economy Of The Securities Act Of 1933, 30 J. Legal Stud. 1 (2001).

Topics: The policies underlying securities regulation; choice of securities regulation regime; privatizing securities regulation and regulation by securities exchanges; global regulation of securities and competition of securities regulators.

Assignment 5: Insider trading. *Suggested Readings:*

Bainbridge, Insider Trading Regulation: The Path Dependent Choice between Property Rights and Securities Fraud (SSRN); Fried, Reducing the profitability of corporate insider trading through pretrading disclosure. 71 S. Cal. L. Rev. 303 (1998); Ribstein, Federalism and Insider Trading, 6 Supreme Court Economic Review 123 (1998); Weiss, Pragmatism Returns to the Law in Insider Trading, 23 J. Corp. L. (1998); Noe, Insider trading and the problem of corporate

agency, 13 J. Law Econ. & Organ. 287; Bettis, Coles and Lemmon, Corporate Policies restricting trading by insiders, 57 J Fin Econ 191 (2000); Bris, Do Insider Trading Laws Work? (SSRN) (October 2000); Choi, Selective Disclosures in the Public Capital Markets, UC Davis Law Review, SSRN; Ayres & Choi, Internalizing Outsider Trading, SSRN; Krawiec, Privatizing "Outsider Trading", 41 Va. J. Int'l L. 693 (2001); Ayres & Bankman, Substitutes For Insider Trading, SSRN (2001); Bainbridge, The Law And Economics Of Insider Trading: A Comprehensive Primer, SSRN (February 2001); Goshen & Parchomovosky, On Insider Trading, Markets, And "Negative" Property Rights In Information" (SSRN); .

Topics: Limits of liability for insider trading under 10b-5; revising federal insider trading law; state-federal roles in insider trading regulation; alternatives for reducing improper insider trading.

6. Takeovers. Suggested Readings:

Avery, Chevalier and Schaefer, Why do managers undertake acquisitions? An analysis of internal and external rewards for acquisitiveness, 14 J.L. Econ. & Org. 24 (1998); Mahoney and Weinstein, The Appraisal Remedy and Merger Premiums, (SSRN); Martin & McNabb, Managerial Entrenchment and the Effectiveness of Internal Governance Mechanisms (SSRN); Changes in the Model Business Corporation Act--Fundamental Changes, 54 Bus. Law. 685 (1999); Proposed Changes in the Model Business Corporation Act--Appraisal Rights, 54 Bus. Law. 209 (1998); Denis and Kruse, Managerial Discipline and Corporate Restructuring Following Performance Declines (SSRN); Agrawal & Jaffee, Do Takeover Targets Under-Perform (SSRN); Hallock, Layoffs, Top Executive Pay, and Firm Performance, 88 Amer. Econ. Rev. 711 (1998); Daines & Michael, Do IPO Charters Maximize Firm Value? Antitakeover Protection in IPOs, 17 Journal of Law, Economics and Organization 83 (2001); Agrawal & Jaffe, Do Takeover Targets Under-perform? Evidence from Operating and Stock Returns, SSRN (2001); Holmstrom & Kaplan, Corporate Governance and Merger Activity In The U.S.: Making Sense of the 1980s and 1990s, SSRN (February 2001); Hietala, Kaplan & Robinson, What is the Price of Hubris? Using Takeover Battles to Infer Overpayments And Synergies, SSRN.

Topics: Costs and benefits of takeovers; managerial agency costs and takeovers; appraisal rights.

7. Takeover defenses. Suggested Readings:

Bizjak and Marquette, The Impact of Poison Pill Adoption on Managerial Compensation (SSRN); Gordon, "Just Say Never?" Poison Pills, Deadhand Pills, and Shareholder-Adopted Bylaws: An Essay for Warren Buffett, 19 Cardozo L. Rev. 511 (1997); Macey, The Legality and Utility of the Shareholder Rights Bylaw, 26 Hofstra L. Rev. 835 (1998); Shareholder Rights Bylaws Seminar, 21 Bank and Corporate Governance Law Reporter 1112 (February, 1999); Quickturn Design Systems, Inc. v. Shapiro 721 A.2d 1281 (Del. 1998); International Brotherhood of Teamsters v. Fleming Companies, 1999 WL 35227 (Okla., Jan. 26, 1999); Invacare Corporation v. Healthdyne Technologies, Inc., 968 F. Supp. 1578 (N.D. Ga. 1997); Narayanan & Sundaram, A Safe Landing? Golden Parachutes and Corporate Behavior (SSRN); Roosevelt, Understanding Lockups: Effects in Bankruptcy and the Market for Corporate Control, Yale Journal on Regulation (1999); Lawrence A. Hamermesh, Corporate Democracy and stockholder-adopted by-laws: taking back the street? 73 Tulane L. Rev. 409 (1998); Gilson, Unocal Fifteen Years Later (And What We Can Do About It) (SSRN) (June, 2000); Field and Karpoff, Takeover Defenses at IPO Firms (SSRN) (June 2000); Coates, Explaining Variation in Takeover Defenses: Failure in the Corporate Law Market (SSRN) (June 26, 2000); Israel and Ma, Investment Horizon and the Market for Corporate Control: The Defensive Role of Long-Term Investments (SSRN) (September 1999); Hartzell and Yermack, What's In It For Me?

Personal Benefits Obtained By CEOs Whose Firms Are Acquired (SSRN) (June 2000); Schwert, Hostility in Takeovers: In the Eyes of the Beholder, 55 J. Fin. 2599 (2000); Jensen and Warner, The Distribution of Power Among Corporate Managers, Shareholders, and Directors (SSRN); Coates, Takeover Defenses in the Shadow of the Pill: A Critique of the Scientific Evidence, 79 Texas Law Review 271 (2000).

Topics: Appropriate limitations on takeover defenses, including dead-hand poison pills; shareholder bylaw response to poison pills.