

U.S. Corporate Law in an International Perspective

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U.S. Business Law Academy

**July 11 through July 14, 2022
10.00am to 12.00pm and 1.30pm to 3.30pm**

Overview. In this course we will consider the law of corporations and corporate governance in the United States—that is, the rules that govern the control of business enterprises under American law. The material is approached from an “international perspective”, meaning it is aimed at a non-U.S. lawyer familiar with corporate law in their home jurisdiction who wishes to understand the distinctive features of the U.S. system. Where appropriate we will compare and contrast U.S. approaches with those of other major legal systems.

We begin with basic background in U.S. corporate law, including how the separation of ownership and control common in U.S. corporations gives rise to agency costs, how shareholder voting to elect the corporation’s directors influences those costs, and the fiduciary duties of directors under Delaware law, the dominant source of state corporate law in the United States. We will also consider the enforcement of these duties through shareholder lawsuits, the frequency of which is arguably a unique feature of the U.S. system.

We then turn to a series of topics in corporate governance that provide opportunities to explore the application of fiduciary duties in specific contexts. We begin with executive pay, which offers the potential to align managers’ interests with those of shareholders. Then, we consider directors’ fiduciary duties in relation to corporate risk management and compliance. We next consider the duties of directors in relation to mergers and acquisitions. After examining the typical structure and regulation of those transactions under Delaware law, we will introduce the idea of contests for corporate control and Delaware law governing takeover defenses, before turning to the private-law innovation that now dominates contests for control in the United States: the poison pill. Then we will consider how directors’ fiduciary duties change as the sale of the corporation becomes increasingly likely. Finally, we will conclude by turning to the acquisition of control through proxy fights, now the dominant mode of conducting control contests in the United States.

Class structure. Classes will be held from 10.00am to 12.00pm and 1.30pm to 3.30pm, with a fifteen-minute break at the approximate midpoint of each class. In an effort to provide you with as much background as possible in this area, we expect to cover as much material as our time will allow. Active participation is encouraged.

Reading Materials. For each of our sessions, I have selected Reading Materials for your consideration, which will be made available to you online. The materials are drawn principally

from WILLIAM T. ALLEN & REINIER KRAAKMAN, COMMENTARIES AND CASES ON THE LAW OF BUSINESS ORGANIZATION (5th ed. 2016) (“A&K”).

Statutory Background. Occasionally your reading in A&K will refer to regulations and statutes that will provide helpful background for our discussion. For example, A&K may refer to regulations promulgated by the United States Securities and Exchange Commission (“SEC”), which govern virtually all large American corporations. In addition, A&K will often refer to statutes enacted by American state legislatures, and particularly the Delaware General Corporation Law (“DGCL”), because the majority of large U.S. public companies are subject to Delaware law. In those cases, I have noted the relevant regulations are statutes that you should review and have provided links to the text of those regulations or statutes in the syllabus.

Recent Developments. Although you will be reading the most recent edition of A&K, U.S. corporate law is constantly changing, and in some cases there are new developments of which you should be aware. In these cases, I have included links to the text of relevant judicial decisions under a separate heading in the syllabus entitled *Recent Developments*.

PowerPoint slides. PowerPoint slides will be made available in advance of each session so that you can print them or have them open on your laptops for notetaking. You may find it helpful to have these slides handy during our sessions so that you can follow our discussion.

Contact information. My email address is john.armour@law.ox.ac.uk. If you have any questions on our material, or if you would find it helpful to discuss our work outside of class, please don't hesitate to email me.

Syllabus

Although I will endeavor to follow the schedule below as closely as possible, we may proceed more quickly or slowly than is indicated. So long as you have completed the assigned readings before each session as indicated below, you will be appropriately prepared for our discussion.

Class	Date	Topics	Reading Materials
Part One: Introduction to U.S. Corporate Law (Two Classes)			
1	Monday, July 11 (am)	Economic Theory; Shareholder Voting	A&K, pp. 90-95, 163-169, 173-175, 201-206, 208-214 (28 pages). <i>Statutory Background:</i> SEC Rule 14a-8 <i>Recent Developments:</i> Trinity Wall Street v. Wal-Mart Stores, Inc. (2015) pp. 39-47.
2	Monday, July 11 (pm)	Directors' Fiduciary Duties in Delaware Law	A&K, pp. 229-232, 239-244, 292-305 (24 pages) <i>Statutory Background:</i> Delaware General Corporations Law ("DGCL") §§ 109 , 102(b)(7) , 141
Part Two: Topics in Corporate Governance (Three Classes)			
3	Tuesday, July 12 (am)	The Law and Economics of Executive Compensation	A&K, pp. 343-368 (25 pages)
4	Tuesday, July 12 (pm)	Duties of Oversight: Risk Management and Compliance	A&K pp. 248-259, 263-277 (25 pages) <i>Statutory Background:</i> DGCL § 102(b)(7) <i>Recent Developments:</i> Marchand v. Barnhill (2019).
5	Wednesday, July 13 (am)	Enforcement of Fiduciary Duties: Shareholder Litigation	A&K, pp. 379-385, 387-391, 400-414 (25 pages) <i>Statutory Background:</i> Federal Rules of Civil Procedure, Rule 23.1

Class	Date	Topics	Reading Materials
Part Three: Transactional Governance—M&A and Control Contests (Three Classes)			
6	Wednesday, July 13 (pm)	Economic Reasons for Mergers; Transactional Structure and Related Legal Rules	A&K pp. 459-487 (28 pages) <i>Statutory and Regulatory Background:</i> DGCL § 251
7	Thursday, July 14 (am)	Directors' Fiduciary Duties and the Sale of the Firm	A&K pp. 547-560, 584-590, 502-520 (37 pages)
8	Thursday, July 14 (pm)	Defensive Tactics and the Poison Pill	A&K pp. 531-538, 541-545, 560-568, 610-616 (25 pages) <i>Recent Developments:</i> Williams Companies Stockholder Litigation (2021).