

Syllabus

Law of Corporate Management and Finance in Global Perspective

LGST 202/802

Classes: Mondays and Wednesdays, 1:30 to 3:00 pm, Vance B10

Prof. Eric Orts

Legal Studies and Business Ethics Department

Office: 648 Huntsman Hall

Office phone: 898-3018

e-mail: ortse@wharton.upenn.edu [preferred method of communication]

Course description: This course provides an introduction to the law of corporate management and finance. It covers the basic law of business organization, including agency, partnerships, and corporations, with an emphasis on the governance of large publicly held corporations. The course covers the basic obligations of corporate directors and managers under state corporate law and the federal securities laws in the United States, including the substantive areas of fiduciary duties, insider trading, shareholder voting, and mergers and acquisitions. The rights and responsibilities of major players in corporate governance, including managers, shareholders, bondholders, and employees are considered, as well as the roles of investment bankers, venture capitalists, private equity firms, corporate lawyers, and accountants. A comparative perspective includes a discussion of the law of corporate governance in other leading countries, though the focus in terms of details remains on U.S. law. Issues of social policy and business ethics concerning business firms are also discussed.

Required texts:

William A. Klein, J. Mark Ramseyer & Stephen M. Bainbridge, *Business Associations: Cases and Materials on Agency, Partnerships, and Corporations* (Foundation Press, 9th ed. 2015).

William A. Klein, John C. Coffee, Jr. & Frank Partnoy, *Business Organization and Finance: Legal and Economic Principles* (11th ed. 2010).

Jonathan Charkham, *Keeping Better Company: Corporate Governance Ten Years On* (Oxford University Press, 2d ed. 2009).

Optional: Eric W. Orts, *Business Persons: A Legal Theory of the Firm* (Oxford University Press, rev. paper ed. 2015).

Note: Students do not need to purchase any published supplement to the textbook or the statutory supplement. Students may also rely on electronic versions or copies on reserve, though the two main textbooks are recommended for purchase.

Availability of texts: Books are available at the Penn Barnes & Nobel Bookstore. See also: http://store.westacademic.com/Klein_Ramseyer_and_Bainbridges_Business_Associations_Cases_and_Materials_on_Agency_Pa_9781609303495.html for an optional electronic version of the main text.

Handouts: Any handouts provided in class are also considered required course materials.

Note on coverage for accountants and lawyers (or future accountants and lawyers): This course, in addition to being required in some states, covers a number of areas on the CPA exam. This course covers many of the topics that would also be covered in a basic corporate law course in law school, though with an emphasis on business rather than legal lessons for practice.

Office hours: to be announced and by appointment.

Quality feedback and informal dinners/lunches: A series of optional dinners and/or lunches will be held to get feedback from students about the course (and vice versa), as well as to encourage general informal interactions among students and the professor. No additional credit for class participation will be given for participation in informal dinners or lunches, though they may be used to ask questions about material and points covered in class discussions.

Class format and student participation: Classes will combine lecture, Socratic dialogue, and group discussion. Students will be expected to have read material assigned for class and to be prepared to discuss it. Cold calling may be used to encourage broad levels of participation as well as to encourage preparation.

Exams and grading: There will be one required in-class exam covering materials formally assigned for the class primarily on U.S. law (but not including materials presented by students). In addition, there will be required student team presentations on selected topics in corporate governance, focused especially on covering international dimensions. Final grades for the course will be based on performance on the exam (one-third), team presentation (one-third), and class participation (one-third).

Exam: The scheduled in-class exam will be open-book and open-notes (only a student's own materials of course). It will include fact-based scenarios (including an expectation of "issue spotting") calling for assessments of legal and business actions to take under the circumstances given. A policy question is also possible. The exam will require written essay-style responses in blue books.

Group Presentation: A primary component of the course is a group presentation. Students should begin to consider a topic that they would like to investigate relatively early in the semester.

Possible topics are indicated on the syllabus and in reading materials, but most of the presentations will be scheduled near the end of the semester. Departures from the syllabus-listed topics are possible and even encouraged, and topics must be cleared with the professor in advance. Groups are limited to a minimum of two and a maximum of three students (a partnership in which students divide work according to informal arrangement and share the same grade for the result). Grades for the projects will be based on the quality and coherence of the final presentation itself, as well as any supplementary written or other submissions provided indicating sources and research.

Class participation: Class attendance and preparation for class by reading assigned materials are required. A ranking for attendance and participation will be assessed for each class session with the final grade determined by an accumulation of credits for each class by the end of the course. Regular and excellent class participation and attendance will therefore increase a student's final grade. Poor attendance, unpreparedness, or failure to participate in class will reduce a student's final grade.

Course outline

Specific assignments will in general follow the outline provided below. Any changes will be announced in class. Any revised versions of the syllabus will reflect changes. Required assignments in bold without attribution are to the hardcover Klein, Ramseyer, and Bainbridge text. Note: If you are pressed for time for a particular class, read the assignments in bold first: the cases will form the basis for class discussions.

INTRODUCTION

1. Introduction to the course and overall review of coverage, requirement, and mutual expectations; notes on reading legal cases; introduction to the basic players in business organization (including owners, managers, creditors, and employees); discussion of the nature of business firms and their variations. [*Jan. 10*]

Klein, Coffee & Partnoy, pp. iii-iv, 1-14.

I. AGENCY LAW

2. Agency Costs, Agency Law, and Liabilities of Principals to Third Parties in Contract (including actual authority, apparent authority, and ratification) [*Jan. 17*]

Ch. 1, pp. 1-18.

Klein, Coffee & Partnoy, pp. 14-26.

3. Liabilities of Principals to Third Parties in Tort (including treatment of employees, independent contractors, and franchises) [*Jan. 22*]

Ch. 1, pp. 31-52, 59-63.

Klein, Coffee & Partnoy, pp. 27-32.

4. Fiduciary Duties of Agents [*Jan. 24*]

Ch. 1, pp. 63-72.

Klein, Coffee & Partnoy, pp. 27-45.

II. PARTNERSHIPS, LIMITED PARTNERSHIPS, AND LIMITED LIABILITY COMPANIES/PARTNERSHIPS

5. Introduction to Partnerships [*Jan. 29*]

Ch. 2, pp. 73-89.

Klein, Coffee & Partnoy, pp. 51-71.

6. Fiduciary Obligations in Partnerships [*Jan. 31*]

Ch. 2, pp. 89-100, 108-13.

Klein, Coffee & Partnoy, pp. 71-79.

7. Partnership Property and Management [*Feb. 5*]

Ch. 2, pp. 113-25, 152-57.

Klein, Coffee & Partnoy, pp. 79-100.

8. Limited Partnerships [*Feb. 7*]

Ch. 2, pp. 157-67

Klein, Coffee & Partnoy, pp. 100-02.

9. Limited Liability Companies and Limited Liability Partnerships [*Feb. 12*]

Ch. 4, pp. 259-76.

Klein, Coffee & Partnoy, pp. 102-05.

III. CORPORATIONS

10. Introduction to the Corporation as a Business Organization: History, Structure, and Purposes [*Feb. 14*]

Klein, Coffee & Partnoy, pp. 106-46.

Ch. 3, pp. 169-78, 242-48.

11. The Social Role and Purposes of Corporations: Benefit Corporations, State-Owned Enterprises, and Other Variations [*Feb. 19*]

Orts, *Business Persons*, ch. 5, pp. 175-222 [handout].

Ch. 3, pp. 248-58.

12. Limited Liability in Corporations [*Feb. 21*]

Ch. 3, pp. 177-96.

Klein, Coffee & Partnoy, pp. 146-56.

13. Limited Liability in Limited Partnership and LLCs [*Feb. 26*]

Ch. 3, pp. 196-98; Ch. 4, pp. 277-83.

Optional: Orts, *Business Persons*, ch. 4, pp. 133-73.

14. Shareholder Derivative Litigation (including distinction between direct and derivative lawsuits) [*Feb. 28*]

Ch. 3, pp. 203-21, 234-42.

Klein, Coffee & Partnoy, pp. 207-13.

- Spring Break -

IV. FIDUCIARY AND OTHER DUTIES OF CORPORATE DIRECTORS, OFFICERS, AND MANAGERS

15. Fiduciary Duty of Care [*Mar. 12*]

Ch. 5, pp. 299-322.

Klein, Coffee & Partnoy, pp. 156-62.

16. Fiduciary Duty of Loyalty [*Mar. 14*]
- Ch. 5, pp. 322-42.**
- Klein, Coffee & Partnoy, pp. 162-70.
17. Obligations of Good Faith and Oversight [*Mar. 19*]
- Ch. 5, pp. 358-81.**
18. Duties of Disclosure and Fairness: Introduction to Securities Law and Overview of the Regulation of Financial Markets [*Mar. 21*]
- Ch. 5, pp. 395-97, 425-27.**
- Klein, Coffee & Partnoy, pp. 170-73, 402-55.
19. Securities Fraud [*Mar. 26*]
- Ch. 5, pp. 427-42.**
- Klein, Coffee & Partnoy, pp. 170-73.
20. Insider Trading (and Indemnification/Insurance) [*Mar. 28*]
- Ch. 5, pp. 455-80, 489-90, 500-01 [notes on indemnification and insurance].**
- Klein, Coffee & Partnoy, pp. 174-77.
- Optional: Orts, *Business Persons*, pp. 147-51.

V. CORPORATE CONTROL

21. Proxy Fights and Shareholder Proposals [*Apr. 2*]
- Ch. 6, pp. 503-04, 507-13, 523-46.**
- Klein, Coffee & Partnoy, pp. 124-29, 185-89.
22. Takeovers (including tender offers, enhanced duty of care, duty to auction, and antitakeover statutes) [*Apr. 4*]
- Ch. 7, pp. 722-51, 764-71, 795-807.**

Klein, Coffee & Partnoy, pp. 189-207.

VI. Review and Examination

23. In-class review session *[Apr. 9]*

24. In-class exam *[Apr. 11]*

VII. Comparative and Global Corporate Governance

General background reading for all students: Charkham (entire book or selected chapters)

25. Student Presentations *[Apr. 16]*

26. Student Presentations *[Apr. 18]*

27. Student Presentations *[Apr. 23]*

28. Student Presentations *[Apr. 25]*

BIOGRAPHY OF INSTRUCTOR

Eric Orts is the Guardsmark Professor at the Wharton School of the University of Pennsylvania. He is a full professor in the Legal Studies and Business Ethics Department with a secondary appointment in the Management Department. He is the faculty director of the Initiative for Global Environmental Leadership (IGEL) at Penn/Wharton. His primary research and teaching interests are in corporate governance, environmental law and policy, professional ethics, and business theory. His work is published mainly in law reviews and books. His most recent books are *Business Persons: A Legal Theory of the Firm* (Oxford University Press, rev. ed. 2015) and *The Moral Responsibility of Firms* (ed. with Craig Smith) (Oxford University Press 2017).

Prior to joining Wharton's faculty, Prof. Orts practiced law as a litigation associate at Paul, Weiss, Rifkind, Wharton & Garrison in New York City and was a Chemical Bank fellow in corporate social responsibility at Columbia Law School. He has taught also at the University of Pennsylvania Law School and has been a visiting professor at INSEAD, the NYU School of Law, UCLA School of Law, University of Michigan Law School, Sydney Law School, and Tsinghua University School of Economics and Management. He has been a visiting Fulbright professor in the law department of the University of Leuven, the Eugene P. Beard Faculty Fellow at Harvard University's Center for Ethics and the Professions, and a faculty fellow in the Center for Business and Government at the Kennedy School at Harvard. Prof. Orts is a graduate of Oberlin College (BA), the New School for Social Research (MA), the University of Michigan (JD), and Columbia University (JSD). He is a member of the bar of New York and the District of Columbia, an elected member of the American Law Institute, and belongs to several other professional and academic associations.