Welcome to this Seminar. I hope that you’ll all enjoy the semester as much as getting one step closer to becoming excellent cross-border corporate / M&A lawyers!!!

Course Duration: Thursday, Aug. 29 – Thursday, Nov. 21 (note that though there are only 13 sessions of this class, but with each class having a longer 2-hour time period)

Class Meeting Time and Place: Thursdays from 3:30-5:30 PM in Room HH – 354

Office Hours: As needed (by skype) – my skype name is sethchertok

Paper Turn-In Date: Thursday, Dec. 19 at 5 PM (this is the very end of the exam period and the school will not permit any extensions – I advise turning in the paper a bit before the deadline, so that I can give you constructive feedback)
Course Overview

The central question in any state’s corporate law is, from an internal corporate governance perspective, how to make the corporate system successful, for both the shareholder owners of the corporation and the broader society? The answers derive primarily from our understanding of economics and the agency ethical issues pertinent to corporate fiduciaries managing others’ property.

This seminar will focus on international comparative corporate law for the public company, to help students develop a theoretical understanding of corporate law beyond merely Delaware as well as to prepare students for US cross-state and international cross-border practice. Unlike in a standard corporations class, we’ll examine the US Delaware corporate law (A) intra-American comparatively against other US states (including Florida) and federal law, and (B) international comparatively against the EU and its Member States as well as Japan.

Specific topics will include introductions to the corporation, corporate law theory and history, corporate substantive and procedural choice of law, “internal” relationships with “external” corporate constituencies (such as employees, creditors, the preferred and the broader society), vertical, horizontal and external corporate governance as well as regulatory fiduciary duties, M&A and takeover issues (including sales and defenses) as well as some securities laws. Time permitting, we might also cover some private companies corporate laws.

Course Objectives

General thinking skills

• Learn to piece together the individual “trees” that we study to develop a compass to find your own “stars”

• Understand the interrelationships of the different corporate law topics that we study, and how you might apply those interrelationships to novel problems in law and business

• Improve critical thinking skills, so that you’ll have the intellectual foundation to quickly learn additional business law areas as well as new areas, beyond business

• Develop comparative knowledge, skills, and attitudes that improve inter-cultural competence

• Learn to find ex ante solutions for clients – in short, learn how to counsel corporate clients

Corporate/M&A law skills

• Read, understand, apply and strategize about how to proceed in the face of Delaware, cross-state and international comparative corporate law statutes and cases, which are essential for
corporate lawyers, like physicians that need to understand physiology and pathology, i.e. the law of the body, to diagnose and solve problems

- Learn how to evaluate the theoretical soundness of corporate law, in the light of its purposes, and think about how the law might change in relation to other countries’ corporate law purposes

- Master the higher-level principles prized by senior corporate counselors - the federal securities, plus state corporate law corporate governance rights, duties and responsibilities of those who are part of the corporation (shareholders, controlling shareholders, boards, executives and stakeholders)

**Comparative skills**

- Make the jump from Delaware law to other US states’ corporate laws (including Florida), and then from strictly US law to international and cross-border corporate law practice
Seminar Paper

This class will not have a final exam, so you’ll not be held directly accountable for any specific information. Instead, you should focus on using the course materials to enrich your mind to prepare for higher level creative thesis work.

Your thesis paper may be used to satisfy your UF senior writing requirement!

Thesis Format:
- Your paper must be a minimum page length of 25 pages double-spaced in 12-point font and appropriately footnoted under standard bluebook rules.

Acceptable Topics:
- Papers can be written on any topic in U.S. and/or comparative corporate/M&A law. I’m also open to considering a corresponding topic on securities regulation (either private placements, public companies, investment advisers / funds or broker-dealers), agency or unincorporated forms of businesses, private equity and hedge funds governance, antitrust, copyrights and trademarks, contract law, tort law or even corporate Constitutional law.

- If you’re practically oriented toward client counseling, a practical section is fine, but this paper should have some theoretical component solving a U.S. and/or comparative problem for a society. It’s important when you write to stick to a problem in THE LAW, versus ONLY your impressions of a society, etc.

Finding a Topic:
- If you’re not sure what to write about, I’d recommend starting by reading through a treatise for ideas of unresolved issues – or turning to recent news stories. You should also feel free to discuss with me your preliminary ideas!

Progressing with Your Topic:
- Let’s please plan to catch up at regular intervals and I’ll do my best to help you with the direction of your paper. I’m also happy to review and comment on drafts of your papers as needed. I’m available to speak with you in person (by appointment) and can work with you by skype remotely even after hours in the evenings.

- Please don’t put yourself in a last minute effort position!!!

Thesis Grading Methodology:
- The paper will be graded based on standard factors like research depth, breadth and creativity/originality, thesis direction, identifying social problems, applicable laws and underlying theories, addressing in a nuanced manner counter-arguments for your beliefs/theories, U.S. and comparative problem solving (for each society but also perhaps for a client), social insights, etc.
Course Grading

The projected weight of each of the components of your Course Grade is as follows:

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<th>Weighting</th>
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<tr>
<td>Class Participation</td>
<td>Roughly 9-14% (though I reserve the right to make a slightly different adjustment)</td>
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<td>Seminar Paper</td>
<td>Roughly 86-91%</td>
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This class adheres to UF’s posted grading policy:

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<tr>
<th>Letter Grade</th>
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<tr>
<td>A (Excellent)</td>
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Further information for UF grading policies for assigning points can be found at:
https://catalog.ufl.edu/ugrad/current/regulations/info/grades.aspx
Other UF Policies

Honesty Policy

UF students are bound by The Honor Pledge which states, “We, the members of the University of Florida community, pledge to hold ourselves and our peers to the highest standards of honor and integrity by abiding by the Honor Code. On all work submitted for credit by students at the University of Florida, the following pledge is either required or implied: ‘On my honor, I have neither given nor received unauthorized aid in doing this assignment.’”

The Honor Code (http://www.dso.ufl.edu/scrr/process/student-conduct-honor-code/) specifies a number of behaviors that are in violation of this code and the possible sanctions. Furthermore, you are obligated to report any condition that facilitates academic misconduct to appropriate personnel. If you have any questions or concerns, please consult with Prof. Chertok.

Class Attendance, Make-Up Exams, Etc.

Per ABA requirements, please attend all classes, unless you e-mail me in advance with a legitimate excuse. “Requirements for class attendance and make-up exams, assignments, and other work in this course are consistent with university policies that can be found at: https://catalog.ufl.edu/ugrad/current/regulations/info/attendance.aspx

ABA Standard 310 Policy

Students should expect to spend, on average, approximately two hours preparing for every hour of class. It is expected that you will spend time preparing the Q&A in the Pre-Class Slides, as well as the readings, all per the Syllabus.

Disability Policy

Students with disabilities requesting accommodations should first register with the Disability Resource Center (352-392-8565, www.dso.ufl.edu/drc/) by providing appropriate documentation. Once registered, students will receive an accommodation letter which must be presented to Student Affairs (Dean Rachel Inman). Students with disabilities should follow this procedure as early as possible in the semester. Please don’t e-mail your request to Prof. Chertok, to preserve student anonymity.

Online Course Evaluations Policy

Students are expected to provide professional and respectful feedback on the quality of instruction in this course by completing course evaluations online via GatorEvals. Guidance on how to give feedback in a professional and respectful manner is available at https://gatorevaluations.aa.ufl.edu/students/. Students will be notified when the evaluation period opens and can complete evaluations through the email they receive from GatorEvals in their Canvas course menu under GatorEvals or via https://ufl.bluerary.com/ufl/. Summaries of course evaluation results are available to students at https://gatorevaluations.aa.ufl.edu/public-results/.

Technical Issues

If you have technical problems, please contact the UF Help Desk at http://helpdesk.ufl.edu

Wellness

If you or a friend is in distress, please contact umatter@ufl.edu or 352-392-1575 so that a team member can reach out to you or your friend.
Reading List


**Statutory Supplement**: My version will be the latest version of: Commentaries and Cases on the Law of Business Organizations, Statutory Supplement, by William T. Allen, Reinier Kraakman and Guhan Subramanian, but you should feel free to use another if you so desire.

**Florida Business Corporation Act (FBCA)**:  

**Supplementary Readings for Law Practice (all on reserve in the library)**:

- **Business News**

- **Due Diligence**
  - ABA’s Manual on Acquisition Review  
    (on reserve in the library)

- **Contracting**
    (for students interested in how real lawyers would draft corporate contracts – useful to hit the ground running as corporate associates)  
    (available as e-book from Bloomberg, w/ password - http://uf.catalog.fcla.edu/permalink.jsp?20UF032817458)
  - ABA’s Model Merger Agreement for the Acquisition of a Public Company  
    (access through Bloomberg Law)
  - ABA’s Model Asset Purchase Agreement (vol. 1 and 2)  
    (access through Bloomberg Law)
  - ABA’s Model Stock Purchase Agreement with Commentary, 2nd ed., vols. I, II  
    (access through Bloomberg Law)
    (access through Bloomberg Law)

- **Regulations**
    (on reserve at LIC)
  - Antitrust Regulation – Phillip Areeda & Herbert Hovenkamp, Antitrust Law: An Analysis of Antitrust Principles and their Application  
    (on reserve at LIC)
Syllabus

Preliminary Notes

• Please read the notes falling within any assigned pages

• Reading assignments are supplemented with my own slides about the materials, which will be posted on the course portal – to prepare for each class, please work through the questions and problems in my slides, apart from the readings

• Section assignments below WILL NOT track how much we’ll cover each class – estimate our pace, by preparing roughly 100 slides in advance, per class!!!

  a. Introduction:
     i. Lesson 1 Slides
     ii. Intro to Business Law
        1. Intro to Business
        2. Intro to Agency
        3. Chertok Article (posted on course portal)
           a. Corporate History (Section II)
           b. Anatomy of the Firm (Section III)
        4. Intro to Corporate Law / Goals
        5. Intro to Securities Regulation
        6. Intro to Valuation Principles
           a. Valuation Methods
           b. Market Valuations / ECMH:

  b. Ventoruzzo Casebook
     i. Ch. 1 (Comparative Corporate Law: The Building Blocks):
        1. Lesson 2 Slides
        2. Introduction, p. 1-34
        3. Comparative Law Articles:
           a. International:
              i. Cunningham article, p. 3-6
           b. Intra-American:
        c. Florida:

ii. More DE Or More MBCA???

ii. Ch. 3 (The Incorporation Process and Limits on Limited Liability):
   1. Lesson 2 Slides
   2. The Incorporation Process
      a. Introduction, p. 129-131
      b. Formation Process:
         i. Charter Filing / DGCL § 101
         ii. Fees and Taxes / DGCL § 103(c)(2)
      c. Governance Documents:
         i. A Note on Governance – What is It?
         ii. The Charter
            1. Mandatory Terms:
               a. Delaware / DGCL § 102(a)
            2. Flexible Terms:
               a. Delaware / DGCL § 102(b)
            3. Amendments:
               a. Delaware / DGCL § 242
               b. MBCA § 10.03(e)
               c. Florida / FBCA § 607.1003 + .1006
      iii. The Bylaws
         1. Flexible Terms:
            a. Delaware / DGCL § 109(b)
         2. Amendments
            a. Introduction, p. 287-288
            b. A Note on Law v. Equity
            c. “Legal” Powers for Bylaws Amendments:
               i. Delaware / DGCL § 109 v. DGCL § 141(a)
               ii. BUT Limits = Subject to Charter + Equity???
            d. Vertical “Equitable Limits” on Bylaws Amendments:
Shareholder “Abuses” / Hollinger, 844 A.2d 1022 (Del. Ch. 2004)

Beyond DE – Say FL “Equity”???

iv. International:
   1. EU + Japan, p. 142-144
d. Ongoing Formation Effects:
i. Annual Filings:
   1. Delaware / DGCL § 502
   2. Florida / FBCA § 607.1622

   ii. Annual Taxes:
   1. Delaware / https://corp.delaware.gov/paytaxes/

iii. Ch. 2 (Choice of Applicable Corporate Laws and Regulatory Competition):
   1. Lesson 3 Slides
   2. Introduction, p. 35-40
   3. A Note on Systems of Corp Law:
      a. Common Law v. Civil Law
   4. A Note on Sources of Corp Law:
      a. US:
         i. State Law = internal governance scope, via governance contracting v. regulations
         ii. Federal Law = mostly public company regulations in limited areas, via SEC rules
      b. EU:
         i. State Law = Member State Law, e.g., Germany, Italy, etc.
         ii. Federal Law = EU Directives v. Regulations
      c. Regulations Beyond the State / Markets (Super-Regulations)

5. Freedom of Incorporation:
   b. Substantive Choice of Law:
      i. Theory
      ii. US:
1. Introduction, p. 40
2. A Note on the Free Markets
3. Regulatory Free Markets / State of Incorporation Doctrine:
   a. Delaware:
      i. A Note on Class Voting
      ii. Examen case, p. 49-55
   b. Florida:
      i. Banco Industrial v. De Saad, 68 So.3d 895, 895-899 (Fl. 2011)
4. Exception # 1 - Pseudo-Foreign Corporation Statutes:
   a. A Note on Foreign Qualifications:
      i. FBCA § 607.1503
      ii. https://dos.myflorida.com/media/700430/cr2e007.pdf
   b. California / Beyond Qualifications:
      i. A Note on Cumulative Voting
      ii. Wilson case, p. 40-49
5. Exception # 2 – Non-Internal Affairs Issues:
   a. Connecticut:
      i. A Note on Shareholder Informational Rights
      ii. Carbone case, p. 55-59
   iii. EU / Real Seat Doctrine:
      1. Introduction, p.63
      2. French Cass. Case, p.64-65
      3. A Note on Minimum Capital Requirements
      4. Centros case, p. 65-74
      5. Uberseering case, p. 74-89
      6. Ventoruzzo article, p. 109-127
   c. “Procedural” Choice of Law
      i. A Note on Multi-Forum Litigation
      1. Exclusive Forum Clauses:
         a. Delaware / DGCL § 115
         b. Beyond the US???
   d. Implications of Choice of Law / Regulatory Competition Theory – Race to Top or Bottom?
      i. Cary article / Delaware, p. 100-104
      ii. Beyond DE / Other US States???
      iii. The EU???
iv. Back to Ch. 3 (Limitations on Limited Liability):
   1. Lesson 4 Slides
   2. Limited Liability:
      a. Theory:
         i. Criticisms:
            1. 1824 London Times article (on slides)
         ii. Defenses:
            1. 1926 Economist article (on slides)
            2. Easterbrook & Fischel, Limited Liability and the Corporation, 52 U. Chi. L. Rev. 89 (1985)
      b. LL Exceptions:
         i. Governance / Contracting, p. 134-144
         ii. Regulations / Piercing the Corporate Veil – see below....
   3. The Protection of Creditors:
      a. Minimum Legal Capital:
         i. Introduction, p. 144-146
         ii. Enriques & Macey article, p. 147-151
      b. Busting the “Entity” LL Shield / Piercing the Corporate Veil:
         i. Introduction, p. 151-152
         ii. Theory
         iii. A Note on Piercing “Tactics”
         iv. US Piercing:
            1. Voluntary Creditors (Contracts)
               a. Classic Cases:
                  i. Sea-Land Services v. The Pepper Source, 941 F.2d 519 (7th Cir., 1991)
               b. Florida:
                  i. Futch v. Head, 511 So. 2d 314 (Fla. App. 1987)
            2. Involuntary Creditors (Tort Law Victims)
               a. Classic Cases:
                  i. Baatz case (SD), p. 153-155
                  ii. Walkovsky case (NY), p. 156-160
               b. Florida:
                  i. Dania Jai-Alai Palace v. Sykes, 450 So.2d 1114 (Fl. 1984)
            3. Empirical note, p. 186-188
      v. International Piercing:
1. UK approach:
   a. VTB Capital case, p. 160-171
2. French approach:
   a. Denis Facques case, p. 171-173
   b. Roussy case, p. 173-175
3. Japanese approach:
   a. Tokyo case, p. 175-178
4. German approach:
   a. TBB case, p. 179-182
   b. Trihotel case, p. 182-185
5. Asia, p. 185-186

v. Ch. 5 (Corporate Governance):
   1. Lesson 5 Slides
   2. Composition of the Board of Directors
      a. Basics of the Full Board:
         i. Number of Directors:
            1. Delaware / DGCL § 141(b)
         ii. Term:
            1. Normal Boards:
               a. Delaware / DGCL § 141(d)
            2. Staggered / Classified Boards:
               a. Delaware / DGCL § 141(d)
         iii. Removal:
            1. Normal Boards:
               a. Delaware / DGCL § 141(k)
               b. MBCA § 8.08(a)
            2. Staggered / Classified Boards:
               a. Delaware / DGCL § 141(k)(1)
               b. MBCA § 8.08(a)
      iv. International:
         1. German and EU Board Alternatives, p. 249-261
     b. Possible Strategies to Improve Board Representation:
        i. Co-Determination:
           1. Theory
           2. International:
              a. Germany / Damman article, p. 254-258
        ii. Independent Directors:
            1. Theory
            2. US:
               a. Gordon article, p. 261-262
            3. International:
iii. Minority Shareholder Representation:
   1. Introduction, p. 263
   2. Theory
   3. Ventoruzzo article, p. 264-269

iv. Minority Director “Personhood”:
   1. Introduction, p. 269
   2. Theory
   3. Branson article, p. 270-276

3. Powers of Directors v. Shareholders
   a. Key Board Decisions:
      i. Unilateral Power Areas:
         1. Centralized Management:
            a. Strategic Decisions:
               i. Delaware / DGCL § 141(a)
         2. Governance:
            a. Elect + Remove Officers:
               i. Delaware / DGCL § 142(b)
            b. Certain Bylaws Amendments
               i. Delaware / DGCL § 109
               ii. MBCA § 10.20
         3. Transactions:
            a. Certain Stock Issuances
               i. Delaware / DGCL §§ 102(a)(4) + 151(a)
            b. Most Dividends + Repurchases
               i. Delaware / DGCL §§ 160(a) + 170(a)
   b. Shareholder Decisions
      i. Voting Power Areas = Fundamental Matters:
         1. Kraakman / Theoretical Concept
2. Unilateral:
   a. Governance:
      i. Bylaws Amendments
      ii. Elect + Remove Directors

3. Bilateral:
   a. Governance:
      i. Charter Amendments
   b. Transactions:
      i. Fundamental M&A Deals
      ii. Firm Dissolutions

ii. “Who” Votes?
   a. Delaware / DGCL § 212(a)
   b. MBCA § 7.21(a)

2. And To Vote on a Unified or Class Basis?
   a. Theory
   b. “Class” Vetoes Scope:
      i. Delaware / DGCL § 242(b)(2) + “Equity” Vetoes
      ii. MBCA / MBCA § 11.04(f) + 10.04
      iii. WHY???
     iv. International / Japan, p. 207
     v. BUT “vetoes” often produce “class” hold-up – see M&A cases below....

4. Approval “Percentages”
   a. Delaware:
      i. Quorum, DGCL § 216(1)
      ii. Approval Percentages:
         1. Election of Directors, DGCL § 216(3)
         2. Most Other Matters, DGCL § 216(2)
   b. MBCA:
      i. Quorum, FBCA § 7.25(a)
      ii. Approval Percentages:
         1. Election of Directors, MBCA § 7.28(a)
         2. Most Other Matters, MBCA § 7.25(c)

5. “How To” Solicit Those Shareholder Votes?
   a. Where Shareholders Vote?
      i. Annual Meetings:
         1. Delaware:
            a. Matters / DGCL § 211(b)
b. Mandatory / DGCL § 211(b)
ii. Special Meetings:
  1. Delaware:
    a. Matters / DGCL § 211(d)
    b. Non-Mandatory / DGCL § 211(d)
    c. “Who” Can Call:
       i. Delaware / DGCL § 211(d)
      ii. MBCA § 7.02(a)(2)
iii. Written Consents:
  1. Delaware:
    a. Written Consents, DGCL § 228(a)
    b. Special Approval Percentages:
       i. Delaware / DGCL § 228(a)
       ii. MBCA § 7.04(a)
       iii. Florida / FBCA § 607.0704(1)
       iv. WHY???
  b. Proxy Voting System / Shareholders Voting without Appearing in Person:
     i. Delaware / DGCL § 212(b) + (c)
     ii. Proxy (Ir)revocability:
        1. Delaware / DGCL § 212(e)
        3. Beyond Delaware???
  c. Proxy Fights
     i. Introduction:
        1. Key Fights = Election of Directors, Corporate Governance, Corporate Social Responsibility (CSR) and Dividends Proposals
        2. BUT very burdensome solicitation requirements....
     ii. Disclosure Regulations:
        1. The Federal Securities Laws / Proxy Rules Disclosures:
           a. Regulation 14A
           b. Schedule 14A, available at
              https://www.ecfr.gov/cgi-bin/text-idx?node=17:4.0.1.1.1&rgn=div5#se17.4.240.114a.6101
        2. Delaware / The Expanding State Law Duty of Disclosure:
3. Beyond the US??
   iii. Disclosure Expenses Regulations:
      1. US:
         a. Election of Directors Proposals:
            i. Froessel Rule, Rosenfeld v. Fairchild Engine, 309 N.Y. 168 (Ct. App. N.Y. 1955)
            ii. Town Meeting SEC Rule, Rule 14a-8
            iii. The “Proxy Access” Debate
         b. Beyond Election of Directors / Other Governance + CSR Proposals:
            i. Town Meeting SEC Rule, Rule 14a-8
      2. Beyond the US??

   a. The Rights of Shareholders and Classes
      i. Introduction, p. 190-200
      ii. Cumulative Voting / Minority Shareholder Voting Power Augmentations:
         1. Recall CA / Wilson Regulatory Approach
         2. Delaware / DGCL § 214 Contractual Approach
      iii. CMS Structures / Insider Voting Power Augmentations:
         1. Theory
         2. Dual Class Stock / CMS Recaps (“Bilateral”):
            a. Introduction, p. 200-206
            b. US “Limits”:
               i. Delaware “Equity” / Lacos Land v. Arden Group, 517 A.2d 271 (Del. Ch. 1986)
               ii. Federal Law / Old Rule 19c-4
               iii. SROs / Listing Rules
               iv. ISS / Market Checks
            c. International “Limits”:
               i. EU???
               ii. UK???
               iii. Canada???
               iv. Germany???

3. Voting Dilution Beyond Recaps / Circular Control Structures (Board “Unilateral”):
   a. Statutory Basis:
      i. Delaware / DGCL § 160(c)
ii. Florida / FBCA § 607.0721(2)
c. Equity:
   i. Delaware / Speiser v. Baker, 525 A.2d 1001 (Del. Ch. 1987)
d. Beyond Delaware???

vi. Ch. 4 (Financing the Corporation):
   1. Lesson 6 Slides
   2. Introduction, p. 189-190
   3. A Note on Corporate Securities Financings
   4. The Basics of Stock Issuances
      a. Theory
      b. How Issued:
         i. Delaware / DGCL §§ 102(a)(4) + 151(a)
         ii. Florida / FBCA § 607.0602
      c. Valid Consideration:
         i. Delaware:
            1. DGCL § 152
            2. “Equitable” Limits / MBKS Co. Ltd. V. Reddy, 924 A.2d 965 (Del. Ch. 2007)
         ii. Beyond Delaware???
      d. Terms of Issuance:
         i. Delaware / DGCL § 151
         ii. A Note on Stock Series and Classes
      e. Ministerial Matters:
         i. Creation / Subscription Agreements
            1. Delaware / DGCL § 161 + 166
         ii. Memorialization / Certificated v. Uncertificated Stock
            1. Delaware / DGCL § 158
            2. Florida / FBCA §§ 607.0625 + .0626(1)
   5. Stock Issuances / Board “Limits”
      a. Can’t Exceed Authorized Shares:
         i. Delaware / DGCL §§ 102(a)(4) + 151(g)
      b. Can’t Violate Capital Regulation:
         i. A Note on Stock “Terminology”
         ii. Delaware:
            1. DGCL § 153
            2. DGCL § 154
            3. DGCL § 102(a)(4)
            4. DGCL § 242(a)(3)
iii. Florida:
   1. FBCA § 607.0202(2)(b)(4)

iv. Beyond the US???

c. Can’t Violate the Equal Treatment of Shareholders:
   i. A Worksheet on Dilution (word file posted on course portal)

ii. Contract Law / Pre-Emption Rights:
   1. Theory
   2. Ventoruzzo article, p. 208-215
   3. Delaware / DGCL § 102(b)(3)
   4. International:
      a. Germany:
         i. Deutsche Bank case, p. 215-218
         ii. Kali und Salz case, p. 218-221
      b. Japan:
         i. Sony-Aiwa case, p. 221-225

iii. Fiduciary Duties / Control Dilution:
   1. Delaware / Condec v. Lunkenheimer, 43 Del. Ch. 353 (Del. Ch.1967)
   2. Beyond DE???

d. Can’t Violate Preferred Rights:
   i. Introduction, p. 206-207 – see governance section above....

e. Can’t Violate Bondholder Rights:
   i. Introduction, p. 230-233
   ii. A Note on Debt Securities Issuances:
      1. Delaware / DGCL § 122(13)

iii. A Couple Concerns:
   1. Violating Creditor Contractual Covenants / Morgan Stanley case, p. 233-238
      a. WHY???
   2. Violating Creditor Rights During Insolvencies / Doctrine of Equitable Subordination, p. 243-247
      a. WHY???

iv. International:
   1. EU / Kingdom of Spain case, p. 238-243

f. + Securities Regulation:
   i. A Note on the Federal Securities Laws
   ii. A Note on State Blue Sky Laws

6. Other Ordinary Course Transactions
   a. Dividends
      i. The Basics of Dividends:
1. Theory
2. Types of Dividends:
   a. Delaware / DGCL § 173
   b. Florida / FBCA § 607.01401(8)
3. Record Date / Which Shareholders Receive Dividends?
   a. Delaware / DGCL § 213(c)
ii. Dividends / Board “Limits”:
   1. Can’t Violate Charter
      a. Delaware / DGCL § 170(a)
   2. Can’t Violate Preferred Preferences
      a. Delaware / DGCL § 151(c)
   3. Can’t Violate Capital Regulation / Creditor Protections
      a. Delaware / “Nimble Dividends” Test, DGCL § 170(a)(1) + (2)
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      b. MBCA / Insolvency Test, MBCA § 6.40(c) + (d)
         i. WHY???
      c. A Note on Valuation
      d. Dividends Constraints – Differences???
         i. Kraakman Problem on Dividends Constraints
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   iii. Beyond the US???
b. Repurchases
   i. The Basics of Repurchases:
      1. Theory
   ii. Repurchases / Board “Limits”:
      1. Ordinary Repurchases / Capital Regulation:
         a. Delaware / DGCL § 160(a)(1)
         b. Florida / FBCA § 607.0631
         c. WHY???
      2. Defensive Repurchases / Takeover Regulation – see AC and Unitrin below....
         iii. Beyond the US???
c. Dividends + Repurchases – Hot Topics:
   i. The Question of Stock Buybacks???

vii. Ch. 6 (Fiduciary Duties):
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   a. A Refresher on Standards of Review
   b. Judicial Review:
      i. To Let it Be (Free Market) or Intrude (Paternalism)???
   c. WHY???
      i. A Particular Party:
         1. End = Who Gets the Governance Rights???
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   a. Vertical Agency Theory
   b. Big Question = When to Unwind Management Free Market Position Governance Rights???
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   a. Introduction, p. 295-299
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   c. Defining “Care”
      i. Delaware:
         1. No “Care” Statute – All Case Law
      ii. Scholars:
         1. ALI Principles § 4.01(a)
      iii. Florida Gloss – Like DE or Scholars???
         1. FBCA § 607.0830(1)
      iv. International:
         1. Italy, p. 297
   d. “Care” D&O Protections
      i. Reports:
         1. Delaware / DGCL § 141(e)
      ii. Business Judgment Rule (BJR)
         1. Defining the BJR:
            a. Scholars / ALI Principles § 4.01(c)
            b. Florida / FBCA § 607.0831(1)
         2. Theory:
            a. Delaware / Gagliardi v. Trifoods, 683 A.2d 1049 (Del. Ch. 1996)
         3. International:
            a. Asia, p. 298
            b. Czech Republic, p. 298
      iii. The BJR “Lite”:
         1. D&O Indemnification:
a. Delaware / DGCL § 145

2. D&O Insurance:
   a. Delaware / DGCL § 145(g)

e. Contexts for Care
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      1. US:
      2. International:
         a. Germany / ARAG-Garmenbeck case, p. 312-316

6. Vertical Axis / Duty of Loyalty
   a. Introduction, p. 316-317 + p. 325
   b. Loyalty Theory
   c. Loyalty to Whom?
      i. The Old Days:
         2. WHY???
         3. PROBLEMS???
      ii. Today:
         1. Normal Modes:
            a. Increased Legal Managerial Discretions to Consider Long-Term Value + Corporate Constituencies:
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               ii. WHY???
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         2. BUT:
            a. De Facto Shareholder Primacy???
               i. ISS / Market Checks???
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         1. UK, p. 279
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         1. Ordinary Business Decisions / Fairness Review:
2. Problems Of Too Much Fairness / Lawsuits?? Solutions??

ii. The Effect of Approval by a “Disinterested” Party / Cleansing:
   1. Theory
   2. Delaware:
      a. DGCL § 144, p. 317-320
      c. WHY???
   3. MBCA:
      a. MBCA § 8.61
   4. Scholars:
      a. ALI Principles § 5.02
   5. International:
      a. Italy, p. 343-44

iii. Beyond Cleansing / Charter Exculpations for Disloyalty:
   1. Delaware:
      a. DGCL § 102(b)(7)
   2. MBCA:
      a. MBCA § 2.02(b)(5)
   3. Florida:
      a. FBCA § 607.0202
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iv. Conflicted Deals Beyond State Corporate Laws:
   1. Federal Securities Laws Disclosures, A Note on Regulation S-K

v. Amorphous Areas of Corporate Law Disloyalty
   1. Corporate Opportunity Doctrine:
      a. Introduction, p. 328-330
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         i. EU / Bhullar case, p. 330-343
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e. Corporate Nonfeasance / The Duty to Monitor for Illegalities
   i. History / Enron + Worldcom Scandals
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   iii. Federal Law:
      1. Sarbanes-Oxley
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      1. In re Caremark, 698 A.2d 959 (Del. Ch. 1996), p. 299
      3. WHY???
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      1. Italy, p. 299

7. Horizontal Axis
   a. Horizontal Agency Theory
   b. Big Question = When to Unwind Controller Free Market Property Governance Rights???
   c. Controlling Shareholders
      i. What is a Controller?
      ii. Theory
      iii. Ordinary Business Decisions:
         1. California / Non-Differential Standards + Ex Ante Approach:
            a. Wilson case – revisited
            b. WHY???
         2. Delaware / Differential Standards + Ex Post Approach:
            a. Unequal Freeze-Outs Dividends / Sinclair Oil v. Levien, 280 A.2d 717 (Del. 1971)
            c. WHY???
         3. Beyond the US???
   iv. + Minority/Public Shareholders???
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         a. WHY???
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         1. Introduction, p. 345
2. Theory
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   a. Recall Normal Modes / Shareholders....
      i. WHY???
   b. Insolvency Modes:
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      iii. International / UK + EU + Japan Armour article, p. 345-348
   c. Direct v. Derivative Lawsuits:
      i. Delaware / North American Catholic case, skip ahead to p. 348-353
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ii. Corporate Law CSR / Beyond Creditors:
   1. Discretionary CSR / Good Will
      a. Theory
      b. Success Stories???
      c. BUT Any Problems???
   2. Mandatory CSR / Knowing Illegalities Standard:
      a. Theory
      b. Delaware / DGCL § 102(b)(7)
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viii. Ch. 9 (M&A):
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   2. A Note on Takeovers
   3. Introduction to M&A / Theory
   4. Mergers
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            1. Normal Mergers
               a. Delaware / DGCL § 259
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   a. Delaware / DGCL § 251(b)(5)

3. Tactics???
   i. Effects
      1. Delaware / DGCL § 259
   ii. A Note on M&A Taxation and Accounting

b. Board Approvals in M&A Deals:
   i. Delaware / DGCL § 251(b)

c. Shareholder Approvals in M&A Deals:
   i. Theory / Fundamental Deals
      ii. Voting Exceptions / Acquirer Insignificant Transactions:
         1. Delaware / DGCL § 251(f)
         2. MBCA § 6.21(f)(1)(ii)
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         1. Delaware / DGCL § 251(c)
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      1. Ex Ante v. Ex Post Solutions
      2. Carrot / Vote Buying:
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3. Stick / Dual Reverse Triangular Mergers:
   b. Delaware / Eisenberg v. Chicago Milwaukee Corp., 537 A.2d 1051 (Del. Ch. 1987)
   c. MBCA, §§ 10.04(a) + 11.04(f)(1)
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   i. Articles of Merger Filings
      1. Delaware / DGCL § 251(c)
   ii. Franchise Taxes Payments
      1. Delaware / DGCL § 277
   iii. A Note on Derivatives
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   iv. Statutory Appraisal
      1. Delaware:
         a. Process, DGCL § 262
         b. Valuation Proceedings, DGCL § 262(h)
         c. Zero-Outs, DGCL § 262(b)
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      3. International:
         a. Japan, p. 512

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   a. Introduction, p. 471-483
   b. A Note on Asset Sales
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         1. = Only if Substantial Enough???
      ii. Triggers:
         1. Delaware (Quantitative + Qualitative Approach):
            a. DGCL § 271(a)

2. MBCA (Strictly Quantitative Approach):
   a. MBCA § 12.02(a)

3. Florida Gloss – DE or MBCA???
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4. International:
   a. UK, p. 488
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   1. Delaware:
      a. DGCL § 271(a)
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            a. Non-Existent
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   i. Theory / A Board Decision or a Fundamental Deal for Shareholder Approval???
   ii. A Note on the Delaware Doctrine of Independent Legal Significance / The Dividend Arrearage Cases:
       1. Skim Keller v. Wilson, 21 Del.Ch. 391 (Del. 1936)
       2. Skim Federal United Corp. v. Havender, 24 Del.Ch. 318 (Del. 1940)
   iii. Asset Sale Deal Forms over Mergers
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       2. Shareholder Rights Circumventions???
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          b. The De Facto Merger Doctrine:
             i. Pennsylvania / Farris v. Glen Alden, 143 A.2d 25 (Pa. 1958)
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i. Delaware / Hariton v. Arco Electronics, 188 A.2d 123 (Del. Ch. 1963), p. 484-489
d. Florida Gloss – DE or MBCA???
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3. Asset Sales Structuring over Mergers – Creditor Rights Circumventions???

iv. Subsidiary Asset Deals / Other Shareholder Rights Circumventions

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2. US:
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ix. Ch. 10 (Hostile Takeovers):

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      i. Proxy Fight
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   b. Theory
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ii. Ex Ante Market Regulation / ISS
Activism + Threats of Negative
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   a. Core Question = To Defend or not to Defend???
   b. Core Doctrine = Unocal Doctrine:
      ii. BUT Problems with Unocal??? Solutions???
   c. Subsequent Unocal Shareholder Democracy Layers
      i. Control / Director Contractual Governance Provisions as Takeover Proxy Fight “Defenses”:
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         3. Kraakman Problem on Proxy Fight Defenses:
            a. The Unfireable CEO???
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      1. A Note on Repurchase “Defenses”
      2. Delaware:
         a. A Worksheet on Dilution – revisited (word file posted on course portal)
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         i. Unitrin, 651 A.2d 1361 (Del. 1995)
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1. Strategic Decisions / Paramount v. Time, 571 A.2d 1140 (Del. 1990)

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d. Defensive Stock Issuances / The Equal Treatment of all Shareholders

i. Delaware:

1. Recall the Strict Old Days / Lunkenheimer
2. A Note on Poison Pills
3. The Post-Unocal Poison Pill Days:
   a. Legal Pills / Standard Pills:
      i. Moran v. Household, 500 A.2d 1346 (Del. 1985)
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      i. Quickturn v. Shapiro, 721 A.2d 1281 (Del. 1988)
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1. US / Delaware:

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e. Cumulative Defenses
   i. Recall Unitrin – see above
   ii. A Note on Chesapeake v. Shore, 771 A.2d 293 (Del. Ch. 2000)

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   a. Core Question = To Sell or not to Sell???
   b. Vertical Axis / Board Duties
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         1. Delaware:
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ii. Duty of Loyalty / White Knights Favoritism Defenses
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   2. A Note on Favoritism
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      a. Revlon “Effects” / What is Short-Term Value???
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         i. Time, 571 A.2d 1140 (Del. 1989)
         ii. Ivanhoe, 535 A.2d 1334 (Del. 1987)
         iii. A Note on Voting Agreements – Dis-amplifying Control / DGCL § 218(c)
             iv. QVC, 637 A.2d 34 (Del. 1994)
   5. “Act I ½” Regulation – The Omnicare Doctrine:
      a. Omnicare v. NCS, 818 A.2d 914 (Del. 2003)

5. International:
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1. A Note on the Dutch Stitching Defense, p. 523-524
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         1. A Note on LBOs
         2. International:
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6. Horizontal Axis
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      i. Introduction, p. 520
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         1. DE Law / Sinclair Standard???
         2. Comparative Law:
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               case, 219 F.2d 173
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               i. EU / Equal Opportunity Rule
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