

Seminar in International (US, EU and Japanese) Comparative Corporate Law – FALL 2019

LAW 6936-16103 - 2 credits

Prof. Seth Chertok
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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:

	Weighting
Class Participation	Roughly 9-14% (<i>though I reserve the right to make a slightly different adjustment</i>)
Seminar Paper	Roughly 86-91%

This class adheres to UF's posted grading policy:

Letter Grade	Point Equivalent
A (Excellent)	4.0
A-	3.67
B+	3.33
B	3.0
B-	2.67
C+	2.33
C (Satisfactory)	2.0
C-	1.67
D+	1.33
D (Poor)	1.0
D-	0.67
E (Failure)	0.0

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/sccr/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://gatorevals.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.bluera.com/ufl/>. Summaries of course evaluation results are available to students at <https://gatorevals.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

Required Textbook: Marco Ventoruzzo, et al., Comparative Corporate Law (2015)

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):

http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&URL=0600-0699/0607/0607.html

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

- **Business News**
 - Wall Street Journal Student/Academic Pass - https://partner.wsj.com/en/register?mod=wsj_uf4
 - New York Times Student/Academic Pass - <https://myaccount.nytimes.com/verification/edupass>
- **Due Diligence**
 - ABA's Manual on Acquisition Review
(on reserve in the library)
- **Contracting**
 - Charles M. Fox, Working with Contracts: What Law School Doesn't Teach You (2d ed. 2008)
(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)
 - The M&A Process: A Practical Guide for the Business Lawyer
(access through Bloomberg Law)
- **Regulations**
 - **Corporate Law** - Rainier Kraakman, et al., The Anatomy of Corporate Law: A Comparative and Functional Approach (3rd ed. 2017)
(available as e-book from Oxford University Press - <http://uf.catalog.fcla.edu/permalink.jsp?20UF035138809>)
 - **Securities Regulation** – Louis Loss & Joel Seligman, Fundamental of Securities Regulation (6th ed. 2011)
(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:
 - i. William J. Carney, Signalling and Causation in Insider Trading, 36 Cath. U. L. Rev. 863, 877-883 (1987)

b. Ventruruzzo 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:
 - i. Michael P. Dooley and Michael D. Goldman, Some Comparisons between the Model Business Corporation Act and the Delaware General Corporation Law, 56 Bus. Law. 737 (2001)
 - c. Florida:

- i. Stuart R. Cohn, *Dover Judicata: How Much Should Florida Courts Be Influenced by Delaware Corporate Law Decisions?*, 83-APR Fla. B.J. 20 (2009)
 - 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:
 - i. Management “Abuses” / Schnell v. Chris-Craft, 285 A.2d 437 (Del. 1971)

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)
 - ii. Kinney Shoe v. Polan, 939 F.2d 209 (4th 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:

- a. EU / Notes, p. 262-263
 - 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
 - c. Taking Action:
 - i. At Board Meetings:
 - 1. Delaware / DGCL § 141(b)
 - ii. By Written Consents:
 - 1. Delaware / DGCL § 141(f)
 - iii. Board Committees / Mini-Boards:
 - 1. Where Used / Transactional v. Independent Committees
 - 2. Statutory Basis / Scope:
 - a. Delaware / DGCL § 141(c)(2)
 - b. Florida / FBCA § 607.0825
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?
 1. Common v. Preferred v. Bondholders?
 - 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)
 - 2. Skim Haft v. Haft, 671 A.2d 413 (Del. Ch. 1995)
 - 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:
 - a. Gantler v. Stephens, 965 A.2d 695 (Del. 2009)

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???
6. Bolstering “Voting Power”
 - 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)
 - b. A Note on the Federal Securities Laws – Anti-Circumvention Provisions
 - 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
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 - a. A Refresher on Standards of Review
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- a. Delaware / DGCL § 145
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- 2. Theory
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 - i. “Fair Value”, Golden Telecom v. Global GT, 11 A.3d 214 (Del. 2010)
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 - 2. Florida:
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 - 1. US / Delaware:
 - a. The CBS Control Battle, James B. Stewart, *A Battle for Control of CBS, With Far-Reaching Consequences*, **N.Y. Times**, May 16, 2018, *available at* <https://www.nytimes.com/2018/05/16/business/cbs-viacom-battle-redstone.html?login=email&auth=login-email>
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