

Syllabus [Revised]

**Law of Corporate Management and Finance in Global Perspective**

LGST 202/802 and MGMT 808 – J.M. Huntsman Hall 340

Prof. Eric Orts

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Required texts:

William A. Klein, J. Mark Ramseyer & Stephen M. Bainbridge, *Business Associations: Cases and Materials on Agency, Partnerships, and Corporations* (Foundation Press, 7th ed. 2009).

William A. Klein & John C. Coffee, Jr., *Business Organization and Finance: Legal and Economic Principles* (10th ed. 2007).

Jonathan Charkham, *Keeping Better Company: Corporate Governance Ten Years On* (Oxford University Press 2006).

John Micklethwait and Adrian Wooldridge, *The Company: A Short History of a Revolutionary Idea* (Phoenix Press paperback ed. 2005)

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

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, 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 concerning large business corporations are also discussed.

Note for future accountants or law students: 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: Tuesdays from 1:30 to 2:30 and by appointment.

Quality circle: A small quality circle of student representatives may be used to provide mutual feedback on teaching, classroom issues, and class performance. No extra credit in terms of grading will be given for representatives in the quality circle (though a “free lunch” may be provided).

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.

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

Final exam: The scheduled final 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. A policy question is also possible. The exam will require 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, but most of the presentations will be scheduled for near the end of the semester. Departures from the syllabus-listed topics are possible, and topics must be cleared with the professor in advance. Groups should be two to three students. Teams will share responsibility and the grade for the presentation. Grades for the group projects will be based on the quality of the final presentation itself, as well as any supplementary written or other submissions provided indicating sources and research.

Class participation: Students are expected to come to class prepared to discuss the assigned material. A ranking for attendance and participation will be assessed for each class session with the final grade determined by an accumulation of credits 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 discussion 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 or its supplement.

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) [*Jan. 13*]

Klein & Coffee, pp. iii-iv, 1-4.

### I. AGENCY LAW

2. Agency Costs versus Agency Law: Who is an Agent? [*Jan. 20*]

**Ch. 1, pp. 1-13.**

Klein & Coffee, pp. 5-8, 11-21.

3. Liabilities of Principals to Third Parties in Contract: Actual and Apparent Authority -- and Ratification [*Jan. 25*]

**Ch. 1, pp. 14-26 [omit *Watteau*], pp. 31-35.**

4. Liabilities of Principals to Third Parties in Tort: Employees, Independent Contractors, and Franchises [*Jan. 27*]

**Ch. 1, pp. 42-59, 71-75.**

Klein & Coffee, pp. 19, 21-32.

5. The Fiduciary Duties of Agents: Introduction to Corporate Fiduciary Obligations [*Feb. 1*]

**Ch. 1, pp. 76-86.**

Klein & Coffee, pp. 32-45.

### II. PARTNERSHIPS (AND VARIATIONS)

6. What is a Partnership, and Who is a Partner? Partners Compared with Employees and Creditors; Partnership by Estoppel [*Feb. 3*]

**Ch. 2, pp. 87-104.**

Klein & Coffee, pp. 51-71.

7. Fiduciary Obligations of Partners [Feb. 8]

**Ch. 2, pp. 105-17, 125-31.**

Klein & Coffee, pp. 71-79.

8. Partnership Property and Management [Feb. 10]

**Ch. 2, pp. 132-35, 140-49, 173-74 (note on Buyout Agreements).**

Klein & Coffee, pp. 90-100.

9. Limited Partnerships and Limited Liability Companies [Feb. 15]

**Ch. 2, pp. 179-81; Ch. 4, pp. 281-93, 299-304.**

Klein & Coffee, pp. 100-05.

III. CORPORATIONS

10. Historical Background on the Corporation as a Business Organization [Feb. 17]

*The Company: A Short History of a Revolutionary Idea*, pp. xiii-78, 101-57.

Klein & Coffee, pp. 106-17.

**\*\* Two or three student team presentations on the history of the corporation and implications for the present [to be assigned]. \*\***

11. The Structure, Role, and Purposes of Corporations [Feb. 22]

**Ch. 3, pp. 264-80.**

Klein & Coffee, pp. 122-46, 150-56, 177-85.

12. The Corporate Form and Limited Liability: "Piercing the Corporate Veil" [Feb. 24]

**Ch. 3, pp. 189-200, 203-11; Ch. 4, pp. 294-98.**

Klein & Coffee, pp. 146-50.

13. Shareholder Direct and Derivative Litigation [*Mar. 1*]

**Ch. 3, pp. 214-37, 251-63.**

Klein & Coffee, pp. 207-13.

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

14. The Duty of Care [*Mar. 3*]

**Ch. 5, pp. 310-35.**

Klein & Coffee, pp. 156-62.

- Spring Break -

15. The Duty of Loyalty (including Corporate Opportunities) [*Mar. 15*]

**Ch. 5, pp. 336-57 [omit problems]; 370-74 [omit problems].**

Klein & Coffee, pp. 162-70.

16. The Obligations of Good Faith and Oversight [*Mar. 17*]

**Ch. 5, pp. 375-403.**

17. Duties of Disclosure and Fairness: Introduction to Securities Law [*Mar. 22*]

**Ch. 5, pp. 404-06 [omit *Robinson*], 412-13 [omit *Doran*], 419-21 [note only], 435-57 [omit problems].**

Klein & Coffee, pp. 170-73, 402-33.

18. Insider Trading (and Indemnification/Insurance Notes) [*Mar. 24*]

**Ch. 5, pp. 467-98 [omit problems], 508-09, 520 [notes on indemnification and insurance].**

Klein & Coffee, pp. 170-77.

## V. CORPORATE CONTROL

19. Proxy Fights and Shareholder Proposals [Mar. 29]

**Ch. 6, pp. 521-35 [omit problems], 547-56.**

Klein & Coffee, pp. 124-29, 185-89.

20. Takeovers: Enhanced Duty of Care and Duty to Auction [Mar. 31]

**Ch. 7, pp. 743-93.**

Klein & Coffee, pp. 189-207.

21. Extensions to Negotiated Acquisitions and Shareholder Disenfranchisement;  
Corporate Federalism and State Antitakeover Statutes [Apr. 5]

**Ch. 7, pp. 793-836.**

22. Corporate Debt [Apr. 7]

**Ch. 8, pp. 837-38, 845-75.**

Klein & Coffee, pp. 47-50, 310-13, 251-68.

## VI. Comparative and Global Corporate Governance

23. Comparative Corporate Governance I: Anglo-American Capitalism (U.S. and U.K.) [Apr. 12]

*The Company: A Short History of a Revolutionary Idea*, pp. 81-90.

Charkham, chs. 1, 5 and 6, pp. 1-27, 227-372.

**\*\* Two or three student team presentations on specific issues in U.S. or U.K. corporate governance or comparative corporate governance – including possible proposals for new regulatory reform [to be assigned].**

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24. Comparative Corporate Governance II: Continental Europe and Japan [Apr. 14]

Charkham, chs. 2, 3 and 4, pp. 28-226



**\*\* Two or three student team presentations on specific issues in German, French, or Japanese corporate governance or comparative corporate governance [to be assigned]. \*\***

25. Comparative Corporate Governance III: China, India, and Elsewhere [Apr. 19]

**\*\* Three student team presentations on specific issues of corporate governance or comparative corporate governance in China or other countries [to be assigned]. \*\***

26. Global Context: Multinational Corporations and Corporate Social Responsibility [Apr. 21]

*The Company: A Short History of a Revolutionary Idea*, pp. 159-91.

Charkham, pp. 18-22, 373-403.

**\*\* Three student team presentations on specific issues of global corporate governance or contemporary theory or practice of corporate social responsibility [to be assigned]. \*\***

27. Final class: Review [Apr. 26]

**Final Exam as scheduled, tentative date: Friday, May, 7, noon to 2 pm.**

## **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 joint appointment in the Management Department. He directs the Initiative for Global Environmental Leadership (IGEL) at Penn/Wharton. He serves also as an academic co-director of the FINRA at Wharton certificate program for securities compliance and regulatory professionals. His primary research and teaching interests are in environmental law and policy, corporate governance, and professional ethics.

Prior to joining Wharton's faculty in 1991, Orts practiced law 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 at the University of Pennsylvania Law School and visited at the UCLA School of Law, University of Michigan Law School, Tsinghua University, Sydney Law School, and NYU School of Law. He has also 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. 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.