

American Corporate Law and Practice:
Overview, Finance & Governance

Course Syllabus

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This course consists of ten (10) sections for a total of fifteen (15) hours. The goal of the lecture is to give an overview of US corporate law and practice from the perspectives of practitioners, as well as to provide an in-depth understanding of certain aspects which are timely and important for the Chinese audience, such as venture financing, which is becoming a common terminology and practice in China; corporate governance principles, which international media has turned spotlights on since the Enron bankruptcy; and an introduction to the U.S. securities law, which is essential understanding for Chinese enterprises seeking listing overseas.

The course materials are primarily classic cases, supplemented with various articles, casebooks or hornbooks as listed below.

The speakers could be reached as follows:

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Outlines

LECTURE ONE: OVERVIEW AND FORMATION OF CORPORATION

Lecturer: Zou, Ji

Corporate Form

- Basic Attributes
- Sources of Corporate Law

Pre-incorporation Transactions

- Rights and Liabilities of Corporations on Promoters' Contracts
- Rights and Obligations of Promoters on Promoters' Contracts

Incorporation

- Choice of Domicile State
- Incorporation Process
- Ultra Vires Doctrine

Reading Assignment:

1. *Lewis D. Solomon & Alan R. Palmiter, Corporations, Chapter 1*
2. *Larry D. Soderquist, A.A. Sommer, Jr., Pat K. Chew & Linda O. Smiddy, Corporate Law and Practice, Chapter 3.3*
3. *McArthur v. Times Printing Co., 48 Minn. 319, 51 N.W. 215(1892)*
4. *Sherwood & Roberts-Or., Inc. v. Alexander, 269 Or. 389, 525 P.2d 135 (1974)*
5. *Jacobson v. Stern, 605 P.2d 198 (Nev. 1980)*

LECTURE TWO: CORPORATE STRUCTURE – PART I
CAPITALIZATION AND SHAREHOLDERS' RIGHTS

Lecturer: Zou, Ji

Equity

- Types of Equity Securities and Related Concepts

Debt

- Types of Debt Securities and Related Concepts

Maintaining Shareholders' Investment Interest

- Preemptive Rights
- Share Transfer Restrictions and Buyout Provisions

Shareholders Voting Rights

- Statutory Voting Rights
- Contractual Voting Rights
- Shareholders Voting Structure and Corporate Governance

Reading Assignments:

1. *Larry D. Soderquist, A.A. Sommer, Jr., Pat K. Chew & Linda O. Smiddy, Corporate Law and Practice, Chapter 5*
2. *Hanewald v. Bryan's, Inc., 429 N.W.2d 414 (N.D. 1988)*
3. *Obre v. Alban Tractor Co., 179 A.2d 861 (Md. C.A. 1962)*
4. *Fett Roofing and Street Metal Co. v. Moore, 438 F. Supp. 726 (E.D. Va. 1977)*

LECTURE THREE: CORPORATE STRUCTURE – PART II
ORGANIZING THE CORPORATION AND CORPORATE AUTHORITY

Lecturer: Xu, Gang

Organizing the Corporation

- Bylaws
- Election of Directors and Officers
- Other Organizational Matters
- De Facto Corporation Doctrine and Corporation by Estoppel

Piercing the Corporate Veil

- Factors
- Formalities & Equities

Corporate Authority

- Functions and Authorities of Shareholder
- Functions and Authorities of Directors
- Functions and Authorities of Officers

Reading Assignments:

1. *Benintendi v. Kenton Hotel, Inc., Court of Appeals of New York, 60 N.E.2d 829 (1945)*
2. *Cantor v. Sunshine Greenery, Inc., N.J. Super. Ct., App. Div., 398 A.2d 571 (1979)*
3. *DeWitt Truck Brokers, Inc. v. W. Ray Flemming Fruit Co., 4th Cir., 540 F.2d 681 (1976)*
4. *Gashwiler v. Willis, Supreme Court of California, 33 Cal.11 (1867)*
5. *Manson v. Curtis, Court of Appeals of New York, 119 N.E.559 (1918)*
6. *Joseph Greenspon's Sons Iron & Steel Co. v. Pecos Valley Gas Co., Superior Court of Delaware, 156 A. 350 (1931)*

LECTURE FOUR: DIRECTORS' DUTY OF CARE

Lecturer: Xu, Gang

Directors' Fiduciary Duties

- Duty of Care
- Statutory Standards of Care and Protections
- Business Judgment Rule
- Limitations on Directors' Liability
- Indemnification and Insurance

Reading Assignments:

1. *Barnes v. Andrews*, S.D.N.Y., 298 F.614 (1924)
2. *Bates v. Dresser*, US Supreme Court, 251 U.S. 524 (1920)
3. *Litwin v. Allen*, Sup.Ct., 25 N.Y.S.2d 667 (1940)
4. *Smith v. Van Gorkom*, Delaware Supreme Court, 488 A.2d 858 (1985)
5. *Unocal Corp. v. Mesa Petroleum Co.*, Delaware Supreme Court, 493 A.2d 946 (1985)

LECTURE FIVE: DUTY OF LOYALTY AND DUTY OF FAIRNESS

Lecturer: Xu, Gang

Directors' Duty of Loyalty

- Transactions Involving Interested Directors
- Corporate Opportunity Doctrine
- Unfair Competition

Shareholders' Duty

- Controlling Shareholders
- Duty of Fairness
- Sale of Control and Operation of the Corporation

Reading Assignments:

1. *Globe Woolen Co. v. Utica Gas & Electric Co.*, New York Court of Appeals, 224 N.Y.483, 121 N.E. 378 (1918)
2. *Dravosburg Land Co. v. Scott*, Pennsylvania Supreme Court, 340 Pa.280, 16 A.2d 415 (1940)
3. *Guth v. Loft, Inc.*, Delaware Supreme Court, 5 A.2d 503 (1939)
4. *Perlman v. Feldman*, 2nd Circuit Court, 219 F.2d 173 (1955)
5. *Donahue v. Rodd Electrotype Co.*, Massachusetts Supreme Judicial Court, 328 N.E.2d 505 (1975)

LECTURE SIX: DIVIDENDS, DISTRIBUTIONS AND LIQUIDATION

Lecturer: Xu, Gang

Dividends and Distributions

- Mechanics and Forms of Dividends and Distributions
- Repurchase of a Corporation's Own Shares
- Limitations on Dividends and Distributions

Liquidation of Corporations

- Voluntary Dissolution, Administrative Dissolution, and Winding Up
- Distributions upon Liquidation and Protection of Creditors' Rights

Reading Assignments:

1. *Bayless Manning & James Hanks, Jr., Legal Capital (3rd ed., 1990)*
2. *Cox, Corporations, Volume III, Chapter 26*
3. *Dodge v. Ford Motor Co., Michigan Supreme Court, 170 N.W.668 (1919)*
4. *Gay v. Gay's Supermarkets, Inc., Maine Supreme Court, 343 A.2d 577 (1975)*
5. *In re Security Finance Company, California Supreme Court, 317 P.2d 1 (1957)*

LECTURE SEVEN: FUNDAMENTAL CORPORATE CHANGES

Lecturer: Zou, Ji

Internal Fundamental Changes

- Charter Amendments
- Dissolution

Corporate Combination

- Mergers
- Consolidations
- Sales of Assets
- Dissenting Shareholders Rights

Reading Assignments:

1. *Larry D. Soderquist, A.A. Sommer, Jr., Pat K. Chew & Linda O. Smiddy, Corporate Law and Practice, Chapter 13*
2. *Rath v. Rath Packing Co., 257 Iowa 1277, 136 N.W.2d 410 (1965)*
3. *Knapp v. North Am. Rockwell Corp., 506 F.2d 361 (3d Cir. 1974)*
4. *Singer v. Magnavox, 380 A.2d 969 (Del. 1977)*
5. *Weinberger v. UOP, Inc., 457 A.2d 701 (Del. 1983)*
6. *Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc., 506 A.2d 173 (Del. 1986)*

LECTURE EIGHT: INTRODUCTION TO CORPORATE (VENTURE) FINANCE

Lecturer: Zou, Ji

Overview of Venture Financing

- Basic Concepts
- Typical Fund Raising Process

Financing Documents

- Charter Documents
- Purchase Agreement
- Rights Agreement
- Others

Reading Assignments:

1. *Michael J. Halloran, Lee F. Benton, Robert V. Gunderson, Jr., Jorge del Calvo, Thomas W. Kintner, Venture Capital & Public Offering Negotiation (3rd Edition), Chapter 6*
2. *Sample Term Sheet and Financing Documents*

LECTURE NINE: INTRODUCTION TO US SECURITIES LAW

Lecturer: Zou, Ji

Federal Securities Laws and Regulations

- The 1933 Act
- The 1934 Act

The Role of Securities Laws in Corporate Finance

- Private Placement
- Public Offering

Reading Assignments:

1. *Handout*
2. *Lewis D. Solomon & Alan R. Palmiter, Corporations, Chapter 5*
3. *Escott v. BarChris Construction Corp., 283 F. Supp. 643,688 (S.D.N.Y. 1968)*
4. *Feit v. Leasco Data Processing Equipment, 332 F. Supp. 544, 578 (E.D.N.Y. 1971)*
5. *Rubin v. United States, 449 U.S. 424 (1981)*

LECTURE TEN: COMPARATIVE PERSPECTIVES

Guest speaker: Luming Chen, partner, King & Wood, Shanghai

Corporate Law Practice in US & China

Reading Assignments:

1. *Douglas M. Branson, The Very Uncertain Prospect of “Global” Convergence in Corporate Governance, 34 Cornell International Law Journal 321 (2001)*

Bibliography

Reference Books:

Lewis D. Solomon & Alan R. Palmiter, Corporations, 3rd Edition, 1999, published by Aspen Law & Business

Stoyan Tenev, Chunlin Zhang & Loup Brefort, Corporate Governance and Enterprise Reform in China: Building the Institutions of Modern Markets, 2002, published by World Bank

Robert A. G. Monks & Nell Minow, Corporate Governance, 2nd Edition, 2001, available at www.thecorporatelibrary.com

Franklin A. Gevurtz, Corporation Law, 2000, published by West Group/ Hornbook Series

Richard T. McDermott, Legal Aspects of Corporate Finance, 3rd Edition, 2000, published by LEXIS Publishing

Arthur R. Pinto & Douglas M. Branson, Understanding Corporate Law, 1999, published by Matthew Bender/ Casebook Skills Series

Larry D. Soderquist, A.A. Sommer, Jr., Pat K. Chew & Linda O. Smiddy, Corporate Law and Practice, 2nd Edition, 1999, published by PLI Press

Larry D. Soderquist, A.A. Sommer, Jr., Pat K. Chew & Linda O. Smiddy, Corporations and Other Business Organizations: Cases, Materials and Problems, 4th Edition, 1997, published by Michie

Lawrence E. Mitchell, Lawrence A. Cunningham & Lewis D. Solomon, Corporate Finance and Governance: Cases, Materials, and Problems for an Advanced Course in Corporations, 2nd Edition, 1996, published by Carolina Academic Press

James D. Cox, Thomas Lee Hazen & F. Hodge O'Neal, Corporations (successor to Ballantine on Corporations), Volumes I-III, 1995-2002, published by Aspen Law & Business

The American Law Institute, Principles of Corporate Governance: Analysis and Recommendations, Volumes 1 & 2, 1994, published by ALI

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Coudert was the first foreign law firm to establish a permanent presence in Beijing in 1979, and the first foreign law firm to be approved by the Ministry of Justice in China to establish a law office in Beijing in 1992. The China practice is evenly balanced between representation of foreign companies directly investing in China and representation of Chinese enterprises in a variety of international matters, including public offerings of securities, international transactions, venture financing, foreign commercial litigation, and regulatory administrative proceedings.

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