PUBLICLY HELD CORPORATIONS
FALL 2017
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SUBJECT INTRODUCTION / COURSE OVERVIEW
Following up on the material covered in the basic Business Organizations course, the Publicly Held Corporations course will examine legal doctrines and financial principles applicable to corporations whose stock is traded on a public exchange. We will consider not only various legal rules governing such business entities but also the financial and economic principles underlying the legal doctrine. In particular, we will consider:

• securities law issues (including an overview of securities regulation, securities fraud rules, insider trading doctrine, and the rules on short-swing profits);
• shareholder control in the public corporation (including proxy fights, shareholder proposals, and shareholder inspection rights);
• corporate combinations, both friendly and hostile; and (time permitting)
• federal regulation of corporate governance, including some key features of the Sarbanes-Oxley and Dodd-Frank laws.

ASSIGNMENTS & TEXTS
I will give specific reading assignments every day. For the most part, they will come from the required text:


In addition to the daily reading assignments, which I expect everyone to complete prior to class, I recommend that you consult the following supplemental sources:

STEPHEN M. BAINBRIDGE, CORPORATE LAW (2d ed. 2008).

STEPHEN M. BAINBRIDGE, CORPORATION LAW AND ECONOMICS (2002).

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Following is a tentative – and ambitious – list of the topics we will endeavor to consider:

I. **A review of corporation law basics**: pp. 359-73

II. **Securities law issues**
   a. What is a security?: pp. 395-402
   c. Securities fraud (Section 10(b), Rule 10b-5): pp. 427-50
   d. Insider trading: pp. 451-80
   e. Short-swing profits by statutory insiders (Section 16(b)): pp. 480-88

III. **Shareholder control in the public corporation**
   a. Proxy fights
      i. Strategic use of proxies: pp. 504-07
      ii. Who pays?: pp. 507-13
      iii. Private actions for proxy rule violations: pp. 513-27
   b. Shareholder proposals: pp. 527-46; Exchange Act Rule 14a-8 (handout)
   c. Shareholder inspection rights: pp. 546-58

IV. **Corporate combinations**
   a. Mergers and acquisitions
      i. M&A basics and the *de facto* merger doctrine: pp. 667-77
      ii. Freeze-out mergers: pp. 677-97
   b. Takeovers and takeover defenses
      i. Rejection of the passivity thesis: pp. 712-21
      ii. Delaware’s framework for evaluating takeover defenses: pp. 722-71
      iii. State and federal legislation: pp. 795-807

V. **Federal regulation of corporate governance matters**: TBA
ATTENDANCE AND CLASSROOM PARTICIPATION

Attendance – Regular class attendance is expected. I may adjust a student’s grade downward if she or he misses more than four classes.

Class participation – I expect that you will do the reading assignment each day and be prepared to discuss it in class. I will “cold call” on students to discuss the reading. When a student is called on and is unprepared, the entire class suffers. Accordingly, if you have not done the reading, please let me know in advance of class so that I do not call on you. You may avail yourself of this option a couple of times without penalty. Thereafter, or if you are unprepared when called upon, you risk being penalized for deficient classroom performance. In general, I reserve the right to reward exceptional class participation or penalize poor or inappropriate class participation1 in determining the final grade. I may adjust grades one or two points.

OFFICE HOURS

I maintain an “open door” office policy, which means that you may come by my office (Room 316) any time to discuss questions concerning the course material. I trust you’ll be understanding if I’m busy at the moment and suggest that we get together later.

I frequently work outside the office, so feel free to call or email me to set up a pre-arranged meeting time. You’re always welcome to call or text my mobile number, 773.580.7123. I turn the phone off when I don’t want to be disturbed.

GRADING

The grade for this class will be based on a student’s examination grade, potentially adjusted for attendance and class participation, as noted. The examination will be “limited open book”: published materials (other than the assigned readings) and materials prepared entirely by others are prohibited. The questions on the examination will be a combination of essay and multiple choice. Toward the end of the semester, I will post some model examination questions.

LEARNING OUTCOMES

Students in this course will:

- Learn the primary federal rules governing the issuance of corporate securities;
- Learn the economic rationale for securities regulation;

1 Please note that I will not penalize you for getting an answer wrong, provided that you made a mistake despite having done the reading. ALL of us make occasional mistakes when asked to think on our feet. I have found that one of the toughest parts of being a lawyer is learning to give an answer (oral or written) in the face of uncertainty. One of the goals of Socratic method is to help you overcome the fear of speaking when you’re uncertain, so I will not penalize good faith efforts that prove unsuccessful. That said, you may be penalized if it is apparent that your wrong answer is the result of poor preparation.
• Learn the elements of federal securities fraud and the available defenses;
• Learn basic principles of financial economics, including the different versions of the efficient capital markets hypothesis and the capital asset pricing model;
• Learn the rules on insider trading;
• Evaluate the policy merits of the federal rules on insider trading;
• Learn the rules related to “short swing profits” by statutory insiders of corporations;
• Learn the contours of federal proxy regulation;
• Learn the rules on shareholder proposals and the bases for excluding such proposals from the corporation’s own proxy materials;
• Evaluate the policy merits of the federal proxy and shareholder proposal rules;
• Learn the Delaware and New York rules on shareholder inspection rights;
• Learn the primary ways of accomplishing a negotiated corporate combination;
• Practice the skill of planning a corporate transaction;
• Learn the rules on takeover defenses;
• Assess the merits of mandatory structural rules as a means of regulating agency costs in a corporation;
• Practice the skill of policy analysis.

As explained above, assessment is summative (a final examination).

The course is NOT Standard 303 compliant (simulation/law clinic/field placement).

INFORMATION REGARDING DISABILITIES

If you need accommodations because of a disability, if you have emergency medical information to share with me, or if you need special arrangements in case the building must be evacuated, please inform me immediately. Please see me privately after class, telephone me (773.580.7123), or come by my office (Room 316). Alternatively, you may contact Associate Dean Rafael Gely to discuss potential accommodations.

STATEMENT REGARDING INTELLECTUAL PLURALISM

You are encouraged to think for yourself in this course. You need not agree with me, and you are most welcome to argue different sides on the issues we will confront. I will endeavor to treat you with respect, even when I disagree with your arguments, and I will expect you to afford similar treatment to me and your classmates. Participants in this course—including me—should endeavor to understand each other, not necessarily to agree with one another. If you believe at any point that your point of view (or that of another student) is being stifled or is not being given a fair hearing, please let me know.