

CONTENTS

1 *Theory of the Firm and Capital Markets, 1*

A *Theory of the Firm, 5*

Theory of the Firm: Managerial Behavior, Agency Costs,
and Ownership Structure, 5

Michael C. Jensen and William H. Meckling

Transaction Cost Economics, 10

Oliver E. Williamson

Ownership of the Firm, 16

Henry Hansmann

Firms, Contracts, and Financial Structure, 23

Oliver Hart

A Political Theory of American Corporate Finance, 29

Mark J. Roe

Notes and Questions, 33

B *Theory of Capital Markets, 40*

A Random Walk Down Wall Street, 40

Burton G. Malkiel

Corporate Finance, 52

Stephen A. Ross, Randolph W. Westerfield and
Jeffrey F. Jaffe

Event Studies and the Law: Part I: Technique and
Corporate Litigation, 65

Sanjai Bhagat and Roberta Romano

A Random Walk Down Wall Street, 72

Burton G. Malkiel

Notes and Questions, 80

2 *Legal Characteristics of the Corporation: Limited Liability, 90*

Limited Liability and the Corporation, 92

Frank H. Easterbrook and Daniel R. Fischel

Limited Liability in the Theory of the Firm, 99

Susan E. Woodward

Toward Unlimited Shareholder Liability for Corporate
Torts, 102

Henry Hansmann and Reinier Kraakman

Notes and Questions, 107

- A* *State Competition for Corporate Charters*, 117
 The State Competition Debate in Corporate Law, 117
 Roberta Romano
 Toward an Interest Group Theory of Delaware Corporate
 Law, 123
 Jonathan R. Macey and Geoffrey P. Miller
 The Myth of State Competition in Corporate Law, 126
 Marcel Kahan and Ehud Kamar
 Delaware's Competition, 130
 Mark Roe
 Uncorporations and the Delaware Strategy, 132
 Saul Levmore
 Notes and Questions, 139
- B* *The Structure of Corporation Laws*, 152
 The Corporate Contract, 152
 Frank H. Easterbrook and Daniel R. Fischel
 The Mandatory Structure of Corporate Law, 160
 Jeffrey N. Gordon
 The Mandatory/Enabling Balance in Corporate Law: An
 Essay on the Judicial Role, 167
 John C. Coffee, Jr.
 What Do Corporate Default Rules and Menus Do? An
 Empirical Examination, 169
 Yair Listokin
 Notes and Questions, 174

4 *Financing the Corporation, 183*

- On Financial Contracting: An Analysis of Bond Covenants,
 185
 Clifford W. Smith, Jr., and Jerold B. Warner
 Contractual Resolution of Bondholder—Stockholder
 Conflicts in Leveraged Buyouts, 192
 Kenneth Lehn and Annette Poulsen
 Active Investors, LBOs, and the Privatization of
 Bankruptcy, 194
 Michael C. Jensen
 The Structure and Governance of Venture Capital
 Organizations, 196

William A. Sahlman
Two Agency–Cost Explanations of Dividends, 201
Frank H. Easterbrook
Notes and Questions, 203

5 *Internal Governance Structures: Boards of Directors, 217*

- A *Boards of Directors, 219***
Corporate Governance, 219
Oliver E. Williamson
Empirical Studies of Corporate Law, 226
Sanjai Bhagat and Roberta Romano
The Human Nature of Corporate Boards: Law, Norms, and
the Unintended Consequences of Independence and
Accountability, 228
Donald C. Langevoort
Notes and Questions, 237
- B *Director Liability for Breach of Duty, 246***
The Shareholder Suit: Litigation Without Foundation?, 246
Roberta Romano
The New Look of Shareholder Litigation:
Acquisition–Oriented Class Actions, 257
Robert B. Thompson and Randall S. Thomas
File Early, Then Free Ride: How Delaware Law
(Mis)Shapes Shareholder Class Actions, 270
Elliott J. Weiss and Lawrence J. White
The Public and Private Faces of Derivative Lawsuits, 277
Robert B. Thompson and Randall S. Thomas
Predicting Corporate Governance Risk: Evidence from the
Directors' & Officers' Liability Insurance Market,
280
Tom Baker and Sean J. Griffith
The Missing Monitor in Corporate Governance: The
Directors' & Officers' Liability Insurer, 292
Tom Baker and Sean J. Griffith

Does "Unlawful" Mean "Criminal"?: Reflections on the
Disappearing Tort/Crime Distinction in American
Law, 301

John C. Coffee, Jr.

Corporate Crime Legislation: A Political Economy
Analysis, 307

Vikramaditya S. Khanna

Notes and Questions, 315

6 *Internal Governance Structures: Shareholder Voting and
Exercise of Voice, 329*

A *Shareholder Voting Rights, 331*

Voting in Corporate Law, 331

Frank H. Easterbrook and Daniel R. Fischel

Ties That Bond: Dual Class Common Stock and the
Problem of Shareholder Choice, 337

Jeffrey N. Gordon

The Case for Increasing Shareholder Power, 341

Lucian Arye Bebchuk

Director Primacy and Shareholder Disempowerment, 353

Stephen M. Bainbridge

The Mythical Benefits of Shareholder Control, 356

Lynn A. Stout

The New Vote Buying: Empty Voting and Hidden
(Morphable) Ownership, 360

Henry T.C. Hu and Bernard Black

Notes and Questions, 364

B *Exercising Voice: Institutional Investors in Action, 372*

Less is More: Making Institutional Investor Activism a
Valuable Mechanism of Corporate Governance, 372

Roberta Romano

Hedge Funds in Corporate Governance and Corporate
Control, 384

Marcel Kahan and Edward B. Rock

Hedge Fund Activism, Corporate Governance, and Firm
Performance, 393

Alon Brav, Wei Jiang, Frank Partnoy and Randall
Thomas

Fiduciary Duties for Activist Shareholders, 397

Iman Anabtawi and Lynn Stout
The Promise and Peril of Corporate Governance Indices,
403

Sanjai Bhagat, Brian Bolton and Roberta Romano
Notes and Questions, 410

7 *Internal Governance Structures: Executive Compensation, 426*

Executive Compensation, 427

Kevin J. Murphy

Incentive and Tax Effects of Executive Compensation
Plans, 433

Clifford W. Smith, Jr. and Ross L. Watts

Pay without Performance: Overview of the Issues, 437

Lucian A. Bebchuk and Jesse M. Fried

Executive Compensation: If There's a Problem, What's the
Remedy? The Case for "Compensation Discussion
and Analysis", 448

Jeffrey N. Gordon

Pay without Performance and the Managerial Power
Hypothesis: A Comment, 457

Bengt Holmstrom

"Empowering Shareholders on Executive Compensation"
and H.R. 1257, the "Shareholder Vote on Executive
Compensation Act," 464

Steven N. Kaplan

Say on Pay Votes and CEO Compensation: Evidence from
the UK, 468

Fabrizio Ferri and David Maber

Notes and Questions, 472

**8 *External Governance Structure: The Market for Corporate
Control, 488***

A Theories and Evidence, 491

Mergers and the Market for Corporate Control, 491

Henry G. Manne

Takeovers: Their Causes and Consequences, 492

Michael C. Jensen

Risk Reduction as a Managerial Motive for Conglomerate
Mergers, 495

- Yakov Amihud and Baruch Lev
The Hubris Hypothesis of Corporate Takeovers, 496
Richard Roll
The Market for Corporate Control: The Empirical Evidence
Since 1980, 500
Gregg A. Jarrell, James A. Brickley and Jeffry M.
Netter
Hostile Takeovers in the 1980s: The Return to Corporate
Specialization, 503
Sanjai Bhagat, Andrei Shleifer and Robert W.
Vishny
New Evidence and Perspectives on Mergers, 505
Gregor Andrade, Mark Mitchell and Erik Stafford
Leveraged Buyouts and Private Equity, 515
Steven N. Kaplan and Per Strömberg
Notes and Questions, 526

- B* *Management's Fiduciary Duty and Takeover Defenses*, 546
The Proper Role of a Target's Management in Responding
to a Tender Offer, 546
Frank H. Easterbrook and Daniel R. Fischel
Seeking Competitive Bids Versus Pure Passivity in Tender
Offer Defense, 550
Ronald J. Gilson
The Case for Facilitating Competing Tender Offers: A
Reply and Extension, 553
Lucian A. Bebchuk
The Market for Corporate Control: The Empirical Evidence
Since 1980, 555
Gregg A. Jarrell, James A. Brickley and Jeffry M.
Netter
The Wealth Effects of Second-Generation State Takeover
Legislation, 560
Jonathan M. Karpoff and Paul H. Malatesta
The Future of Hostile Takeovers: Legislation and Public
Opinion, 566
Roberta Romano

Do IPO Charters Maximize Firm Value? Antitakeover
Protection in IPOs, 573
Robert Daines and Michael Klausner

Securities Regulation, 600

A Disclosure Regulation, 603

Mandatory Disclosure and the Protection of Investors, 603

Frank H. Easterbrook and Daniel R. Fischel

Market Failure and the Economic Case for a Mandatory Disclosure System, 609

John C. Coffee, Jr.

Measuring the Costs and Benefits of Regulation:

Conceptual Issues in Securities Markets, 611

J. Harold Mulherin

Mandatory Disclosure as a Solution to Agency Problems, 619

Paul G. Mahoney

Securities Fraud as Corporate Governance: Reflections upon Federalism, 629

Robert B. Thompson and Hillary A. Sale

Notes and Questions, 636

B Insider Trading Regulation, 646

Insider Trading, Rule 10b-5, Disclosure, and Corporate Privacy, 646

Kenneth E. Scott

The Regulation of Insider Trading, 650

Dennis W. Carlton and Daniel R. Fischel

Substitutes for Insider Trading, 653

Ian Ayres and Joe Bankman

Notes and Questions, 661

C Who Should Regulate?, 668

Empowering Investors: A Market Approach to Securities Regulation, 668

Roberta Romano

The Exchange as Regulator, 678

Paul G. Mahoney

Regulating Investors Not Issuers: A Market-Based Proposal, 686

Stephen Choi

The SEC, Retail Investors, and the Institutionalization of

the Securities Markets, 695
Donald C. Langevoort
Notes and Questions, 700

10 *Comparative Corporate Law, 705*

Legal Determinants of External Finance, 706
Rafael La Porta, Florencio Lopez-De-Silanes,
Andrei Shleifer and Robert W. Vishny
The Economic Consequences of Legal Origins, 713
Rafael La Porta, Florencio Lopez-De-Silanes and
Andrei Shleifer
A Self-Enforcing Model of Corporate Law, 725
Bernard Black and Reinier Kraakman
The Legal and Institutional Preconditions for Strong
Securities Markets, 729
Bernard S. Black
A Theory of Path Dependence in Corporate Governance
and Ownership, 741
Lucian Ayre Bebchuk and Mark J. Roe
The End of History for Corporate Law, 747
Henry Hansmann and Reinier Kraakman
Notes and Questions, 757