



Corporate Governance & Finance

Academic Year 2019/2020

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Summary

The course ‘Corporate Governance and Finance’ aims to enhance the understanding of the interaction of economic and legal mechanisms applicable to markets, contracts and corporations. Fields of the law treated are corporate and capital market law, including references to contract law.

The course covers basic questions such as: (1) When is a corporation a functional transaction structure? (2) For which of the core structural elements of corporations is law needed? (3) Which corporate governance problems should be solved by law? (4) To what extent do specific problems of control transactions interact with corporate governance? (5) In view of one to four, which are the challenges a functional rule making should take care of? The last class will be devoted to exam training.

Course readings are taken mainly from the ‘Anatomy of Corporate Law’, edited by *Kraakman* et al., 3rd ed., 2017. Selected chapters of the ‘Anatomy’, additional readings and further materials are available online.

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1. Class 1: Transaction governance and corporations

Summary: course aim, the firm and its size, incomplete contracts, specific investment, hold up, contract governance, modes and costs

Main question: When is a corporation a functional transaction structure?

Topics

- Coase's world: transaction costs
- Klein's world: hold-ups
- Williamson's world: critical dimensions

Reading **the main ideas will be covered in class, studying the slides suffices*

- Coase, 4 *Economica* 386 (1937)
- Klein, 4 *J. L. Econ. & Organ.* 199 (1988), esp. p. 199-208
- Williamson, 22 *J. L. Econ.* 233 (1979)

2. Class 2: Corporations and the law

Summary: characteristic elements of the large business enterprise, evolution and role of corporate law, market failure, information asymmetry, moral hazard

Main Question: For which of the core structural elements of corporations is law needed?

Topics

- What is a corporation?
- What is corporate law?
- What drives corporate law?
- Outlook: How to analyze agency problems?

Obligatory

- Anatomy, p. 1- 34 (focus on 1-29)

Voluntary

- Hopt, in: Reimann/Zimmermann, ed., 2006, p. 1161 **focus on the roles of legislators, lawyers, academics, judges (p. 1167-1172)*

3. Class 3: Corporate governance

Summary: agency costs, regulatory and governance strategies to reduce agency costs, incompatibilities b/w shareholder and management incentives, compliance enforcement strategies, board models

Main question: Which corporate governance problems does the law have to solve?

Topics

- How to reduce agency costs?
- How to enforce compliance?
- Why do managers not comply?
- What is the role of the board of directors?

Obligatory

- Anatomy, p. 35-72

Voluntary

- Hopt, 59 *Am J. Comp. L.* 1 (2011) **repository for knowledge deepening in selected areas*

- *Hopt/Leyens*, ECFR 2004, 135, www.ssrn.com *focus on convergence (p. 160-166), not details

4. Class 4: Control transactions

Summary: agency problem, market-based corporate governance, interdependencies between internal and external corporate governance

Main question: To what extent do specific problems of control transactions interact with corporate governance?

Topics

- What are the core agency problems in takeovers?
- How does EU law address agency problems (as opposed to the U.S.)?
- When are takeovers functional for corporate governance?
- What do takeovers tell about modes of regulation?

Obligatory

- Anatomy, p. 205-242 (focus on 205-231, 236-242)

Voluntary

- *Bebchuk*, 12 Del. J. Corp. L. 911 (1987) *the core ideas are covered by the Anatomy

5. Class 5: Regulatory challenges (incl. revision)

Summary: This class will be devoted to open questions and tailored to the progress made so far. General issues concern regulatory techniques, path dependencies, institutional settings and future challenges.

Main question: In view of the foregoing classes, which are the challenges corporate law making should take care of?

Topics

- What are the chances of new modes of regulation (e.g. comply or explain)?
- Why is corporate law path-dependent (e.g. corporate history)?
- What next in corporate law (e.g. ownership patterns as proxy for corporate theory)?

Obligatory

- Anatomy, p. 267-272

Voluntary

- *Sandrock/du Plessis*, in: du Plessis et al., 2012, p. 149-196 *we will treat aspects of German co-determination (p. 151-173); studying the slides is sufficient
- *Fox/Heller*, eds., in: Corporate Governance Lessons from Transition Economy Reforms, 2006, p. 3, www.ssrn.com *examples of path-dependencies
- *Bratton/McCahery*, 38 Colum. J. Transnat'l L. 213 (1999) *theory of path-dependence

Bibliography

a) Internet Resources

- Corporate Governance Network: <http://www.CorpGov.net>.
- Encyclopedia of Law and Economics: all fields of L&E, <http://encyclo.findlaw.com/>
- European Commission: law making EU, http://ec.europa.eu/justice/civil/company-law/index_en.htm

- European Corporate Governance Institute: corporate governance codes, corporate governance research, <http://www.ecgi.org>
- Journal Storage (JSTOR), large database, mainly on economics, many original texts, <http://www.jstor.org>
- Max Planck Institute for Comparative and International Private Law, Bibliographical links to foreign and international law, legal history and library catalogues, http://www.mpipriv.de/ww/en/pub/library/research_tools/bibliographical_links.htm
- Social Science Research Network, largest international research database <http://www.ssrn.com>

b) General monographs and edited volumes

- *Cooter/Ulen*, Law and Economics, 6th ed., 2016, www.scholarship.law.berkeley.edu/books/2
- *Furubotn/Richter*, Institutions & Economic Theory, 2nd ed., 2005 *includes L&E glossary
- *Towfigh/Petersen* (eds.), Economic Methods for Lawyers, 2015 (German ed: *Ökonomische Methoden im Recht: Eine Einführung für Juristen*, 2nd ed., 2017) *short, comprehensive
- *Posner*, Economic Analysis of the Law, 7th ed., 2007
- *Schäfer/Ott*, The Economic Analysis of Civil Law, 2004 (German ed.: *Lehrbuch der ökonomischen Analyse des Zivilrechts*, 5th ed., 2012)

c) Corporate Law

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- *Romano, Roberta*, The Sarbanes-Oxley Act and the Making of Quack Corporate Governance, 114 Yale L. J. 1521 (2005)
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