



The Hebrew University of Jerusalem

Syllabus

Corporate Law and Governance - 62626

Last update 19-10-2017

HU Credits: 4

Degree/Cycle: 1st degree (Bachelor)

Responsible Department: Law

Academic year: 0

Semester: 2nd Semester

Teaching Languages: Hebrew

Campus: Mt. Scopus

Course/Module Coordinator: Nitzan Shilon

Coordinator Email: nshilon@sjd.law.harvard.edu

Coordinator Office Hours:

Teaching Staff:

Dr. Nitzan Shilon

Course/Module description:

In every developed market-economy, organizational law in general and corporate law in particular plays an essential role in the economy by providing a wide range of rules, arrangements and legal-entities, that design the way in which corporations, as well as other legal entities, are governed. Therefore, the knowledge and understanding of corporate governance policy is essential not only for designing corporate law policy but also for designing general economic policy and firms behavior. What is, if any, the essential role of organizational law from an economic perspective? What institutions in modern corporate law facilitate those roles? How much power should shareholders have vis-à-vis managers? How much and in what form should managers be compensated? How do all those questions relate to developed financial markets and economic growth? What benefits and constraints do developed financial markets impose on corporate governance and corporate law?

We will consider these questions and others with particular emphasis on American corporate law and the American financial markets, focusing on diffused ownership companies. We will analyze corporate law and corporate governance from an analytical and critical economic perspective. We will challenge common legal practices and theories as well as classical economic concepts.

Students will be encouraged to explore these issues by engaging in class discussions, and by writing analytical seminar papers. There will be no exam.

Course/Module aims:

Learning outcomes - On successful completion of this module, students should be able to:

Students will have extensive knowledge of traditional and current corporate governance and executive compensation theories.

Students will be able to apply theory to current real-world debates in the field.

Students will be able to critically analyze theories and practices of public corporations pertaining corporate governance and executive compensation.

Students will think about their own constructive ideas to fix certain governance and compensation arrangements and to be able to articulate their pros and cons.

Students will be able to present their own analysis orally in class discussions and in seminar presentations.

Students will be able to thoroughly and clearly express themselves in writing their seminar papers.

Attendance requirements(%):
100

Teaching arrangement and method of instruction:

Course/Module Content:

1. The Corporate Form
2. Legal and Market Solutions to Agency Problems in Diffused Ownership Companies
3. The current Debate on Shareholder Activism
4. Executive Compensation
5. Corporate Control Transactions
6. The Future of Corporate Governance

Required Reading:

Part I – THE CORPORATE FORM

Class 1 – The Essential role of Organizational Law

Please read the introduction and chapters III, IV, VI: Henry Hansmann & Reinier Kraakman, “The Essential Role of Organizational Law”, 110 Yale Law Journal 387 (2000).

Class 2 – Who Needs Limited Liability?

Pls. read the full article except for chapter III: Frank H. Easterbrook & Daniel R. Fischel, “Limited Liability and the Corporation”, 52 University of Chicago Law Review 89 (1985).

Pls. read the full article except for chapters II, III, V: Joseph A. Grundfest, “The Limited Future of Unlimited Liability: A Capital Markets Perspective”, 102 Yale Law Journal 387 (1992).

Recommended reading: Henry Hansmann & Reinier Kraakman, “Towards Unlimited Liability for Corporate Torts”, 100 Yale Law Journal 1879 (1991).

Class 3 – Agency Theory

Introduction, Chapters I, II, III of: Eugene Fama & Michael Jensen, “Separation of Ownership and Control”, 26 Journal of Law & Economics 301 (1983).

Introduction of Michael Jensen & William Meckling, “Theory of the Firm: Managerial

Behavior, Agency Costs and Ownership Structure”, Journal of Financial Economics 3(4) 305-360 (1976).

Part II – LEGAL AND MARKET SOLUTIONS TO AGENCY PROBLEMS IN DIFFUSED OWNERSHIP COMPANIES

Class 4 - The Board of Directors and its Fiduciary Duty

Oliver Hart, “An economist’s view on fiduciary duty”, 42 University of Toronto Law Journal 299 (1993).

Mark Maremont, “The CEO's Private Golf Shuttle”, Wall Street Journal, Oct. 1, 2005.

Recommended reading: A. A. Berle Jr., “Corporate Powers as Powers in Trust”, 44, Harvard Law Review 1049 (1931).

Class 5 - Takeovers and the Market for Corporate Control I

p. 175-182 of Sanford Grossman & Oliver Hart, “One Share, One Vote, and the Market for Corporate Control”, 20 Journal of Financial Economics 175 (1988).

Easterbrook & Fischel, The Proper Role of a Target’s Management in Responding to a Tender Offer, 94 Har. L. Rev. 1161 (1984)

Part III – THE CURRENT DEBATE ON SHAREHOLDER ACTIVISM

Class 6 - Hedge Fund Activism

Pls. read this article except for chapter II: Kahan, Marcel and Rock, Edward B., Hedge Funds in Corporate Governance and Corporate Control , 155 Uni. Penn. L. Rev. 1021 (2007).

Class 7 – The 2014 Bebchuk Lipton Debate on the Long-Term Effects of Hedge Fund Activism

Introduction, Chapters I, II and VII of: Lucian A. Bebchuk, Alon Brav, and Wei Jiang, The long-term effects of hedge fund activism, Forthcoming, Columbia Law Review, vol. 114, 2014.

Martin Lipton, Wachtell, Lipton, Rosen & Katz, The Bebchuk Syllogism, The Harvard Law School Forum on Corporate Governance and Financial Regulation, August 26, 2013.

Recommended: Martin Lipton, Wachtell, Lipton, Rosen & Katz, Current Thoughts About Activism, Revisited, The Harvard Law School Forum on Corporate Governance and Financial Regulation, April 8, 2014.

Class 8 - Shareholders Voting: Empty Voting, Vote Buying & the New Financial Products

Pages 628-654, 682-684 of Henry T. C. Hu, Bernard Black, "Equity and Debt Decoupling and Empty Voting II: Importance and Extensions", 156 U. Pa L. Rev. 625 (2007)

Recommended reading: Henry T. C. Hu & Bernard S. Black, Hedge Funds, Insiders and Empty Voting: Decoupling of Economic and Voting Ownership in Public Companies (working paper 2006), available at <http://ssrn.com/abstract=eq;874098>.

Class 9 – The 2014 Bebchuk Lipton Debate on Blockholder Disclosure

Pls. read p. 40-52 of Lucian Bebchuk and Robert J. Jackson, Jr., The Law and Economics of Blockholder Disclosure, Harvard Business Law Review, Vol. 2, No. 1, pp. 40-60, Spring 2012.

Wachtell, Lipton, Rosen & Katz, Petition for Rulemaking under Section 13 of the Securities Exchange Act of 1934, March 7, 2011.

Class 10 – The Bebchuk Lipton Debate on Shareholder Access to the Ballot

Pls. read p. 1-19 of Lucian Bebchuk, The Case for Shareholder Access to the Ballot, The Business Lawyer (2003) reprinted in Shareholder Access to the Corporate Ballot

Pls. read p. 67-70, 82-94 of Martin Lipton and Steve Rosenblum, Election Contests in the Company's Proxy: An Idea Whose Time Has Not Come, The Business Lawyer (2003) reprinted in Shareholder Access to the Corporate Ballot

Recommended reading: The Bebchuk Bylaw: Devilish.. but Brilliant, 6 The M&A Journal 10 (2006).

Part IV – EXECUTIVE COMPENSATION

Class 11 – Executive Compensation – The Big Picture

Introduction and Summary, List of Recommendations and Guiding Principles, and Chapters 1, 2, 6 of Michael Jensen, Kevin Murphy & Eric Wruck, Remuneration: Where We've Been, How We Got to Here, What are the Problems, and How to Fix Them, working paper (2004).

Class 12 – Executive Compensation As an Agency Problem

Chapter 5, 6 of Michael Jensen, Kevin Murphy & Eric Wruck, Remuneration: Where We've Been, How We Got to Here, What are the Problems, and How to Fix Them, working paper (2004)

Lucian Bebchuk & Jesse Fried, "Pay without Performance: Overview of the Issues," 17 Journal of Applied Corporate Finance 8-22 (2005).

Recommended readings:

Charles Forelle & James Bandler, "The Perfect Payday", Wall Street Journal Mar. 18, 2006, available at <http://online.wsj.com/news/articles/SB114265075068802118>
Xavier Gabaix & Augustin Landier, Why Has CEO Pay Increased So Much?,
Forthcoming in the Quarterly Journal of Economics, 2007.

Hall, Brian J., and Jeffrey B. Liebman (1998), Are CEOs Really Paid Like Bureaucrats? Quarterly Journal of Economics 113, 653-691.

Class 13 – Nitzan Shilon, The Case for Cash-for-Performance (working paper)

Class 14 – Core, Guay & Larcker, Executive Equity Compensation: A Survey

Class 15 – David Walker, The Way We Pay Now: Understanding and Evaluating Performance-Based Executive Pay, 1 Journal of Law, Finance, and Accounting 395 (2016).

Class 16 –

Alexander Pepper, Julie Gore & Alf Crossman, Are Long-Term Incentive Plans an Effective and Efficient Way of Motivating Senior Executives? 23 (1) Human Resource Management Journal 36 (2013).

Class 17 – Executive Stock Holdings as a Tool for Executive Accountability (i)

Nitzan Shilon, CEO Stock Ownership Policies – Rhetoric and Reality, 90(1) Indiana Law Journal 353 (2015).

Class 18 – Executive Stock Holdings as a Tool for Executive Accountability (ii)

Nitzan Shilon, Putting Directors Money Where Their Mouths Are: A New Approach to Corporate TakeoverDynamics, COLUM. BUS. L. REV. 511 (2017).

Part V – CORPORATE CONTROL TRANSACTIONS

Class 19 – Introduction and Chapters II, III in Frank Easterbrook & Daniel R. Fischel, Corporate Control Transactions, 91 Yale L.J. 698 (1982)

Class 20 – Lucian Bebchuk, Efficient and Inefficient Sales of Corporate Control, 109 Quarterly Journal of Economics 957-993 (1994) (please do not try to understand the formulas, but rather focus on the qualitative analysis of the paper).

Class 21 – Freeze-Outs

Introduction and p. 22, 30- 47, 55-63 of Subramanian, Guhan. Fixing Freeze-outs, 115 Yale Law Journal 2 (2005).

Part VI – THE FUTURE OF CORPORATE GOVERNANCE

Class 22 – Outlook to the Future of Corporate Governance

Jill Fisch, The Overstated Promise of Corporate Governance (reviewing Corporate Governance: Promises Kept, Promises Broken by Jonathan Macey), 77(2) Chic. L.

Rev. 923 (2010).

Additional Reading Material:

Course/Module evaluation:

End of year written/oral examination 0 %

Presentation 0 %

Participation in Tutorials 50 %

Project work 50 %

Assignments 0 %

Reports 0 %

Research project 0 %

Quizzes 0 %

Other 0 %

Additional information: