

# Contents

## List of Authors

xv

<b>1. What Is Corporate Law?</b>	<b>1</b>
<i>John Armour, Henry Hansmann, Reinier Kraakman, and Mariana Pargendler</i>	
1.1 Introduction	1
1.2 What Is a Corporation?	5
1.2.1 Legal personality	5
1.2.2 Limited liability	8
1.2.3 Transferable shares	10
1.2.4 Delegated management with a board structure	11
1.2.5 Investor ownership	13
1.3 Sources of Corporate Law	15
1.3.1 Special and partial corporate forms	15
1.3.2 Other bodies of law	16
1.4 Law versus Contract in Corporate Affairs	17
1.4.1 Mandatory laws versus default provisions	18
1.4.2 The benefits of legal rules	19
1.4.3 Choice of legal regime	21
1.5 What Is the Goal of Corporate Law?	22
1.6 What Forces Shape Corporate Law?	24
<b>2. Agency Problems and Legal Strategies</b>	<b>29</b>
<i>John Armour, Henry Hansmann, and Reinier Kraakman</i>	
2.1 Three Agency Problems	29
2.2 Legal Strategies for Reducing Agency Costs	31
2.2.1 Rules and standards	32
2.2.2 Setting the terms of entry and exit	33
2.2.3 Trusteeship and reward	35
2.2.4 Selection and removal	37
2.2.5 Initiation and ratification	37
2.2.6 <i>Ex post</i> and <i>ex ante</i> strategies	37
2.3 Disclosure	38
2.4 Compliance and Enforcement	39
2.4.1 Enforcement and intervention	39
2.4.2 Initiators of enforcement	40
2.4.3 Penalties	43
2.5 Legal Strategies in Corporate Context	45
2.6 Systematic Differences	45
<b>3. The Basic Governance Structure: The Interests of Shareholders as a Class</b>	<b>49</b>
<i>John Armour, Luca Enriques, Henry Hansmann, and Reinier Kraakman</i>	
3.1 Delegated Management and Corporate Boards	50

3.2	Appointment and Decision Rights	51
3.2.1	Appointing directors	53
3.2.2	Removing directors	55
3.2.3	Decision rights	57
3.2.4	Shareholder coordination	58
3.3	Agent Incentives	62
3.3.1	The trusteeship strategy: Independent directors	62
3.3.2	The reward strategy: Executive compensation	66
3.4	Legal Constraints and Affiliation Rights	68
3.4.1	The constraints strategy	69
3.4.2	Corporate governance-related disclosure	71
3.5	Explaining Jurisdictional Variation	72
4.	<b>The Basic Governance Structure: Minority Shareholders and Non-Shareholder Constituencies</b>	79
	<i>Luca Enriques, Henry Hansmann, Reinier Kraakman, and Mariana Pargendler</i>	
4.1	Protecting Minority Shareholders	79
4.1.1	Shareholder appointment rights and deviations from one-share-one-vote	80
4.1.2	Minority shareholder decision rights	84
4.1.3	The incentive strategy: Trusteeship and equal treatment	84
4.1.4	Constraints and affiliation rights	88
4.2	Protecting Employees	89
4.2.1	Appointment and decision rights strategies	90
4.2.2	The incentives and constraints strategies	91
4.3	Protecting External Constituencies	92
4.3.1	Affiliation strategies	94
4.3.2	Appointment and decision rights strategies	95
4.3.3	The incentives and constraints strategies	97
4.4	Explaining Jurisdictional Differences and Similarities	100
4.4.1	The law-on-the-books	100
4.4.2	The law in practice	102
5.	<b>Transactions with Creditors</b>	109
	<i>John Armour, Gerard Hertig, and Hideki Kanda</i>	
5.1	Asset Partitioning and Agency Problems	110
5.1.1	Asset partitioning and corporate creditors	110
5.1.2	Shareholder-creditor agency problems	111
5.1.3	Creditor-creditor coordination and agency problems	116
5.2	Solvent Firms	119
5.2.1	The affiliation strategy—mandatory disclosure	119
5.2.2	The rules strategy: Legal capital	124
5.3	Distressed Firms	127
5.3.1	The standards strategy	128
5.3.2	Governance strategies	135
5.4	Ownership Regimes and Creditor Protection	140
5.4.1	Regulatory or contractual controls for solvent firms?	141
5.4.2	The role of bankruptcy law	142

<b>6. Related-Party Transactions</b>	145
<i>Luca Enriques, Gerard Hertig, Hideki Kanda, and Mariana Pargendler</i>	
6.1 Why Are Related-Party Transactions Permitted at All?	146
6.2 Legal Strategies for Related-Party Transactions	147
6.2.1 The affiliation strategy	147
6.2.2 Agent incentives strategies	153
6.2.3 The decision rights strategy: Shareholder voting	156
6.2.4 The rules strategy: Prohibiting conflicted transactions	158
6.2.5 The standards strategy: The duty of loyalty and intra-group transactions review	161
6.3 Ownership Regimes and Related-Party Transactions	166
<b>7. Fundamental Changes</b>	171
<i>Edward Rock, Paul Davies, Hideki Kanda, Reinier Kraakman, and Wolf-Georg Ringe</i>	
7.1 What are Fundamental Changes in the Relationship among the Participants in the Firm?	172
7.2 Charter Amendments	174
7.2.1 The management–shareholder conflict in charter amendments	178
7.2.2 The majority–minority shareholder conflict in charter amendments	178
7.3 Share Issuance	180
7.3.1 The manager–shareholder conflict	180
7.3.2 The majority–minority conflict	181
7.4 Mergers and Divisions	183
7.4.1 The management–shareholder conflict in mergers	185
7.4.2 The majority–minority shareholder conflict in mergers	188
7.4.3 The protection of non-shareholder constituencies in mergers	192
7.4.4 Corporate divisions	194
7.5 Reincorporation and Conversion	196
7.6 General Provisions on Significant Transactions	199
7.7 Explaining Differences in the Regulation of Fundamental Changes	201
<b>8. Control Transactions</b>	205
<i>Paul Davies, Klaus Hopt, and Wolf-Georg Ringe</i>	
8.1 Regulatory Problems in Control Transactions	205
8.1.1 Control transactions	205
8.1.2 Agency and coordination issues	207
8.2 Agency Problems in Control Transactions	211
8.2.1 The decision rights choice: Shareholders only or shareholders and board jointly	211
8.2.2 The “no frustration” rule	212
8.2.3 Joint decision-making	215
8.2.4 Pre-bid defensive measures	222
8.3 Coordination Problems among Target Shareholders	224
8.3.1 Disclosure	224
8.3.2 Trusteeship strategy	226
8.3.3 Reward (sharing) strategy	226
8.3.4 Exit rights: Mandatory bid rule and keeping the offer open	227
8.3.5 Acquisition of non-accepting minorities	230

8.4	Specific Issues upon Acquisition from a Controlling Shareholder	231
8.4.1	Exit rights and premium-sharing	232
8.4.2	Facilitating bids for controlled companies	234
8.5	Explaining Differences in the Regulation of Control Transaction	236
8.5.1	Differences in form and differences in substance	237
8.5.2	Different regulatory environments	238
8.5.3	Political economy considerations	239
8.5.4	Regulatory uncertainty	240
<b>9.</b>	<b>Corporate Law and Securities Markets</b>	<b>243</b>
	<i>Luca Enriques, Gerard Hertig, Reinier Kraakman, and Edward Rock</i>	
9.1	Securities Regulation and Legal Strategies	244
9.1.1	Why securities regulation?	244
9.1.2	Affiliation terms strategies	245
9.1.3	Governance and regulatory strategies	256
9.2	Securities Law Enforcement	258
9.2.1	Public enforcement	259
9.2.2	Private enforcement	260
9.2.3	Gatekeeper control	263
9.3	Convergence and Persistence in Securities Regulation	264
<b>10.</b>	<b>Beyond the Anatomy</b>	<b>267</b>
	<i>John Armour, Luca Enriques, Mariana Pargendler, and Wolf-Georg Ringe</i>	
10.1	Beyond the Analysis	267
10.2	Beyond the Scope	268
10.3	Beyond the Present	269
	<i>Index</i>	<b>273</b>