

ASPEN CASEBOOK SERIES

RHEE

**CORPORATE
FINANCE**



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CORPORATE FINANCE

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For Nicki, Piers, and Blake

PREFACE

Corporate Finance is important. It is not an esoteric course. It should be a standard course in a rigorous business law curriculum. Along with Business Associations and Securities Regulation, Corporate Finance should be the foundational course to prepare for corporate and business transactional practice. Business Associations introduces students to different business organizational forms and provides an overview of the duties and powers of directors and officers, governance rights, shareholder litigation, and a bit of securities regulation. This introduction to corporations covers only a portion of the types of problems seen in business law practice.

Financings are routine corporate transactions. Every financing transaction triggers the consideration of two spheres of law. The first is the public law regulating securities issuances and trading, which is Securities Regulation. The second is the mostly private law dealing with the private ordering of the bundles of governance and economic rights embedded in financial instruments; this is the field of Corporate Finance. Business lawyers should have grounding in both the spheres of law. Corporate Finance is a transaction-oriented course. It is fundamentally the study of the legal and economic nature of financial instruments that corporations issue to service their financing needs.

When an author undertakes the work of writing a book, he or she should answer two questions.

Why write it? Although Corporate Finance is a practical subject, there is not a broader selection of casebooks in legal education. There are several wonderful books authored by some of the most distinguished scholars and teachers in the field, but there is not the type of broad selection seen in Business Associations or Corporation Law or even Securities Regulation. There may be reasons for this thin menu. Corporate Finance is difficult. Financial transactions can be factually and conceptually complex. Corporate Finance is an interdisciplinary study. Law, finance, transaction economics, and accounting are intertwined in financing transactions and their documentation. This casebook provides more options in this important field of business law and professional practice.

How is this book different? With the above considerations in mind, I sought to distinguish this casebook from several other fine books in the field in four ways.

1. *This book is interdisciplinary in nature.* I provide essential coverage of the basic concepts of accounting and finance needed for a business lawyer to understand deal economics. Lawyers should not compartmentalize legal issues from business, economic, accounting, and financial issues. They should be more than caretakers of boilerplate contracts and wordsmith functionaries. A corporate lawyer should understand financial transactions as clients and financial advisors do. Essential accounting and financial concepts are comprehensively covered, at the basic level, in clear expository text, including: financial statements, financial statement analysis, time value of

money, cost of capital, securities valuation, capital structure, market efficiency, and derivatives.

2. *This book facilitates ease of learning and teaching.* I tried to make this book accessible. I avoided excerpting technically dense academic writings in finance and economics, which can intimidate students and teachers alike. There is no hiding the ball or gratuitous academic-speak. I wrote the materials in the plainest way I could to convey essential ideas. Some ideas are difficult, but they should be readily accessible to all if written in clear exposition.

3. *This book provides a basic understanding of financial instruments to prepare students for corporate practice.* I highlighted contractual contents of financial instruments and transaction documents taken from various sources, including: model indentures and debt contracts, SEC filings, legal and financial advisor opinion letters, and corporate charter provisions. Economics and business needs drive corporate transactions, but deals are enabled by law and memorialized in legal transactional documents. Students should begin to see and read financial contracts and documents within the constraint of publication page limits.

4. *This book takes a business and transactional perspective.* I included several case studies, which will give students the opportunity to analyze legal problems in the context of business transactions. These case studies go beyond the specific legal issues and present opportunities to consider more broadly the transaction from business and economic perspectives.

I packaged the materials in this book with a specific course goal in mind. After finishing the course using this book, students should have foundational knowledge of the legal and economic structure of major classes of financial instruments used in financing the corporate enterprise, and such knowledge encompasses a basic understanding of the business, economic, and accounting contexts and the sources of law and documents used in corporate finance transactions. If a student can acquire this knowledge, the book will have served its purpose.

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December 2015

NOTE ON CASE EDITING AND ANNOTATION

The editing of cases is an important feature of this book. Case opinions have been heavily edited, and so full disclosure is required. The single purpose of editing a casebook is easier, efficient reading for students without compromising the essential substance and law in the opinion. With this sole purpose in mind, I used the following editorial and stylistic conventions throughout this book, some of which are atypical for a law school casebook.

Annotations and other author supplied materials. In actual practice, transactions are schematized; tables of data are created; information is packaged in visual form if it will facilitate better communication. In addition to word processing software, PowerPoint and Excel are heavily used in business practice. However, judicial opinions are written in prose, making the task of understanding facts and transactions more difficult. When complex data, information, or transactions are presented in prose, and when appropriate, I embedded in the opinions "Author's Case Annotation," which are diagrams, charts, and data summaries.

No use of ellipses or brackets. Editing necessarily changes the style and substance of the original case. As with all case editing, the most prominent editorial changes to the original text are deletions of certain sections of opinions. Where materials have been deleted, they have not been indicated with ellipses ("..." or "* * *"). When capitalization has been supplied due to deletions of the sentence beginning, no brackets [] have been used. These standard conventions of legal writing are visually distracting and pedagogically unnecessary.

Choices on deletion and retention of citations to authority. Some casebooks keep most citations in opinions and others delete the majority of them. This book follows the latter convention. I preserved case citations mostly when the excerpted cases cite to each other. These cross-citations among the selected cases illustrate the collective body of case law bound by common substantive principles and efforts to achieve interpretive consistency among common law courts.

Emphases added for contract terms. Contract terms in financial instruments or corporate charters are frequently boilerplate language that can be lengthy, abstruse, artfully drafted, and difficult to read. Some case opinions do not sufficiently highlight or emphasize important contract language. Important terms may be buried in a footnote or in a long paragraph in the prose of judicial opinions. When needed, important contractual terms have been indented, emphasized, or moved from footnote and to text.

Citation formatting and other minor editorial changes. When an edited opinion contains an incomplete citation fragment or uses unconventional citation methods, I took the liberty of completing or standardizing the citation. Some portions of the citations may have been edited out: for example, "cert. denied" or parallel citations to multiple reporters. I diligently made other nonsubstantive, minor editorial changes—edits in the nature of: rewriting "\$.6" to "\$0.6," supplying or deleting

headings, changing “mm” denoting million to “m,” or deleting unnecessary text, words, phrases, and parentheticals within sentences to streamline the reading to the essential points of analysis and law.

The accumulation of these editing and annotation conventions over the course of the entire book will make a material impact on the reading and learning experience. A casebook is not a primary legal source; it is an educational tool. This textbook was not a brief writing exercise. The editorial process strove for visual appeal, superior presentation of complex information, and easier reading with an eye toward advancing student learning of a complex area of law and business without losing or altering substance. The complete, unaltered case opinions are readily available in the law reporters.

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