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CORPORATION FINANCE

CASES AND MATERIALS

Fourth Edition



Robert W. Hamilton
Richard A. Booth

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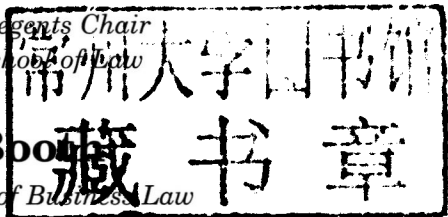
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610 Opperman Drive
St. Paul, MN 55123
1-800-313-9378

Printed in the United States of America

ISBN: 978-0-314-90797-4

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PREFACE TO THE FOURTH EDITION

For those familiar with earlier editions of this book, this edition is thoroughly revised and reorganized. The materials on time value of money, financial reporting, and valuation have been expanded to occupy the first four chapters. And the first chapter thereof now includes a more fulsome discussion of the bond market (as distinct from debt and leverage and debt securities themselves, both of which are discussed in subsequent chapters) as well as new material related to the 2008 credit crisis. The subject of legal capital has been condensed into a more readable discussion (rather than relying on excerpts from other works) and includes additional explanation of the evolution of these rules over time, all in an effort to enhance understanding of how these rules fit into the overall scheme of corporation law. Issues relating to common stock have been divided into two chapters. The first addresses the duty to maximize stockholder wealth together with issues relating to distributions. This chapter also includes expanded materials on executive compensation and the implications of investor diversification. Although one might think of executive compensation more as a matter of governance than finance, the use of equity as the primary form of pay among high-level officers necessitates significant distributions in the form of repurchases and is thus inextricably intertwined with distribution policy. The second chapter on common stock addresses transactions in control, including not only sales of control but also dual-class recapitalizations. The textual materials in the chapter on preferred stock have been revised to include more discussion of venture capital financing. As suggested above, the chapter on debt securities has been condensed to focus more on the peculiar features thereof and less on capital structure. This edition also includes a new chapter focused on start-ups and closely held corporations. Although one could address these issues first and then work up to public companies, most of the peculiar law relating to nonpublic companies consists of exceptions to the general rules. So it is much more efficient to address public corporations first. On the other hand, where the distinction is not central to the analysis or outcome, cases involving public and private corporations (and those in between) may be intermingled with abandon.

In another departure, there is no separate discussion of mergers and acquisitions or securities regulation included in this edition since these subjects are generally addressed in separate courses that focus thereon. On the other hand, these subjects do come up in passing since finance issues often arise in the context of transactions that otherwise might fall into these categories. Still, this book makes no attempt to deal with these subjects in any systematic way. The same is true of derivative instruments and income tax issues. Rather, these subjects are woven into the fabric of the book as they arise. Unlike earlier editions, statutory text is not included in the body of the

book. In other words, a statutory supplement may be needed, but most students are likely to have online access to the necessary materials.

A few notes on style are also in order. Although the Revised Model Business Corporation Act (RMBCA) (first promulgated in 1984) was officially renamed by dropping *revised* from the name, we continue to refer to this act as the RMBCA in order to distinguish it from the earlier MBCA (first promulgated in 1950) for purposes of comparison. We also may use the terms *public corporation* and *nonpublic corporation* rather than the wordier *publicly traded corporation* and *closely held corporation*. We do not mean to suggest that a public corporation is somehow a government-sponsored enterprise (GSE), which are identified as such where they are discussed. We generally use the word *target* to refer to a company that is to be acquired, irrespective of whether the transaction is hostile or friendly. And we use the word *bidder* to refer to the buyer. We try to point out other peculiarities of language as they arise, particularly where usage differs from one area of practice to another (such as between corporate lawyers, tax lawyers, and accountants). Finally, we often use the word *company* rather than *corporation* in an effort to emphasize the universality of the concepts discussed. In other words, although the title of the book is *Corporation Finance*, the underlying principles are equally applicable to partnerships, LLCs, and other forms of organization with appropriate variations depending on the applicable statutes.

Note also that we generally do not use section signs (§) in the text. Rather, statutory provision are identified (for example) as RMBCA 6.40 or DGCL 102 or IRC 305 and so forth. We use * * * to indicate elisions from cases and other outside materials reproduced in the book, but we do not signal the omission of internal heading, citations, or footnotes. Finally, we have sought to avoid footnotes when possible, but where they are retained they are numbered beginning with footnote no. 1 in each chapter. Where notes are retained within cases and other outside materials we have sought to include a parenthetical indication of the note number in the original source.

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ACKNOWLEDGMENTS

We are grateful to the following publishers and authors who have granted permission to reproduce portions of the following copyrighted works:

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Model Business Corporation Act and Commentary

Model Rules of Professional Conduct

ABA Section of Business Law, Committee on Legal Opinions, Legal Opinion Principles, 53 Bus. Law. 831 (1998)

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Fourth Edition

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