

# CORPORATION LAW

Second Edition

Franklin A. Gevurtz

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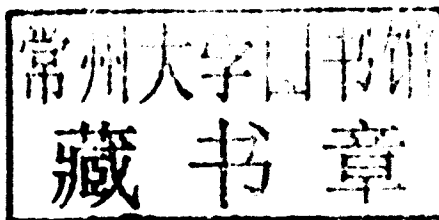
# CORPORATION LAW

**Second Edition**

By

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*To Carmen, Sara, Marvin and Manya*

## Preface to the First Edition

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This book is intended for several audiences. As with all books in the “hornbook” series, a primary audience is law students; in this instance, students taking courses variously labeled Corporations or Business Associations. The book corresponds to the advice I give to students who ask for recommendations on secondary reading. This advice is to go beyond sources which simply provide pithy recitals of rules, and seek a source which provides a careful explanation of what the rules mean, the context and policies out of which the rules arise, and how the rules might apply to different situations. Otherwise, the result all too often is an examination answer consisting of recitals of rules, followed by sentences which demonstrate that the student has little idea as to the meaning of what he or she just said, much less how to apply the rules to analyze the problem at hand. Keeping in mind that the goal of this book is to clarify rather than simply recite, the text pays particular attention to correcting common misconceptions I have found among students of corporations law over the years. In addition, consistent with the notion that one cannot comprehend the law without understanding leading and illustrative cases in which courts have developed and applied various rules, the text spends considerable time discussing and critiquing court opinions found in most of the Corporations casebooks.

A second audience consists of members of the practicing bar; particularly those who only encounter corporations law problems on an occasional basis. A work of this size cannot hope to duplicate the sort of jurisdiction-specific research found in a multi-volume treatise. Instead, the goal of this book is to meet the type of request made by practitioners who have contacted me from time to time and explained that they had read all of the relevant cases on the particular issue facing them, but, lacking an overall context, they were not sure how the cases fit together.

In addition, I hope this treatise might be of interest to courts and commentators in seeking the appropriate resolution of issues of corporations law. In teaching corporations law for almost two decades, I confess that I have developed some strong opinions as to what the law is and what the law should be. In several areas, I already had expressed my viewpoint in law review articles, from which this book draws. In numerous other areas, I have taken advantage of the opportunity of writing this book to provide a more efficient forum for setting out my views.

At this point, word or two about style might be appropriate. I have deliberately adopted a conversational style; indeed, occasionally a light-hearted one. To be candid, it made the book more enjoyable for me to write (the utility of which is not to be underestimated in a four year project). I hope it also makes for a more accessible—or, to use the marketing cliché, “user friendly”—product. In order to maximize the space available for

explanation and discussion, I deliberately have kept citations to a minimum; just enough to keep me honest and to provide the interested reader with a stepping stone for additional research.

Finally, a few words of thanks are called for. My colleague, Michael Malloy—who, being the author of West's hornbook on banking law, has some experience with this sort of work—graciously gave his time to review the manuscript for this book. My research assistants, Ryan Herrick and Anne Sherlock spent long hours cite checking the manuscript. Not to sound like a PBS commercial, but this work was made possible by generous financial support from the McGeorge School of Law. My wife, Carmen, deserves credit for her encouragement when it seemed like this project would never finish. Even my daughter, Sara, lent a hand by typing in all of the internal cross references.



## **Preface to the Second Edition**

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It has been a decade since publication of the first edition of this “hornbook” in 2000. Despite some predictions, the start of the Twenty-first Century did not mark “the end of history for corporate law”. On the contrary, the first decade of this century witnessed epic corporate scandals, which challenged the conventional wisdom in the field, led to some changes in the law, and even allowed corporate law professors to claim the media attention typically reserved for constitutional law professors. Hence, it was necessary to write a new edition.

This edition updates the first edition to reflect the significant changes and events in corporate law since publication of the first edition in 2000. This includes both developments after 2000, as well as earlier developments whose significance exploded in the last decade. My research assistant, James Bothwell, deserves special thanks for his work on this project.

## WESTLAW® Overview

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*Corporation Law* offers a detailed and comprehensive treatment of the basic rules, principles, and issues relating to the law of corporations. To supplement the information contained in this book, you can access Westlaw, West's computer-assisted legal research service. Westlaw contains a broad array of legal resources, including case law, statutes, expert commentary, current developments, and various other types of information.

Learning how to use these materials effectively will enhance your legal research abilities. To help you coordinate the information in the book with your Westlaw research, this volume contains an appendix listing Westlaw databases, search techniques, and sample problems.

The instructions and features described in this Westlaw overview are based on accessing Westlaw at [www.westlaw.com](http://www.westlaw.com).

THE PUBLISHER



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**Second Edition**

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