

AMERICAN
CASEBOOK
SERIES

CORPORATE FINANCE
DEBT, EQUITY, AND DERIVATIVE
MARKETS AND THEIR
INTERMEDIARIES

Third Edition



Jerry W. Markham
José M. Gabilondo
Thomas Lee Hazen

WEST

CORPORATE FINANCE

DEBT, EQUITY, AND DERIVATIVE MARKETS AND THEIR INTERMEDIARIES

Third Edition

■ ■ ■

By

Jerry W. Markham

Professor of Law, College of Law, Florida International University, Miami

José M. Gabilondo

*Associate Dean for Academic Affairs, Associate Professor of Law,
College of Law, Florida International University, Miami*

Thomas Lee Hazen

*Professor of Law, Cary C. Boshamer Distinguished Professor of Law,
University of North Carolina*

AMERICAN CASEBOOK SERIES®

WEST®

A Thomson Reuters business

Thomson Reuters created this publication to provide you with accurate and authoritative information concerning the subject matter covered. However, this publication was not necessarily prepared by persons licensed to practice law in a particular jurisdiction. Thomson Reuters does not render legal or other professional advice, and this publication is not a substitute for the advice of an attorney. If you require legal or other expert advice, you should seek the services of a competent attorney or other professional.

American Casebook Series is a trademark registered in the U.S. Patent and Trademark Office.

© West, a Thomson business, 2004, 2008

© 2011 Thomson Reuters

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

Printed in the United States of America

ISBN: 978-0-314-26510-4

WEST'S LAW SCHOOL ADVISORY BOARD

JESSE H. CHOPER

Professor of Law and Dean Emeritus,
University of California, Berkeley

JOSHUA DRESSLER

Professor of Law, Michael E. Moritz College of Law,
The Ohio State University

YALE KAMISAR

Professor of Law, University of San Diego
Professor of Law Emeritus, University of Michigan

MARY KAY KANE

Professor of Law, Chancellor and Dean Emeritus,
University of California,
Hastings College of the Law

LARRY D. KRAMER

Dean and Professor of Law, Stanford Law School

JONATHAN R. MACEY

Professor of Law, Yale Law School

ARTHUR R. MILLER

University Professor, New York University
Formerly Bruce Bromley Professor of Law, Harvard University

GRANT S. NELSON

Professor of Law, Pepperdine University
Professor of Law Emeritus, University of California, Los Angeles

A. BENJAMIN SPENCER

Professor of Law,
Washington & Lee University School of Law

JAMES J. WHITE

Professor of Law, University of Michigan

For Oscar, Lola, and Sophie

JWM

For Nico, James, and Michael

JMG

For Lisa, Elliott, and George

TLH

PREFACE TO THE THIRD EDITION

This book introduces students to the major instruments issued by corporations to fund their activities and to manage risk—debt, equity, and derivatives—and explains both their financial and legal nature. After two introductory chapters on financial history, market structure, accounting standards, and the professional expectations that apply to corporate lawyers, the book moves down the balance sheet—starting with the short term debt instruments of the money market, followed by medium- and long-term debt instruments, introducing junior equity through preferred stock, and, then, examining the major legal issues of common stock. In these chapters, we start with the financial structure of the instruments and then examine their legal and regulatory aspects, which are best appreciated after understanding the instruments themselves.

Moving beyond the primary market of issuance, the book also puts these instruments in the context of the trading markets where financial intermediaries deal and invest. In addition to explaining the state and federal law framework for these instruments, the book focuses on cases that contain good lessons for the practitioner. To economize on coverage, we have eliminated the chapters on retirement plans and insurance from previous editions. Since the Second Edition, the Dodd–Frank Act has changed the regulatory framework for the debt markets. Hence, this edition incorporates the implications of the Dodd–Frank Act throughout the text. To help students track their progress, a set of chapter objectives has been added at the beginning of each chapter.

The authors would like to thank Timothy McFarland and Rigers Gjyshi, students at the College of Law, Florida International University, for their fine work in compiling the statutory and other materials contained in the supplement that accompanies this casebook.

JERRY W. MARKHAM

JOSÉ M. GABILONDO

THOMAS LEE HAZEN

December 2010

ACKNOWLEDGMENTS

We are indebted to the following authors and publishers for their generosity in giving us permission to reprint excerpts from copyrighted materials: William T. Allen, "Contracts and Communities in Corporation Law," 50 *Washington & Lee Law Review* 1395 (1993). Reprinted with permission.

Bank of America Web Site Material provided as a courtesy of Bank of America.

Michael S. Bennett & Michael J. Marin, "The Casablanca Paradigm: Regulatory Risk in the Asian Financial Derivatives Markets," 5 *Stan. J. L. Bus. & Fin.* 1, 7 (1999). Reprinted with permission.

Carl S. Bjerre, "International Project Finance Transactions: Selected Issues Under Revised Article 9," 73 *Am. Bankr. L.J.* 261B266 (1999). Reprinted with the permission of the copyright owner, the National Conference of Bankruptcy Judges.

Committee on Bankruptcy and Corporate Reorganization of the Association of the Bar of the City of New York, "Structured Financing Techniques," 50 *Bus. Law.* 527 (1995). Reprinted by permission.

"Federal Regulation of Securities: Regulatory Developments," 48 *Bus. Law.* 997 (1993). Reprinted by permission.

CBOE Web Site Material provided as a courtesy by Chicago Board Options Exchange, Incorporated.

Nicole Chu, "Bowie Bonds: A Key to Unlocking the Wealth of Intellectual Property," 21 *Hastings Comm. & Ent. L. J.* 469 (1999). Reprinted with permission.

Todd H. Eveson, "Financial and Bank Holding Company Issuance of Trust Preferred Securities," 6 *N.C. Banking Institute* 315B317 (2002). Reprinted with permission.

Thomas R. Fileti & Carl R. Steen, "Synthetic Lease Financing For the Acquisition and Construction of Power Generation Facilities in a Changing U.S. Energy Environment," 24 *Fordham Int'l L. J.* 1083 (2001). Reprinted with permission of the authors.

Ann Judith Gellis, "Municipal Securities Market: Same Problem No Solution," 21 *Delaware Journal of Corporation Law* 427 (1996). Reprinted with permission.

Thomas S. Harman, "Emerging Alternatives to Mutual Funds: Unit Investment Trusts and Other Fixed Portfolio Investment Vehicles," 1987 *Duke L. J.* 1045. Reprinted with permission.

Timothy J. Harris, "Modeling the Conversion Decisions of Preferred Stock," 58 *Bus. Law.* 587 (2003). Reprinted by permission.

Excerpts from <www.isda.org> are reprinted with the permission of the International Swaps and Derivatives Association, Inc.

Jonathan R. Macey, "Wall Street Versus Main Street: How Ignorance, Hyperbole, and Fear Lead to Regulation," 65 *U. Chi. L. Rev.* 1487, 1497B 1498 (1998). Reprinted with permission.

Paul S. Maco, "Building a Strong Subnational Debt Market: A Regulator's Perspective," 2 *Rich. J. Global L. & Bus.* 1, 12 (2001). Reprinted with permission.

Jack H. McCall, "A Primer on Real Estate Trusts: The Legal Basics of REITS," 2 *Transactions* 1 (2001). Reprinted with permission.

Norman Menachem Feder, "Deconstructing OverBTheBCounter Derivatives," 2002 *Columbia Business Law Review* 677. Reprinted with permission.

Donna M. Nagy, Is the PCAOB a "Heavily-Controlled Component" of the SEC? An Essential Question in the Constitutional Controversy, 71 *U. Pitt. L. Rev.* 361. Reprinted with permission.

Frank Partnoy, F.I.A.S.C.O., *Blood in the Water on Wall Street*, 55B56 (1997). Used by permission of W.W. Norton & Company, Inc. and by permission of the author.

Frank Partnoy, "The Siskel and Ebert of Financial Markets? Two Thumbs Down for the Credit Rating Agencies," 77 *Wash. U. L. Q.* 619, 648, n. 139 (1999). Reprinted with permission.

Edward L. Pittman, "Economic and Regulatory Developments Affecting Mortgage Related Securities," 64 *Notre Dame L. Rev.* 497 (1989). Reprinted with permission.

Robert A. Robertson & Bradley W. Paulson, "Regulation of Financial Derivatives: A Methodology for Mutual Fund Derivative Instruments," 1 *Stanford Journal of Law, Business & Finance* 237 (1995). Reprinted with permission.

Lee A. Sheppard, "News Analysis: Equipment Leasing Shelters for Corporate Customers," 66 *Tax Notes* 1591 (1995). Reprinted with permission.

Norman P. Stein, "An Alphabet Soup Agenda for Reform of the Internal Code and ERISA Provision Applicable to Qualified Deferred Compensation Plans," originally appearing in Vol. 56, No. 1 of the *SMU Law Review*. Reprinted with permission from the *SMU Law Review* and the Southern Methodist University Dedman School of Law.

"The Commercial Paper Market and the Securities Acts," 39 *University of Chicago Law Review* 362, 363B64 (1972). Reprinted with permission.

Arthur E. Wilmarth, Jr., "The Transformation of the U.S. Financial Services Industry 1975B2000: Competition, Consolidation, and Increased Risk," 2002 *U. Ill. L. Rev.* 215, 235B236. Reprinted with permission.

Charles E. Wren III, "Sparing Cain: Executive Clemency in Capital Cases: The Stapled REIT on Ice: Congress' 1988 Freeze of the Grandfather Exception for Stapled REITs," 28 Capital University Law Review 717 (2000). Reprinted with permission.

Edward A. Zelinsky, "The Cash Balance Controversy," 19 Va. Tax. Rev. 683 (2000). Reprinted with permission.

TABLE OF CASES

The principal cases are in bold type. Cases cited or discussed in the text are in roman type. References are to pages. Cases cited in principal cases and within other quoted materials are not included.

- Abrams v. Oppenheimer Government Securities, Inc.**, 737 F.2d 582 (7th Cir.1984), **715**
- Abrams v. Prudential Securities, Inc.**, 2000 WL 390494 (N.D.Ill.2000), **799**
- Advanced Communication Design, Inc. v. Follett, 615 N.W.2d 285 (Minn.2000), 464
- Ajay Sports, Inc. v. Casazza**, 1 P.3d 267 (Colo.App.2000), **390**
- Alabama By-Products Corp. v. Neal, 588 A.2d 255 (Del.Supr.1991), 450
- American Bankers Mortg. Corp. v. Federal Home Loan Mortg. Corp., 75 F.3d 1401 (9th Cir.1996), 644
- American Bell Intern., Inc. v. Islamic Republic of Iran, 474 F.Supp. 420 (S.D.N.Y.1979), 159
- American Realty Trust v. United States**, 498 F.2d 1194 (4th Cir.1974), **984**
- Andersons, Inc. v. Horton Farms, Inc., 166 F.3d 308 (6th Cir.1998), 863
- Applestein v. United Board & Carton Corp., 60 N.J.Super. 333, 159 A.2d 146 (N.J.Super.Ch.1960), 491
- Appraisal of Ford Holdings, Inc. Preferred Stock, Matter of**, 698 A.2d 973 (Del.Ch.1997), **262**
- Arnaud v. Stockgrowers State Bank of Ashland, Kansas, 268 Kan. 163, 992 P.2d 216 (Kan.1999), 472
- Arnold Graphics Industries, Inc. v. Independent Agent Center, Inc., 775 F.2d 38 (2nd Cir.1985), 491
- Ashford.Com, Inc., In re, 2002 WL 1271781 (S.E.C. Release No.2002), 102
- Balsamides v. Protameen Chemicals, Inc., 160 N.J. 352, 734 A.2d 721 (N.J.1999), 472
- Banca Cremi, S.A. v. Alex. Brown & Sons, Inc.**, 132 F.3d 1017 (4th Cir.1997), **675**
- Bank of New York Co., Inc. v. Irving Bank Corp., 142 Misc.2d 145, 536 N.Y.S.2d 923 (N.Y.Sup.1988), 334
- Barlage, In the Matter of, 63 S.E.C. 1060 (S.E.C. Release No.1996), 598
- Barrett v. Denver Tramway Corporation, 53 F.Supp. 198 (D.Del.1943), 309
- Basic Inc. v. Levinson, 485 U.S. 224, 108 S.Ct. 978, 99 L.Ed.2d 194 (1988), 50
- Belenke v. S.E.C.**, 606 F.2d 193 (7th Cir. 1979), **788**
- Bell v. Kirby Lumber Corp.**, 413 A.2d 137 (Del.Supr.1980), **439**
- Benchmark Capital Partners IV, L.P. v. Vague**, 2002 WL 1732423 (Del.Ch.2002), **282**
- Bernstein v. Canet, 1996 WL 342096 (Del.Ch. 1996), 299
- Bevill, Bresler & Schulman Asset Management Corp., Matter of, 67 B.R. 557 (D.N.J.1986), 127, 187
- Bielfeldt v. Commissioner**, T.C. Memo. 1998-394 (U.S.Tax Ct.1998), **575**
- Bily v. Arthur Young & Co.**, 11 Cal.Rptr.2d 51, 834 P.2d 745 (Cal.1992), **70**
- Bing Crosby Minute Maid Corp. v. Eaton**, 46 Cal.2d 484, 297 P.2d 5 (Cal.1956), **319**
- Bissias v. Koulovatos, 761 A.2d 47 (Me.2000), 324
- Blitch v. Peoples Bank, 246 Ga.App. 453, 540 S.E.2d 667 (Ga.App.2000), 471
- Blount v. S.E.C.**, 61 F.3d 938, 314 U.S.App. D.C. 52 (D.C.Cir.1995), **619**
- Bluegrass Ford-Mercury, Inc., In re**, 942 F.2d 381 (6th Cir.1991), **138**
- Board of Trade of City of Chicago v. S.E.C.**, 187 F.3d 713 (7th Cir.1999), 715, **737**
- Board of Trade of City of Chicago v. S.E.C.**, 677 F.2d 1137 (7th Cir.1982), **711**
- Boulder Fruit Exp. & Heger Organic Farm Sales v. Transportation Factoring, Inc.**, 251 F.3d 1268 (9th Cir.2001), **144**
- Bove v. Community Hotel Corp. of Newport, R. I.**, 105 R.I. 36, 249 A.2d 89 (R.I. 1969), **300**
- Burks v. Lasker, 441 U.S. 471, 99 S.Ct. 1831, 60 L.Ed.2d 404 (1979), 942
- Caiola v. Citibank, N.A., New York**, 295 F.3d 312 (2nd Cir.2002), **874**
- Cartwright, United States v., 411 U.S. 546, 93 S.Ct. 1713, 36 L.Ed.2d 528 (1973), 956
- Cathedral Trading, LLC v. Chicago Bd. Options Exchange, 199 F.Supp.2d 851 (N.D.Ill. 2002), 792

- Cavalier Oil Corp. v. Harnett, 564 A.2d 1137 (Del.Supr.1989), 450, 471, 472
- Cede & Co. v. Technicolor, Inc.**, 684 A.2d 289 (Del.Supr.1996), **457**
- Cendant Corporation Prides Litigation, In re, 51 F.Supp.2d 537 (D.N.J.1999), 885
- Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A., 511 U.S. 164, 114 S.Ct. 1439, 128 L.Ed.2d 119 (1994), 87
- Centrifugal Casting Mach. Co., Inc. v. American Bank & Trust Co.**, 966 F.2d 1348 (10th Cir.1992), **151**
- Certain Market Making Activities on NASDAQ In the Matter of**, 1998 WL 919673 (S.E.C. Release No.1998), **539**
- CF Industries, Inc. (and Subsidiaries) v. Commissioner, 995 F.2d 101 (7th Cir.1993), 135
- Chamber of Commerce of United States v. S.E.C., 443 F.3d 890, 370 U.S.App.D.C. 249 (D.C.Cir.2006), 964
- Chamber of Commerce of United States v. Securities and Exchange Com'n, 412 F.3d 133, 366 U.S.App.D.C. 351 (D.C.Cir.2005), 964
- Chicago Mercantile Exchange v. S.E.C.**, 883 F.2d 537 (7th Cir.1989), 510, **720**
- Commissioner v. _____** (see opposing party)
- City of** (see name of city)
- Clarendon Group, Ltd. v. Smith Laboratories, Inc., 741 F.Supp. 1449 (S.D.Cal.1990), 334
- Clement v. S.E.C., 674 F.2d 641 (7th Cir.1982), 548
- Color Tile, Inc., In re**, 2000 WL 152129 (D.Del.2000), **380**
- Commodity Futures Trading Commission v. Hunt**, 591 F.2d 1211 (7th Cir.1979), **753**
- Commodity Futures Trading Com'n v. Co Petro Marketing Group, Inc.**, 680 F.2d 573 (9th Cir.1982), **820**
- Commodity Futures Trading Com'n v. Valko, 2006 WL 2582970 (S.D.Fla.2006), 829
- Commodity Futures Trading Com'n v. Zelener, 373 F.3d 861 (7th Cir.2004), 829
- Cooper v. Pabst Brewing Co.**, 1993 WL 208763 (Del.Ch.1993), **472**
- Corn Exchange Nat. Bank & Trust Co., Philadelphia v. Klauder, 318 U.S. 434, 63 S.Ct. 679, 87 L.Ed. 884 (1943), 143
- Craig v. State of Missouri, 29 U.S. 410, 7 L.Ed. 903 (1830), 610
- Credit Suisse Securities (United States)A) LLC v. Billing, 551 U.S. 264, 127 S.Ct. 2383, 168 L.Ed.2d 145 (2007), 533, 556
- Crocker Nat. Bank v. Rockwell Intern. Corp., 555 F.Supp. 47 (N.D.Cal.1982), 251
- Dart v. Kohlberg, Kravis, Roberts & Co, 1985 WL 11566 (Del.Ch.1985), 299
- DeMartino v. Commissioner, 862 F.2d 400 (2nd Cir.1988), 771
- Department of Revenue of Ky. v. Davis, 553 U.S. 328, 128 S.Ct. 1801, 170 L.Ed.2d 685 (2008), 627
- DiLuglio v. Providence Auto Body, Inc., 755 A.2d 757 (R.I.2000), 472
- DiPlacido v. Commodity Futures Trading Com'n, 2009 WL 3326624 (2nd Cir.2009), 775
- Dodge v. Ford Motor Co., 204 Mich. 459, 170 N.W. 668 (Mich.1919), 358
- Doppelt v. Perini Corp.**, 2002 WL 392289 (S.D.N.Y.2002), **287**
- Dougherty, United States v.**, 763 F.2d 970 (8th Cir.1985), **148**
- Dunn v. Commodity Futures Trading Com'n**, 519 U.S. 465, 117 S.Ct. 913, 137 L.Ed.2d 93 (1997), **826**
- Elliott Associates, L.P. v. Avatex Corp.**, 715 A.2d 843 (Del.Supr.1998), **276**
- Enron Corp. Securities, Derivative & ERISA Litigation, In re**, 235 F.Supp.2d 549 (S.D.Tex.2002), **687**
- Equity-Linked Investors, L.P. v. Adams**, 705 A.2d 1040 (Del.Ch.1997), **268**
- Erickson v. Wheatley Ventures**, 1997 WL 119849 (N.D.Cal.1997), **252**
- Ernst & Ernst v. Hochfelder, 425 U.S. 185, 96 S.Ct. 1375, 47 L.Ed.2d 668 (1976), 87
- Estate of** (see name of party)
- Eternity Global Master Fund Ltd. v. Morgan Guar. Trust Co. of N.Y.**, 375 F.3d 168 (2nd Cir.2004), **898**
- Ettinger v. Merrill Lynch, Pierce, Fenner & Smith, Inc.**, 835 F.2d 1031 (3rd Cir. 1987), **604**
- Fadem v. Ford Motor Co., 2003 WL 22227961 (S.D.N.Y.2003), 709
- FAIC Securities, Inc. v. United States, 768 F.2d 352, 247 U.S.App.D.C. 235 (D.C.Cir. 1985), 166
- Farris v. Glen Alden Corp., 393 Pa. 427, 143 A.2d 25 (Pa.1958), 490
- Federal Deposit Ins. Corp. v. Philadelphia Gear Corp.**, 476 U.S. 426, 106 S.Ct. 1931, 90 L.Ed.2d 428 (1986), **155**
- Fidelity & Columbia Trust Co. v. Louisville Ry. Co., 265 Ky. 820, 97 S.W.2d 825 (Ky.1936), 358
- First Nat. Bank of Chicago v. Jefferson Mortg. Co., 576 F.2d 479 (3rd Cir.1978), 645
- First Western Bank Wall v. Olsen, 621 N.W.2d 611 (S.D.2001), 464, 471, 472
- Fitch, Inc., In re, 330 F.3d 104 (2nd Cir.2003), 182
- Fleet Capital Corp. v. Yamaha Motor Corp., United StatesA., 2002 WL 31174470 (S.D.N.Y.2002), 137
- Free Enterprise Fund v. Public Co. Accounting Oversight Bd., ___ U.S. ___, 130 S.Ct. 3138, 177 L.Ed.2d 706 (2010), 120
- Friedman v. Beway Realty Corp., 87 N.Y.2d 161, 638 N.Y.S.2d 399, 661 N.E.2d 972 (N.Y.1995), 471
- Friedman v. Salomon/Smith Barney, Inc., 313 F.3d 796 (2nd Cir.2002), 533, 556
- Gardner v. Commissioner, 954 F.2d 836 (2nd Cir.1992), 771

- Gartenberg v. Merrill Lynch Asset Management, Inc., 740 F.2d 190 (2nd Cir.1984), 951
- Gary Plastic Packaging Corp. v. Merrill Lynch, Pierce, Fenner & Smith, Inc.**, 756 F.2d 230 (2nd Cir.1985), **159**
- General Motors Class H Shareholders Litigation, In re, 734 A.2d 611 (Del.Ch.1999), 889
- Goldberger v. Integrated Resources, Inc., 209 F.3d 43 (2nd Cir.2000), 194
- Goldstein v. S.E.C., 451 F.3d 873, 371 U.S.App. D.C. 358 (D.C.Cir.2006), 939
- Gonsalves v. Straight Arrow Publishers, Inc.**, 701 A.2d 357 (Del.Supr.1997), **433**
- Gonsalves v. Straight Arrow Publishers, Inc., 2002 WL 31057465 (Del.Ch.2002), 438
- Handley v. Stutz, 139 U.S. 417, 11 S.Ct. 530, 35 L.Ed. 227 (1891), 323
- Hansen v. 75 Ranch Co., 288 Mont. 310, 957 P.2d 32 (Mont.1998), 431
- Haren v. Conrad Co-op., 198 F.3d 683 (8th Cir.1999), 863
- Hariton v. Arco Electronics, Inc., 41 Del.Ch. 74, 188 A.2d 123 (Del.Supr.1963), 491
- Harriet & Henderson Yarns, Inc. v. Castle**, 75 F.Supp.2d 818 (W.D.Tenn.1999), **230**
- Harris Corp. v. National Iranian Radio and Television, 691 F.2d 1344 (11th Cir.1982), 159
- Harvard College v. Amory, 26 Mass. 446 (Mass. 1830), 647
- HB Korenvaes Investments, L.P. v. Marriott Corp.**, 1993 WL 257422 (Del.Ch. 1993), **291**
- Heilbrunn v. Sun Chemical Corp., 38 Del.Ch. 321, 150 A.2d 755 (Del.Supr.1959), 491
- Hirshon Trust, Commissioner v., 213 F.2d 523 (2nd Cir.1954), 346
- HMO-W Inc. v. SSM Health Care System, 234 Wis.2d 707, 611 N.W.2d 250 (Wis.2000), 471
- Hospes v. Northwestern Mfg. & Car Co., 48 Minn. 174, 50 N.W. 1117 (Minn.1892), 323
- IES Industries, Inc. v. United States, 253 F.3d 350 (8th Cir.2001), 229
- In re (see name of party)**
- Internet Law Library, Inc. v. Southridge Capital Management, LLC, 223 F.Supp.2d 474 (S.D.N.Y.2002), 256
- Jefferson County School Dist. No. R-1 v. Moody's Investor's Services, Inc., 175 F.3d 848 (10th Cir.1999), 182
- John A. Roebling's Sons Co. v. Mode**, 17 Del. 515, 43 A. 480 (Del.Super.1899), **386**
- John Nuveen & Co., Inc. v. Sanders, 450 U.S. 1005, 101 S.Ct. 1719, 68 L.Ed.2d 210 (1981), 170
- Jones v. First Nat. Bldg. Corp., 155 F.2d 815 (10th Cir.1946), 358
- Jones v. Harris Associates L.P.**, ___ U.S. ___, 130 S.Ct. 1418, 176 L.Ed.2d 265 (2010), **942**
- Jones, United States v., 900 F.2d 512 (2nd Cir.1990), 598
- JPMorgan Chase Bank v. Liberty Mut. Ins. Co.**, 189 F.Supp.2d 24 (S.D.N.Y.2002), **682**
- Justh v. Holliday, 13 D.C. 346 (D.C.Sup.1883), 820
- Kahn v. Household Acquisition Corp., 591 A.2d 166 (Del.Supr.1991), 450
- KA Investments LDC v. Number Nine Visual Technology Corp., 2002 WL 31194865 (D.Mass.2002), 251
- Kamin v. American Exp. Co.**, 86 Misc.2d 809, 383 N.Y.S.2d 807 (N.Y.Sup.1976), **358**
- Katzowitz v. Sidler**, 24 N.Y.2d 512, 301 N.Y.S.2d 470, 249 N.E.2d 359 (N.Y.1969), **404**
- Kelley v. Carr**, 442 F.Supp. 346 (W.D.Mich. 1977), **811**
- Koch v. Koch Industries, Inc., 969 F.Supp. 1460 (D.Kan.1997), 86
- Koppers Company, Inc. v. American Express Company, Shearson Lehman Brothers Holdings, Inc., Shearson Lehman Hutton, Inc., SL-Merger, Inc., BNS Partners, BNS Inc., Bright Aggregates Inc., Beazer PLC, National Westminister Bank PLC, 689 F.Supp. 1408 (W.D.Pa.1988), 254
- Krull v. S.E.C.**, 248 F.3d 907 (9th Cir.2001), **952**
- Lachmund v. ADM Investor Services, Inc.**, 191 F.3d 777 (7th Cir.1999), **856**
- Lakonia Management Ltd. v. Meriwether**, 106 F.Supp.2d 540 (S.D.N.Y.2000), **928**
- Lawson Mardon Wheaton, Inc. v. Smith, 160 N.J. 383, 734 A.2d 738 (N.J.1999), 472
- Log On America, Inc. v. Promethean Asset Management L.L.C., 223 F.Supp.2d 435 (S.D.N.Y.2001), 255
- Lohnes v. Level 3 Communications, Inc.**, 272 F.3d 49 (1st Cir.2001), **335**
- Lopez v. Dean Witter Reynolds, Inc., 805 F.2d 880 (9th Cir.1986), 977
- Lorenz v. CSX Corp.**, 1 F.3d 1406 (3rd Cir. 1993), **223**
- Mallinckrodt Chemical Works v. Goldman, Sachs & Co., 420 F.Supp. 231 (S.D.N.Y. 1976), 178
- Malone v. Microdyne Corp., 26 F.3d 471 (4th Cir.1994), 111
- Manhattan Inv. Fund Ltd., In re, 359 B.R. 510 (Bkrcty.S.D.N.Y.2007), 937
- Manufacturers Hanover Trust Co. v. Drysdale Securities Corp., 801 F.2d 13 (2nd Cir. 1986), 595
- Marks v. Minnesota Mining & Manufacturing Co., 187 Cal.App.3d 1429, 232 Cal.Rptr. 594 (Cal.App. 1 Dist.1986), 491
- Matter of (see name of party)**
- McMahan & Co. v. Po Folks, Inc.**, 206 F.3d 627 (6th Cir.2000), **133**
- McCulloch v. State, 17 U.S. 316, 4 L.Ed. 579 (1819), 23
- Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran**, 456 U.S. 353, 102 S.Ct. 1825, 72 L.Ed.2d 182 (1982), **702**

- Metropolitan Life Ins. Co. v. RJR Nabisco, Inc.**, 716 F.Supp. 1504 (S.D.N.Y.1989), 129, **209**
- Mezzonen, S.A. v. Wright, 1999 WL 1037866 (S.D.N.Y.1999), 363
- MFS Securities Corp. v. New York Stock Exchange, Inc.**, 277 F.3d 613 (2nd Cir. 2002), **559**
- M.G. Bancorporation, Inc. v. Le Beau, 737 A.2d 513 (Del.Supr.1999), 449
- MG Refining & Marketing, Inc. v. Knight Enterprises, Inc.**, 25 F.Supp.2d 175 (S.D.N.Y.1998), **864**
- Midland-Ross Corp., United States v., 381 U.S. 54, 85 S.Ct. 1308, 14 L.Ed.2d 214 (1965), 189
- Miller v. American Stock Exchange**, 317 F.3d 134 (2nd Cir.2003), **802**
- Minpeco, S.A. v. Conticommodity Services, Inc.**, 673 F.Supp. 684 (S.D.N.Y. 1987), **756**
- Montgomery, In re**, 983 F.2d 1389 (6th Cir. 1993), **129**
- Morgan, United States v.**, 118 F.Supp. 621 (S.D.N.Y.1953), **521**, 622
- Morris v. Standard Gas & Elec. Co.**, 31 Del.Ch. 20, 63 A.2d 577 (Del.Ch.1949), **348**
- Motorcity of Jacksonville, Ltd. By and Through Motorcity of Jacksonville, Inc. v. Southeast Bank, N.A., 83 F.3d 1317 (11th Cir.1996), 138
- Mountain State Steel Foundries, Inc. v. Commissioner, 284 F.2d 737 (4th Cir.1960), 419
- M.P.M. Enterprises, Inc. v. Gilbert**, 731 A.2d 790 (Del.Supr.1999), **483**
- Mr. Furniture Warehouse, Inc. v. Barclays American/Commercial Inc., 919 F.2d 1517 (11th Cir.1990), 143
- MT Properties, Inc. v. CMC Real Estate Corp., 481 N.W.2d 383 (Minn.App.1992), 471
- Munford, Inc., Matter of**, 97 F.3d 456 (11th Cir.1996), **377**
- Mutual Sav. Life Ins. Co. v. James River Corp. of Virginia**, 716 So.2d 1172 (Ala. 1998), **239**
- National Ass'n of Securities Dealers, Inc., United States v.**, 422 U.S. 694, 95 S.Ct. 2427, 45 L.Ed.2d 486 (1975), **958**
- National Mortg. Equity Corp. Mortg. Pool Certificates Securities Litigation, In re**, 636 F.Supp. 1138 (C.D.Cal.1986), **672**
- Neimark v. Mel Kramer Sales, Inc.**, 102 Wis.2d 282, 306 N.W.2d 278 (Wis.App. 1981), **410**
- New Orleans, City of v. Smith Barney, Inc.**, 1999 WL 288797 (E.D.La.1999), **623**
- North American Catholic Educational Programming Foundation, Inc. v. Gheewalla, 930 A.2d 92 (Del.Supr.2007), 228
- O'Hagan, United States v., 521 U.S. 642, 117 S.Ct. 2199, 138 L.Ed.2d 724 (1997), 802
- Old Dominion Copper Mining & Smelting Co. v. Bigelow, 203 Mass. 159, 89 N.E. 193 (Mass.1909), 324
- Old Dominion Copper Mining & Smelting Co. v. Lewisohn, 210 U.S. 206, 28 S.Ct. 634, 52 L.Ed. 1025 (1908), 324
- Paskill Corp. v. Alcoma Corp.**, 747 A.2d 549 (Del.Supr.2000), **464**, 472
- Patterson v. Durham Hosiere Mills, 214 N.C. 806, 200 S.E. 906 (N.C.1939), 308
- Pension Committee of University of Montreal Pension Plan v. Banc of America Securities LLC**, 568 F.3d 374 (2nd Cir.2009), **933**
- People Who Care v. Rockford Bd. of Educ., School Dist. No. 205, 111 F.3d 528 (7th Cir.1997), 631
- Philip Morris United StatesA, Inc., United States v., 396 F.3d 1190, 364 U.S.App.D.C. 454 (D.C.Cir.2005), 662
- Pipelife Corp. v. Bedford, 38 Del.Ch. 276, 150 A.2d 319 (Del.Ch.1959), 324
- Poindexter v. Greenhow, 114 U.S. 270, 5 S.Ct. 903, 29 L.Ed. 185 (1885), 610
- Pratt v. Ballman-Cummings Furniture Co., 261 Ark. 396, 549 S.W.2d 270 (Ark.1977), 491
- Procter & Gamble Co. v. Bankers Trust Co.**, 925 F.Supp. 1270 (S.D. Ohio 1996), **842**
- Protocomm Corp. v. Novell, Inc.**, 171 F.Supp.2d 459 (E.D.Pa.2001), **368**
- Prudential Ins. Co. of America v. Commissioner**, 882 F.2d 832 (3rd Cir.1989), **191**
- Pueblo Bancorporation v. Lindoe, Inc., 37 P.3d 492 (Colo.App.2001), 471
- Purnell, Estate of v. LH Radiologists, P.C., 90 N.Y.2d 524, 664 N.Y.S.2d 238, 686 N.E.2d 1332 (N.Y.1997), 319
- Quadrangle Offshore (Cayman) LLC v. Kentech Corp., 1999 WL 893575 (Del.Ch.1999), 268
- Radley, United States v., 2011 WL 241984 (5th Cir.2011), 874
- Randall v. Bailey**, 288 N.Y. 280, 43 N.E.2d 43 (N.Y.1942), **341**
- Rapid-American Corp. v. Harris, 603 A.2d 796 (Del.Supr.1992), 449
- Rath v. Rath Packing Co., 257 Iowa 1277, 136 N.W.2d 410 (Iowa 1965), 491
- Rauch v. RCA Corp., 861 F.2d 29 (2nd Cir. 1988), 268
- Reilly v. Segert**, 31 Ill.2d 297, 201 N.E.2d 444 (Ill.1964), **388**
- Reliant Resources, Inc., In re, 2003 WL 21051729 (S.E.C. Release No.2003), 111
- Reves v. Ernst & Young, 507 U.S. 170, 113 S.Ct. 1163, 122 L.Ed.2d 525 (1993), 88
- Reves v. Ernst & Young**, 494 U.S. 56, 110 S.Ct. 945, 108 L.Ed.2d 47 (1990), 171, **241**, 510
- Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc., 506 A.2d 173 (Del.Supr.1986), 228
- Richton Bank & Trust Company v. Bowen, 798 So.2d 1268 (Miss.2001), 471, 472
- Rigel Corp. v. Cutchall, 245 Neb. 511, 511 N.W.2d 519 (Neb.1994), 471

- RJR Nabisco, Inc. Shareholders Litigation, In re**, 1989 WL 7036 (Del.Ch.1989), 421
- Robblee v. Robblee, 68 Wash.App. 69, 841 P.2d 1289 (Wash.App. Div. 1 1992), 471
- Rockford Life Ins. Co. v. Illinois Dept. of Revenue**, 482 U.S. 182, 107 S.Ct. 2312, 96 L.Ed.2d 152 (1987), 645
- Rosenthal & Co. v. Commodity Futures Trading Com'n, 802 F.2d 963 (7th Cir.1986), 976
- Ross Transport, Inc. v. Crothers**, 185 Md. 573, 45 A.2d 267 (Md.1946), 397
- Rothschild Intern. Corp. v. Liggett Group Inc.**, 474 A.2d 133 (Del.Supr.1984), 259
- Sanders v. John Nuveen & Co., Inc.**, 463 F.2d 1075 (7th Cir.1972), 167
- Santa Fe Gaming Corp. v. Hudson Bay Partners, L.P., 49 F.Supp.2d 1178 (D.Nev.1999), 254
- Santa Fe Industries, Inc. v. Green, 430 U.S. 462, 97 S.Ct. 1292, 51 L.Ed.2d 480 (1977), 439
- Schall v. Anderson's Implement, Inc., 240 Neb. 658, 484 N.W.2d 86 (Neb.1992), 385
- Schickler v. Santa Fe Southern Pacific Corp., 229 Ill.App.3d 291, 171 Ill.Dec. 141, 593 N.E.2d 961 (Ill.App. 1 Dist.1992), 187
- Schwartz v. Marien, 37 N.Y.2d 487, 373 N.Y.S.2d 122, 335 N.E.2d 334 (N.Y.1975), 410
- S.E.C. v. Cuban, 620 F.3d 551 (5th Cir.2010), 251
- S.E.C. v. Dain Rauscher, Inc., 254 F.3d 852 (9th Cir.2001), 178
- S.E.C. v. SG Ltd.**, 265 F.3d 42 (1st Cir.2001), 502
- S.E.C. v. Unifund SAL, 910 F.2d 1028 (2nd Cir.1990), 802
- S.E.C. v. W.J. Howey Co.**, 328 U.S. 293, 66 S.Ct. 1100, 90 L.Ed. 1244 (1946), 498
- Securities and Exchange Commission v. Fifth Ave. Coach Lines, Inc.**, 435 F.2d 510 (2nd Cir.1970), 920
- Securities and Exchange Commission v. Miller**, 495 F.Supp. 465 (S.D.N.Y.1980), 587
- Securities and Exchange Commission v. Mount Vernon Memorial Park**, 664 F.2d 1358 (9th Cir.1982), 971
- Securities and Exchange Commission v. S & P National Corp., 360 F.2d 741 (2nd Cir. 1966), 924
- Securities Industry Ass'n v. Board of Governors of Federal Reserve System, 468 U.S. 137, 104 S.Ct. 2979, 82 L.Ed.2d 107 (1984), 171
- Securities Industry Ass'n v. Clarke**, 885 F.2d 1034 (2nd Cir.1989), 636
- Sedighim v. Donaldson, Lufkin & Jenrette, Inc., 167 F.Supp.2d 639 (S.D.N.Y.2001), 363, 887
- Seinfeld v. Bartz, 322 F.3d 693 (9th Cir.2003), 116
- 75,629 Shares of Common Stock of Trapp Family Lodge, Inc., In re**, 169 Vt. 82, 725 A.2d 927 (Vt.1999), 431, 476
- Shell Oil Co., Matter of, 607 A.2d 1213 (Del. Supr.1992), 449
- Shultz v. S.E.C.**, 614 F.2d 561 (7th Cir.1980), 792
- Silver v. New York Stock Exchange**, 373 U.S. 341, 83 S.Ct. 1246, 10 L.Ed.2d 389 (1963), 548
- Simons v. Cogan, 549 A.2d 300 (Del. Supr.1988), 228
- Spanier v. United States Fidelity and Guaranty Co., 127 Ariz. 589, 623 P.2d 19 (Ariz.App. Div. 1 1980), 385
- Spicer v. Chicago Bd. of Options Exchange, Inc.**, 977 F.2d 255 (7th Cir.1992), 796
- Stokes v. Continental Trust Co. of City of New York**, 186 N.Y. 285, 78 N.E. 1090 (N.Y.1906), 325
- Strassburger v. Earley**, 752 A.2d 557 (Del. Ch.2000), 363
- Strougo on Behalf of Brazil Fund, Inc. v. Scudder, Stevens & Clark, Inc., 964 F.Supp. 783 (S.D.N.Y.1997), 919
- Student Loan Marketing Ass'n v. Riley, 104 F.3d 397, 322 U.S.App.D.C. 354 (D.C.Cir. 1997), 647
- Sunstates Corp. Shareholder Litigation, In re**, 788 A.2d 530 (Del.Ch.2001), 309
- Swiss Bank Corp. v. Dresser Industries, Inc., 141 F.3d 689 (7th Cir.1998), 191
- Swope v. Siegel-Robert, Inc., 243 F.3d 486 (8th Cir.2001), 471, 472
- Sztejn v. J. Henry Schroder Banking Corp., 177 Misc. 719, 31 N.Y.S.2d 631 (N.Y.Sup. 1941), 159
- Terry v. Penn Central Corp., 668 F.2d 188 (3rd Cir.1981), 490
- Timpinaro v. S.E.C., 2 F.3d 453, 303 U.S.App. D.C. 184 (D.C.Cir.1993), 545
- Torres v. Speiser, 268 A.D.2d 253, 701 N.Y.S.2d 360 (N.Y.A.D. 1 Dept.2000), 325
- Touche Ross & Co. v. Redington, 442 U.S. 560, 99 S.Ct. 2479, 61 L.Ed.2d 82 (1979), 88
- Transnor (Bermuda) Ltd. v. BP North America Petroleum**, 738 F.Supp. 1472 (S.D.N.Y.1990), 834
- Tron v. Condello, 427 F.Supp. 1175 (S.D.N.Y. 1976), 611
- Turkish, United States v., 623 F.2d 769 (2nd Cir.1980), 771
- United City Merchants (Investments) Ltd v. Royal Bank of Canada (The American Accord), 1982 WL 221777 (HL 1982), 159
- United States v. _____ (see opposing party)**
- United States Commodity Futures Trading Com'n v. Amaranth Advisors, LLC, 523 F.Supp.2d 328 (S.D.N.Y.2007), 766
- United States Trust Co. of New York v. Alpert, 10 F.Supp.2d 290 (S.D.N.Y.1998), 969, 970

- United States Trust Co. of New York v. Jenner**, 168 F.3d 630 (2nd Cir.1999), **967**
- Valencia, *United States v.*, 394 F.3d 352 (5th Cir.2004), 766
- Valuation of Common Stock of McLoon Oil Co., *In re*, 565 A.2d 997 (Me.1989), 471
- Venetis v. Global Financial Services, Inc., 174 F.R.D. 238 (D.Mass.1997), 137
- Waggoner v. Laster, 581 A.2d 1127 (Del. Supr.1990), 299
- Washington Public Power Supply System Securities Litigation, *In re*, 823 F.2d 1349 (9th Cir.1987), 612
- Watson's Estate v. Blumenthal, 586 F.2d 925 (2nd Cir.1978), 609
- Weinberg v. Baltimore Brick Co., 35 Del.Ch. 225, 114 A.2d 812 (Del.Supr.1955), 358
- Weinberger v. UOP, Inc.**, 457 A.2d 701 (Del. Supr.1983), **450**
- Williams, *In re*, 3 B.R. 728 (Bkrtcy.N.D.Ill. 1980), 456
- Williams v. Nevelow, 513 S.W.2d 535 (Tex. 1974), 419
- Winograd, United States v.**, 656 F.2d 279 (7th Cir.1981), **769**
- Wolff v. Heidritter Lumber Co., 163 A. 140 (N.J.Ch.1932), 419
- Wood v. Dummer, 30 F.Cas. 435 (C.C.D.Me. 1824), 341
- Wood v. National City Bank**, 24 F.2d 661 (2nd Cir.1928), **394**
- Yoshikawa v. S.E.C., 192 F.3d 1209 (9th Cir. 1999), 598
- Zeffiro v. First Pennsylvania Banking and Trust Co., 623 F.2d 290 (3rd Cir.1980), 237

CORPORATE FINANCE
DEBT, EQUITY, AND DERIVATIVE
MARKETS AND THEIR
INTERMEDIARIES

Third Edition

SUMMARY OF CONTENTS

	Page
PREFACE TO THE THIRD EDITION.....	v
ACKNOWLEDGMENTS.....	vii
TABLE OF CASES.....	xxv
Chapter One. Corporate Finance—An Overview.....	1
1. Introduction.....	1
2. Corporate Finance—Some History.....	2
3. Enron: Financial Moral Panic.....	11
4. The Role of the Corporate Lawyer.....	16
5. Institutions.....	21
6. Finance and Economics.....	44
Chapter Two. Some Basic Accounting Issues.....	52
1. Accounting Statements.....	52
2. Accountant’s Liability Under State Laws.....	70
3. SEC Regulation.....	86
4. Application of Accounting Standards.....	91
5. Sarbanes–Oxley Act of 2002: A Financial Moral Panic.....	114
6. Public Company Accounting Oversight Board.....	117
7. International Accounting Standards.....	120
Chapter Three. Interest Rates, the Money Market, and Firm Liquidity Management.....	124
1. Borrowing Funds—Some Fundamentals.....	124
2. The Money Market and Other Short Term Debt.....	136
3. Evolving Regulatory Approaches to Credit Rating Agencies.....	173
Chapter Four. Medium and Long Term Obligations.....	187
1. Instrument Design.....	187
2. Market Structure.....	194
3. Stockholder–Bondholder Conflict.....	209
4. Federal Securities Law Issues.....	241
Chapter Five. Preferred Stock.....	253
1. Instrument Design.....	253
2. Liquidation Preferences.....	259
3. Preferred and Common Shareholder Conflicts.....	268
4. Cumulative Preferred Dividends.....	300
5. Remarketed Preferred Stock.....	312
6. Preferred Stock Variations.....	314