

INTERACTIVE CASEBOOK SERIES

Corporations

■ A Contemporary Approach ■



Alan Palmiter
Frank Partnoy

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THE INTERACTIVE CASEBOOK SERIES™

CORPORATIONS

A Contemporary Approach

By

Alan Palmiter

PROFESSOR OF LAW
WAKE FOREST UNIVERSITY SCHOOL OF LAW

and

Frank Partnoy

GEORGE E. BARRETT PROFESSOR OF LAW AND FINANCE
UNIVERSITY OF SAN DIEGO SCHOOL OF LAW



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Overview

This is an interactive casebook about corporations.

As you'll discover, it has many of the elements of a traditional casebook: it lays out the rules and principles of corporate law and uses court decisions and statutes to identify key issues. But, as you'll also discover, this casebook has a modern feel: it uses interactive elements, such as examples, hypos, statutory excerpts, real-life documents, and sidebar boxes. It covers novel and complex areas of law and legal practice with more narrative description than you would find in a traditional casebook. And the online version of this casebook allows you to search the book for particular terms and to easily access a wealth of additional hyperlinked material.

Who is this book for? We designed the book for anyone taking a course on Corporations or Business Associations (see the sidebar). Whether you're taking the course because you know the topic will be on the bar exam, you're curious to understand corporations and their impact on society, or because you've dreamed of being a corporate lawyer since you were young, we've tried to make this book relevant to you. You'll find lots of useful new vocabulary and black-letter rules, a good dose of novel concepts and policy analysis, and the tools to become a top-notch corporate lawyer.



Take Note!

The book's title is "Corporations," but it works equally well for a survey course on "Business Associations." Both students and professors looking for an introduction to the law of business firms will find plenty of material here.

The book covers non-corporate firms throughout. It starts with a famous partnership case and ends with a case involving a limited liability company, or LLC. It explores many legal issues that arise in any business firm, such as formation, liability, governance, duties, and liquidity. It includes a chapter on firm organizational choices, with examples describing many of the main cases found in other Business Association casebooks. It introduces agency principles in a chapter on authority in the corporation. It covers accounting and valuation, topics relevant to both corporate and non-corporate firms. It explains how closely-held corporations compare to partnerships and LLCs, and the final two chapters focus on closely-held firms.

Before you launch into the book, we wanted to give you an overview of its main features, how we've organized the vast subject of corporate law, and a summary of the main principles of U.S. corporate law.

A. Organization of this Casebook

Corporate law is a sprawling, even daunting topic. The corporation reaches into every aspect of our social, economic, and political lives. How is it possible to understand it?

We believe that the corporation (or any business firm) can be understood by focusing on the questions that you would ask if you were thinking of investing in a business. You would want to know how long your commitment will last, who is liable if something goes wrong, how much control you will have, how accountable those running the business will be, whether you can get out, and what happens if the business is ever sold. Answering these questions will help you master corporate law.

To help you keep things straight, we've organized the book into modules that reflect the essential questions you would ask before investing in a business firm, particularly a corporation. Here are the ten modules of the book, with the specific questions addressed in each module. (Each of the 30 questions represents one chapter.) Don't worry right now if some of the words in this outline are unfamiliar. We just want you to have a sense of what we'll be covering. You might want to return to this outline periodically, to remind yourself where you are in the "big picture" of this course.

(1) Fundamentals

- What is a business firm?
- What are the basic attributes of the corporation?

(2) Corporation in society

- What law governs the corporation?
- What is the purpose of the corporation?
- What role does (and can) the corporation play in politics?

(3) Corporate form

- What business firm choices are available in organizing a business?
- How is a corporation formed?
- Where is the locus of decision making in a corporation?

- (4) Corporate finance
 - What basic accounting and finance should corporate lawyers know?
 - How does money come into and go out of the corporation?
- (5) Corporate externalities
 - What is corporate limited liability and when can it be disregarded?
 - When can the corporation and its insiders be criminally liable?
 - When can corporate investors and insiders be liable for environmental harm?
- (6) Corporate governance
 - What are the voting rights of corporate shareholders?
 - What are the information rights of shareholders when they vote?
 - How active are shareholders in publicly-traded corporations?
- (7) Fiduciary duties
 - When can shareholders sue to enforce their rights?
 - What duties do directors have when making corporate decisions?
 - What are the duties of directors when supervising the corporation?
 - What happens when a director's interests conflict with corporate interests?
 - What are the rules and duties that govern executive pay?
 - What are the duties within corporate groups?
- (8) Stock trading
 - How do stock markets work and how are they regulated?
 - When can shareholders sue if the corporation deceives them?
 - What are the limits on stock trading by corporate insiders?
- (9) Corporate deals
 - What rules apply to negotiated sales of control?
 - What devices are available to block hostile takeovers?
 - How can corporations protect negotiated changes in control?
- (10) Close corporations
 - How can minority shareholders protect themselves in closely-held corporations?
 - What judicial protections are available to minority shareholders?



Food for Thought

One way to think of the corporation is as a “private constitution.” As you’ll notice, the structure of the corporation resembles that of republican government, with shareholders as owner-citizens, the board of directors as the law-making legislature, and corporate officers as the bureaucracy. We return to this metaphor throughout the book and invite you to draw your own parallels, as a way to bring the corporation into clearer focus.

No doubt you probably have some questions about all of this: What are corporate externalities? What does it mean that shareholders are active? What are corporate groups? What is the difference between publicly-traded and closely-held corporations? How do corporations change control?

We will answer these and many other questions. But we want to emphasize that the questions and answers will be much clearer if you keep in mind how they fit into the bigger picture.

B. Features of this Casebook

Our purpose in this book is to engage (and even entertain) you in your study of corporate law. We have tried to do this in a number of ways. First, you’ll notice that we’ve streamlined the case decisions to cut out extraneous material such as unrelated discussion, citations to other cases, and even pin cites. Second, we follow up the cases and other primary materials with “Points for Discussion.” We’ve kept these brief and to the point by using straight-forward comments and questions to focus your attention on the important concepts from the cases. Third, we’ve included important statutes and rules, and even actual corporate documents, in special text boxes. Sometimes the most important thing for you to know is the actual legal language, so we’ve put it right in the book.

At various points you also will see examples and hypos, set apart in their own separate boxes. They are meant to give you a specific idea to think about, and to help you better understand the broader concepts of the main readings. The examples, often drawn from actual cases, fill in the details and thus complement the main cases and statutes. The hypos are there to animate your thinking about the material you’re reading and to provoke discussion, not to quiz you for a particular “right” answer.

Perhaps the most unusual feature of this book (and the other interactive casebooks in this new West series) are the breakout boxes, which we see as a kind of seasoning that gives flavor to the main ingredients of the book. The boxes draw your attention to noteworthy matters or to issues that deserve deeper reflection. Here are descriptions of the eight different kinds of breakout boxes that we’ve included:

The Box Categories



FYI. These boxes are self-explanatory bits of useful or interesting information relevant to material in the text.



Take Note! These boxes prompt you to take special notice of something in the case or text that deserves your attention.



Business Lingo. These boxes explain special business terms that arise in corporations and stock markets.



Practice Pointer. These boxes give you advice on lawyering and legal practice related to the material covered in the text.



What's That? These boxes explain the meaning of special legal terms that appear in the text. You can access *Black's Law Dictionary*® definitions by clicking on the hyperlinked term.



Make the Connection. These boxes refer to places elsewhere in the book, sometimes earlier and sometimes later, where you can find related information.



Go Online! These boxes allow you to access relevant online resources with hyperlinks or web search suggestions.



Food for Thought. These boxes pose questions that ask you to think about deeper issues raised in the readings.

In addition to the breakout boxes, another special feature of this interactive casebook is that it is also available online. In the electronic version, the cases, statutes and other materials – as well as internal references – are hyperlinked. (The hyperlinks are a light blue type in the printed text, and for some of the hyperlinked material you'll need a Westlaw® account to get access.) The electronic version also allows you to highlight and take notes, and to search with ease.

Go Online!



You may have noticed that there's an attached, tear-out card in the front of the book. It gives you instructions on how to access the online version of this Interactive Casebook. Check it out.

C. Principles of U.S. Corporate Law

Corporate law in the United States is special, even strange, in a number of remarkable ways. As you read through the materials, you will be exposed to some concepts that differ dramatically from those you have learned or will learn in the

rest of law school. We want to mention a few of these concepts upfront, so you'll know to look for them as you work through the various topics in the book. We will identify and discuss these concepts again, so you don't need to think through all of their implications right now. Still, you might find it useful to keep them in mind – or at least in the back of your mind – as you read this book.

Corporate law is about investors and managers. The focus of corporate law, and the law of business associations more generally, is the relationship between those who invest in the firm and those who manage it. Although the corporation affects lots of other people – such as employees, suppliers, customers, even communities – corporate law frequently regards them as falling outside the corporation, and instead focuses on investors and managers.

Corporate law is mostly state law. The law that governs the relationship between corporate investors and managers comes mostly from state law. Federal law is important in corporations whose shares are traded on national stock markets. But your first instinct should be to look to state law.

Corporate law is primarily private law. The rules and standards that govern the hierarchical relationship between corporate investors and managers are essentially chosen by the parties, depending on where they incorporate their business and how they choose to modify (or even eliminate) the default rules and standards that apply to their corporation.

Corporate law focuses on Delaware law. It turns out that more than half of the corporations whose shares are traded on public stock markets are incorporated in Delaware. This means much of corporate law is really Delaware law. That explains why this casebook is chock full of Delaware cases and statutory provisions.

Corporate law teaches “hands off.” A fundamental tenet of corporate law is that judges, and other would-be regulators, should keep their hands off corporate decision making, an essentially private matter. This principle is embodied in something called the “business judgment rule” – which we abbreviate in the book as BJR.

Corporate law is mostly about duties, not power. Corporate statutes lay out the powers of corporations and describe how decision making, voting, and remedies operate in corporations. But the really important corporate law comes from court cases that impose special duties – so-called “fiduciary duties” – on those who exercise corporate power.

Corporate law allows for adaptation. Corporations, like chameleons, change according to the business, financial, and regulatory environments in which they operate. Corporate law accepts adaptation and lays out many paths for the parties to change their corporation. Each path is legally acceptable under a principle called “independent legal significance.”

There you have it. Now you’re ready to begin your learning of corporate law.

Editor's Note

We have written this book to be a teaching resource, not a research tool. Toward this end, we have edited the cases heavily, generally without adding ellipses or brackets to signal our edits. This means we have omitted citations and footnotes, even whole paragraphs and sections, without any identifying notations. Likewise, to aid readability, we have removed words, phrases, and sections from statutes, official comments, and regulations, again without signaling these edits.

In short, as with many secondary references, you should use caution when quoting primary materials from this book. The full text of the cases and other primary materials are readily available by using the online version of the book, which has hyperlinks to the original sources.

In addition, the book does not have a suggested printed statutory supplement. Instead, we expect that students will rely on the statutory excerpts in the text, as well as the online statutory materials (including the Delaware General Corporation Law and the Model Business Corporation Act, both of which are linked here).

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