



民商法精要系列·影印注释本

West Nutshell Series

公司法

(第四版)



[美] R. W. 汉密尔顿 著

刘俊海 徐海燕 注

汤树梅 校



 中国人民大学出版社

 WEST GROUP

民商法精要系列·影印注释本

D971.222-9

2



West Nutshell Series

公司法 (第四版)

THE LAW OF

CORPORATIONS (Fourth Edition)

[美] R. W. 汉密尔顿 著
刘俊海 徐海燕 注
汤树梅 校

图书在版编目 (CIP) 数据

公司法: 英文/ (美) 汉密尔顿著; 刘俊海, 徐海燕注
北京: 中国人民大学出版社, 2000

(民商法精要系列·影印注释本)

书名原文: THE LAW OF CORPORATIONS

ISBN 7-300-03645-7/D·526

I. 公...

II. ①汉... ②刘... ③徐...

III. 公司法-美国-英文

IV. D971.222.9

中国版本图书馆 CIP 数据核字 (2000) 第 55758 号

民商法精要系列·影印注释本

West Nutshell Series

公司法 (第四版)

THE LAW OF CORPORATIONS

(Fourth Edition)

【美】 R. W. 汉密尔顿 著

刘俊海 徐海燕 注

汤树梅 校

出版发行: 中国人民大学出版社

(北京中关村大街 31 号 邮编 100080)

发行部: 62514146 门市部: 62511369

总编室: 62511242 出版部: 62511239

E-mail: rendafx@public3.bta.net.cn

经 销: 新华书店

印 刷: 三河市新世纪印刷厂

开本: 787×980 毫米 1/16 印张: 41 插页 1

2001 年 1 月第 1 版 2001 年 1 月第 1 次印刷

字数: 745 000

定价: 45.00 元

(图书出现印装问题, 本社负责调换)

导 读

由美国罗伯特·汉米尔顿所著的《公司法》一书是美国许多大学法学院学生学习公司法的必备入门教科书。该书自1980年由美国西方出版公司第一版出版发行以来，又先后于1987年、1991年和1996年三次再版发行。今年，这本书由中国人民大学出版社在国内出版发行，这对我国法律院系和工商管理学院的教授、学生、律师和公司经营管理者来说都是一件可喜之事。受出版社之邀，笔者作为公司法的研究人员为此书提供译注，也深感荣幸。

本书的最大特点之一是，详略得当，简明扼要，实用性强。公司法是一个博大精深的法律部门法。在美国，除了数量有限的联邦层次的公司成文立法和判例法之外，更多的公司法规体现在50个州的公司立法和判例法之中。因此，要想事无巨细地将联邦和各州的公司法规都囊括在一本入门教科书中是不可能的；但在一本教科书中只阐述枯燥的几条立法原则和判例要旨，也是失败之作。本书恰恰在这个问题上体现了重点突出与内容全面相兼顾、内容广度与深度相结合、立法例与判例、学说兼收并蓄的特点。例如，从体系上看，该书既阐述了公司的法律本质、公司的社会责任等基本理论概念，也覆盖了公司的设立、公司的合并与解散、公司的融资、公司的治理结构、股东权的保护（含股东代表诉讼与股东种类诉讼、股东的账簿查阅请求权）、董事的义务与责任、公司的利润分配、公开上市公司与内部控股公司的不同法律调整思路等诸多丰富内容。从每个章节内容上看，也能做到深入浅出，粗细并举。如，该书第9章用49页的篇幅论述股份与股东的法律地位，既触及到了基本理论问题，也照顾到了累积投票制、分类董事会、表决权代理、表决权买卖、股东表决协议、表决权信托、股份转让限制等颇具操作性的内容。

本书的最大特点之二是，语言流畅，可读性强。公司法是市场经济社会的法律基石。英美法系国家有关公司法的学术专著和教科书可谓是汗牛充栋。但无可否认，有些英文教科书的写作风格过于严谨，语法结构过于复杂，法律术语过于晦涩，无形中降低了我国法学院学生阅读原版英文公司法著作的兴趣。与其他英文公司法著作相比，本书体现了美国英语实用、朴素、流畅的独特魅力，使得大多数具有大学四级以上英语水准的读者均能直接阅读。为方便广大读者阅读，笔

者对本书中一些固定的公司法词汇与语句作了一些必要的注解。当然，为了减少读者对注解的依赖性，培养读者直接阅读英文原著作的独立性与积极性，笔者在为本书作注时坚持了尽量少作、甚至不作注解的原则。

本书的最大特点之三是，既充分介绍了美国公司法的现有基本原理和具体制度，也揭示了当前已经初露端倪的公司法律现象以及公司法学界尚无定论的问题。该书充分体现了教科书的风格，为读者学习美国公司法提供了最基本的知识背景。同时也介绍了美国公司法的前沿法律问题，如美国公司法学界对公司承担社会责任的争论，公司的本质是一连串合同关系的争论，公司经营管理人员的股票选择权（即股票期权）等等。这对于开阔我国读者的知识视野，无疑具有较大的帮助。

美国是世界上最发达的市场经济国家。这与公司法在保护股东的投资积极性、鼓励经营者的市场开拓精神方面所起的积极作用密不可分。难怪美国公司法学者将美国称之为“公司化的美国”（corporate America）。也难怪美国著名法学家巴特勒在1921年曾如此感慨道：“公司是现代社会最伟大的独一无二的发明。就连蒸汽和电都无法与之媲美，而且假若没有公司，蒸汽和电的重要性更会相应地萎缩”。美国公司法的成文立法主体具有多元化，联邦和诸州均有公司立法权限；公司法的渊源既有成文法，也有判例法。这些因素都决定了美国公司法与大陆法系公司法，乃至其他英美法系国家相比，具有极强的开放性、动态性与生命力。

1999年9月《中共中央关于国有企业改革和发展若干重大问题的决定》明确指出，“建立现代企业制度，是发展社会化大生产和市场经济的必然要求，是公有制与市场经济相结合的有效途径，是国有企业改革的方向”。现代企业制度虽然不是搞活所有国有企业的充分条件和灵丹妙药，但的确是搞活所有国有企业的必要条件和前提。国有企业建立现代企业制度的实质是，推动国有企业的商事化、法人化，把国有企业从目前的假法人、不合格的法人转变成真法人、合格的法人。“现代企业制度”一语有广、狭二义，前者既包括现代公司制度，也包括现代独资企业制度、现代合伙企业制度和现代合作社企业制度；而后者则仅指现代公司制度，包括有限责任公司制度、股份有限公司制度，尤其是上市公司制度。因此，我国国有企业建立的现代企业制度，就是现代公司制度。因此，《决定》强调，“公司制是现代企业制度的一种有效组织形式”。

由于我国的公司实践起步较晚、公司法理论研究薄弱、起草时间仓促等原因，致使我国1993年颁布的《公司法》还存在着不少缺陷，抓紧研究修改《公司法》已经迫在眉睫。公司、股东、经营者、债权人之间发生的各类纠纷迫切需

要人民法院和仲裁机构作出裁决。如何完善公司法解释学，补充公司法适用中的漏洞，也成为我国公司法学者面临的一个重要课题。为推动我国现代企业制度的建立，进一步提升我国公司法的研究水平，完善我国的公司立法，为我国公司方面的司法实践提供理论支持，都有必要认真借鉴美国公司法中的先进立法例、判例与学说。笔者相信，中国人民大学出版社推出的《公司法》一书的出版将在这方面发挥积极的推动作用。值该书付梓之际，赘寥寥数语，作为导读。该书注解中若有不当之处，敬请广大读者不吝指正，以便下次再版时订正。

刘俊海

2000年1月22日

于美国堪萨斯大学

**THE LAW OF
CORPORATIONS
IN A NUTSHELL**

Fourth Edition

By

ROBERT W. HAMILTON

Minerva House Drysdale Regents Chair in Law
The University of Texas at Austin



ST. PAUL, MINN.
WEST PUBLISHING CO.
1996

TABLE OF CASES

Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.,
 U.S. 114 S.Ct. 1439, 128 L.Ed.2d 119 (1994), 432

Chert v. Marbes, 41 Del.Ch. 494, 199 A.2d 548 (Del.Super.1964), 438

Chestman, United States v., 947 F.2d 551 (2nd Cir.1991), 433

Chingila v. United States, 83 L.Ed.2d 348 (1990), 432, 433

Cincom, Inc. v. Technicolor, Inc., 688 A.2d 1156 (Del.Super.1995), 418

Clark v. Dodge, 289 N.Y. 414, 198 N.E.2d 198 (1964), 198

Clearfield Trust Co. v. United States, 318 U.S. 369, 318 U.S. 744, 63 S.Ct. 573, 87 L.Ed. 838 (1943), 115, 116

Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 541, 69 S.Ct. 1231, 93 L.Ed. 1528 (1949), 471

Abercrombie v. Davies, 36 Del.Ch. 371, 130 A.2d 338 (Del.Super.1957), 228, 232
Application of (see name of party)

Aronson v. Lewis, 473 A.2d 805 (Del.Super.1984), 396

Auer v. Dressel, 306 N.Y. 427, 118 N.E.2d 590 (N.Y.1954), 191

Austin v. Michigan Chamber of Commerce, 494 U.S. 652, 110 S.Ct. 1391, 108 L.Ed.2d 652 (1990), 71

Baker v. Commercial Body Builders, Inc., 264 Or. 614, 507 P.2d 387 (Or. 1973), 302

Barnes v. Andrews, 298 F. 614 (S.D.N.Y.1924), 384

Bartle v. Home Owners Co-op., 309 N.Y. 103, 127 N.E.2d 832 (N.Y.1955), 100

Basic Inc. v. Levinson, 485 U.S. 224, 108 S.Ct. 978, 99 L.Ed.2d 194 (1988), 484

Benintendi v. Kenton Hotel, 294 N.Y. 112, 60 N.E.2d 829 (N.Y.1945), 298

Berkey v. Third Ave. Ry. Co., 244 N.Y. 84, 155 N.E. 58 (N.Y.1926), 101

Birnbaum v. Newport Steel Corp., 193 F.2d 461 (2nd Cir.1952), 447

Blau v. Lehman, 368 U.S. 403, 82 S.Ct. 451, 7 L.Ed.2d 403 (1962), 442

Bradshaw v. Jones, 152 S.W. 695 (Tex.Civ.App.1912), 86

Browning v. C & C Plywood Corp., 248 Or. 574, 434 P.2d 339 (Or.1967), 176

Bryan, United States v., 58 F.3d 933 (4th Cir.1995), 434

Burkin, Application of, 154 N.Y.S.2d 898, 136 N.E.2d 862 (N.Y.1956), 308

Burnett v. Word, Inc., 412 S.W.2d 792 (Tex.Civ.App.-Waco 1967), 195, 196

Business Roundtable v. S.E.C., 905 F.2d 406, 284 U.S.App.D.C. 301 (D.C.Cir. 1990), 158

Cady Roberts & Co., Matter of, 40 SEC 907 (1961), 431

Caplan, Petition of, 20 A.D.2d 301, 246 N.Y.S.2d 913 (N.Y.A.D. 1 Dept.1964), 446

Cargill, Inc. v. Hedge, 375 N.W.2d 477 (Minn.1985), 117

Carpenter v. United States, 484 U.S. 19, 108 S.Ct. 316, 98 L.Ed.2d 275 (1987), 432, 434

Cede & Co. v. Technicolor, Inc., 542 A.2d 1182 (Del.Super.1988), 552

TABLE OF CASES

- Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A., —
 U.S. —, 114 S.Ct. 1439, 128 L.Ed.2d 119 (1994), 494
- Cheff v. Mathes, 41 Del.Ch. 494, 199 A.2d 548 (Del.Supr.1964), 426
- Chestman, United States v., 947 F.2d 551 (2nd Cir.1991), 433
- Chiarella v. United States, 445 U.S. 222, 100 S.Ct. 1108, 63 L.Ed.2d 348
 (1980), 432, 433, 434
- Cinerama, Inc. v. Technicolor, Inc., 663 A.2d 1156 (Del.Supr.1995), 418
- Clark v. Dodge, 269 N.Y. 410, 199 N.E. 641 (N.Y.1936), 196, 198
- Clearfield Trust Co. v. United States, 318 U.S. 363, 318 U.S. 744, 63 S.Ct. 573,
 87 L.Ed. 838 (1943), 115, 116
- Cohen v. Beneficial Indus. Loan Corp., 337 U.S. 541, 69 S.Ct. 1221, 93 L.Ed.
 1528 (1949), 471
- Credit Lyonnais Bank Nederland, N.V. v. Pathe Communications Corp. (Del.
 Ch.1991), 427
- CTS Corp. v. Dynamics Corp. of America, 481 U.S. 69, 107 S.Ct. 1637, 95
 L.Ed.2d 67 (1987), 376, 377
- Dartmouth College v. Woodward, 17 U.S. 518, 4 L.Ed. 629 (1819), 6
- Diamond v. Oreamuno, 301 N.Y.S.2d 78, 248 N.E.2d 910 (N.Y.1969), 424
- Dirks v. S.E.C., 463 U.S. 646, 103 S.Ct. 3255, 77 L.Ed.2d 911 (1983), 432, 434,
 435
- Dodge v. Ford Motor Co., 204 Mich. 459, 170 N.W. 668 (Mich.1919), 517
- Donahue v. Rodd Electrotype Co. of New England, Inc., 367 Mass. 578, 328
 N.E.2d 505 (Mass.1975), 305, 306, 307, 414, 518
- Edgar v. MITE Corp., 457 U.S. 624, 102 S.Ct. 2629, 73 L.Ed.2d 269 (1982),
 376
- Eichler v. Berner, 472 U.S. 299, 105 S.Ct. 2622, 86 L.Ed.2d 215 (1985), 437
- Farris v. Glen Alden Corp., 393 Pa. 427, 143 A.2d 25 (Pa.1958), 541
- Fidelity Federal Sav. and Loan Ass'n v. Felicetti, 830 F.Supp. 262 (E.D.Pa.
 1993), 456
- First Nat. Bank of Boston v. Bellotti, 435 U.S. 765, 98 S.Ct. 1407, 55 L.Ed.2d
 707 (1978), 70
- Fliegler v. Lawrence, 361 A.2d 218 (Del.Supr.1976), 403
- Foremost-McKesson, Inc. v. Provident Securities Co., 423 U.S. 232, 96 S.Ct.
 508, 46 L.Ed.2d 464 (1976), 442
- Francis v. United Jersey Bank, 87 N.J. 15, 432 A.2d 814 (N.J.1981), 383
- Gall v. Exxon Corp., 418 F.Supp. 508 (S.D.N.Y.1976), 473
- Galler v. Galler, 32 Ill.2d 16, 203 N.E.2d 577 (Ill.1964), 200, 202, 305, 308
- Gearing v. Kelly, 227 N.Y.S.2d 897, 182 N.E.2d 391 (N.Y.1962), 299
- Geyer v. Ingersoll Publications Co., 621 A.2d 784 (Del.Ch.1992), 427

TABLE OF CASES

- Goodnow v. American Writing Paper Co.**, 69 A. 1014 (N.J.Err. & App.1908),
510
- Hall v. Staha**, 303 Ark. 673, 800 S.W.2d 396 (Ark.1990), 232
- Heckmann v. Ahmanson**, 168 Cal.App.3d 119, 214 Cal.Rptr. 177 (Cal.App. 2
Dist.1985), 426
- Heller v. Boylan**, 29 N.Y.S.2d 653 (N.Y.Sup.1941), 408
- Honigman v. Green Giant Co.**, 309 F.2d 667 (8th Cir.1962), 445
- Hospes v. Northwestern Mfg. & Car Co.**, 48 Minn. 174, 50 N.W. 1117
(Minn.1892), 141
- Hunt v. Rousmanier's Adm'rs**, 21 U.S. 174, 5 L.Ed. 589 (1823), 223
- Hyman v. Velsicol Corp.**, 342 Ill.App. 489, 97 N.E.2d 122 (Ill.App.1951), 176
- In re (see name of party)**
- J. I. Case Co. v. Borak**, 377 U.S. 426, 84 S.Ct. 1555, 12 L.Ed.2d 423 (1964),
362, 363
- John Kelley Co. v. C.I.R.**, 326 U.S. 521, 326 U.S. 698, 66 S.Ct. 299, 90 L.Ed.
278 (1946), 165
- Jones v. H. F. Ahmanson & Co.**, 81 Cal.Rptr. 592, 460 P.2d 464 (Cal.1969),
445
- Kahn v. Lynch Communication Systems, Inc.**, 638 A.2d 1110 (Del.Supr.1994),
403
- Klinicki v. Lundgren**, 298 Or. 662, 695 P.2d 906 (Or.1985), 412
- Lehrman v. Cohen**, 43 Del.Ch. 222, 222 A.2d 800 (Del.Supr.1966), 235, 297
- Liggett Co. v. Lee**, 288 U.S. 517, 53 S.Ct. 481, 77 L.Ed. 929 (1933), 14
- Long Park v. Trenton-New Brunswick Theatres Co.**, 297 N.Y. 174, 77 N.E.2d
633 (N.Y.1948), 198
- Marciano v. Nakash**, 535 A.2d 400 (Del.Supr.1987), 403
- Matter of (see name of party)**
- McQuade v. Stoneham**, 263 N.Y. 323, 189 N.E. 234 (N.Y.1934), 196, 198, 199,
200
- Mills v. Electric Auto-Lite Co.**, 396 U.S. 375, 90 S.Ct. 616, 24 L.Ed.2d 593
(1970), 364
- Minton v. Cavaney**, 56 Cal.2d 576, 15 Cal.Rptr. 641, 364 P.2d 473 (Cal.1961),
105
- Moran v. Household Intern., Inc.**, 500 A.2d 1346 (Del.Supr.1985), 374, 392
- Nixon v. Blackwell**, 626 A.2d 1366 (Del.Supr.1993), 199, 307
- Obre v. Alban Tractor Co.**, 228 Md. 291, 179 A.2d 861 (Md.1962), 170

TABLE OF CASES

- Old Dominion Copper Mining & Smelting Co. v. Bigelow, 203 Mass. 159, 89 N.E. 193 (Mass.1909), 89
- Old Dominion Copper Mining & Smelting Co. v. Lewisohn, 210 U.S. 206, 28 S.Ct. 634, 52 L.Ed. 1025 (1908), 89
- Panter v. Marshall Field & Co., 646 F.2d 271 (7th Cir.1981), 392
- Paramount Communications Inc. v. QVC Network Inc., 637 A.2d 34 (Del. Supr.1994), 375
- Paramount Communications, Inc. v. Time, Inc., 571 A.2d 1140 (Del. Supr.1989), 375
- Perlman v. Feldmann, 219 F.2d 173 (2nd Cir.1955), 444, 446, 478, 479
- Petition of (see name of party)**
- Pinson v. Hartsfield Intern. Commerce Center, Ltd., 191 Ga.App. 459, 382 S.E.2d 136 (Ga.App.1989), 99
- Piper v. Chris-Craft Industries, Inc., 430 U.S. 1, 97 S.Ct. 926, 51 L.Ed.2d 124 (1977), 369
- Quaker Hill, Inc. v. Parr, 148 Colo. 45, 364 P.2d 1056 (Colo.1961), 87
- Radaszewski v. Telecom Corp., 981 F.2d 305 (8th Cir.1992), 105
- Radom & Neidorff, Inc., In re, 307 N.Y. 1, 119 N.E.2d 563 (N.Y.1954), 303
- Randall v. Bailey, 23 N.Y.S.2d 173 (N.Y.Sup.1940), 609
- Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc., 506 A.2d 173 (Del. Supr.1985), 375, 393, 394
- Ridder v. CityFed Financial Corp., 47 F.3d 85 (3rd Cir.1995), 456
- Ringling Bros.-Barnum & Bailey Combined Shows v. Ringling, 29 Del.Ch. 610, 53 A.2d 441 (Del.Supr.1947), 228
- Rogers v. Hill, 289 U.S. 582, 53 S.Ct. 731, 77 L.Ed. 1385 (1933), 407
- Rooney v. Paul D. Osborne Desk Co., Inc., 38 Mass.App.Ct. 82, 645 N.E.2d 50 (Mass.App.Ct.1995), 138
- Ross v. Bernhard, 396 U.S. 531, 90 S.Ct. 733, 24 L.Ed.2d 729 (1970), 460
- Santa Fe Industries, Inc. v. Green, 430 U.S. 462, 97 S.Ct. 1292, 51 L.Ed.2d 480 (1977), 548
- Schreiber v. Carney, 447 A.2d 17 (Del.Ch.1982), 226
- Securities and Exchange Commission v. May, 229 F.2d 123 (2nd Cir.1956), 368
- Securities and Exchange Commission v. Texas Gulf Sulphur Co., 401 F.2d 833 (2nd Cir.1968), 432, 436
- Selheimer v. Manganese Corp. of America, 423 Pa. 563, 224 A.2d 634 (Pa.1966), 381
- Sinclair Oil Corp. v. Levien, 280 A.2d 717 (Del.Supr.1971), 415
- Singer v. Magnavox Co., 380 A.2d 969 (Del.Supr.1977), 547, 548

TABLE OF CASES

- Smith v. Van Gorkom, 488 A.2d 858 (Del.Supr.1985), 60, 387, 389, 391, 393, 402
- Speed v. Transamerica Corporation, 235 F.2d 369 (3rd Cir.1956), 415
- Strong v. Repide, 213 U.S. 419, 29 S.Ct. 521, 53 L.Ed. 853 (1909), 424
- Studebaker Corp. v. Gittlin, 360 F.2d 692 (2nd Cir.1966), 532
- Superintendent of Ins. of State of N. Y. v. Bankers Life & Cas. Co., 404 U.S. 6, 92 S.Ct. 165, 30 L.Ed.2d 128 (1971), 438
- Surowitz v. Hilton Hotels Corp., 383 U.S. 363, 86 S.Ct. 845, 15 L.Ed.2d 807 (1966), 472
- Taylor v. Standard Gas & Elec. Co., 306 U.S. 307, 306 U.S. 618, 59 S.Ct. 543, 83 L.Ed. 669 (1939), 121
- Theodora Holding Corp. v. Henderson, 257 A.2d 398 (Del.Ch.1969), 70
- Timberline Equipment Co., Inc. v. Davenport, 267 Or. 64, 514 P.2d 1109 (Or.1973), 94
- Tomlinson v. Loew's, 37 Del.Ch. 8, 135 A.2d 136 (Del.Supr.1957), 256
- Tomlinson v. 1661 Corp., 377 F.2d 291 (5th Cir.1967), 164
- TSC Industries, Inc. v. Northway, Inc., 426 U.S. 438, 96 S.Ct. 2126, 48 L.Ed.2d 757 (1976), 363
- United States v. _____ (see opposing party)**
- Unitrin, Inc. v. American General Corp., 651 A.2d 1361 (Del.Supr.1995), 375
- Unocal Corp. v. Mesa Petroleum Co., 493 A.2d 946 (Del.Supr.1985), 374, 393, 426, 521
- USACafes, L.P. Litigation, In re, 600 A.2d 43 (Del.Ch.1991), 72
- Van Schaack Holdings, Ltd. v. Van Schaack, 867 P.2d 892 (Colo.1994), 424
- Virginia Bankshares, Inc. v. Sandberg, 501 U.S. 1083, 111 S.Ct. 2749, 115 L.Ed.2d 929 (1991), 364
- Vogel v. Lewis, 25 A.D.2d 212, 268 N.Y.S.2d 237 (N.Y.A.D. 1 Dept.1966), 307
- Walkovszky v. Carlton, 276 N.Y.S.2d 585, 223 N.E.2d 6 (N.Y.1966), 106, 107
- Weinberger v. UOP, Inc., 457 A.2d 701 (Del.Supr.1983), 417, 547, 552
- Wheelabrator Technologies, Inc. Shareholders Litigation, In re, 663 A.2d 1194 (Del.Ch.1995), 419
- Zahn v. Transamerica Corporation, 162 F.2d 36 (3rd Cir.1947), 414, 415
- Zapata Corp. v. Maldonado, 430 A.2d 779 (Del.Supr.1981), 396, 397
- Zion v. Kurtz, 428 N.Y.S.2d 199, 405 N.E.2d 681 (N.Y.1980), 195, 199

*

**THE LAW OF
CORPORATIONS
IN A NUTSHELL**

Fourth Edition

*

OUTLINE

	Page
TABLE OF CASES	xvii
Chapter One. The Corporation in Perspective	1
Sec.	
1.1 What Is a Corporation? The Concept of an Artificial Entity	1
1.2 What Is a Corporation? Other Theories	4
1.3 The "Nexus of Contracts" Theory	6
1.4 The Development of Corporation Law in the United States	12
1.5 Economic Analysis of the "Race for the Bottom"	14
1.6 What Explains Delaware's Success in Attracting Corporations?	16
1.7 The Model Business Corporation Act	18
1.8 The Federal Securities Laws	19
1.9 The Debate Over Social Responsibility and the Publicly Held Corporation	20
1.10 "Closely Held" and "Publicly Held" Corporations	22
Chapter Two. Unincorporated Business Forms	25
2.1 Unincorporated Business Forms In General	25
2.2 A Dictionary of Unincorporated Business Forms	25
2.3 Personal Liability and Taxes: The Most Important Factors in Selecting a Business Form	30
2.4 An Introduction to Federal Taxation of Business Forms	32

OUTLINE

Sec.		Page
2.5	Taxation of "C" and "S" Corporations.....	35
2.6	Combining Partnership Tax Treatment and Limited Liability	37
2.7	Economic Effects of the Double Tax Regime.....	39
Chapter Three. Formation of Corporations		42
3.1	In General.....	42
3.2	Selection of the State of Incorporation.....	42
3.3	Mechanics of Creating a Corporation.....	43
3.4	Incorporators.....	45
3.5	Articles of Incorporation: In General	47
3.6	Articles of Incorporation: The Corporate Name..	49
3.7	Articles of Incorporation: Period of Duration.....	53
3.8	Articles of Incorporation: Purposes and Powers	53
3.9	Articles of Incorporation: Capitalization.....	56
3.10	Articles of Incorporation: Registered Office and Registered Agent.....	58
3.11	Articles of Incorporation: Initial Board of Di- rectors	59
3.12	Articles of Incorporation: Limitation of Directo- ral Liability	60
3.13	Completion of the Organization of the Corpora- tion: In General.....	61
3.14	Nature and Purpose of Bylaws	62
3.15	The Corporate Seal.....	63
3.16	Organizational Meetings	63
Chapter Four. The Limited Role of Ultra Vires.....		66
4.1	The Common Law Doctrine of Ultra Vires	66
4.2	The Modern Role of Ultra Vires.....	68
4.3	Ultra Vires Problems in Connection With Corpo- rate Powers	69

OUTLINE

	Page
Chapter Five. Preincorporation Transactions	76
Sec.	
5.1 Introduction	76
5.2 Subscriptions for Shares	76
5.3 Agreements to Form Corporation	79
5.4 Promoters in General	81
5.5 Promoters' Contracts	83
5.6 Liability of Corporations for Promoters' Contracts	87
5.7 Promoter's Fiduciary Duties	89
5.8 Organizational Expenses Incurred by Promoters	90
5.9 Premature Commencement of Business and the De Facto Doctrine	92
5.10 Corporations by Estoppel	95
Chapter Six. "Piercing the Corporate Veil" and Related Problems	98
6.1 "Piercing the Corporate Veil" In Context	98
6.2 Shareholder Responsibility for Corporate Indebtedness: Introduction	99
6.3 The Standard Rhetoric of Piercing the Corporate Veil	100
6.4 Piercing the Corporate Veil in Contract and Tort Cases	101
6.5 Inadequate Capitalization	104
6.6 Failure to Follow Corporate Formalities	107
6.7 Parent-Subsidiary Cases	109
6.8 The Concept of "Enterprise Entity"	113
6.9 Choice of Law Issues in "Piercing the Corporate Veil" Cases	113
6.10 The Federal Law of "Piercing the Corporate Veil"	115
6.11 Reverse Piercing	116
6.12 "Piercing the Corporate Veil" to Further Public Policy	117

OUTLINE

Sec.		Page
6.13	“Piercing the Corporate Veil” in Taxation and Bankruptcy	119
6.14	Other Generalizations About “Piercing the Corporate Veil”	122
Chapter Seven. Financing the Corporation		123
7.1	Introduction	123
7.2	Basic Definitions: Common Stock; Authorized and Issued Shares	124
7.3	The Price of Common Shares	126
7.4	Par Value, Stated Capital and Related Concepts	127
7.5	No Par Shares	135
7.6	Shares Issued for Property or Services	136
7.7	Liability of Shareholders for Watered Stock	140
7.8	Treasury Shares as a Device to Avoid Restrictions on the Issuance of Shares	146
7.9	Current Trends Regarding Par Value	147
7.10	Other Types of Securities: “Equity” and “Debt” Securities	148
7.11	Characteristics of Debt Securities	149
7.12	Classes of Equity Securities; Preferred Shares	152
7.13	The Advantages of Debt Financing	160
7.14	Tax Consequences of Excessive Debt Capitalization in C Corporations	164
7.15	Debt as a Second Class of Stock in S Corporations	165
7.16	The Deep Rock Doctrine Revisited	166
7.17	Equalizing Capital and Services When Forming a Corporation	167
7.18	Issuance of Shares by a Going Concern: Preemptive Rights	170
7.19	Oppressive Issuance of Shares	175
7.20	Circular Ownership of Shares	177