Much, perhaps most, of the productive capacity of the global economy is owned within the corporate form. Why? Moreover in the U.S. once these enterprises achieve significant size, the typical and almost universal pattern is for them to attract risk capital through the device of (regulated) securities. Why this method of capital allocation? Finally, how do those who supply risk capital to these enterprises (and others who make investments in them) receive reasonable assurance that the enterprises in which their savings are invested will be operated soundly.

This course will provide materials to enable students to fashion answers to these and related questions. While we will acknowledge the ways in which markets themselves provide certain assurances to investors, the principal focus of the course will be upon legal infrastructure: legal duties and legal enforcement mechanisms that attempt to supply this assurance and the shortcomings of these mechanisms.

WEEK 1: Controlling the Large Business Corporation: Law & Markets
02/10/05

A. Why Corporation Dominates. Legal attributes of the corporate form that allow corporations to dominate all other market participants.

B. For Whose Benefit Should Corporate Power be Expended? The Goal of Board Supervision. Are corporations simply shareholder property or do those in control of them owe loyalty to other constituencies?

READINGS:
Allen & Kraakman excerpt #1, COMMENTARIES & CASES ON THE LAW OF BUSINESS ORGANIZATION (2003); pgs. 81-103.


WEEK 2: The Legal Control Structures: External and Internal
02/17/05

A. Review of External Corporate Controls

B. The Role of the Board and the Agency Problem. What is unique about corporations as creatures subject to legal system control?
C.  *Constraining Agency Costs of Management.*
- Competitive markets
- Shareholder voting and takeovers
- Incentive compensation
- Basics of the fiduciary duty

**READINGS:**


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**WEEK 3: The Incentives of Corporate Directors**

02/24/05

A.  *Incentives for Director Engagement.*
- The nature of the task and the limited time commitment
- Limited ownership interests
- Emphasis on independence
- Role of reputation or civic duty
- Pay and perquisites today -- Would greater pay give greater incentive to take seriously?

B.  *The Limited Role for Liability Sanctions.*
- Damages: duty of care

C.  *Director Liability Protections.*
- The business judgment rule and other liability protections

D.  *Finding a Balance.*

**READINGS:**


Memo on D&O Insurance and Indemnification.
WEEK 4
03/03/05

A. **What Constitutes “Good” Corporate Governance?**
   • What is central and what is malleable?
   • Current requirements and “best practices”

B. **Does Corporate Governance Matter to Wealth Creation?**
   • Academic studies

**READINGS:**
- NYSE Listing Standards Report and SEC Order amending.
- Armstrong Corporate Responsibility and Governance document
- Armstrong Nominating and Governance Committee Charter
- Armstrong Management Development and Compensation Committee Charter

WEEK 5: **Assuring Integrity of Financial Information.**
03/10/05

A. **Role of Stock Price and Financial Disclosure**

B. **The SEC’s Mandatory Disclosure System**
   • Accounting standards and auditing standards
   • Mandated MD&A (management discussion and analysis)
   • Anti-fraud regime: Rule 10b-5 and 14(e)

C. **Assurance: The Modern Audit Committee**
   • Its charter
   • The audit committee relationship with internal audit and with independent auditor
   • What impairs auditor independence?

D. **Risk Assessment and Disclosure Committee Under Sarbanes-Oxley**

E. **CEO and CFO Certifications Under Sarbanes-Oxley**

**READINGS:**
- Fenwick & West, Audit Committee Best Practices (2003)
- Wachtell, Lipton, Rosen & Katz, Audit Committee Model Charter

Armstrong Audit Committee Charter.

03/17/05  NO CLASS – SPRING BREAK

WEEK 6: Shareholder Voting
03/24/05

A. **Law: Who Votes on What**

B. **How: Proxy Voting**
   - Solicitation of proxies: cost
   - Access to the company’s proxy materials; SEC regulation; current reform
   - Role of institutions

C. **Role of Institutions**

**READINGS:**
Allen & Kraakman excerpt, COMMENTARIES & CASES ON THE LAW OF BUSINESS ORGANIZATION (2003); pgs. 171-185; 557-564

SEC Rule re Shareholder Nomination (10/14/03)