



## INTRODUCTION TO CORPORATE LAW AND GOVERNANCE (LL135)

**Course duration:** 54 hours lecture and class time (Over three weeks)

**LSE Teaching Department:** Department of Law

**Lead Faculty:** Professor David Kershaw

**Pre-requisites:** None

### Course Description and Learning Outcomes:

Welcome to *Introduction to Corporate Law and Governance*. The course begins with an introduction to company law, which includes an explanation of the sources of company law and an analysis of the implications of incorporating a company. The course then builds upon this introduction to consider the regulation of the governance of the company. Here we will focus on the legal and non-legal mechanisms designed to ensure that directors act in their company's and not in their own interests.

The course is designed to study corporate law and governance mechanisms in the economic and business context in which they operate. The question that the course will regularly pose is how do corporate law and governance mechanisms facilitate economic activity and how do they respond to the problems generated by the organizational form of the company. The course's objective is to understand the different ways in which law can respond to these economic demands and problems. Accordingly, the course adopts an explicitly comparative approach drawing in particular on UK and US corporate law, but also on examples from continental European companies, in particular Germany.

### Course Structure:

The course is divided into two parts. This first part of the course will look at the basics of corporate law including separate legal personality and limited liability. The second part of the course will look at corporate governance, including for example: the regulation of the appointment and removal of directors; directors' duties; the composition of the board; ways in which shareholders can enforce their rights and the operation of the market for corporate control.

There will be 12 three hour lectures, which includes a revision lecture on Day 12. Classes will meet for 1.5 hours each day to discuss material covered in the previous days lecture and to answer problem questions addressing this material. The reading is divided into *Required Reading* and *Optional Reading*. Optional reading is designed for additional reference should students be interested but is not required for successful completion of the course.

**Core Text and Materials:**

The core course text is David Kershaw's *Company Law in Context: Text and Materials* (2<sup>nd</sup> Edition OUP, 2012). In addition a course pack will be provided consisting of extracts from texts, articles and cases.

**Assessment:**

Assessment for the course involves a 1000 word essay which is worth 20% of the final mark and a 2 hour examination worth 80% of the final mark.

**PART I: INTRODUCTION TO CORPORATE LAW AND COMPANY STRUCTURE****Day 1: Introduction****Topics Covered:**

- Introduction to the basic principles of legal systems and legal analysis
- Introduction to the organization of business activity: the sole trader. This section uses the most basic of business organizational forms to introduce corporate vocabulary, concepts and ideas, as well as to identify the problems of sole trading which the company form attempts to resolve.
- Incorporation options and the process of incorporation
- The corporate constitution
- Introduction to regulatory competition to attract incorporations in the US and EU.

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**Required Reading:**

- D. Kershaw, *Company Law in Context: Text and Materials* (2nd Edition) chapter 1
- P. Davies, *Introduction To Company Law* (2010), Ch. 1

**Day 2: The Consequences of Incorporation****Topics Covered:**

- Separate legal personality: the entity doctrine; asset partitioning
- Limited liability: meaning and rationales
- The problems generated by limited liability: legal and non-legal responses

**Required Reading:**

- D. Kershaw, *Company Law in Context: Text and Materials* (2nd Edition) pp 30-46
- P. Davies, *Introduction To Company Law* (2010), Chs. 3

### **Day 3: Piercing the Corporate Veil**

#### **Topics Covered:**

- Piercing the veil in the UK
- Piercing the veil in the US

#### **Required Reading:**

- D. Kershaw, Company Law in Context: Text and Materials (2nd Edition) pp 46-78
- US case extracts (course pack)

#### **Further Reading (optional):**

- H. Hansmann and R. Kraakman, 'Toward Unlimited Liability for Corporate Torts' (1991) 100 Yale Law Journal 1879 (extract also found in Kershaw, Chapter 17)

## **PART II: CORPORATE GOVERNANCE**

### **Day 4: Introduction to the agency problem**

#### **Topics Covered:**

- The economist's versus the lawyer's understanding of the agency problem
- Types of agency problem
- The benefits of separating ownership and control
- What is the collective action problem?
- Case study on responses to the agency problem: designed to enable students to identify from first principles ways of maximising the benefits of separation of ownership and control whilst minimising agency costs.
- Strategies for addressing corporate agency problems

#### **Required Reading:**

- Kershaw, Company Law in Context: Text and Materials (2nd Edition), chapter 5 OR
- P. Davies, Introduction To Company Law (2010), Chs. 5

### **Day 5: The Distribution of Power: Initiation and Appointment Strategies**

#### **Topics Covered:**

- The distribution of decision making power
- Instructing the board and shareholder veto powers
- Appointing the board
- Removing the board
- Director primacy versus shareholder primacy

### Required Reading:

- Kershaw, Company Law in Context: Text and Materials (2nd Edition) chapter 6
- Kraakman et al, The Anatomy of Corporate Law (Oxford University Press, 2009) Ch 3
- Extracts from Delaware General Corporation Law and UK Listing Rules (course pack)

### Further Reading (optional):

- L. Bebchuk, 'The Case for Increasing Shareholder Power' (2005) Harvard Law Review 833

## Day 6: Directors Duties I: Shareholders and Stakeholders

### Topics Covered:

- Who are the duties owed to?
- Who should they be owed to: shareholders versus stakeholders?
- US constituency statutes
- The UK reform debate and legislative outcome: an analysis
- Duty of good faith
- Duty to promote the success of the company
- Alternative approaches to protecting Stakeholder interests
- German Codetermination

### Required Reading:

- General: P. Davies, Introduction To Company Law (2010), Chs. 6
- Kershaw, Company Law in Context: Text and Materials (2nd Edition) chapters 9 and 10.
- L Stout, 'Bad and Not-so-Bad Arguments for Shareholder Primacy' (2002) 75 Southern California Law Review 1189 (course pack)
- Extracts from the Companies Act 2006 and US state constituency statutes (course pack)

### Further Reading (optional):

- K. Pistor, 'Co-determination in Germany: A Socio-Political Model with Governance Externalities' in Employees and Corporate Governance (ed. M. Blair and M. Roe) (course pack)
- D Kershaw, 'No End in Sight for the History of Corporate Law' (2002) 2 Journal of Corporate Law Studies 34

## Day 7: Directors Duties II: Introduction and Competence

### Topics Covered:

- Types of duty
- Where do we find the rules?
- The duty of care
- Distinguishing between standard of review and standard of conduct

- Accountability versus risk taking
- The problem of hindsight bias
- UK: duty of care skill and diligence
- US: the business judgement rule

**Required Reading:**

- Kershaw, Company Law in Context: Text and Materials (2nd Edition) chapter 12
- Extracts from M. Eisenberg, Corporations and Other Business Organizations (Foundation Press, 2000) (course pack)

**Further Reading (optional):**

- C. Riley, 'The Case for an Onerous but Subjective Duty of Care' (1999) 62 Modern Law Review 697-724
- Parkinson, Corporate Power and Responsibility (Clarendon Press, Oxford 1993), ch 4 pp 97-136

**Day 8: Directors Duties III: Loyalty**

**Topics Covered:**

- Regulation of self dealing: UK and US
- Corporate opportunities regulation: UK and US
- Approval processes
- Economic analysis of corporate opportunities regulation

**Required Reading:**

- Kershaw, Company Law in Context: Text and Materials (2nd Edition) chapters 13 (pp 476-496; 498-502) and 14 (pp 514-536, 539-560, 567-565, 579-588)
- Extracts from Companies Act 2006 and Delaware General Corporation Statute (course pack)

**Further Reading (optional):**

- R. C. Clark, Corporate Law, (Little Brown & Co, 1986), ch 16
- D. Kershaw, 'Lost in Translation: Corporate Opportunities in Comparative Perspective' (2005) 25 Oxford Journal of Legal Studies 603-627 (course pack)
- J. Lowry and R. Edmunds, 'The No Conflict-No Profit Rules and the Corporate Fiduciary-Challenging the Orthodoxy of Absolutism' (2000) Journal of Business Law 122-142 (course pack)
- V. Brudney and R.C. Clark, 'A New Look at Corporate Opportunities' (1981) 94 Harvard Law Review 997-1062

**Day 9: Shareholder Enforcement**

**Topics Covered:**

- What is a derivative action and what is the rationale for making it available or restricting its availability?
- Mechanisms of regulating access to derivative suits

- In what circumstances are derivative suits available: US v UK
- Alternative shareholder remedies

**Required Reading:**

- R Clark, Corporate Law (Little Brown & Co, 1986), ch 15 (course pack)
- US case extracts (course pack)
- Kershaw, Company Law in Context: Text and Materials (Second Edition) chapter 15 (pp589-628)

**Day 10: Corporate Governance Codes**

**Topics Covered:**

- Introduction to board composition and structure themes
- Approaches to regulation: mandatory rules versus comply and explain
- History: Pre- and Post- Enron Composition Regulation
- An analysis of the US and UK governance codes
- Do corporate governance codes work?
- Two tier versus one tier boards: difference in theory and practice

**Required Reading:**

- Kershaw, Company Law in Context: Text and Materials (Second Edition) chapter 7

**Further Reading (optional):**

- Bhagat, Sanjai and Black, Bernard S., 'The Uncertain Relationship Between Board Composition and Firm Performance' (1999) 54 Business Lawyer, pp. 921-963, 1999
- K. Hopt, 'The German Two-tier Board: Experience, Theory, Reforms' in K. Hopt et al (eds) Comparative Corporate Governance (Oxford University Press, 1998) (course pack).

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**Day 11: The Market for Corporate Control**

**Topics Covered:**

- What is the market for corporate control?
- How does it control agency costs?
- Introduction to basic transaction structures
- Outline of takeover defence types?
- Alternative approaches to regulating takeover defences
- Comparison of UK and US approaches
- Effect of EU Takeover Directive

**Required Reading:**

- Extracts from Choper, Coffee, Gilson, Cases and Materials on Corporations (Foundation Press, 2004) (course pack)
- Extracts from Rule 21 UK Takeover Code (2006) (course pack)

- Extracts from F. Easterbrook and D. Fishel, The Economic Structure of Corporate Law. (course pack)

**Further Reading (optional):**

- Extracts from M. Lipton, 'Management and Control of the Modern Business Corporation: Corporate Control Transactions' University of Chicago Law Review 1037 (2002) (course pack)
- Extracts from D. Kershaw, 'The Illusion of Importance: Reconsidering the UK's Takeover Defence Prohibition' (2007) 56 International and Comparative Law Quarterly 1-40 (course pack)
- M. Kahan and E. Rock, 'How I learned to Stop Worrying and Love the Pill: Adaptive Responses to Takeover Law, University of Chicago Law Review 871 (2002)
- Kershaw, Company Law in Context: Text and Materials (first edition) Web Chapter A

**Day 12: Revision**

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**Credit Transfer:** If you are hoping to earn credit by taking this course, please ensure that you confirm it is eligible for credit transfer well in advance of the start date. Please discuss this directly with your home institution or Study Abroad Advisor.

As a guide, our LSE Summer School courses are typically eligible for three credits within the US system and 7.5 ECTS in Europe. Different institutions and countries can, and will, vary. You will receive a digital transcript and a printed certificate following your successful completion of the course in order to make arrangements for transfer of credit.

If you have any queries, please direct them to [summer.school@lse.ac.uk](mailto:summer.school@lse.ac.uk)