

CORPORATE & COMMERCIAL LAW SEMINAR (LAW 807)

(3 OR 4 CREDITS)

Spring 2021

Tuesday 1:20pm to 3:50pm, *Room 2*

Jan 10 to April 26, 2022

Professors:

Robert Rasmussen, Room 456, rrasmussen@law.usc.edu

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Administrative Assistant: John Lee, Room 401, johnlee@law.usc.edu

Course Objectives

After completing this course, we would like you to:

- Think critically about arguments regarding how corporate governance is and should ideally be structured
- Contrast shareholder primacy with stakeholder, managerial and other alternative models
- Understand the concept of agency cost and how it influences corporate governance
- Understand entities within and outside of firms that influence corporate governance
- Consider the role of competition and path dependence in the evolution of corporate governance
- Write concise, thoughtful reaction papers
- Ask insightful questions to guest lecturers

Course Description

This course will examine leading legal and economic theories regarding corporate governance. Students will read foundational articles from leading scholars, prepare reaction papers, and actively participate in class discussions. Students will also read work in progress reflecting the cutting edge of corporate governance research and presentations from practitioners about current topics. Students will engage with and provide feedback to guest speakers.

Prerequisite: Business Organizations (Law 603).

The course is a three (3) unit course with a (4) unit option.

Course Work & Grading

Grades will be awarded based on class participation and weekly student reaction papers to the assigned reading. Students taking the course for four credits will be required to write a 20 page (~5,000 word) scholarly article on a topic of their choosing, related to the class, and approved by the professors. This course may only be taken for a grade (no pass-fail option).

Enrollment Cap:

Enrollment will be capped at 25 students.

Office Hours:

After class or by appointment.

Name Placards and Seating

Please bring a name placard to class and place it in front of you. If you have lost your name placard, you may obtain a free replacement from John Lee, Room 401, johnlee@law.usc.edu. Please keep the back-row empty for guests and visitors.

Syllabus Revisions

We may post revisions to the syllabus or announce changes in class. Please check the course website regularly!

Course Outline

Foundational Classic Articles

Week 1: January 11

- Milton Friedman, *A Friedman Doctrine: The Social Responsibility of Business Is to Increase its Profits*, NEW YORK TIMES, September 13, 1970, <https://www.nytimes.com/1970/09/13/archives/a-friedman-doctrine-the-social-responsibility-of-business-is-to.html>.

- Michael C. Jensen & William H. Meckling, *Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure*, 3 J. FIN. ECON. 305–360 (1976).
- Frank H. Easterbrook & Daniel R. Fischel, *The Corporate Contract*, 89 COLUM. L. REV. 1416–1448 (1989).

Week 2: January 18

- Henry Hansmann & Reinier Kraakman, *The End of History for Corporate Law*, 89 GEO. L.J. 439 (2001).
- Mark J. Roe, *A Political Theory of American Corporate Finance*, 91 COLUM. L. REV. 10–67 (1991).
- Margaret M. Blair & Lynn A. Stout, *A Team Production Theory of Corporate Law*, 85 VA. L. REV. 247 (1999).

Week 3: Jan. 25

Guest Speaker: Stephen Bainbridge

- Lucian Arye Bebchuk & Jesse M. Fried, *Executive Compensation as an Agency Problem*, 17 J. ECON. PERSP. 71–92 (2003).
- Stephen M. Bainbridge, *Director Primacy: The Means and Ends of Corporate Governance*, 97 NW. U. L. REV. 547–606 (2002).

Optional:

- James A. Brickley, Jeffrey L. Coles & Gregg Jarrell, *Leadership structure: Separating the CEO and Chairman of the Board*, 3 J. CORP. FIN. 189–220 (1997).

Week 4: Feb. 1

Guest Speaker: Sarath Sanga

- Lucian Arye Bebchuk & Mark J. Roe, *A Theory of Path Dependence in Corporate Ownership and Governance*, 52 STAN. L. REV. 127–170 (1999).
- Roberta Romano, *Law as a Product: Some Pieces of the Incorporation Puzzle*, 1 J. LAW, ECON., & ORG. 225–283 (1985).

AND

- Roberta Romano, *The Sarbanes-Oxley Act and the Making of Quack Corporate Governance*, 114 YALE L.J. 1521–1612 (2004).

Week 5: Feb. 8

- Douglas G. Baird & Robert K. Rasmussen, *Private Debt and the Missing Lever of Corporate Governance*, 154 U. PA. L. REV. 1209–1251 (2006).
- George G. Triantis & Ronald J. Daniels, *The Role of Debt in Interactive Corporate Governance*, 83 CAL. L. REV. 1073 (1995).

Week 6: Feb. 15

Session on paper writing & discussion of student essay topics; discussion of student reaction papers / how to respond to papers for live classes

[TBD additional speaker]

+ Changes in Corporate Governance over time SEC filings exercise

Important Work:

Week 7: Mar. 1

- Alon Brav, Frank Partnoy et al., *Hedge Fund Activism, Corporate Governance, and Firm Performance*, 63 J. FIN. 1729–1775 (2008).
- Ronald J. Gilson & Reinier Kraakman, *Reinventing the Outside Director: An Agenda for Institutional Investors*, 43 STAN. L. REV. 863 (1991).
- Stephen Choi, Jill E Fisch & Marcel Kahan, *The Power of Proxy Advisors: Myth or Reality?*, 59 EMORY L. J. 869 (2010).

Week 8: Mar. 8

- Bernard S Black & Ronald J Gilson, *Venture Capital and the Structure of Capital Markets: Banks Versus Stock Markets*, 47 J. FIN. ECON. 243–277 (1998).

- D. Gordon Smith, *Team Production in Venture Capital Investing*, 24 J. CORP. L. 940 (1999).

Presentations from Speakers of New and Recent Research

Class 9 -14: TBD

Mar. 22	Jennifer Arlen (NYU) Compliance & Governance Paper	In person
Mar. 29		
April 5		
April 12		
April 19	Dorothy Lund (USC) Shareholders as Regulators	In person
April 26	Ed Rock (NYU), Systemic Stewardship with Tradeoffs	In person
date TBD		
Mark Roe	The Market Mechanisms of Corporate Social Responsibility	(zoom)
Elizabeth Pollman	(needs April 19) (in person)	

USC Statement on Academic Conduct and Support Systems

Plagiarism – presenting someone else’s ideas as your own, either verbatim or recast in your own words – is a serious academic offense with serious consequences. Please familiarize yourself with the discussion of plagiarism in *SCampus* in Part B, Section 11, “Behavior Violating University Standards” <https://policy.usc.edu/scampus-part-b/>. Other forms of academic dishonesty are equally unacceptable. See additional information in *SCampus* and university policies on scientific misconduct, <http://policy.usc.edu/scientific-misconduct>.

Support Systems:

Student Counseling Services (SCS) - (213) 740-7711 – 24/7 on call

Free and confidential mental health treatment for students, including short-term psychotherapy, group counseling, stress fitness workshops, and crisis intervention. <https://engemannshc.usc.edu/counseling/>

National Suicide Prevention Lifeline - 1-800-273-8255

Provides free and confidential emotional support to people in suicidal crisis or emotional distress 24 hours a day, 7 days a week. <http://www.suicidepreventionlifeline.org>

Relationship & Sexual Violence Prevention Services (RSVP) - (213) 740-4900 - 24/7 on call

Free and confidential therapy services, workshops, and training for situations related to gender-based harm. <https://engemannshc.usc.edu/rsvp/>

Sexual Assault Resource Center

For more information about how to get help or help a survivor, rights, reporting options, and additional resources, visit the website: <http://sarc.usc.edu/>

Office of Equity and Diversity (OED)/Title IX compliance – (213) 740-5086

Works with faculty, staff, visitors, applicants, and students around issues of protected class.
<https://equity.usc.edu/>

Bias Assessment Response and Support

Incidents of bias, hate crimes and microaggressions need to be reported allowing for appropriate investigation and response. <https://studentaffairs.usc.edu/bias-assessment-response-support/>

Student Support & Advocacy – (213) 821-4710

Assists students and families in resolving complex issues adversely affecting their success as a student EX: personal, financial, and academic. <https://studentaffairs.usc.edu/ssa/>

Diversity at USC – <https://diversity.usc.edu/> Tabs for Events, Programs and Training, Task Force (including representatives for each school), Chronology, Participate, Resources for Students