

PREFACE

With this Ninth Edition, Jesse Choper, a founder of this casebook and long-time Dean at Boalt Hall Law School in Berkeley, leaves us for retirement. We will miss him. He was our leader—always organized, always friendly, and always seeking to express a complex thought in a few less words. His succinct and fluent writing style will continue to influence us.

Joining us with this edition is Brian JM Quinn of Boston College Law School. Brian has already done many things in a short time: a teaching fellow at Stanford Law School, a legislative aide to Senator Edward M. Kennedy, in private practice with Cooley Godward in Palo Alto, a country coordinator for Harvard's Institute for International Development (where he oversaw Harvard's Vietnam-based teaching and research activities), and a specialist in merger and acquisition law.

With this edition, we have made a determined effort to shrink our size without reducing our coverage or depth. New material however has been added in all chapters. In Chapter I, recognizing that issues of race have dominated the headlines and political discourse, we examine recent efforts to increase racial and gender diversity on corporate boards, and efforts by some states and Nasdaq to require greater diversity. We also briefly review the Public Benefit Corporation, which is a new creature that is a hybrid of a profit-making corporation and a not-for-profit entity. Its recent growth has been hyperbolic. We also return to this new actor on the corporate stage in connection with corporate acquisitions in Chapter IX.

Chapter II provides an introduction to the basic management structures of the corporation as well as to the various duties of directors, including the duties of care and loyalty. New to this chapter is a focus on the emerging line of duty of good faith cases in the context of director oversight where directors have failed to monitor a critical risk. Known as the "*Caremark*" context, it had been thought that the risk of liability in this area was remote, but a new line of cases has refused to dismiss these claims and compelled defendants to settle where they overlooked a serious risk for a continuing period.

Chapter III surveys the financial economics associated with valuing corporations. Because parties create corporations to the end of creating value, Chapter III provides a framework for doing so and the role of law in accomplishing it.

Chapter IV covers important issues related to the formation of the corporation, including the effects of defective incorporation, and also addresses the occasions on which courts have “pierced the corporate veil” and subjected shareholders to liability because they misused the corporation. Chapter IV also examines the potential liability of successor corporations for the deaths of their predecessors.

Chapter V covers disclosure and the federal securities laws. New Supreme Court decisions (including *Lorenzo* and *Omnicare*) are assessed, and the continuing struggle to define insider trading is reviewed.

Chapter VI examines shareholder voting and proxy contests as basic tools of corporate accountability and gives special attention to recent efforts by activist hedge funds to influence and constrain corporate management through proxy contests. Close attention is given to the SEC’s rules, which have been revised in several noteworthy respects.

Chapters VII addresses the legal issues associated with organizing and operating privately held corporations. It traces the evolution of the legal rules governing such “close” corporations, as corporate law in this area has moved from legislative formalities to becoming increasingly a matter of contract. The culmination has been a series of legislative authorizations for new types of vehicles that emphasize contract, including the highly successful limited liability company.

Chapter VIII introduces the shareholder derivative action, a critical legal device for policing management opportunism, but one not without its own faults. This chapter examines cases and standards that deal with the evolution of the demand futility standard in derivative litigation.

Chapter IX takes up the most controversial area of corporate law over the last 30 some years: the legal rules governing friendly and unfriendly acquisitions. In doing so it tracks the unique experience of Delaware law over this period and the continuing dialogue between the Delaware Chancery Court and the Delaware Supreme Court about the allocation of authority between the board of directors and shareholders.

The authors particularly want to express their thanks and appreciation to their research assistants who have worked long and hard on this edition (and have shown immense patience in dealing with the authors). These include: Henry Hagen, Jihoon Kim, and Taylor Sutton.

John C. Coffee, Jr.
Ronald J. Gilson
Brian JM Quinn