# Corporations

## **Corporations**

### **Cases and Materials**

#### Dalia Tsuk Mitchell

Professor of Law
The George Washington University Law School



Copyright © 2018 Dalia Tsuk Mitchell All Rights Reserved.

ISBN 978-1-5310-0927-4 eISBN 978-1-53100-928-1 LCCN 2018933301

Carolina Academic Press, LLC 700 Kent Street Durham, North Carolina 27701 Telephone (919) 489-7486 Fax (919) 493-5668 www.cap-press.com

Printed in the United States of America.



### **Contents**

Table of Principal Cases	xiii
Part $1\cdot$ The Nature and Purpose of the Corporation	
Section I · What is a Corporation?	3
Trustees of Dartmouth College v. Woodward	4
Liam Seamus O'Melinn, Neither Contract nor Concession:	
The Public Personality of the Corporation	16
Section II · The Corporation and the Community	21
Steinway v. Steinway & Sons	21
Dodge v. Ford Motor Co.	25
Dalia Tsuk Mitchell, Corporations Without Labor: The Politics	
of Progressive Corporate Law	34
A.P. Smith Mfg. Co. v. Barlow	36
Bell v. Maryland	42
Poletown Neighborhood Council v. City of Detroit	51
Charter Township of Ypsilanti v. General Motors Corporation	53
Section III · Ownership and Control	61
A. The Corporation and Other Business Forms	62
B. Limited Liability and Its Limits	65
Walkovszky v. Carlton	65
Kinney Shoe Corporation v. Polan	72
Sea-Land Services, Inc. v. The Pepper Source	77
Consolidated Rock Products Co. v. Du Bois	81
C. The Authority of the Board	86
Delaware General Corporation Law Section 141	86
Delaware General Corporation Law Section 142	90
Hoyt v. Thompson's Executor	90
Shlensky v. Wrigley	92
Grimes v. Donald	96
Section IV · The Corporation's Capital Structure	100
A. Debt	101
Simons v. Cogan	102
Metropolitan Life Insurance Company v. RJR Nabisco, Inc.	105

viii CONTENTS

Katz v. Oak Industries, Inc.	114
B. Preferred Stock	123
Jedwab v. MGM Grand Hotels, Inc.	123
In re Trados Incorporated Shareholder Litigation	128
Part 2 $\cdot$ The Duties of Directors, Officers and other Insiders	
Section I · Derivative Litigation	138
A. The Distinction Between Derivative and Direct Actions	139
Eisenberg v. The Flying Tiger Line, Inc.	139
Grimes v. Donald	142
B. Security for Expenses	144
Baker v. MacFadden Publications, Inc.; Baker v. Boord	144
C. Demand on the Board	147
Grimes v. Donald	147
Marx v. Akers	151
London v. Tyrrell	160
D. The Role of Special Litigation Committees	166
Auerbach v. Bennett	166
Zapata Corporation v. Maldonado	174
In re Oracle Corp. Derivative Litigation	182
Section II · The Duty of Care	193
A. Directors' Negligence (The Duty to Act)	194
Francis v. United Jersey Bank	194
Senn v. Northwest Underwriters Inc.	205
B. The Business Judgment Rule	208
Kamin v. American Express Company	208
Joy v. North	212
C. The Business Judgment Rule and the Duty of Care	216
Smith v. Van Gorkom	216
Van Gorkom in context	236
Section III · The Duty of Loyalty	239
A. Interested Director Transactions	240
Meinhard v. Salmon	241
Bayer v. Beran	246
Delaware General Corporation Law Section 144	253
Marciano v. Nakash	255
Benihana of Tokyo, Inc. v. Benihana, Inc.	261
B. Corporate Opportunity	266
Broz v. Cellular Information Systems, Inc.	266
ALI Principles of Corporate Governance Section 5.05	276
In re eBay, Inc. Shareholders Litigation	278
C. Compensation and Waste	282
Lewis v. Vogelstein	282

CONTENTS ix

Section IV · Good Faith	295
A. A New Framework	296
Cede & Co. v. Technicolor, Inc.	296
Cede v. Technicolor in context	306
In re The Walt Disney Company Derivative Litigation,	
Brehm v. Eisner	307
B. Good Faith and the Duty to Monitor	343
In re Caremark International Inc. Derivative Litigation	343
Stone v. Ritter	357
In re Citigroup Inc. Shareholder Derivative Litigation	367
In re China Agritech, Inc. Shareholder Derivative Litigation	387
Section V · The Federal Approach	404
A. Rule 10b-5	406
Halliburton Co. v. Erica P. John Fund, Inc.	406
West v. Prudential Securities, Incorporated	419
B. Insider Trading	423
Securities and Exchange Commission v. Texas Gulf Sulphur Co.	424
Dirks v. Securities and Exchange Commission	438
United States v. O'Hagan	448
C. Short-Swing Profits	457
Part 3 · Shareholders	
Section I · Shareholders in Publicly Held Corporations	462
Dalia Tsuk Mitchell, Shareholders as Proxies: The Contours	
of Shareholder Democracy	462
A. Proxy and Consent Contests	464
Rosenfeld v. Fairchild Engine and Airplane Corporation	466
Campbell v. Loew's Incorporated	473
Levin v. Metro-Goldwyn-Mayer, Inc.	483
Blasius Industries, Inc. v. Atlas Corporation	492
Andrew C. Houston, Chancellor Allen's Jurisprudence: Blasius	
and the Democratic Paradigm in Corporate Law	503
B. Shareholders' Rights to Information	506
Mills v. Electric Auto-Lite Co.	506
TSC Industries, Inc. v. Northway, Inc.	512
Virginia Bankshares, Inc. v. Sandberg	521
C. Shareholder Proposals	533
Dalia Tsuk Mitchell, Shareholders as Proxies: The Contours	
of Shareholder Democracy	533
Amalgamated Clothing and Textile Workers Union v.	
Wal-Mart Stores, Inc.	541

x CONTENTS

American Federation of State, County & Municipal	
Employees (AFSCME), Employees Pension Plan v.	
American International Group, Inc. (AIG)	554
CA, Inc. v. AFSCME Employees Pension Plan	560
Section II · Shareholders in Closely Held Corporations	570
A. Shareholders' Voice and Exit Arrangements	571
Ringling BrosBarnum & Bailey Combined Shows, Inc. v.	3/1
Ringling Ringling	573
Abercrombie v. Davies	580
Lehrman v. Cohen	589
Oceanic Exploration Company v. Grynberg	597
Rosiny v. Schmidt	604
B. The Allocation of Power between Shareholders and Directors	618
McQuade v. Stoneham	618
Clark v. Dodge	625
Galler v. Galler	628
C. Fiduciary Duties of Shareholders in Closely Held Corporations	635
Donahue v. Rodd Electrotype Company of New England, Inc.	635
Wilkes v. Springside Nursing Home, Inc.	645
Smith v. Atlantic Properties, Inc.	652
Brodie v. Jordan	656
Jordan v. Duff and Phelps, Inc.	661
D. Remedies for Oppression	675
Alaska Plastics, Inc. v. Coppock	675
In the Matter of the Judicial Dissolution of Kemp & Beatley, Inc.	681
Section III · Controlling Shareholders	687
A. Controlling Shareholders' Fiduciary Duties	687
Sinclair Oil Corporation v. Levien	687
Anadarko Petroleum Corporation v. Panhandle	
Eastern Corporation	692
Zahn v. Transamerica Corporation	699
B. Sale of Control	703
Perlman v. Feldmann	703
Essex Universal Corporation v. Yates	709
Part 4 · Fundamental Transactions	
Section I · The De Facto Merger Doctrine	722
Farris v. Glen Alden Corporation	723
Hariton v. Arco Electronics, Inc.	729
Section II · Freeze-Out Mergers	730
Weinberger v. UOP, Inc.	730

CONTENTS xi

Kahn v. M&F Worldwide Corp.	744
Coggins v. New England Patriots Football Club, Inc.	758
Glassman v. Unocal Exploration Corp.	765
Leader v. Hycor, Inc.	767
Section III · Tender Offers and Hostile Takeovers	772
A. Unocal / Revlon Duties	774
Unocal Corporation v. Mesa Petroleum Co.	774
Unocal v. Mesa in context	783
Moran v. Household International, Inc.	785
Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc.	792
Paramount Communications, Inc. v. Time Incorporated	803
Paramount Communications Inc. v. QVC Network Inc.	819
Unitrin, Inc. v. American General Corp.	836
B. Extending the <i>Unocal / Revlon</i> Approach	857
Hilton Hotels Corporation v. ITT Corporation	858
Omnicare, Inc. v. NCS Healthcare, Inc.	867
Lyondell Chemical Company v. Ryan	890
C. Anti-Takeover Legislation	896
CTS Corporation v. Dynamics Corporation of America	896
Index	907

### **Table of Principal Cases**

A	Cede & Co. v. Technicolor, Inc., 296
A.P. Smith Mfg. Co. v. Barlow, 36	Charter Township of Ypsilanti v. General
Abercrombie v. Davies, 580	Motors Corporation, 53
Alaska Plastics, Inc. v. Coppock, 675	Clark v. Dodge, 625
Amalgamated Clothing and Textile	Coggins v. New-England Patriots
Workers Union v. Wal-Mart Stores,	Football Club, Inc., 758
<i>Inc.</i> , 541	Consolidated Rock Products Co. v. Du
American Federation of State, County &	Bois, 81
Municipal Employees (AFSCME),	CTS Corporation v. Dynamics Corpora-
Employees Pension Plan v. American	tion of America, 896
International Group, Inc. (AIG), 554	D
Anadarko Petroleum Corporation v.	Dirks v. Securities and Exchange
Panhandle Eastern Corporation, 692	Commission, 438
Auerbach v. Bennett, 166	Dodge v. Ford Motor Co., 25
В	Donahue v. Rodd Electrotype Company
Baker v. MacFadden Publications, Inc.;	of New England, Inc., 635
Baker v. Boord, 144	,
Bayer v. Beran, 246	E E
Bell v. Maryland, 42	Eisenberg v. The Flying Tiger Line, Inc.,
Benihana of Tokyo, Inc. v. Benihana,	139
Inc., 261	Essex Universal Corporation v. Yates,
Blasius Industries, Inc. v. Atlas Corpora-	709
tion, 492	F
Brodie v. Jordan, 656	Farris v. Glen Alden Corporation, 723
Broz v. Cellular Information Systems,	Francis v. United Jersey Bank, 194
Inc., 266	G
C	Galler v. Galler, 628
CA, Inc. v. AFSCME Employees Pension	Glassman v. Unocal Exploration Corp.,
Plan, 560	765
Campbell v. Loew's Incorporated 473	Grimes v. Donald, 96, 142, 147

H	London v. Tyrrell, 160
Halliburton Co. v. Erica P. John Fund,	Lyondell Chemical Company v. Ryan,
<i>Inc.</i> , 406	890
Hariton v. Arco Electronics, Inc., 729	M
Hilton Hotels Corporation v. ITT	Marciano v. Nakash, 255
Corporation, 858	Marx v. Akers, 151
Hoyt v. Thompson's Executor, 90	McQuade v. Stoneham, 618
I	Meinhard v. Salmon, 241
In re Caremark International Inc.	Metropolitan Life Insurance Company v.
Derivative Litigation, 343	RJR Nabisco, Inc., 105
In re China Agritech, Inc. Shareholder	Mills v. Electric Auto-Lite Co., 506
Derivative Litigation, 387	Moran v. Household International, Inc.,
In re Citigroup Inc. Shareholder Deriva-	785
tive Litigation, 367	0
In re eBay, Inc. Shareholders Litigation,	Oceanic Exploration Company v.
278	Grynberg, 597
In re Oracle Corp Derivative Litigation,	Omnicare, Inc. v. NCS Healthcare, Inc.,
182	867
In re The Walt Disney Company	n
Derivative Litigation, 307	P
In re Trados Incorporated Shareholder	Paramount Communications, Inc. v.
Litigation, 128	Time Incorporated, 803 Paramount Communications Inc. v.
In the Matter of the Judicial Dissolution	QVC Network Inc., 819
of Kemp & Beatley, Inc., 681	Perlman v. Feldmann, 703
J	Poletown Neighborhood Council v. City
Jedwab v. MGM Grand Hotels, Inc., 123	of Detroit, 51
Jordan v. Duff and Phelps, Inc., 661	•
Joy v. North, 212	R
K	Revlon, Inc. v. MacAndrews & Forbes
Kahn v. M&F Worldwide Corp., 744	Holdings, Inc., 792
Kamin v. American Express Company,	Ringling BrosBarnum & Bailey
208	Combined Shows, Inc. v. Ringling, 573
Katz v. Oak Industries, Inc., 114	Rosenfeld v. Fairchild Engine and
Kinney Shoe Corporation v. Polan, 72	Airplane Corporation, 466
L	Rosiny v. Schmidt, 604
Leader v. Hycor, Inc., 767	
Lehrman v. Cohen, 589	S C L LO C L C C L
Levin v. Metro-Goldwyn-Mayer, Inc.,	Sea-Land Services, Inc. v. The Pepper
483	Source, 77
Lewis v. Vogelstein, 282	Securities and Exchange Commission v.
5	Texas Gulf Sulphur Co., 424

Senn v. Northwest Underwriters Inc., 205 Shlensky v. Wrigley, 92 Simons v. Cogan, 102 Sinclair Oil Corporation v. Levien, 687 Smith v. Atlantic Properties, Inc., 652 Smith v. Van Gorkom, 216 Steinway v. Steinway & Sons, 21 Stone v. Ritter, 357

T

Trustees of Dartmouth College v. Woodward, 4 TSC Industries, Inc. v. Northway, Inc., 512

U

United States v. O'Hagan, 448 Unitrin, Inc. v. American General Corp., 836 Unocal Corporation v. Mesa Petroleum Co., 774 V

Virginia Bankshares, Inc. v. Sandberg, 521

W

Walkovszky v. Carlton, 65 Weinberger v. UOP, Inc., 730 West v. Prudential Securities, Incorporated, 419 Wilkes v. Springside Nursing Home, Inc., 645

Z

Zahn v. Transamerica Corporation, 699 Zapata Corporation v. Maldonado, 174