

Corporations

Corporations

A Contemporary Approach

*Cases and Materials for a Course
in Corporate Law*

SIXTH EDITION

Michael R. Diamond

PROFESSOR OF LAW
GEORGETOWN LAW



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*To my family, Jacki, Dez, and Geordie,
for all that you have given me.*

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Introduction

Why another casebook on corporate law in a field that abounds with good choices? I undertook this project because I think that, despite the existence of excellent casebooks on the market, none of them adequately address issues I believe corporate law students need to think through in order to be equipped to serve as corporate lawyers and to be educated as lawyer-citizens in the twenty-first century. In one respect, this casebook is traditional: it addresses the same topics and uses many of the same leading cases found in other books. In another respect, I believe the approach of this book is entirely original. It is that aspect of the project that has led me to produce this book.

The study of corporate law apart from a consideration of the issues raised by the nature of the corporation and its purpose in society provides an incomplete education in the subject. All contemporary casebooks treat the corporation as an economic institution, and this one is no exception. As a doctrinal matter, corporations serve as the most powerful and prominent vehicle for the conduct of business in America and, indeed, the world. As a theoretical matter, corporate law has, over the course of its history in this country, developed to serve this function very well. Like others, I present these doctrinal and theoretical views through the cases and through the materials following them. Again, as others do, I address issues of practical lawyering throughout the book.

But it is not enough to say that doctrine and economics answer all of the important questions about the modern business corporation. In fact, they frequently fail to raise some of the most important questions. For all its vitality as an economic institution, the corporation is a social and political institution as well. Its peculiar legal characteristics, its role in public life, and its dominating power in the world economy require the modern corporate lawyer to understand the special roles of the entity she is serving. To this end, I have broadened the range of social sciences that normally accompany the study of corporate law doctrine, from economics alone to sociology, psychology, political and moral philosophy, and history. I have done so not only by the essays and questions throughout the book but also, as in the case of Chapter One, in the very construction of the book itself. I hope that through this approach, the questions of role, purpose, and responsibility; the questions of public entity versus private property; and the questions of shareholders versus stakeholders all undergird the doctrinal materials and make for a richer course that situates the modern American business corporation in the world more realistically than does the more traditional limited focus on the internal workings of the enterprise. I have

done this, I hope, in a format that will be comfortable for and familiar to seasoned teachers of corporate law, stimulating to new teachers, and, most important, enriching for students of the course.

While I have, of course, my own views on these questions, I have tried to present this material with as light and subtle a touch as I can. It is not my intention to be heavy-handed or to attempt to indoctrinate students into one way of thinking. It is, instead, simply my belief that no student should finish her study of corporations without thinking about the questions and problems I have raised here. The conclusions that you reach will be your own, informed, I hope, by the material I have presented.

It is in that spirit — the spirit of broad intellectual engagement — that I present this book. I hope you enjoy it and I welcome your comments for consideration in future editions.

Note on Citations

In many instances, some or all of the citations and footnotes in the cases and excerpts have been omitted or renumbered. Readers should consult the original sources for exact citation information.

Note to Teachers

You will, as I mentioned, find the classic cases in this book, as well as other cases that I believe enhance the thematic and methodological approach. One area I have not addressed in very much depth is agency and partnership, topics that in recent years have formed the opening sections of most corporations casebooks. I do discuss these materials where I think they are helpful to an understanding of corporate law, but I do not present them in a way that permits their in-depth teaching. I feel comfortable in this decision both because I believe that there is so much material to cover in corporate law itself that I did not want to detract from the principal focus of the book or its themes, and also because I know that several excellent paperback casebooks covering only agency and partnership law are available for those teachers who choose to explore these materials in detail and would otherwise be inclined to use this book.

M.D.