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Assessment

- Written examination
- English
- Essay questions
- Dictionaries permitted
- Structure of answer most important – IRAC
- Issue, Rule/Law/Regulation, ANALYSIS!, Conclusion
- Grades awarded: 1-6 (0.5)
- Passing grade: 4

Lecture 1	**Overview / Basic Concepts of Corporate Law.** Course introduction and important information. What are the general concepts of corporate law across jurisdictions? Why do we have companies? What is "the theory" of the firm? Discuss the contractarian vs communitarian perspectives of the firm. What is the shareholder supremacy model?
Lecture 2	**Corporate Personality and Limited Liability.** How are corporations formed? What are the memorandum and articles of association? Separate legal entity – Salomon principle. Whose liability is limited? Why so? Discuss recent developments regarding the disclosure duties of beneficial owners as well as the doctrine of "piercing the corporate veil".
Lecture 3	**Board Management and Agency Problems.** Management and agency problems. What are the main problems in modern boards? How do director's duties address the principal-agent problem? How are corporate boards of directors in Western Europe different from the US? Do directors' have duties to the corporation or to shareholders? Are their duties aimed at resolving the principal-agent problem? Should there be international standards governing the regulation of corporate governance? Or should it be left to individual states or regional trading areas?
Lecture 4	**Alternatives to Incorporation.** What are the reasons not to incorporate? Discuss the regulatory competition between partnerships and corporations. What are the commonalities and differences between different kinds of partnerships from a comparative perspective? What are the reasons for the rise of hybrids (especially LLCs)? Discuss recent developments as regards to entity proliferation and DAOs.
Lecture 5	**Corporate Finance and Prospectus Regulation.** Corporate finance theory – why do companies raise capital? What type of capital exists? What does capital maintenance mean? What is a prospectus? What is required in a prospectus? What is the liability for misstatements?
Lecture 6	**Majority Control and Minority Protection.** Corporate law and investor protection. Is there a duty of stewardship? Control rights and related-party transactions. Control issues and protecting minority shareholders. How does the legal origin of shareholder rights affect corporate governance? Discuss recent developments regarding Elon Musk's compensation packages from Tesla.

Lecture 7	**Corporate Law and Investment Funds.** This lecture examines structural similarities between funds and companies, particularly limited liability and the nexus of contracts, while emphasizing key differences such as the prohibition of operational business purposes for funds and the separation between fund and management. It also contrasts the control-based protections of corporate law with the behavioural rules of fund regulation.
Lecture 8	**Compensation and Bonuses.** What are the objectives and main issues of executive remuneration. Is variable pay superior to a fixed salary. How do different jurisdiction regulate executive pay. Discuss the specific EU requirements for financial services firms. How does horizontal shareholding affect executive remuneration?
Lecture 9	**Takeovers and Mergers.** What is meant by the market for corporate control? How important should the market for corporate control be in influencing corporate governance? How are takeovers a governance mechanism? Discuss the main takeover defenses in the readings and their effects on stakeholders.
Lecture 10	**Insider Dealing and Market Abuse / The Role of Technology in Corporate Governance.** The nature of market abuse and manipulation, the rationale for control of market abuse, criminal and civil offences, corporate fraud. The role of technology in Corporate Governance. How advances and use of Artificial Intelligence (AI) and Blockchain are reshaping corporate practices.
Lecture 11	**The Role of Gatekeepers.** Following discussion on the role of the board and gatekeepers we take a closer look at governance problems that may arise and the role of compliance. How far can or should corporate transparency and disclosure extend? Specifically, we will look at recent developments in transparency and reporting regulations such as the Corporate Transparency Act in the United States, the UK Economic Crime and Corporate Transparency Act 2023, and Corporate Sustainability Reporting Directive of the EU.
Lecture 12	**Current Trends in Corporate Law.** This lecture examines new approaches emerging in corporate governance both on a general basis and by looking at recent examples of changes to corporate governance rules. Examples include the amendments to the Texas Business Organization Code and how such changes have been driven by jurisdictional competition to attract corporations.

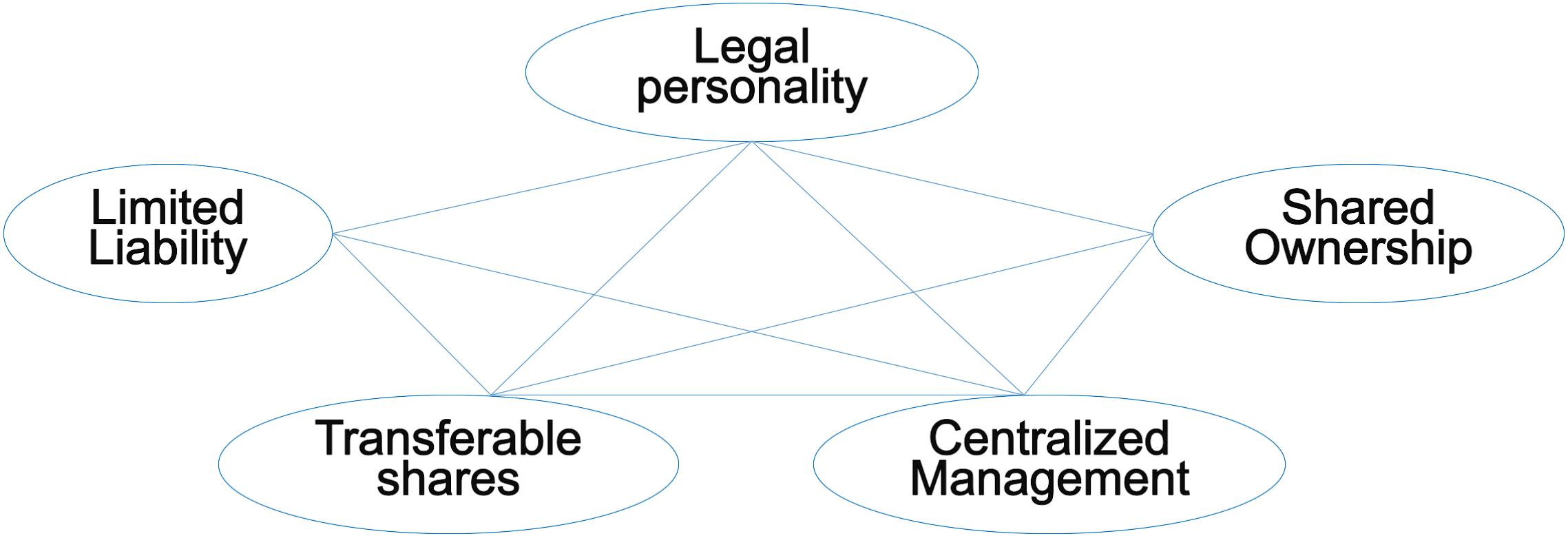
Review – Theories of corporate law

- The theory of the firm (profit maximisation) and
- its complementary views:
  - Transaction cost theory
  - Agency theory
  - Property rights theory
- Welfare economics
- Theories of company law
  - Contract theory
  - Concession theory (incl. communautaire theory)
  - Real entity theory

Review – Theories of shareholders rights

- Shareholder primacy
  - «true owners»
  - Milton Friedman: The link from primacy to profit maximisation
- Shareholders as residual claimants
- From shareholderism to stakeholderism

Review - Key attributes of a corporation



Review – Legal personality

- Natural persons – Legal persons
  - Qualities
  - Limitations
- Reasons to incorporate
  - Raising capital
  - Delegating management
  - Diversification
  - Veiling ownership?
- Reasons not to incorporate
  - Informal establishment
  - Active control
  - Personal continuity

Review – Limited liability

- Entity shielding and owner shielding
  - Two pools of assets
  - Separated by corporate veil
- Legal capital
  - Substitute for shareholders' liability
  - Statutory requirements / merit / disclosure
- Corporate veil
  - Applicability to small corporations / corporate groups
  - Lifting / «Reverse» lifting

Review – Centralised management

- Delegation of powers – agency problems
  - Control
  - Fiduciary duties
  - Incentives (cf. remuneration)
- Standard of conduct
  - Directors
  - (Controlling) shareholders
- Standard of review
  - Business judgment rule
  - Enhanced scrutiny
  - Entire fairness

Review – Shared ownership

- Shareholder rights
  - Absolute and proportional rights,
  - namely voting rights
    - «voice» / «exit»
    - Theories and effects
- Shareholder duties
  - Legal capital provision
  - Reporting duties
  - Loyalty duties?
  - Mandatory bid duties (cf. T & M)
- Control transactions - controllers

Board duties

- During the Exam review session, I described the great debate between the corporate board's duty to promote shareholder wealth maximization and the board's duty to take account of the company's impact on society.
- **Adolphe Berle and Merrick Dodd'.**
- **Authors** of the two Harvard Law Review articles (mandatory readings) in which Berle argued that the fiduciary duty of the board only should focus on shareholder wealth maximization, while Dodd argued that the duty should focus on what is best for the company, which also included taking account of the company's impact on society.
- Debate continues to this day.

Separation of ownership and control – Berle and Means

- Separately in the session, I also mentioned the theory of the separation of ownership and control as the main theory of corporate law in the early to middle 20th century, which was advocated by Adolphe Berle and Gardner Means; they argued for shareholders having the ability to 'exit' from ownership of shares when they were unhappy with corporate management because it was impractical (too numerous and complex) for shareholders to coordinate with each other to monitor management. This led to the **'Exit', 'Voice' and 'Loyalty'** debate (Hirschman, Lectures 2 & 3). The separation of ownership and control has been made less relevant because of the institutionalization of investors (ie., pension funds and asset management firms) and may be less relevant in the future because of AI, blockchain and other technology innovations

Review – Remuneration

- Options
- Risks
  - Self-dealing
  - Earnings and information management
  - Unproportional risk and reward
- Regulation
  - SRD II provisions and national implementations
  - US say-on-pay
  - CH Minder Initative
- Special provisions for financial service firms
- Remuneration and sustainability / CSR

Review – Takeovers and Mergers

- Acquisitions without prior consent
- Permissible defenses
  - Board neutrality rule
  - Breakthrough rule
- Mandatory bid
  - Applicability
  - Opting-up / -out
- Squeeze-out / sell-out rights
- Mergers – Inverse mergers

Review

•Company may finance their investments and projects with debt or equity or retain earnings (equity)
•Debt finance may offers tax advantages. The optimal capital structure may result in a minimized WACC and a maximised company value
•Definition of ‘security’ is broad in most jurisdictions
•Prospectus requirements: EU – PR (2019)(exemptions apply/proportionality for smaller issuers). Changes include: Prospectus exemptions, content and format of the prospectus, fast track approval for frequent issuer.
•US/EU/Swiss liability provisions – *ex ante* v *ex post* control provisions
•Unregulated market offering regime - US and UK
•International Coin Offerings – regulatory challenge of financial technology

Comparison: Liabilities (Debt) and Equity

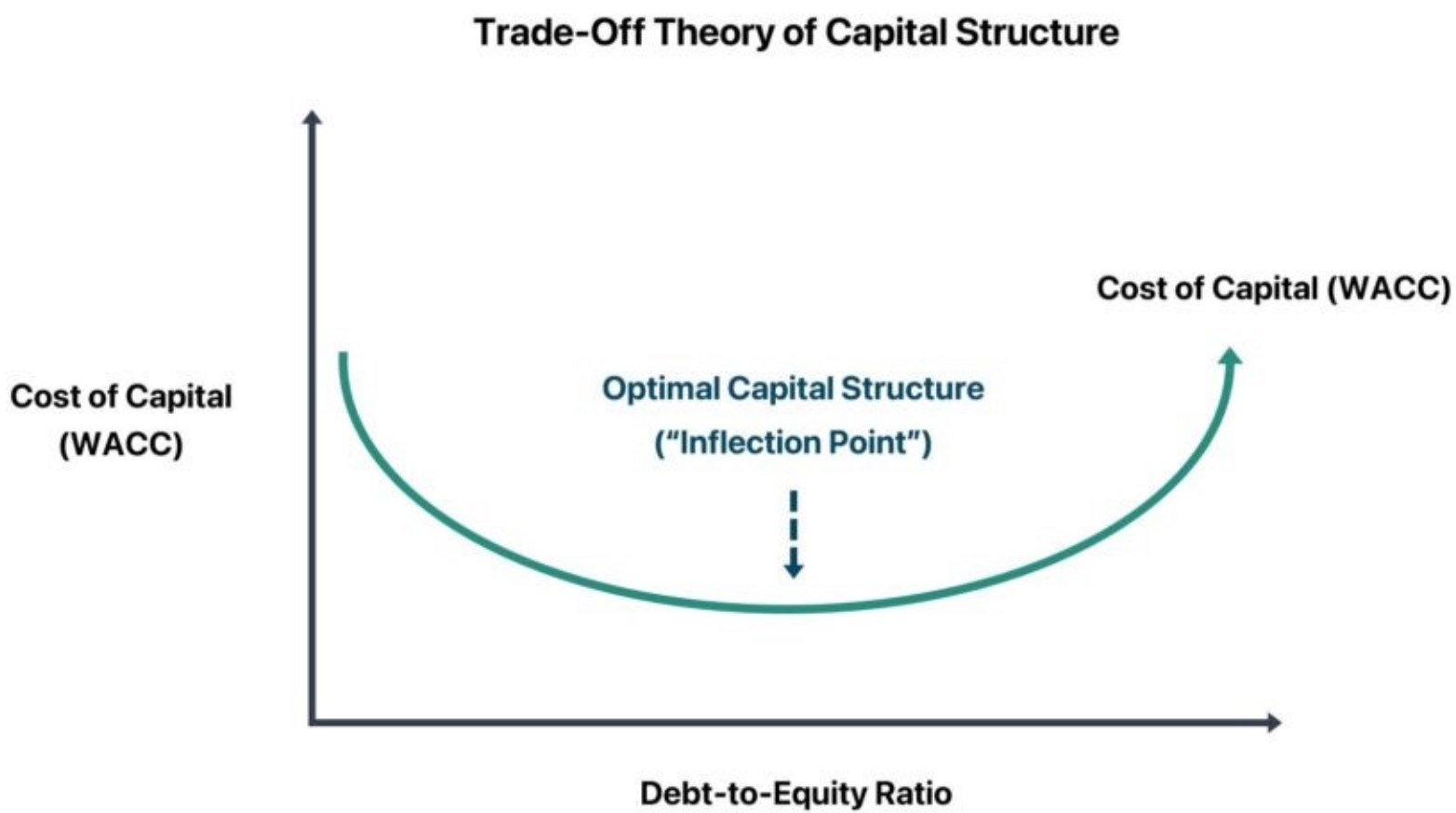
	Liabilities (debt)		Equity
Meaning	Money which is owed by a company towards another party (lender)		Money which is raised by a company by issuing shares
Reflects	Obligation to the lender		Ownership of the shareholder
Time horizon	Short-, medium or long-term		Rather long-term
Return/ payment	Interests (+ repayment of the principal)		Dividends (+/- change in share price)
Rank	Creditors' claims against a corporation's income and assets have priority over the claims of equity holders		
Types of securities	A split may be conducted by: Issuer (*government*, corporates), structure of bond (zero-coupon bonds, floating-rate bonds, fixed-rate bonds), backed (secured, unsecured/debentures)		Common shares, preferred shares
Way of issue	Private or public		

Corporate Finance, Optimal Capital Structure

The optimal capital structure is achieved when the allocation of debt and equity maximizes the firm value and minimizes the cost of capital (WACC) per the trade-off theory.

The process of incrementally increasing the financial leverage in the capital structure of a company, and the impact on firm valuation (and WACC) are as follows.

- As a firm introduces debt into its capital structure, the value of the firm increases from the interest tax shield.
- Gradually, as more debt is placed on the company, the tax benefits continue to rise. But the tax shield is beneficial only until a certain point, which is when the interest expense burden exceeds the borrower's operating income (EBIT).
- If a company's interest expense equals its operating income, there is no taxable income, assuming there are no non-operating revenues.
- Since there are no tax savings from increasing the debt load – which determines the interest expense – the benefits halt.
- Beyond the inflection point, the company is now no longer benefiting from the interest tax shield, and instead at greater risk of default, as the debt burden might be unsustainable – hence, the cost of capital reverses course and starts to rise in an upward trajectory (and firm value declines).
- The stage at which the cost of capital (WACC) is at its lowest point reflects a company's optimal capital structure, which is the ratio of debt and equity that a company should target in the long run.


Trade-Off Theory of Capital Structure
Cost of Capital (WACC)
Cost of Capital (WACC)
Optimal Capital Structure
("Inflection Point")
Debt-to-Equity Ratio

Gatekeepers

- **Gatekeeper Failure**:
  - The Principal-Agent problem and its risks
    - Gakeeping function as a tool for mitigating it.
  - Examples:
    - Enron; Worldcom and Parmalat
    - Financial Crisis of 2008
    - FTX
  - The Role of Auditors and Accountants and Credit Rating agencies
    - The dynamic concept of a True and Fair View
    - Cases: Caparo & ABN Amro vs Bathurst Regional Council
  - **Corporate & Financial Reforms: effective after all?**