

# Exam Review

Principles of Corporate Law/Gesellschaftsrecht – Lecture 14

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# Lecture 14

- Group Themes on Corporate Law
- Exam Review
  
- *Reminder* Course Evaluation

# Group Comments, Dec 12, Lecture 13

## GROUP 1:

- Technology and the possibility that AI could replace the board of directors as an entity and each directors individually.
- Problems of accountability of AI

## GROUP 2:

- Milton Friedman
- Short-term vs. Long-value creation
- Role of the government and its interference in managing private corporations
- Role of the Board of Directors:
  - o Should it take into account stakeholder-value or should the state intervene by imposing taxes?

## GROUP 3:

- ESG factors and economy
- Role of shareholders in addressing stakeholder-value
- Importance of information and the role of big data in the context of corporate governance

# Group Comments

## **GROUP 4:**

- Shareholder vs. Stakeholder value
- Multiple dimensions in corporate governance: Importance of politics and regulation
- Bottom-up approach: Fundamental importance of NGOs and social media

## **GROUP 5:**

- Minority shareholders and their role and safeguard in corporate governance

## **GROUP 6:**

- Proper Regulation for AI and Corporate Responsibility

## **GROUP 7:**

- Managers' supervision and role of gatekeepers
- Gatekeepers' failure as a threat for corporate-governance and the financial system.

# Group Comments – summary of views/issues

## ➤ **Gatekeeper Failure:**

- The Principal-Agent problem and its risks
  - Gatekeeping 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?**

➤ **Corporate Governance:**

- A system of Rules, Policies and Practices
- Shareholders vs Stakeholder-value Maximization
  - Redefining the Corporate Purpose
  - Milton Friedman and Delaware Cases: the establishment of Shareholder-value
  - The reactions: Corporate Social Responsibility; Stakeholder Capitalism
  - The key characteristics of the contermprorary debates
- **How to intervene:**
  - **Should private companies embrace stakeholder capitalism or should the state take the lead?**

➤ **Corporate Governance & Technology:**

- The General Role of Technology in Corporate Governance
  - Disruptive vs. Sustaining Technology
- Disruptive Technologies:
  - Artificial Intelligence
  - Blockchain Technology
  - Big Data
- Key characteristics of each technology and potential changes in corp. gov.
  - AI & Blockchain: changes in the corporate form; gatekeeping functions; corporate voting
  - AI & Big Data: changes in the board of the directors & general decision making functions
- **Full integration of technology in corp. gov: a realistic option?**



# Exam Review

- L1 Introduction, Theory of the Firm, History of Principles of Corporate Law across Jurisdictions (KA)
- L2 Theory of the Firm, Agency Problems and Role of Board of Directors (KA) and Anette Mikes Guest Lecture on stakeholders & climate change
- L3 Corporate Personality, Separate Legal Entity Principle, Limited Liability and Group Liability (KA)
- L4 Corporate Finance, Rationale of Corporate Law, Investor Protection, (KA)
- L5 Capital Raising- The Prospectus (KA)
- L6 EU Company Law (Free Movement and Financial Structure) (KA)
- L7 Investor Protection, Shareholder Control Issues, Minority Shareholder Rights, Multinational corporations Ethics & Corruption
- L8 Conference
- L9 Insider Dealing, Market Abuse (KA) & Remuneration/Compensation (DR)
- L10 Role of Gatekeepers – Accountants, Auditors and Rating Agencies - a 'True and Fair View' (MD)
- L11 Corporate Governance, Stakeholders and Corporate Social Responsibility (MD)
- L12 Takeovers and Mergers (DR)
- L13 Multi-national Groups: Corporate Governance and Technology (MD)
- L14 Group Comments & Themes and Exam Review (KA)

## Correction and clarification

- 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 as being between Adolphe Berle and Gardner Means (I referred to it as 'Berle v. Means' debate). **What I meant to say was that this debate was between 'Adolphe Berle and Merrick Dodd'**. They are the 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. This 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 20<sup>th</sup> 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