

## Corporations Summer 2024

### ADMINISTRATIVE MATTERS

**Course Webpage.** The course management platform for our course in *Corporations* is TWEN (the West Education Network), which is provided by Westlaw (a subsidiary of Thomson Reuters Corporation). Members of the team in the Library are happy to provide the necessary credentials, and any needed technical assistance, to access Westlaw.

The course webpage may be accessed by directing your internet browser to [www.lawschool.westlaw.com](http://www.lawschool.westlaw.com), selecting *TWEN*, and then selecting the course *Corporations* taught by Professor Gentile. The password for the course web page is *Gentile407*.

Please remember that all items posted on the course web page are protected by copyright. Each of these items must only be used for the purpose of learning the material for our course in *Corporations*, and none of them may be shared with anyone who is not registered for our course in *Corporations*.

All students must register their respective e-mail addresses on the course webpage. I'll send all announcements (and any updates) using the email function (and so the registered email addresses) available through the course webpage.

**Class Meetings.** Our class meetings for *Corporations* will take place on Tuesdays and Thursdays from 6:00pm until 9:00pm in Room 4-07. In the event we must conduct any of our class meetings via Zoom, we will use a *zoom room* with meeting id 845 4028 6306 and passcode *Gentile407*. For access via phone, please dial (646) 558-8656 and use code 845 4028 6306. In addition, a link to our *zoom room* is available on the course webpage within the tab *Link to Zoom Room*.

Note that, as directed by the Registrar's Office, class will *not* meet on Thursday, July 4, 2024 (*Independence Day Holiday*).

**Class Discussions.** Our class meetings will consist of a mixture of lecture and discussion. To facilitate our discussions, we will use *Poll Everywhere*. Please follow the instructions available by directing your internet browser to [www.support.polleverywhere.com](http://www.support.polleverywhere.com) and *download* the app onto your computer or mobile device. Our classroom identifier is *FLSGentile* (and there is no passcode).

While I expect students to be prepared for our class meetings, I do not expect them to know the answers to all the questions I pose. Our time in class is designed to enhance every student's understanding of the material, and so most of the answers to the questions I ask, just as in the practice of law, have better and worse arguments in their favor (rather than a single best response). Please view our discussions as an opportunity to learn, not as a punishment (particularly as I never use them to embarrass students). Consistent with Article XXIII (Rule 2) of the Academic Regulations, I reserve the right to reward exemplary class performance by increasing students' grades.

**Class Attendance and Class Recordings.** As required by Article XI of the Academic Regulations, students must regularly attend class meetings. If you miss any class meeting, you must notify me via e-mail of the class meeting(s) from which you will be (or have been) absent, and you must also provide me with a reason for every absence. Also consistent with the provisions of Article XI, I reserve the right to take class attendance into account in determining students' grades and, upon consultation with the Associate Dean for Academic Affairs and the Assistant Dean for Student Affairs, to deny any student with excessive absences from class meetings permission to take the examination.

As requested by the Associate Dean, I will record our class meetings, and I will post a link to the recording for each class meeting on the course web page within the tab *Class Meetings (Overviews, Exercises + Recordings)*. Students must use these recordings only for the purpose of learning the material for our course in *Corporations*. Students may not download (or otherwise capture) all (or any part) of the recordings, nor may they share all (or any part) of them with anyone who is not registered for our course in *Corporations*. Note that, as stated by the Associate Dean, watching recordings of class meetings does not satisfy either Article XI of the Academic Regulations or the American Bar Association's requirement that students be in *good and regular* attendance for all their courses. Finally, note that Article XXII of the Academic Regulations prohibits students from recording our class meetings (including through the use of *smart pens* and similar devices).

**Examination.** As is the case on the Multistate Essay Exam portion of the Uniform Bar Exam (and in practice), the examination for our course in *Corporations*, which is scheduled to take place on Wednesday, July 24, 2024, at 5:30pm, will consist of a series of essay questions. Unlike the bar exam, our examination will be administered on an *open book* basis (with the *closed laptop* setting for computers). Copies of the examinations from prior semesters will be available on the course web page within the tab *Prior Examinations*.

**Contact Information and Office Hours.** My office is located in Room 8-135, and my e-mail address is [cgentile@law.fordham.edu](mailto:cgentile@law.fordham.edu).

I will hold scheduled office hours every Thursday from 5:00pm until 6:00pm in my office, which is Room 8-135. I am also happy to meet with students (including via Zoom, using the same link for any class meetings that must be conducted via Zoom) at other times that are mutually convenient. If you wish to meet with me at a time that differs from my scheduled office hours, please send me an e-mail message so that we can schedule an appointment.

**Disability Services.** The Law School is eager to make accommodations to allow all students to succeed in their studies. Please send an email message to Abel Montez, the Director of Student Affairs ([amontez@fordham.edu](mailto:amontez@fordham.edu)), to make any needed (and confidential) arrangements regarding our course in *Corporations*.

**Casebook, Additional Materials, and Statutory Supplement.** The casebook for our course in *Corporations* is *Commentaries and, Cases on the Law of Business Organization (Sixth Edition)* by William T. Allen, Reinier Kraakman, and Vikramaditya S. Khanna (to which I refer as *Allen, Kraakman, and Khanna*). Printed copies of the casebook are available from the Book Store (among other places), and electronic copies of it are available from the publisher, Wolters Kluwer | Legal Education (among other places). In addition, I have placed copy of the casebook (in electronic format) on *Course Reserve* in the Library.

I will also assign readings from additional materials to augment the information presented in Allen, Kraakman, and Khanna. Copies of these materials will be available on the course webpage within the tab *Additional Reading Materials*.

The statutory supplement for our course (to which I refer as *Statutory Supplement*) is available on the course webpage within the tab *Statutory Supplement*.

To provide a basis for applying the legal rules we study to a(n actual) company, we'll examine Krispy Kreme, Inc. (and Dunkin' Brands Group, Inc.) through the materials each company publicly provides. These materials are available on the course web page within the tab *Krispy Kreme, Inc.* (and *Dunkin' Brands Group, Inc.*).

**Reference Materials.** In the event you find (at some point during our work together) that a bit of additional reading would be helpful to your learning, I have placed a handful of reference materials on *Course Reserve* in the Library. All of these materials are available in electronic format, and a link to them is available on the course web page within the tab *Link to Library Course Reserve*.

The first two books, from the *Concepts and Insights Series*, are designed to provide general overviews of their respective topics (with limited references to specific cases or statutes). They are:

*Agency, Partnerships & LLCs (Third Edition)* (2019) by Stephen M. Bainbridge; and

*Corporate Law (Fourth Edition)* (2020) by Stephen M. Bainbridge.

The third book, *Treatise on the Law of Corporations (Fifth Edition)* (2020) by James D. Cox and Thomas Lee Hazen, is a comprehensive *hornbook* for corporate law.

The final book, *Business Organization and Finance, Legal and Economic Principles (Eleventh Edition)* (2010) by William A. Klein, John C. Coffee, Jr., and Frank Partnoy, is designed to provide students with a broad understanding of the interplay between legal rules and the financial aspects of firms.

## LEARNING OUTCOMES

Consistent with Fordham Law School's commitment to providing a complete legal education that integrates doctrine, theory, practice, and ethics, through our work together in *Corporations* students will learn:

- (1) to identify, to analyze, and to apply principles of business organization and business governance in agency relationships, partnerships, and corporations,
- (2) to think strategically, from the perspective of each of the parties to a transaction (and any resultant litigation), about the consequences of legal rules arising from applicable state common law and statutory systems as well as aspects of the federal securities laws, and
- (3) to examine critically the role of businesses in society and the role of attorneys in representing these entities.

## TOPICS AND READINGS

### ❖ Foundational Principles of Business Organization

#### ◆ *Efficiency*

- » William T. Allen, Reinier Kraakman, and Guhan Subramanian, *Efficiency and the Social Significance of Enterprise Organization* (2009), pages 2 – 5
- \* Quentin Hardy, *Making Movie Magic More Efficient*, New York Times, March 15, 2013
- \* Economic Focus, *Measuring What Matters*, The Economist, September 17, 2009

#### ◆ *Agency Costs, Transaction Costs, and Ownership Costs*

- » Roberta Romano, *Foundations of Corporate Law (Second Edition)* (2010), pages 5 – 14 and pages 16 – 20
- \* Thomas Gryta, Joann S. Lublin, and Mark Maremont, *GE Board Was Kept in the Dark about CEO's Extra Plane*, The Wall Street Journal, October 29, 2017

#### ◆ *Law and Lawyers*

- » Allen, Kraakman, and Khanna, pages 1 – 6

### ❖ Agency Law

#### ◆ *Creation of the Agency Relationship*

- » Allen, Kraakman, and Khanna, pages 7 – 13
- » *Hanson v. Kynast* (Ohio 1986)
- # Restatement (Third) of Agency: §1.01, §1.02, §1.03, §1.04(2), and §1.04(5)
- \* Michael Levinson, *Real Estate Agent with Same Name as Golfer Is Invited To the Masters*, The New York Times, January 3, 2023

#### ◆ *Liability of Principals for Acts of Agents*

##### ◇ *Liability in Contract*

- » Allen, Kraakman, and Khanna, pages 13 – 22
- # Restatement (Third) of Agency: §2.01, §2.02, §2.03, §2.05, §2.06, §3.01, §3.03, §3.06, §3.11, §4.01, §4.02, §4.03, §4.04, §4.05, §4.07, §6.01, §6.02, and §6.03
- # Restatement (Second) of Agency: §8A and §14

##### ◇ *Liability in Tort*

- » Allen, Kraakman, and Khanna, pages 22 – 27
- # Restatement (Third) of Agency: §2.04, §7.07, and §7.08
- \* Preetika Rana, *Uber, Lyft Score Victory as California Court Affirms Right to Treat Drivers as Contractors*, The Wall Street Journal, March 13, 2023

#### ◆ *Duties of Agents (Fiduciary Duties)*

- » Allen, Kraakman, and Khanna, pages 28 – 30
- # Restatement (Third) of Agency: §8.01, §8.02, §8.03, §8.04, §8.05, §8.06, §8.08, and §8.09
- # Restatement (Second) of Agency: §388

## Partnership Law

### ◆ *Formation of Partnerships*

- » Allen, Kraakman, and Khanna, pages 35 – 43
- # Restatement (Third) of Agency: §3.03, comment e(2)
- # Uniform Partnership Act (1914): §6, §7(3), §7(4), §8, §11, §12, §16, §18(g), and §24
- \* Jeff Bailey, *Rethinking a Return to Venture-Capital Funding – Some Entrepreneurs Warn about a Loss of Control as Financing Increases*, The Wall Street Journal, September 30, 2003
- \* Finance and Economics, *Wall Street Partnerships: Brown-blooded Holdouts*, The Economist, June 16, 2011

### ◆ *Governance of Partnerships*

- » Allen, Kraakman, and Khanna, pages 49 – 51
- # Uniform Partnership Act (1914): §9(1), §9(2), §18(e), and §18(h)
- \* Business, *Electing the Boss: Deloitte Prepares to Vote for a New CEO*, The Economist, August 23, 2014

### ◆ *Termination of Partnerships*

#### ◇ Accounting for Financial Status and Performance

- » Howell E. Jackson et al., *Analytical Methods for Lawyers (Third Edition)* (2017), pages 93 – 105, pages 113 – 118, and pages 122 – 124
- » Allen, Kraakman, and Khanna, pages 51 – 53 (ignore the problems on page 53)
- \* Marketing, *What Are Brands For?*, The Economist, August 30, 2014

#### ◇ Division of Accounts

- » Allen, Kraakman, and Khanna, pages 53 – 62
- # Uniform Partnership Act (1914): §13, §14, §15, §29, §30, §31, §36, §37, §38, and §40
- \* George Anders, *Bitter End of a Partnership*, The Wall Street Journal, September 15, 2007

### ◆ *Duties of Partners (Fiduciary Duties)*

- » Allen, Kraakman, and Khanna, pages 62 – 67
- # Uniform Partnership Act (1914): §21

## ❖ Corporate Law

### ◆ *Corporate Form of Ownership*

#### ◇ Legal Aspects

##### ▶ Nature of Corporations

- » Allen, Kraakman, and Khanna, pages 93 – 97
- » Kent Greenfield, *Corporations Are People Too (And They Should Act Like It)* (2018), pages ix – xi, pages xii – xiii, and pages 1 – 3

##### ▶ Formation of Corporations

###### ■ Statutory Scheme for Incorporation

- » Allen, Kraakman, and Khanna, pages 98 – 102
- » J. Mark Ramseyer, *Business Organizations* (2012), pages 128 – 129
- > Discussion Exercises 1 (*Statutory Scheme for Incorporation*)
- \* Business, *A New Judicial Boss*, *The Economist*, November 23, 2013
- \* Alexa Corse, *Twitter Inc. Changes Its Name to X Corp. and Moves to Nevada*, *The Wall Street Journal*, April 12, 2023

###### ■ Mechanics of Incorporation

- » Allen, Kraakman, and Khanna, pages 103 – 106
- # Delaware General Corporation Law: §101(a), §101(b), §102, 106, §108(a), §109, §121, §122, §141(a), §141(b), §151(a), § 151(d), §151(g), §157(a) §157(c), §173, §211(a), §211(d), §223(a), and §242
- Δ Krispy Kreme, Inc.,  
Annual Report on Form 10-K (for 2023), pages 2 – 3 and pages 4– 8  
Amended and Restated Certificate of Incorporation  
Amended and Restated Bylaws
- > Discussion Exercises 1 (*Mechanics of Incorporation*)

##### ▶ Organization of Corporations

###### ■ Purpose of Corporations

###### □ Shareholders

- » Allen, Kraakman, and Khanna, pages 106 – 111
- Δ Krispy Kreme, Inc.,  
Annual Report on Form 10-K (for 2023), pages 2 – 3 and pages 9 – 10
- \* Alexander Osipovich, *Individual-Investor Boom Reshapes U.S. Stock Market*, *The Wall Street Journal*, August 31, 2020

- Stakeholders
  - » Kent Greenfield, *Proposition: Saving the World through Corporate Law*, 57 Emory Law Journal 948 (2008), pages 971 – 972
  - Δ Krispy Kreme, Inc., Annual Report on Form 10-K (for 2023), page 2 – 3 and pages 10 – 11
  - \* Raphael Bostic, *A Moral and Economic Imperative to End Racism*, Federal Reserve Bank of Atlanta, June 12, 2020
  
- Shareholder Primacy and Stakeholderism
  - » Allen, Kraakman, and Khanna, pages 311 – 313 and pages 317 – 320
  - » *Katz v. Oak Industries Inc.* (Delaware Chancery 1986)
  - » A.A. Sommer, Jr., *Whom Should the Corporation Serve? The Berle-Dodd Debate Revisited Sixty Years Later*, 16 Delaware Journal of Corporation Law 35 (1991), pages 36 – 39
  - » Jill E. Fisch and Steven Davidoff Solomon, *Should Corporations Have a Purpose? (Governance)*, 99 Texas Law Review 1309 (2021), pages 1309 – 1311, page 1316, and pages 1322 – 1324
  - \* Lucian Bebchuk and Roberto Tallarita, “*Stakeholder*” *Talk Proves Empty Again*, The Wall Street Journal, August 18, 2021
  - \* Elizabeth Warren, *Companies Shouldn’t Be Accountable Only To Shareholders*, The Wall Street Journal, August 14, 2018

- Management of Corporations

- Board of Directors
  - » Allen, Kraakman, and Khanna, pages 111 – 113 and pages 116 – 119
  - » *Charlestown Boot & Shoe Co. v. Dunsmore* (New Hampshire 1880)
  - # Delaware General Corporation Law: §141(a), §141(f), and §141(g)
  - \* Lucian Bebchuk and Roberto Tallarita, “*Stakeholder*” *Capitalism Seems Mostly for Show*, The Wall Street Journal, August 6, 2020
  
- Officers
  - » Allen, Kraakman, and Khanna, pages 120 – 122
  - # Restatement (Third) of Agency: §3.03, comment e(1)
  - # Delaware General Corporation Law: §142

- ◇ Financial Aspects

- ▶ Theories of Value
  - » Burton G. Malkiel, *A Random Walk Down Wall Street (Anniversary Edition)* (2023), pages 38 – 42
  - > Discussion Exercises 2 (*Theories of Value*)
  - \* William Alden, *Ackman and Dalio, Two Hedge Fund Titans, Size Each Other Up*, The New York Times, February 12, 2015

- ▶ Elements of Value
  - Time Value of Money
    - » Allen, Kraakman, and Khanna, pages 172 – 175
    - > Discussion Exercises 2 (*Time Value of Money*)
    - \* Michael Greenstone and James H. Stock, *The Right Discount Rate for Regulatory Costs and Benefits*, The Wall Street Journal, March 4, 2021
  - Compensation for Risk
    - Risk Aversion and Risk Measurement
      - » Allen, Kraakman, and Khanna, pages 175 – 178
      - > Discussion Exercises 2 (*Risk Aversion and Risk Measurement*)
      - \* Ian MacDonald, *Janus's Karen Reidy Discusses Road Ahead for Stocks, Bonds*, The Wall Street Journal Online, February 14, 2003
    - Benefits (and Limits) of Diversification
      - » Allen and Kraakman, pages 178 – 179  
(ignore the questions on systematic and unsystematic risk)
      - > Discussion Exercises 2 (*Benefits (and Limits) of Diversification*)
- ▶ Valuation Techniques
  - Discounted Cash Flow Analysis and Comparable Companies Analysis
    - » Howell E. Jackson et al., *Analytical Methods for Lawyers (Third Edition)* (2017), pages 224 – 229
    - > Discussion Exercises 3 (*Discounted Cash Flows and Comparable Companies*)
  - Market Prices (Efficient Capital Markets Hypothesis)
    - » Stephen A. Ross et al., *Fundamentals of Corporate Finance (Thirteenth Edition)* (2022), pages 415– 419
    - » *Dell, Inc. v. Magnetar Global Event Driven Master Fund Ltd.* (Delaware 2017)
    - \* Tim Higgins, *Tesla's Musk Turns Conference Call into Sparring Session*, The Wall Street Journal Online, May 3, 2018
- ◆ **Protection of Creditors**
  - ◇ Capital Structure
    - » Allen, Kraakman, and Khanna, pages 167 – 172
    - \* Joe Renninson, *Companies Raise \$100bn on Global Debt Market in Brisk Start to 2022*, January 11, 2022
    - \* Lauren Hirsch, *The Carlyle Group Ties a \$4.1 Billion Credit Line to Board Diversity*, The New York Times, February 17, 2021

- ◇ Statutory Protection (Capital Regulation)
  - » Allen, Kraakman, and Khanna, page 126 and pages 129 – 130
  - # Delaware General Corporation Law: §154, §170, §173, §174, and §244
  - Δ Krispy Kreme, Inc.,  
Amended and Restated Certificate of Incorporation, pages 1 – 3
  - > Discussion Exercises 3 (*Capital Regulation*)
  - \* Akane Otani, *Warren Buffett's 'Secret Sauce' Involves One of Investing's Most Basic Strategies*, The Wall Street Journal, May 3, 2023
  
- ◇ Duties Owed To Creditors
  - ▶ Duties of Directors (in the Vicinity of Insolvency)
    - » Allen, Kraakman, and Khanna, pages 132 – 135
  
  - ▶ Duties of Shareholders
    - Equitable Subordination
      - » Allen, Kraakman, and Khanna, pages 137 – 144
      - \* Jonathan D. Glater, *Banking Giants Further Tangle the Enron Cases*, The New York Times, July 30, 2003
  
    - Veil Piercing
      - » Allen, Kraakman, and Khanna, pages 144 – 153

◆ **Corporate Governance**

◇ Shareholders

▶ Voting Rights

- » Allen, Kraakman, and Khanna, pages 189 – 206, pages 229 – 234, and pages 239 – 240  
(ignore the problem on each of page 196, page 203, and page 206)
- # Delaware General Corporation Law: §112, §113, §141(b), §141(d), §141(k), §146, §211, §212, §216, §221, §223, §228, §242, §271, §251, and §253
- Δ Krispy Kreme, Inc.,  
Proxy Statement on Schedule 14A (2024), page 1 and pages 8 – 16  
Proxy Card (2024)
- \* Gretchen Morgenson, *Small Investors Support the Boards. But Few of Them Vote.*, The New York Times, October 6, 2017
- \* Justin Baer, *BlackRock's Climate Stance Is About Profits, Not Politics, Larry Fink Says*, The Wall Street Journal, January 17, 2022
- \* Justin Baer, Dawn Lim and Cara Lombardo, *Investors Give Exxon Payback for Frustrations on Strategy and Climate*, The Wall Street Journal, May 28, 2021
- \* Theo Francis and Jennifer Maloney, *Big Companies Boost Share of Black and Latino Directors*, The Wall Street Journal, June 16, 2021
- \* Patrick Temple-West, *Goldman Asset Management Arm Takes Tough Stance on Companies' Board Diversity*, Financial Times, December 21, 2021
- \* Theo Francis, *Judges Strike Down California Law Mandating Women on Boards*, The Wall Street Journal, May 16, 2022
- \* Lauren Thomas, *The Priciest Shareholder Fight Ever Is Headed to Disney's Boardroom*, The Wall Street Journal, February 11, 2024

▶ Separating Voting Rights (and Cash Flow Rights)

■ Vote Buying

- » Allen, Kraakman, and Khanna, pages 216 – 222

■ Controlling Minority Structures

- » Allen, Kraakman, and Khanna, pages 226 – 229
- \* Joann Muller, *Henry Ford's Will*, Forbes, February 27, 2006
- \* Patrick Temple-West, *Investors Lose Ground in Fight Against Supervoting Shares*, Financial Times, January 7, 2022

▶ Exercising Voting Rights (Federal Proxy Rules)

- Communications with Shareholders
  - » Allen, Kraakman, and Khanna, pages 234 – 239  
(ignore the problem on page 237)
  - # Securities Exchange Act: §14(a)(1), Rule 14a-2(b), Rule 14a-3(a)(1), Rule 14a-4, Rule 14a-6(a), Rule 14a-6(b), Rule 14a-7(a), and Rule 14a-16
  - # Dodd-Frank Act: §971
  - Δ Kremer, Inc.,  
Proxy Statement on Schedule 14A (2024), page 1 and pages 2 – 7  
Proxy Card (2024)
- Shareholder Proposals
  - » Allen, Kraakman, and Khanna, pages 240 – 247
  - # Securities Exchange Act: Rule 14a-8
  - Δ Dunkin' Brands Group, Inc.  
2015 Proxy Statement, pages 1 – 6  
2015 Proxy Card
- Antifraud Rule
  - » Allen, Kraakman, and Khanna, pages 247 – 255
  - # Securities Exchange Act: Rule 14a-9

◇ Directors and Officers

▶ Duty of Care

- Requirements of the Duty
  - » Allen, Kraakman, and Khanna, pages 259 – 262
  - # Delaware General Corporation Law: §141(a)
  - # American Law Institute, Principles of Corporate Governance: §4.01
- Protection of the Business Judgment Rule
  - » Allen and Kraakman, pages 269 – 275
  - # American Law Institute, Principles of Corporate Governance: §4.01
  - \* Michael J. de la Merced, *Netflix Moves \$100 Million in Deposits to Bolster Black Banks*, The New York Times, June 30, 2020
  - \* Tripp Mickle, *Apple, YouTube Each Plan \$100 Million Initiatives to Target Racism*, The Wall Street Journal, June 11, 2020
- Extensions of the Duty
  - Duty to Monitor
    - Minimum Standard
      - » Allen, Kraakman, and Khanna, pages 277 – 284

- Oversight Responsibility
  - Duty to Investigate
    - » Allen, Kraakman, and Khanna, pages 284 – 288
  - Duty to be Informed
    - » Allen, Kraakman, and Khanna, pages 288 – 302
    - # Delaware General Corporation Law: §141(e)
    - \* Emily Glazer and Christina Rexrode, *Wells Fargo CEO Defends Bank Culture, Lays Blame with Bad Employees*, The Wall Street Journal, September 13, 2016
    - \* Emily Glazer, *Wells Fargo Firing Dozens of Regional Managers in Retail-Bank Cleanup*, The Wall Street Journal, December 5, 2018
    - \* Ben Eisen, *Wells Fargo Chairman Elizabeth Duke Resigns*, The Wall Street Journal, March 9, 2020
    - \* Emily Flitter, *The Price of Wells Fargo's Fake Account Scandal Grows by \$3 Billion*, The New York Times, February 21, 2020
    - \* Stacy Crowley, *Wells Fargo's Scandals Drag on Profit as It Braces for a 'Slowing Economy'* The New York Times, October 14, 2022
    - \* Stacy Crowley, *Former Wells Fargo Executive to Plead Guilty in Sham Accounts Scandal*, The Wall Street Journal, March 15, 2023
  - Knowing Violations of Law
    - » Allen, Kraakman, and Khanna, pages 304 – 306  
(ignore the problem on page 306)
- ▶ Duty of Loyalty
  - Conflicted Transactions
    - » Allen, Kraakman, and Khanna, pages 309 – 310
    - \* Eliot Brown, *WeWork's Long List of Potential Conflicts Adds to Questions Ahead of IPO*, The Wall Street Journal, September 6, 2019
  - Elements of Review
    - Disclosure
      - » Allen, Kraakman, and Khanna, pages 323 – 327
    - Safe Harbor Statutes
      - Requirements for Cleansing
        - » Allen, Kraakman, and Khanna, pages 331 – 336
        - # Delaware General Corporation Law: §144

- Methods of Cleansing
  - Director Authorization
    - » Allen, Kraakman, and Khanna, pages 339 – 340
    - # Delaware General Corporation Law: §144
  - Shareholder Approval (Ratification)
    - » Allen, Kraakman, and Khanna, pages 340 – 342
    - » *In re Wheelabrator Technologies, Inc.*  
(Delaware Chancery 1995)
    - # Delaware General Corporation Law: §144
  - Fair to the Corporation
    - » Allen, Kraakman, and Khanna, pages 349 – 356
    - # Delaware General Corporation Law: §144
    - \* Michael J. de la Merced, *Dole C.E.O. and Aide Found Liable for \$148 Million in Buyout*, The New York Times, August 27, 2015
- Transactions with Controlling Shareholders
  - Inherent Coercion and Nonratable Benefits
    - » *In re Tesla Motors, Inc.* (Delaware Chancery 2020)
    - » Allen, Kraakman, and Khanna, pages 345 – 349
    - \* David Michaels and Rebecca Elliott, *Elon Musk Defends Solar City Deal, Says of Being Tesla Boss: “I Rather Hate It”*, The Wall Street Journal, July 12, 2021
  - Framework for Review
    - » Allen, Kraakman, and Khanna, pages 549 – 559 and 566 – 577
    - » *In re Match Group, Inc.* (Delaware 2024)
- Special Concerns
  - Close Corporations
    - » Allen, Kraakman, and Khanna, pages 363 – 374
    - \* Erin Griffith and Kellen Browning, *Instacart Prices IPO at \$30 a Share, Raising \$660 Million*, The New York Times, September 18, 2023
  - Uses of Corporate Profits (Charitable Contributions)
    - » Allen, Kraakman, and Khanna, pages 313 – 315
    - # Delaware General Corporation Law: §122(9)
    - \* Nathan Vardi, *The 2% Solution: Inside Billionaire Robert Smith’s Bold Plan to Funnel Billions to America’s Black-Owned Businesses*, Forbes, June 19, 2020
    - \* Andrew Ross Sorkin, *A Company Backs a Cause. It Funds a Politician Who Doesn’t. What Gives?* The New York Times, July 21, 2020

□ Executive Compensation

• Incentive Pay

- » Allen, Kraakman, and Khanna, pages 375 – 388
- # Delaware General Corporation Law: §141(h)
- # Sarbanes-Oxley Act: §Section 304
- # Dodd-Frank Act: §953 and §954
- Δ Krispy Kreme, Inc.,  
Proxy Statement on Schedule 14A (2024), page 1 and  
pages 17 – 26  
Proxy Card (2024)
- \* Theo Francis, *In a Bumper Year for CEO Pay, One Chief's \$161 Million Award Swells to \$1.3 Billion*,  
The Wall Street Journal, March 25, 2024
- \* Peter Eavis, *Want More Diversity? Some Experts Say Reward C.E.O.s for It*, The New York Times, July 14, 2020
- \* Peter Eavis, *How Elon Musk Helped Lift the Ceiling on C.E.O. Pay*,  
The New York Times, June 25, 2022

• Judicial Oversight

- » Allen, Kraakman, and Khanna, pages 393 – 406

□ Insider Trading

• Duty to Disclose or Abstain

- » Allen, Kraakman, and Khanna, pages 681 – 693  
(*ignore* the note on each of page 692 and page 693)
- # Securities Exchange Act: §10(b) and Rule 10b5-1
- \* Peter J. Henning, *Determining the Victims of Insider Trading*,  
The New York Times, November 11, 2013
- \* Finance and Economics, *Insider Trading Has Been Rife on Wall Street, Academics Conclude*, Economist, February 18, 2018

• Bases for Duty

○ Equal Access Theory

- » Allen, Kraakman, and Khanna, pages 693 – 695 and  
pages 716 – 718
- # Securities Exchange Act: Rule 14e-3(a) and Rule 14e-3(c)

○ Fiduciary Duty (Classical) Theory

- » Allen, Kraakman, and Khanna, pages 695 – 716
- » *United States v. Martoma* (Second Circuit 2018)
- \* Michael Rapoport and Dave Michaels, *Former Equifax Executive Charged with Insider Trading*,  
The Wall Street Journal, March 14, 2018

- Misappropriation Theory
  - ▶ Common Law
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    - Δ Krispy Kreme, Inc.,  
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- ▶ Indemnification and Insurance
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  - # Delaware General Corporation Law: §145
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  - ◇ Transactions in Control Blocks
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◇ Control Contests (Takeovers)

- ▶ Market for Corporate Control
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- ▶ Defending Against Takeovers
  - Defensive Measures
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