

Preface

This book is designed primarily to serve as a supplement allowing professors teaching corporate law courses in law schools in the United States to introduce their students to corporate laws outside of the United States. By doing so, this book seeks to accomplish four goals:

The first is to **familiarize** students with foreign corporate laws. In a global economy, in which corporations formed under laws of other nations are key players, it is helpful for future lawyers to have some familiarity with the corporate laws under which such firms operate. Indeed, among the materials in this book are cases decided in courts in the United States, in which United States nationals, who were shareholders or creditors of corporations formed outside of the United States, found their rights governed by foreign corporate laws. Of course, one cannot expect law students to learn all of the variations in corporate laws around the world—any more than one can expect students to learn all of the corporate laws among the 50 states in the United States. Rather, starting with the first chapter in the book, which gives students a broad introduction to the basic business forms found worldwide, the book seeks to give the students a conceptual framework in which they can work as issues arise.

The second goal is to **clarify** United States corporate law. Many times, the best way to understand a particularly difficult area of law is to step back and examine how other systems address the same concerns. Take, for example, the doctrine of piercing the corporate veil. This is one of the most befuddled areas of corporate law, in which judicial substitution of rubric for functional analysis has confused generations of law students, not to mention lawyers and judges. Without meaning to suggest that other nations necessarily have superior law to the United States in this field, examination of various creditor protection rules found outside of the United States clarifies the fundamental concerns in ways that can take years to distill (as I confess it did for me) from reading just United States source material.

The third goal is to **challenge** students' unquestioning assumption that the law du jour in the United States is, by definition, the best law. For example, the European Union insider trading and takeover directives adopt approaches squarely rejected by courts in the United States, while German co-determination contravenes the

assumption that only shareholders should elect directors. Showing students that other nations somehow function with corporate laws at odds with those in the United States helps create law school graduates with the openness of mind and imagination necessary for quality lawyering.

The fourth goal is to **predict** the direction of corporate law in the future. While legal education examines the law in the past and present, in the end, our graduates will deal with the law in the future. The history of corporate law is a history of migration of structures and rules from one nation to another—whether that is the spread of the European idea of a governing board, the German idea of the limited liability company, or the United States’ idea of prohibiting insider trading. Examination of other nations’ corporate laws will better enable future lawyers to anticipate where corporate law in the United States might go during the course of their careers.

On a practical note, this book is designed to work as a supplement, within the constraints this entails. It is short. It paints with a broad brush. The goal is to have the students gain a sense for the general concepts—*e.g.*, what are the fundamental areas of convergence (use of the board of directors) and divergence (co-determination, two-tier boards) in corporate governance—rather than drowning students in details (say, the use of independent directors in China). Whenever possible, the book contains materials that can substitute for materials the students would otherwise read (as, for example, by using United States court cases seeking to pierce the corporate veil of foreign corporations). The book is self-contained. The notes and text include all of the background reading necessary to understand the cases and other materials. Finally, each chapter, and even each section within the longer chapters, is designed to stand on its own—allowing professors to cover only some of the chapters or sections, and to cover them in different orders, depending upon the professors’ overall organization of the course. (Various suggestions for use of these materials are found in the teachers’ manual for this book.)

Regarding mechanics, certain conventions are followed in the preparation of this book. Citations in cases have been deleted without reference to the deletion. The English translations of the non-English statutes and court opinions found within this book are intended solely for educational purposes and can by no means be considered official. Umlauts, accent marks and similar symbols have been dropped from foreign words reprinted in this book. (Given the spelling of my last name as Gevurtz, rather than

Gewürz, I have standing to say that this was done for convenience, rather than as a sign of cultural disrespect.)

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