

# Corporations

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A Contemporary Approach

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A Contemporary Approach

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*Cases and Materials for a  
Course in Corporate Law*

**Lawrence E. Mitchell**

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GEORGETOWN UNIVERSITY LAW CENTER

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For Dalia  
—L.E.M.

To all the loved ones, those here and those gone,  
who have provided love, inspiration, and support.  
—M.D.



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# Introduction

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Why another casebook on corporate law? The field abounds with good choices. We have undertaken this project because we think that despite the existence of excellent casebooks on the market, no one of them completely addresses issues we believe corporate law students need to think through in order to be equipped both to serve as corporate lawyers and to be educated as lawyer citizens in the twenty-first century. In one respect, our casebook is traditional: we address the same topics and use many of the leading cases found in other books. In another, we believe that our approach is entirely original. It is that aspect of our project that has led us to produce this book.

We believe that the study of corporate law apart from the consideration of 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 ours 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. We, like others, present these doctrinal and theoretical views, both through the cases and in the materials following them. We, like others, address issues of practical lawyering throughout the book.

But it's 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 of 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, we have the range of social science insights that normally accompany the study of corporate law doctrine, from economics alone to sociology, psychology, political and moral philosophy, and history. We have done so not only through our essays and questions throughout the book but also, as in the case of Chapter One, in the very construction of the book itself. We hope that through our approach to the study of corporate law, the questions of role, purpose, and responsibility, questions of public entity versus private property, 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 a more traditional limited focus on the internal workings of the enterprise. We have done this, we believe, in a format that will be comfortable for and familiar to seasoned teachers of corporate law, including teachers who focus on traditional paradigms, stimulating to new teachers, and, most important, enriching for students in the course.

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

It is in that spirit—the spirit of broad intellectual engagement—that we present this book. We hope you enjoy it and welcome your comments for our consideration in future editions. We want to thank Adam Winkler for his early comments on Chapter One, and Larry Cunningham (Mitchell’s casebook coauthor in *Corporate Finance*) for work in that book on mergers that has helped inform our approach to the subject. Although you should feel free to direct any comments to either of us, generally comments on Chapters 1, 2 and 6 should be directed to Mitchell, and Chapters 3, 4, and 5 to Diamond.

## Note to Teachers

You will, as we mentioned, find the classic cases in our book, as well as other cases that we believe enhance our thematic and methodological approach. One area we 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. We do discuss these materials where we think they are helpful to an understanding of corporate law, but we do not present them in a way that permits their in-depth teaching. We feel comfortable in this decision both because we believe that there is so much material to cover in corporate law itself that we did not want to detract from the principal focus of the book or its themes, and also because we 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 our book.

L.E.M.

M.D.