

LAW 1094: SHAREHOLDER LITIGATION

Lecturers Steven M. Schatz, Paul Vizcarrondo, and Catherine Moreno

Administrative Matters:

Instructor Names: Steven M. Schatz, Paul Vizcarrondo, and Catherine Moreno

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Class Meeting Time: Mondays 2:15 pm to 4:05 pm (*classes on February 9 and 16 will be 2:05pm-6:25 pm)

Office Hours: 12:45 p.m.-2:00 p.m. Mondays and by appointment

Course Description:

This 2-unit course analyzes advanced topics in shareholder and corporate governance litigation. In addition to exploring the substantive law, the course will examine the strategic and tactical choices inherent in breach of fiduciary duty cases, M&A transactions, and other disputes over corporate control. The course will also cover controlling and founding shareholder rights and limitations, as well as the effect of recent amendments to Delaware's corporate laws. Students will learn the doctrinal principles underlying shareholder litigation, and will engage with hypotheticals, short (ungraded) oral arguments, and real-world examples implicating allegations concerning changes of control, executive compensation, insider trading, mergers and acquisitions, and Section 220 disputes. The hypotheticals will focus on contemporary fact patterns, including those involving how the tech industry and tech executives are shaping the face of fiduciary duty law. The class culminates in "hands on" opportunities for students to participate as the "lawyers" in a simulated case, writing briefs and arguing motions during different stages of litigation. The goal: a realistic picture of shareholder and corporate governance litigation.

Canvas; Reading Assignments:

Course announcements and assignments will be posted on Canvas. A copy of the syllabus, reading assignments, and copies of class materials can be found there. Reading assignments for each week will be posted approximately one week in advance.

Policy on Attendance; Recording of Classes:

All classes will be held in person and attendance will be required for each class, unless prior permission has been given by the instructors. Students who are unable to attend the makeup class for the Martin Luther King Jr. holiday may request a recording of the class via this form to the Office of Student Affairs: <https://law.stanford.edu/class-recording-notes-request/>. As noted there, any request must be received at least two business days in advance of the class so that IT can make appropriate steps to record the class. Attendance at the oral argument exercise on February 9 and 16 is mandatory. Under limited circumstances, a student may request to have a class recorded due to an absence in the following circumstances: (a) For religious holidays, (b) For make-up classes scheduled outside of normal class hours, or (c) As an approved short-term accommodation due to a prolonged, emergent absence that cannot be avoided. In the event you cannot make a class for one of these reasons, you must submit a request via the form noted above.

Grading:

Your grade in the course will be comprised of the following components: (1) a motion to dismiss writing assignment based on a mock complaint that will be distributed at the beginning of the

course; (2) the live oral arguments held on February 9 and 16; (3) class attendance and participation.

Motion to Dismiss Writing Assignment. Students will be expected to write a motion to dismiss of 10-12 pages and a 5-7 page argument portion of an opposition brief, based on the mock complaint distributed at the beginning of the course. The fact pattern and issues raised in the mock complaint will be the subject of class discussion throughout the quarter. An *ungraded* draft of the motion to dismiss and opposition argument will be due on January 26. Instructors will give students individualized feedback on these drafts during class on February 2. ***The final, graded motion to dismiss and opposition argument will be due on March 9 for graduating students, and March 30 for non-graduating students.***

Oral Argument. Students will argue for and/or against the motion to dismiss the mock complaint. Students will be assigned one or more topics on which to focus their argument and will be expected to answer live questions from the simulated judges (i.e., the instructors). Oral argument will take place on February 9 and 16. Class sessions on these dates will run from 2:05pm-6:15pm, in order to give all students the chance for a substantive oral argument experience.

Class attendance and participation. Class discussion will be based on the readings and other materials assigned for each class. Students should attend each class session and to be prepared to discuss the assigned materials. Students may request one class session at which they will *not* be called upon.

*In addition to the above graded assignments, there will be additional ungraded, *short* assignments throughout the quarter, including mini simulated oral arguments. These are designed to give students a chance to try out their oral argument skills before the graded assignment.

Policy on Generative AI:

This class will follow the law school's default policy on the Use of Generative AI Technology (located [here](#)).

Class Outline (subject to change):

The following outline provides a general overview of the topics we will cover throughout the quarter. Reading assignments for each class will be posted on Canvas approximately one week in advance. For reference, reading assignments for the first two classes are listed below.

Class 1-January 5

Topics:

- Introductions
- Short, ungraded class exercises based on current-day hypothetical fact patterns (for example, recent headline-grabbing stories involving Mark Zuckerberg, Elon Musk, and others)
- Overview of shareholder litigation:
 - For better or worse, shareholder litigation has become a major element of business. It is often seen when a company reports disappointing results, and is ever-increasing in the context of mergers, dispositions, and going-private

transactions. It is common in the context of shareholder challenges to compensation packages. You may, for example, be familiar with the twists and turns of Elon Musk's compensation package.

- A number of decisions in the Delaware courts have caused companies (including several high-visibility companies) to exit for Texas and Nevada. Delaware has reacted with amendments to the Delaware General Corporation Law to attempt to address these issues.
- Roles of plaintiff's and defense bar
 - Litigation as an element of deal practice
 - Litigation's impact (positive and negative) on corporate governance incentives/decision-making
- While much of this course will focus on fiduciary duty litigation (much of which occurs in state courts, particularly Delaware), shareholder litigation claims can be brought in federal court.
 - Quick survey of key federal provisions
 - '33 Act, Sections 11, 12
 - '34 Act, Section 10/Rule 10b-5; Section 14
- The lifecycle of litigation (both state and federal)
 - The importance of the motion to dismiss/demurrer
 - The role of the demand motion as a dispositive motion
 - Differing federal and state standards for motions to dismiss and demurrers

Reading Assignments:

- Wachtell treatise excerpts (to be posted on Canvas)
- Excerpts from the Private Securities Litigation Reform Act (PSLRA) (to be posted on Canvas)
- *Basic v. Levinson* 485 U.S. 224 (1988)
- *Lorenzo v S.E.C.*, 587 U.S. 71 (2019)
- *In re Tellabs v Makor*, 551 U.S. 308 (2007)
- *In re Quality Sys, Inc. Sec. Litig.*, 865 F.3d 1130 (9th Cir 2017)
- *Virginia Bankshares, Inc. v. Sandberg*, 501 U.S. 1083 (1991)

Optional Reading:

- *Janus Cap Grp v First Derivative Traders*, 564 U.S. 135 (2011)
- *Slack Technologies LLC v. Pirani*, 598 U.S. 759 (2023)
- *Zucco Partners LLC v. Digimarc Corp.* 552 F.3d 981 (9th Cir. 2009)
- *Omnicare v Laborers Dist. Council Contr. Indus. Pension Fund*, 575 U.S. 175 (2015)

Class 2-January 12

Topics:

- Fiduciary Duty Basics
- The role of the board, officers, and shareholders

- Core Duties of Care and Loyalty
 - Who owes these duties
- Standards of Review
 - Business Judgment
 - Enhanced Scrutiny
 - *Revlon* and *Unocal*: limits on their applicability
 - Entire Fairness
 - Does the plaintiff always win?
- Controllers/Controlling Interests
 - Litigation is almost automatic in controller situations, even when Board is arguably disinterested
 - What constitutes a controller
 - Evolving standards
 - 2025 Amendments
 - What is an “interested” transaction
 - Sections 144 and 145
- How can fiduciary duties be exculpated or cleansed?
- What actions and remedies are available for breach of fiduciary duty claims
 - Forum selection issues – federal court vs. state court
 - Injunctive relief
 - The movement toward post-closing relief
 - Appraisal
 - Merger litigation and *Trulia*
- Other recent changes to Delaware Code
 - Adopted to address certain court decisions perceived as problematic

Reading Assignments:

- *Smith v. Van Gorkom*, 488 A.2d 858 (Del. 1985)
- *Unocal v. Mesa Petroleum*, 493 A.2d 946 (Del. 1985)
- *Revlon Inc. v. McAndrews & Forbes Holdings, Inc.*, 506 A.2d 173 (Del. 1986)
- *Kahn v Lynch*, 638 A.2d 1110
- *Kahn v. M&F Worldwide*, 88 A3d 635 (2014)
- *Corwin v KKR Fin. Holdings*, 124 A.3d 304 (Del. 2015)

Optional Reading:

- *In re Match Group Inc. Deriv. Litig.*, 2024 WL 1449815 (Del. Apr. 4, 2024)
- *Blasius Industries, Inc. v. Atlas Corp.*, 564 A.2d 651 (Del. 1988)
- *Lyondell Chemical Co. v. Ryan*, 970 A.2d 235 (Del. 2009)
- *Paramount Communications, Inc. v. QVC Network, Inc.*, 637 A.2d 34 (Del. 1994)
- *In re Trados*, 73 A.3d 17 (Del. 2013)
- *In re Tesla*, 298 A.3d 667 (Del. 2023)

Class 3-Date TBD (makeup for MLK Day)

Topics:

- Completion of Class 2 topics, as needed
- Derivative Litigation
 - How it differs from direct claims
 - Remedies available
- What tools do plaintiffs use to bring these cases
 - Section 220
- Director independence/disinterestedness
- Rule 23.1 Demand
 - Futility
 - Excusal
- Special Litigation Committees
 - Composition of the committee
 - SLC investigations and procedures
 - Challenging the outcome of SLC process

Reading Assignments:

- Final reading assignment to be posted on Canvas, but will likely include:
 - *United Food and Commercial Workers Union v. Zuckerberg*, 262 A.3d 1034 (Del. 2021)
 - *Aronson v. Lewis*, 473 A.2d 805 (Del. 1984)
 - *Rales v. Blasband*, 634 A.2d 927 (Del. 1993)
 - *Beam ex rel. Martha Stewart Living Omnimedia, Inc. v. Stewart*, 845 A.3d 1040 (Del. 2004)
 - *Zapata Corp. v. Maldonado*, 430 A.2d 779 (Del. 1981)
 - *Speigel v. Buntrock*, 571 A.2d 767 (Del. 1990)

Class 4-January 26

Topics:

- Special considerations in shareholder litigation
 - Board members who are interested/representatives of interested parties
 - CEO or other key executives
 - Corporate opportunities
 - Going private transactions
 - Takeover litigation
- Class discussion of current trends and issues in shareholder litigation
 - Fights over executive compensation
 - Musk cases and other notable litigation
 - Watch excerpts of oral argument and/or decision if rendered
 - Oracle/NetSuite case
- What does the future look like for the Delaware Court of Chancery?

Reading Assignments:

- To be posted on Canvas

Class 5-February 2

Topics:

- Students will have individual feedback sessions with instructors on their motion to dismiss and opposition argument section.
- While not in their individual feedback session, students will participate in *ungraded* class exercises based on hypothetical fact patterns and/or an *ungraded* oral argument exercise

Class 6-February 9

Oral Argument. **Class will be held from 2:05-6:25pm

Class 7-February 16

Oral Argument. **Class will be held from 2:05-6:25pm

**Motions to Dismiss and opposition written argument due on March 9 for graduating students and March 30 for non-graduating students.