**Corporate Finance Short Outline**

**ACCOUNTING**

* Defer to accountants unless clearly wrong. *Bolt* (9th Cir)
* Due diligence defense if reasonable investigation, highly dependent on context. *Software Toolworks* (9th Cir)

**VALUING FIRM OUTPUT**

* ECMH – significant amount of case law and regulation *assumes* is true
* Valuation in the Courts – For Delaware, any legitimate valuation method is acceptable
  + Looked to market price over subjective estimates of experts. *Campbell Soup* (3rd Cir)
  + Relied on experts, with some tweaks. *Technicolor* (Del; overturned)
* No minority discount at shareholder level (*Cavalier Oil*) BUT control premium at corporate level. *Rapid-American* (Del)

**CAPITAL STRUCTURE**

* Despite M&M theory, capital structure *does* matter 🡪 e.g. ties managements hands (agency cost concerns), taxation

**EXCESSIVE DEBT**

* **Subordination** if “loans” were really contributions in capital. *In re Fett Roofing* (4th Cir)
* For creditors, no FD in **“zone of insolvency,”** and no direct claims in insolvency. *Gheewalla* (Del)
* **Instrumentality doctrine** requires total domination AND fraud/injustice proximately result from control. *Krivo* (5th Cir)
* **“Deepening Insolvency” doctrine** – approved in *Lafferty* (3rd Cir), rejected in *Trenwick* (Del)

**COMMON STOCK**

* Pre-emptive rights – used to be default, now have to opt into. Got proportional interest in closed corp. *Katsowitz* (NY)
* Poison pill approved, subject to *Unocal* test. *Moran* (Del)

**CORPORATE DEBT**

* **Successor obligor** provision is triggered if have a plan of liquidation. *Sharon Steel* & *BNY Mellon* (Del)
  + Court will NOT look at intent of parties or facts, but accepted common purpose. Standardized *legal* interpretation.
* Implied covenants only for explicitly bargained-for benefits—“fruits of the bargain.” *Met Life* (SDNY)
* Avoid subjective interpretation and case-by-case analysis of bond covenants. *Archer Daniels Midland* (SDNY)
* No FD to bondholders, and need *wrongful* coercion 🡪 contract law of good faith. Formalistic reading. *Katz* (Del)
* No FD of bond trustees to bondholder *prior* to default, *Elliot Associates* (2nd Cir), but FD after default. *Gresser* (D.Md)

**PREFERRED STOCK**

* Dividends – Board’s discretion unless contract is clear, except in N.J. *L.L. Constantin* (NJ)
* Look closely/strictly at preferred contrast as a whole, giving all provisions meaning. *Avatex* (Del)
* Contract ***on point*** 🡪 purely contractual issue. But when no relevant contract language 🡪 duty of ***“fair sharing.”*** *Jedwab*
* Preferred has right to be free of wrongful coercion. No right to status quo. *Gradient OC Master* (Del)
* Need “necessary implication” for implied terms. *HB Korenvaes* (Del). See also *Coffman* (1st Cir)
* Dividends accrue on daily basis 🡪 looked at intent (***“reasonable person in position of parties”***). *Smith v. Nu-West* (Del)
* Court did NOT look at extrinsic evidence, *only* within contract. *Wood* (Del)

**OPTIONS AND CONVERTIBLE SECURITIES**

* Option depends on contractual rights, and prior to conversion 🡪 only a hope! *John Parkinson* (Mass)
* No FD prior to conversion. Bondholder protects via contract. *Simon* (Del)
* No appraisal rights for options. *Andalaro* (Del)
* For valuation, board can make decision with info that exists at the time. *HB Korenvaes* (Del)
* Interpret option contract in context 🡪 ALL provisions should have meaning. *CL Investments* (Del)
* Mere **short selling** is NOT enough. Test for manipulative practice, securities fraud. *Colkitt* (3rd Cir)

**DIVIDENDS AND DISTRIBUTIONS**

* Restrictions – Delaware (*Klang* & *Thoughtworks*) v. MBCA 🡪 **Equity Insolvency** and **Balance Sheet Insolvency**
* Board gets deference on dividend policy, especially for public companies. *Berwarld* (Del). BUT weird rules in Mass. *Smith*
* Reverse Stock Split – shareholders entitled to fair treatment, NOT equal treatment. *Applebaum* (Del)
  + Market price is fair *if* there is a liquid market
* Targeted repurchases subject to BJR. *Grobow*