

INDEX

- ab initio*, 164–166
 academic comparative law, 6
 accounting treatment of executive
 compensation, 515–516, 519–520,
 523
 accumulated, realised profits/losses, 265
 acquisitions. *See* mergers and
 acquisitions
 acting in concert, 890
 active shareholders, 159
 actual influence (*faktischer Konzern*), 835
 actual vs. true authority, 368–371
ad hoc disclosure of significant events
 Germany, 656–658
 introduction to, 655–656
 shareholder information rights, 640,
 655–660
 United Kingdom, 658–659
 United States, 659–660
ad hoc liquidity, 810
 advance authorization for share
 increases, 235
 advantages of share repurchases, 287–288
 agency costs, 349–352
 agency law, 160
 agents and authority, 366
 aggregated assets of corporations, 444
 aircraft corporate groups, 827
Aktiengesetz. *See* Stock Corporation Act
 (*Aktiengesetz*) of 1965 (AktG)
 Alexander, Jacob “Kobi,” 510
 allocating power, 53
 American Bar Association (ABA), 18, 49
 annual accounts, delivery, 49
 annual financial report, 647, 652–653
 annual general meetings, 683–684, 690,
 699
Anscheinsvollmacht (apparent
 authority), 371–374
 anti-takeover devices, 582
 appointing management of a
 corporation, 352–358
 appointment rights, 585–587, 589,
 591–592
 appraisal rights, 293, 324, 776, 810–812,
 907
 appraisal suit (*Spruchverfahren*), 811
 approval for share capital increases,
 229–232, 235–236, 238–239
 Approximation of Laws (*Angleichung
 der Rechtsvorschriften*), 97
ARAG v. Garmenbeck, 449
 discussion, 452–459
 facts, 452
 holding, 451
 judicial enforcement of shareholder
 rights, 749
 official head note, 450–451
 arguments against takeovers, 929–932,
 931f
 Aristotelian teleological essentialism, 7
 Armour, John, 12
Aronson, et al. v. Lewis, 447, 465–467
 articles of incorporation (*Satzung*),
 151–153, 158, 161–162, 197–198.
 See also certificate (articles) of
 incorporation
 amendment to, 588, 590, 592
 power granted by, 369
 property interests, 308
 required majorities in voting rights,
 601
 shareholder approval for mergers
 and acquisitions, 804–805

- asset purchases, 769–771, 772*f*
- assets upon incorporation, 151
- at-the-money, 509
- Athenian citizens, 680
- auctions and bid premiums, 928–929
- Aufsichtsrat*, 196, 400–402, 593–595, 601, 750, 838, 915–918
- authorised minimum share capital, 156
- authoritative scholarship, 163
- authorization to repurchase shares, 292, 295
- authorized signatories, 369
- autonomy of family enterprise, 559
- “back end” of stock purchase, 775
- backdating, 510, 665–667
- BaFin. *See* German Financial Services Supervisory Agency
- Baird, Douglas, 981
- balance sheet profit, 259
- Bank of England, 888
- bankruptcy
 - costs of, 224
 - creditors’ interest, 257
 - fraudulent transfers from, 20, 50, 53, 257
 - overview of, 11
 - risks of, 223
- Barad, Jill, 505–506
- Basic v. Levinson et al.*, 659, 673–679, 783
- BAT Industries plc*
 - background, 945–946
 - facts, 946–949
 - federal court proceedings, 952–953
 - general principle 7 of the Code, 949–950
 - issue, 943–944
 - lobbying, 950–952
 - Rule 35.1(a), 953–955
 - rulings, 944–945
- Baums, Theodor, 44, 696, 750–751
- Bebchuk, Lucien A., 59
- bedingtes Kapital*, 236
- Beirat*, 562
- beneficiary, as fiduciary relationship, 395
- Benihana of Tokyo, Inc. v. Benihana, Inc.* (2005)
 - analysis, 248–252
 - applicable standard of review, 250
 - board meetings, 245–246
 - closing of transaction, 247–248
 - concern over future control of, 242–244
 - duty of care, 253
 - duty of loyalty, 252–253
 - financing alternatives, 245
 - improper primary purpose, 250–252
 - the parties overview, 240–242
 - preferred stock purchases, 246–247
 - state of Benihana’s businesses, 244
 - validity of the BFC transaction, 248–249
- Berkowitz, Daniel, 101
- bidder company, 887
- Bifferato, Vincent A., 169–172
- bifurcated management/supervisory board, 514
- binding force of jurisdictions, 94
- Blasius Industries v. Atlas Corporation*, 582, 598, 930
 - allocation of authority, 609–612
 - consent statement, 605–606
 - expansion of board through members, 606
 - fiduciary duty invalidity claims, 966–967
 - introduction to, 604
 - legitimacy questions, 608–609
 - leverage recapitalization or sale, 605
 - rejection of Blasius proposal, 606–608
- blockholders, 777, 930
- “blue sky” laws, 646
- Blumberg, Dean Phillip, 827–828
- BMW AG, 932
- book-entry transfers, 715
- Borland’s Trustee v. Steel Brothers & Co.*, 307
- Börseneinführung*, defined, 534
- Börsengesetz*, 648
- bounded rationality, 446
- Brady v. Brady*, 987, 990, 992–999
- Bratton, William W., 59
- Brexit (ramifications of United Kingdom exit from the European Union), 20, 25, 40, 44–45, 537

- British Telecommunications plc Offer for PlusNet plc*, 890
- Brownlow v G H Marshall Ltd and others*, 561–562
- background, 563–564
- the claim, 563
- facts, 565–567
- the law, 567–568
- summary, 568
- bullet-dodging, 509
- Bundesanzeiger (Federal Gazette)*, 153
- bundling rights, 316–317, 319–320, 322–323
- Bürgerliches Gesetzbuch*, 106
- Business, Energy and Industrial Strategy (BEIS) department, 22, 38
- business combinations. *See* mergers and acquisitions
- business judgment rule, 352, 410, 444–449, 476–478
- Business Practice Act (*Gewerbeordnung*), 359
- buy-backs, 289, 291, 297
- bylaw amendments, 857–860
- California Corporations Code, 90–91
- capacity and *ultra vires* doctrine, 367–368, 367*f*
- capital. *See also* dividend distribution and capital maintenance; share capital
- company law impact on, 225
- conditional capital, 231–232
- contribution rules, 261
- economic determinants of, 224–227
- effective capital increase, 229–230, 235
- equity share capital, 894
- firm's value and, 221–224
- gains tax rates, 288
- human capital, 511
- impairment test, 266, 299–302
- internal capital market, 832
- law on capital structure, 221–222
- maintenance rules, 13, 20, 260
- minimum capital, 150, 164, 189, 192, 256
- nominal capital, 229–230, 235, 294
- partnerships and, 132
- surplus of, 266
- tax rates on capital gains, 288
- uniform minimum capital, 192
- venture capital, 313–314
- capital market rules, 290–292
- Carmody v. Toll Brothers*, 934
- background, 956
- “dead hand” feature, 958–959
- “dead hand” provision, 963–968
- “derivative claim” defense, 962–963
- fiduciary duty invalidity claims, 965–968
- “flip in” and “flip over” features, 957–958
- opinion, 955–956
- overview, 959–961
- Rights Plan, 956–957
- ripeness argument, 962
- statutory invalidity claims, 963–965
- summary, 968
- cash bonuses, 503
- cash budget, 264
- cash-out merger, 907
- cash payments, 195–196, 200–204
- cash pooling, 262
- cash salary, 502–503
- central management of corporation, 349
- centralized management, 841
- Centros Ltd v. Erhvervs-og Selskabsstyrelsen*, 40–42
- certificate (articles) of incorporation, 155, 322–323, 481–482. *See also* articles of incorporation
- certificate of stock, 311
- chain of authority, 374–375
- Chandler, Alfred, 828, 830
- changing rights, 317–318, 320–321, 324
- cheap credit, 982
- chief executive officer (CEO), 356
- China, 6, 100
- Chinese firms, 560
- Chinese legal system for commercial law, 100
- Civil Code (*Bürgerliches Gesetzbuch*), 17

- civil law, 396
 - codification, 539
 - courts, 15–16
 - judicial precedent, 839
 - jurisdiction, 50
 - transplantation and, 99
- civil law partnership (*Gesellschaft bürgerlichen Rechts* or GbR), 108–109
- class actions, 745–748
- Co-Determination Act, 15–16, 34, 360–362
- Coffee, John C., Jr., 508, 748
- Cohen Committee (1945), 544–545
- collective action problems, 582–585, 584*f*, 887, 931
- collegial declaration, 647
- Commerce Clause, 46
- Commercial Code (*Handelsgesetzbuch*), 14
- commercial partnership (*offene Handelsgesellschaft* or OHG), 110–112
- commercial register (*Handelsregister*), 153
- Commission of the European Communities v. Federal Republic of Germany*, 934
 - action, 937–940
 - judgment, 935–936
 - justification for restrictions, 941–943
 - public limited companies law, 936
 - third complaint, 940–941
 - VW law, 936–937
- common law, 99, 396
 - China, 100
 - directors' duties, 396
 - England, 123, 159–160, *v*
 - Hong Kong, 100–101
 - judicial precedent, 839
- common shares, 312–313
- common stock, 325, 804
- community law provisions, 73–74
- Companies Act (1985), 545
- Companies Act 2006 (CA 2006), 9, 13, 18
 - appointment rights, 589
 - delivery of annual accounts, 49
 - directors' duties for listed companies, 544–545
 - dividend distribution and capital maintenance, 260, 264–265
 - duty of loyalty, 404
 - equal application of, 37
 - indoor management rule, 373
 - leveraged buyouts, 990–991
 - liability of shareholders, 162
 - management of partnerships, 120
 - parent-subsidiary “control contracts,” 840
 - public limited company, 153–156
 - revisions to, 20–22
 - routine, regular disclosure, 645
 - share repurchases, 295–296
 - shareholder approval for mergers and acquisitions, 806–809
 - shareholder claims, 750
 - substantially identical provisions, 33
 - takeover bids, 888–889
 - “unfair prejudice” action, 713
- Companies Registration Office, 122
- company interests, 396–398
- company law
 - boundary of, 9
 - defined, 9–13
 - duty of loyalty, 409
 - European Union directives, 29–31
 - Germany, 14*f*, 14–17
 - impact on capital structure, 225
 - preemption in federal company law, 46–47
 - United Kingdom, 20–24, 23*t*
 - United States, 17–20
- comparable offer, 894
- comparative company law, 3–9
- compensation contracts, 501–502
- competitive advantage, 399
- compliance
 - German Code, 36
 - with HGB principles, 263
 - legal rules and, 227, 323, 395
 - pressure to achieve, 398
 - safe harbor, 297, 394
 - in securities, 514
 - statement of, 155
 - waiving preemption rights, 317

- compliance officers, 351
- ComROAD Securities Litigation No. IV*, 641, 658
 - discussion, 669–673
 - facts, 668–669
 - official headnote, 667–668
- Comverse Technologies Inc., 510
- concentrated holdings, 928
- concern, defined, 828
- conditional capital, 231–232
- confidentiality agreements, 768, 783
- conflicts of interest, 399
- conservative valuation, 262
- constituency statutes, 397
- constitutional documents and
 - corporate groups, 840–842
- constitutional position of US federal government, 46–47
- consumer items corporate groups, 827
- Consumer Protection Act, 55
- contingent fee, 744
- contract law
 - corporate law and, 365–366
 - corporations and, 365–366
 - directors' powers, 368–371
 - Germany, 777
- convergence of law, 94, 97–99
- convertible bonds, 232, 314
- corporate governance, 287, 537, 541, 560–561, 887
- Corporate Governance Code, 36
- corporate groups
 - de facto* concern, 837–839
 - defined, 827–828
 - discussion questions, 843–844
 - enterprise agreements, 835–837
 - formation of, 828–830
 - German *Konzernrecht*, 832, 834–840
 - interests affected by, 830–831
 - legal form vs. economic function, 841–842
 - regulation of, 831–832
 - regulation through constitutional documents, 840–842
 - related party transactions, 832–834
- corporate law
 - contract law and, 365–366
 - directors vs. trustees, 396
 - Germany, 10–11
 - share repurchases, 289–290
- corporate opportunity doctrine, 438–441
- corporations. *See also* Delaware General Corporation Law; governing board of a corporation; incorporation; Stock Corporation Act
 - assets upon incorporation, 151
 - certificate (articles) of incorporation, 155, 322–323
 - constitutional documents, 366
 - de facto* corporation, 163
 - de jure* corporation, 163
 - decision-making by, 349, 445–446
 - defective corporation, 161–162
 - foreign corporations, 56–58
 - in formation, 152
 - governing board, 349–352
 - null and void corporations, 164–166
 - partnership vs., 105–107
 - piercing corporate veil, 863–864
 - statutes and share classes, 309, 324–325
 - stock corporation, 14, 98, 156–157
 - stock corporations, 14, 98, 156–157
 - transferring corporate assets, 768–769, 770*f*
- corporations in global market
 - convergence, 94, 97–99
 - European Union, 26–33
 - Germany, 34–36, 37*f*
 - harmonization, 94, 96–97
 - interaction between bodies of law, 94–96
 - overview of, 25–26
 - regulatory competition Europe, 40–45
 - transplantation, 94, 96, 99–101
 - United Kingdom, 37–40
 - United States, 45–53, 52*f*
- counter-majoritarian strength of litigation, 744
- counter-proposals to proposals, 594
- Court of Appeals for the Federal Circuit, 51
- Court of Chancery decision, 88
- creditor protection, 6, 266–267, 286–287, 298

- Criminal Justice Act (1993), 22, 536, 552–554
 cross-border merger structures, 779–782
 Cross Border Mergers Directive, 768, 780, 809
Cumbrian Newspapers Group Ltd v. Cumberland & Westmorland Herald Newspaper & Printing Co. Ltd, 318
 cushioning effect of contractual guarantees, 580
Daily Telegraph, 851–852
Dasho v. Susquehanna Corporation, 988
 Davos World Economic Forum (2007), 983
de facto concern, 837–839
de facto corporation, 163, 989
de facto incorporation, 163
de facto merger, 776
de jure corporation, 163
 debt and insolvency risk, 224
 debt-for-equity swaps, 196, 201, 236, 510–511
 decision-making
 by corporations, 349, 445–446
 by directors, 394–395
 of personal interest, 399
 regarding assets, 588, 590, 592
 regarding structural integrity, 588, 591–593
 decision rights, 588–593
 default (*konkrete Ausfallwahrscheinlichkeit*), 262
 defect is proven (*ex nunc*), 162
 defective corporation (*fehlerhafte Gesellschaft*), 161–162
 deferred compensation, 513
 Delaware Chancery Court, 582
 Delaware General Corporation Law (DGCL), 9, 17–20, 22, 50, 369
 certificate of stock, 311
 mandatory rules, 52–53
 necessary quorum, 687–688
 null and void corporations, 166
 paying for share capital increases, 239
 preemption rights, 239–240
 right to be bought out in mergers and acquisitions, 810–811
 share capital increases, 238–240
 share repurchases, 296–298
 “short-form” mergers, 48
 stock corporation, 156–157
 delegation in corporations, 349–350
 democracy theory of voting rights, 581–582
 Denmark, 40–41
 Department of Trade and Industry (DTI), 22
 “dependence report” (*Abhängigkeitsbericht*), 838
 depreciation methods, 261
 deputization concept, 544
 derivative actions, 745–748, 755–757
Desert View Building Supplies, 267
 determinations regarding thresholds, 890
 deterrence effect of potential takeovers, 929
Deutsche Telekom III (2011)
 official headnote, 272
 reasons, 273–276
 summary of facts, 272–273
 developing countries, 5
 direct actions, 745–748, 755–757
 Directive (EU) 2017/1132, 255–256
 capital maintenance under, 256–258
 creditor protection, 267
 Cross Border Mergers Directive, 768
 leveraged buyouts, 984–987
 mergers and acquisitions, 778
 share repurchases, 289–290
 shareholder approval for mergers and acquisitions, 805, 807–808
 directors and officers (D&O) insurance, 410
 directors’ duties for listed companies
 corporate governance code, 537
 exchange rules, 536–537
 Germany, 539–540, 542, 545–546
 inserting committees in the board, 540–541
 insider trading regulation, 546–555
 prophylactic rules, 543–546

- rules on company transactions, 537–538
- securities exchange listing, 533–536
- securities law, 536
- United Kingdom, 538–539, 541–542, 544–545
- United States, 538, 541, 543–544
- directors' power
 - actual vs. true authority, 368–371
 - apparent vs. ostensible authority, 371–374
 - capacity and *ultra vires* doctrine, 367–368, 367f
 - chain of authority, 374–375
 - discussion question, 377
 - freedom of, 395
 - imputation of knowledge, 375–376
 - introduction to, 365–366
 - supervisory directors, 512–514, 518, 521–522
- Directors' Remuneration Report (DRR), 520–521
- directors' service contracts, 590–591
- disclosure, 256. *See also* routine, regular disclosure
- Disclosure and Transparency Rules (DTRs), 22, 536, 650–651, 658, 660
- disclosure claims, 303, 517
- disclosure obligations, 983
- discretionary activity, 352
- disguised distributions, 259
- disguised in-kind contributions (*verdeckte Sacheinlage*), 198–200
- disinterested directors, 409
- Disney Company Derivative Litigation*, 447
- dissolution of partnerships, 109
- distribution of profits, 831
- District Court of Berlin, 363
- dividend distribution and capital maintenance
 - creditor protection, 266–267
 - Directive (EU) 2017/1132, 256–258
 - discussion questions, 267–268
 - Germany, 258–264
 - introduction, 254–255
 - protecting creditors through, 255–257
 - United Kingdom, 264–265
 - United States, 266–267
- dividend payments, 203, 228, 254, 311, 314, 323
- “doctrinal” reasoning of voting rights, 577–579
- Dodd-Frank Wall Street Reform Act, 55, 59, 514
- dominant parent corporation, 827
- domination agreement (*Beherrschungsvertrag*), 836
- Donne, John, 828
- Drury, R.R., 165
- due care standards. *See* duty of loyalty
- due diligence investigation, 401
- Duldungsvollmacht* (authority by forbearance), 372
- duties of partners, 132–133
- duty of care, 253, 410–412, 444v
- duty of confidentiality, 401
- duty of loyalty, 112, 252–253
 - company interests, 396–398
 - directors' duty of care, 410–412, 444
 - discussion questions, 412
 - fiduciary duty vs., 447–448
 - Germany, 400–403
 - insider trading and, 551
 - introduction to, 393–396
 - rules where loyalty is often, 396–398
 - source and nature of, 400, 403–405, 407–408
 - United Kingdom, 403–407
 - United States, 407–410
 - use of rules, 400–402, 405–406, 408–409
 - use of standard, 402–403, 406–407, 409–410
 - Walt Disney Company Derivative Litigation, In re*, 480–481, 484
- duty of trust or confidence, 550
- earnings management, 508–509
- Easterbrook, Frank, 579
- Eastern Europe economic development, 6

- Ebrahimi Appellant v Westbourne Galleries Ltd. and Others*, 714, 720–726
- EC Insider Dealing Directive (1989), 548, 552, 554
- economic determinants of capital structure, 224–227
- economic function of share classes, 312–314
- economic incentive for success, 501
- economic theory of voting rights, 579–581
- “economics” solution, 575
- effective capital increase, 229–230, 235
- Eisenberg, Melvin A., 445
- election of company directors, 57
- Electronic Data Gathering and Retrieval (EDGAR) system, 654
- Eleventh Company Law Directive, 28, 41–42
- EM. TV, In Re* (2005)
 discussion of reasons, 269–272
 official headnote, 268–269
- empire-building, 503
- employee pension funds, 932
- employee representation in Germany, 359–360
- engagement policy, 584
- English partnerships
 as business organizations, 115–123, 116*t*
 limited liability partnership, 119–121
 limited partnership, 121–123
 partnership, 115–119, 116*t*
- Enriques, Luca, 44
- Enron Corporation, 841
- enterprise agreements
 (*Unternehmensverträge*), 835–837
- “enterprises” (*Unternehmen*), 834–835
- “entitlement” to vote, 577
- entity proliferation, 106
- entrepreneurial lawyer, 748
- entrepreneurs, 132
- equal dignity, 371
- equal treatment of shareholders, 297, 893–894, 899–900, 905–907
- “equilibrium” of regulatory competition, 54
- equitable constraint, 562
- equity compensation, 504, 507, 517
- equity investors/investments, 298, 309, 931
- equity share capital, 894
- equity swaps. *See* debt-for-equity swaps
- equity valuations, 303–304
- ethical reputations, 397
- EU Prospectus Regulation, 226
- EU Takeover Directive, 886, 888–889
- European company (*Societas Europaea*), 30
- European Council, 28
- European Court of Justice (ECJ), 12, 27, 31, 40–44, 58
- European Economic Community (EEC), 26
- European Economic Interest Grouping, 123
- European “highest price” rule, 906
- European Model Company Law Act, 45
- European Private Equity and Venture Capital Association, 989
- European Securities and Markets Authority (ESMA), 32, 36, 656–657
- European social policy, 891
- European Union (EU)
 Buy-back Regulation, 297
 company law directives, 29–31
 comparative law in, 5
 corporations in global market, 26–33
 cross-border merger structures, 779–782
 Europeanization of national law, 33
 executive compensation, 516–517
 framework directive, 226
 implementation of regulations, 32–33
 leveraged buyouts, 984–986
 regulatory competition, 40–45
 securities law, 43–44
 share capital, 194–195, 228–229
 shareholder approval for mergers and acquisitions, 809–810
 UK membership in, 5, 20, 25
 Europeanization of national law, 33
 ex ante blanket rule, 986

- ex ante* contractual limitation, 367
ex ante investment value, 810
ex ante statutory norm, 198
ex ante thresholds, 889
ex parte Guinness plc, 892
ex post action, 367, 409
ex post judicial examination, 198
ex post remedial rules, 986
 Exchange Act (BörsenG), 536
 Exchange Admission Regulation
 (Börsenzulassungsverordnung),
 648–649
 exchange rules, 50–52, 536–537
 exculpation (*Entlastung*), 586
 executive compensation
 accounting treatment of, 515–516,
 519–520, 523
 breach of fiduciary duties,
 510–511
 discussion questions, 524–525
 earnings management, 508–509
 Europe, 516–517
 in financial institutions, 523–524
 Germany, 517–520
 as governance tool, 502–504
 performance-linked pay and moral
 hazard, 501–502
 required disclosure of, 512–514,
 517–518, 520–521
 risks of, 504–511
 self-dealing, 504–508, 507f
 shareholder say on, 514–515,
 518–519, 522
 supervisory directors, 512–514, 518,
 521–522
 United Kingdom, 520–523
 United States, 511–516
 value of options, 509–510
Exit, Voice and Loyalty (Hirschman),
 575
 exit option in shareholder voting rights,
 575–576
 expiration date of options, 513
 external financing, 220, 227

 facsimile signatures, 374
 fair value of options, 513
 fairness burden, 737–738

*Fairway Development Co. v. Title
 Insurance Company of Minnesota*
 (1985), 124, 127
 discussion and law, 135–136
 district judge, 134–135
 Family Firm Institute (FFI), 558
 family firms, 557–563, 561f
 FCA Listing Rules, 537–538, 541, 549,
 659, 807
 federal laws, 47–50, 54–56
 Ferran, Eilís, 982
 fiduciaries, 394
 fiduciary duties, 19, 53, 403–404,
 447–448
 breach of, 310, 510–511, 546–555,
 793–794
 Germany, 395
 invalidity claims, 965–968
 mergers and acquisitions, 812
 partners and, 125
 principles of, 12
 of shareholders, 578, 713–715
 to shareholders, 398
 stock options, 510
 in takeover bids, 904
 filings as publicity, 6
 Financial Accounting Standards Board
 (FASB), 516
 Financial Conduct Authority (FCA),
 21, 38–39, 716
 Disclosure and Transparency Rules,
 22, 536, 650–651, 658, 660
 Listing Rules, 39, 522, 539, 549,
 659–660, 701
 financial crisis (2007–2008), 507, 523,
 984
 financial institutions, 831
 Financial Services and Markets Act
 2000 (FSMA), 37, 39
 Financial Services Authority (FSA), 21,
 39
 financial statements, 192, 222–223
 firm's value and capital structure,
 221–224
 First Company Law Directive (1968),
 29, 42, 49, 644
 Fischel, Daniel, 579
 Fischer, Robert, 16

- five co-determination regimes, 361–364
- five core structural characteristics, 9–10
- fixed obligations, 981
- foreign corporations, 56–58
- foreign employees, 363
- foreign law and commercial transactions, 6
- Form 6-K, 660
- Form 8-K, 660
- Fortune 500 companies, 18
- Foss v. Harbottle*, 752–753
- framework directive, 226
- Frankfurt District Court, 363
- Frankfurt Stock Exchange, 17, 34–35, 539, 650
- fraudulent transfers
 - in bankruptcy, 20, 50, 53, 257, 864
 - mergers and acquisitions, 775
- free riding, 583
- freedom of establishment, 80–82
- freely transferable shares, 106, 349
- Freeman & Lockyer v. Buckhurst Park Properties*, 373, 379–384
- Friedman, Milton, 306–307
- friendly takeover, 529–531
- FSA Listing Rules, 295–296
- gains to selling shareholders, 928
- Gelatine, In re*, 16
 - discussion, 630–639
 - facts, 628–629
 - holdings in overall corporate groups, 630
 - official headnote, 628
- General Overseas Films, Ltd v. Robin International, Inc.*, 374, 377, 385–392
- general partners/partnerships, 113, 123*t*, 123–127
- German *Beherrschungsvertrag*, 840
- German business judgment rule, 804
- German co-determination, 359–364
- German Code of Corporate Governance, 353
- German Constitutional Court (*Bundesverfassungsgericht*), 27
- German Corporate Governance Code (*Deutscher Corporate Governance Kodex*), 17, 537, 539–540
- German Exchange Act, 35
- German Financial Services Supervisory Agency (*Bundesanstalt für Finanzdienstleistungsaufsicht*, BaFin), 36, 524, 549, 897–899
- German *Gesetz über Partnerschaftsgesellschaften Angehöriger Freier Berufe* (*Partnerschaftsgesellschaftsgesetz* or PartGG), 120
- German High Federal Court, 15, 109, 233, 375, 657, 842
- German *Konzernrecht*, 832, 834–840
- German partnerships
 - civil law partnership, 108–109
 - commercial partnership, 110–112
 - limited by shares, 114–115
 - limited partnership, 112–114
 - professional partnership, 110
 - types of, 108–115
- German Securities Prospectus Act, 32
- German Securities Trading Act (*Wertpapierhandelsgesetz*), 11
- Germany. *See also* Stock Corporation Act
 - ad hoc* disclosure of significant events, 656–658
 - approval for share capital increases, 229–232
 - capital maintenance, 258–264
 - cash payments, 195–196, 200–203
 - company law, 14*f*, 14–17
 - corporation law, 10–11
 - corporations in global market, 34–36, 37*f*
 - directors' duties for listed companies, 539–540, 542, 545–546
 - disguised contributions in kind, 198–200
 - duty of loyalty, 400–403
 - ECJ regulation in, 41
 - employee representation, 359–360
 - executive compensation, 517–520
 - family enterprise, 562
 - fiduciary duties, 395
 - five co-determination regimes, 361–364

- governing board of a corporation, 352–354
- group law, 832
- in-kind payments, 196–198, 203–204
- incorporation procedures, 151–153
- insider trading, 554–555
- judicial enforcement of shareholder rights, 749–751
- labor laws, 12
- leveraged buyouts, 988–990
- liability of promoters, 158–159
- liability of shareholders, 161–162
- mergers and acquisitions, 773, 777–778
- null and void corporations, 165
- paying for share capital increases, 232–233
- preemption rights, 232–235
- right to be bought out in mergers and acquisitions, 811
- routine, regular disclosure, 648–650
- security interests, 13
- share capital, 195–200
- share capital increases, 229–235
- share capital structure, 226
- share classes, 315–318
- share repurchases, 292–294
- shareholder approval for mergers and acquisitions, 804–806
- shareholder information rights, 642
- shareholder meetings, 690–698
- shareholder voting rights, 580, 585–588, 593–595, 601, 745
- takeover bids and management interference, 933–934
- takeover bids and prices, 895–901
- Gibson, Peter J., 277–282
- Girmes, In Re*, 738–742
- Glenn, H. Patrick, 96–97
- global financial crisis, 512, 514–515
- global stock market collapse, 54
- globalization, 3–4
- golden handshakes, 406
- golden shares, 314
- Gonenc, Halit, 226
- good cause (*wichtiger Grund*), 587
- good faith negotiations, 783
- Gordon, Jeffrey, 52–53
- governance function of share classes, 312–314
- governance mechanisms, 95, 748, 931
- governing board of a corporation
 - delegated authority, 349–352
 - German co-determination, 359–364
 - Germany, 352–354
 - management interests vs. shareholder interests, 354, 356, 358–359
 - regulation of management, 353, 355, 358
 - screening and appointing management, 352–358
 - United Kingdom, 354–356
 - United States, 356–359, 357f
- granting of loans, 401
- Greenhalgh v. Arderne Cinemas Ltd*, 319, 321, 336–343
- Greenwell v. Porter*, 708–711
- group law in Germany, 832
- Grundfest, Joseph, 603
- Grundkapital*, 191
- Guinness plc The Distillers Company plc*
 - analysis of evidence, 921–925
 - relevant aspects, 919–921
 - substantive issue, 919
 - summary of conclusions, 926
- Guth v. Loft*, 407–408
- Habbershon, Timothy, 559
- Hague Conference on Private International Law, 5
- Hanson Trust plc v. SCM Corp.*, 885–886, 908–913, 929
- harmonization
 - corporations in, 94
 - EU rules and, 95–96, 550
 - Model Act, 49
 - overview of, 40, 96–97
 - safeguarding, 27–28
 - under TFEU, 28–29
- Hausbank* relationship, 698
- High Federal Court, 263, 839–840
- high-yield securities of questionable value, 906
- Hirschman, Albert O., 575

- Hollinger International Inc. v. Conrad M. Black*, 592, 842
 bylaw amendments, 857–860
 corporate structure, 848–850
Daily Telegraph and, 851–852
 independent directors, revolt/
 resignation, 852–853
 international board of directors, 850,
 856
 legal analysis, 856–857
 management structure, 850–851
 repudiation of restructuring
 proposal, 855–856
 restructuring agreement, 852
 violation of restructuring proposal, 853
 violation of restructuring proposal,
 dispute over, 853–855
- Holzmüller, In re*, 16, 839–840
 discussion, 615–628
 facts, 613–615
 official headnote, 612–613
- Honda Motor Co., 932
- Hong Kong Common Law, 100–101
- Honoré, A.M., 309
- Hopt, Klaus, 4
- hostile bidding, 716
- hostile takeovers, 322, 927–929
- human capital, 511
- human resources department, 505
- IBH/Lemmerz* (2002)
 discussion, 209–212
 facts, 208
 official headnote, 207
- IFRS Regulation, 509, 519, 832
- impediment to freedom of
 establishment, 80–82
- imputation of knowledge, 375–376
- in-kind contribution, 153
- in-kind payments
 capital maintenance, 255
 European framework, 194–195
 Germany, 196–198, 203–204
 share capital increases, 232
 United States, 204–205
- In Re Oil Spill by the “Amoco Cadiz”*,
 842
 conclusions of law, 868
 facts, 865–866
 responsibility/roles, 867–868
 tort claims, 866
- In Re Rave Communications, Inc.*
v. Entertainment Equities, Inc., 842
 analysis, 864
 background, 860–862
 facts, 860–861
 fraud in bankruptcy cases, 864
 piercing corporate veil, 863–864
 summary, 865
- incorporation. *See also* corporations
de facto incorporation, 163
 declaring null and void, 164–166
 Germany, 151–153
 introduction to, 150–151
 liability of promoters, 158–161
 liability of shareholders, 161–164
 procedures of, 151–157
 questions for discussion, 166
 United Kingdom, 153–156
 United States, 156–157
- indebtedness, 228, 686, 903
- independent committees, 734–736
- index fund, 511
- indoor management rule, 373
- industrialists, 360
- informal decision-making, 560
- informal establishment of partnerships,
 132
- information management, 446
- Initial Listings by Foreign Issuers, 655
- initial public offering (IPO), 533, 535
- inside information, defined, 553
- insider trading, 510
 directors’ duties for listed companies,
 546–555
 discussion questions, 555–556
 Germany, 554–555
 introduction to, 546–548
 rapid disclosure requirements,
 548–549
 regulating inside information, 549–550
 United Kingdom, 552–554
 United States, 550–552
- Insolvency Act (1986), 21, 24
- insolvency law, 12
- insolvency risk and debt, 224

- inspection upon request, 640
- Institutional Shareholder Services (ISS), 932
- interest of the company
 (*Unternehmensinteresse*), 396–398
- interests affected by corporate groups, 830–831
- interim management statements, 648
- intermediate scrutiny, 410
- intermediate standard, 410
- internal affairs, 89–93
- internal capital market, 832
- internal financing, 220, 224, 227, 229, 831
- international cooperation, 4
- International Disclosure Standards for Cross-Border Offerings (IOSCO), 655
- International Financial Reporting Standard, 519, 647
- International Institute for the Unification of Private Law (UNIDROIT), 5
- International Organization of Securities Commissions (IOSCO), 31
- Interstate Commerce Act, 54
- intrinsic value of options, 515–516
- Investment Advisers Act (1940), 54
- Investment Company Act, 54
- invitations to general meetings, 684–685, 691, 699
- involuntary creditors, 192, 256
- irrational business decisions, 395
- ISION*
 - facts, 459–461
 - holding, 459
 - official head note, 459
 - reason, 461–465
- ISM GmbH v. ARGE Wua* (2001), 124
 - discussion, 137–142
 - facts of, 137
 - official head note, 137
- Jackson, Thomas, 981
- Jacobson v. Stern*, 161, 184–187
- Jahresüberschuss*, 259
- Jennings, Philip, 983
- Jensen, Michael C., 349–350, 503
- John Crowther Group plc v. Carpets International plc*, 782, 784–785, 795–800
- joint management of assets, 107
- joint ventures, 124, 129, 829
- judicial decisions, 16, 21, 267, 444–449
- judicial enforcement of shareholder rights
 - direct, derivative, and class actions, 745–748
 - duty to manage company, 753–754
 - general meetings and, 748
 - Germany, 745, 749–751
 - goals and difficulties, 743–745
 - public enforcement by government authorities, 748
 - United Kingdom, 752–753
 - United States, 753
- judicial precedent (*Rechtsfortbildung*), 839
- junk bonds, 906
- Justinian Code, 96, 99
- Kahn v. Lynch Communication Systems, Inc.*, 841, 904
 - controlling shareholder status, 732–733
 - dominating interested shareholder, 734
 - facts, 729–732
 - fairness burdens, 737–738
 - independent committees and merger transactions, 734–736
 - opinion, 729
 - power to say no, 736–737
 - summary, 738
- Kamer van Koophandel en Fabrieken voor Amsterdam and Inspire Art Ltd*, 41
 - impediment to freedom of establishment, 80–82
 - justification question, 82–85
 - legal framework, 73–76
 - preliminary observations, 77–80
 - preliminary ruling, 76–77
 - relevant provisions of community law, 73–74
 - relevant provisions of national law, 74–76

- Katz v. Bregman*, 802, 812–814
Kelly A. Cleary v. North Delaware A-OK Campground, Inc., et al. (1987), 169–172
Kelner v. Baxter (1866–67), 177–180
Klang v. Smith's Food & Drug Centers, 267, 287, 296
 capital-impairment claim, 299–302
 disclosure claims, 303
 equity valuations, 303–304
 facts of, 298–299
 pre- and post-transaction surplus, 304
 self-tender offer, 305
 shareholder ownership of assets, 306–308
 Kötz, Hein, 5
- labor co-determination in Germany, 10
 Labor Management Relations Act of 1952 (*Betriebsverfassungsgesetz* 1952), 360
Lacos Land Company v. Arden Group, Inc. (1986), 324, 327–336
 Lamfalussy, Alexandre, 32
 law on capital structure, 221–222
 Law on Co-Determination of Employees in the Supervisory Boards and Management Boards of Enterprises Engaged in the Mining, Iron and Steel Industries of 21 May 1951 (*Montan-Mitbestimmungsgesetz*), 360–361
 legal capital, 266
 legal determinants of capital structure, 224–227
 legal limits on dividends, 254
 legal personality, 349, 841
 legal recourse, 535
 legal systems, 8
 legislative comparative law, 5
 legitimate expectation, 562
 Lehman Brothers, 984
 leveraged acquisition, defined, 980–981
 leveraged buyouts (LBOs)
 concern from regulators, 982–984
 defined, 980–981
 disclosure with, 891
 discussion questions, 991–992
- European Union, 984–986
 Germany, 988–990
 United Kingdom, 990–991
 United States, 986–988
Lewis v. Scotten Dillon Co. (1973), 215–218
lex specialis derogat legi generali, 16, 113
 liability of company directors, 57
 liability of promoters in incorporation, 158–161
 limited control rights, 314
 Limited Liability Companies Act, 15, 17
 limited liability company, 21, 105, 349, 841
 Germany, 113, 835
 United States, 130–131, 131*t*
 limited liability partnership (LLP)
 United Kingdom, 119–121
 United States, 127–128
 Limited Liability Partnerships Act 2000 (LLPA), 119
 Limited Liability Partnerships Regulations (2001), 120
 limited partnership
 Germany, 112–114
 United Kingdom, 121–123
 United States, 128–130
 Limited Partnerships Act 1907 (LPA 1907), 121
Linotype, In Re, 726–728, 749, 812
 liquidation of assets, 310, 312
 liquidation of partnerships, 109
 listed companies. *See* directors' duties for listed companies
Listed Company Manual (NYSE), 325, 685
 Listing Rules (LRs), 39, 522, 539, 549, 659–660, 701
 loan covenants, 314
 loans from company, 503
 London Stock Exchange (LSE), 39, 650
 long-term partnerships, 133
 longevity of family enterprise, 559
- Macey, Jonathan, 747
 manager/management. *See also* takeover bids and management interference; Vorstand
 board of, 152

- hostile takeover evaluations, 927–929
- manager incentives, 351, 503
- partnerships and, 132
- regulations, 351
- screening of, 350–351
- shareholder interests *vs.*, 354, 356, 358–359
- stock price and firm value, 928
- mandatory bid rule, 905
- mandatory clauses in supply contracts, 398
- mandatory preemption rights, 29
- mandatory prerequisites, 150
- Mannesmann exchange capitalization, 527
- Mannesmann supervisory board, 526
- Manning, Dean Bayless, 190
- market abuse, 546–555
- Market Abuse Directive, 545–546, 656
- Market Abuse Regulation (MAR), 22, 32, 290, 536, 545–546, 549, 554–555, 656
- market control/dominance, 829
- market manipulation, 287
- market regulation, 287
- marketplace controls, 40
- Marleasing SA v. La Comercial Internacional de Alimentacion SA* (1990), 164, 167–169
- material events and transactions, 648
- material nonpublic information, 550
- materiality concept, 659
- McCahery, Joseph A., 59
- Meckling, William H., 349–350
- medieval transactional structure (*commenda*), 112–113
- meeting agenda (*Tagesordnung*), 692
- Meinhard v. Salmon* (1928), 125, 142–145
- Melzer v. CNET Networks, Inc.*
 - backdating through derivative litigation, 665–667
 - opinion, 662–664
 - stock option backdating, 664–665
 - summary of, 667
- memorandum of association, 153
- Menier v. Hooper's Telegraph Works*, 713, 718–720, 812
- mergers and acquisitions
 - benefits statement, 891
 - confidentiality agreement, 783
 - cross-border merger structures, 779–782
 - defined, 768
 - discussion questions, 785
 - fiduciary duties, 812
 - fiduciary out clause, 784–785
 - Germany, 773, 777–778
 - good faith negotiations, 783
 - “mixed” mergers, 769
 - no-talk/no-shop agreements, 783–784
 - purchase of assets, 769–771, 772f
 - purchase of stock, 771–773
 - relief, 202–203
 - right to be bought out, 810–812
 - shareholder approval, 802–810
 - statutory merger, 773–775, 774–775f
 - termination fee, 784
 - three techniques, 801–802
 - tools of protection, 782
 - transaction structures and protective tools, 767–768
 - transactions, 734–736
 - transferring corporate assets, 768–769, 770f
 - triangular merger, 774, 775f
 - United Kingdom, 773, 778
 - United States, 775–777
- Mertens, Hans-Joachim, 34
- Miller, Geoffrey, 747
- Miller, Merton H., 223–224
- minimum capital, 150, 164, 189, 192, 256
- minimum legal share, 191–193
- minority partners, 111
- minority shareholders, 743, 803, 839
- Minow, Nell, 581
- misappropriation theory, 551, 553
- Mitbestimmungsgesetz*, 587
- “mixed” mergers, 769
- mobile communications company, 526–527
- Model Articles for Public Companies, 521

1050

INDEX

- Model Business Corporation Act
 (2008), 9, 17–20, 369
 adoption of, 49–50
 harmonization of laws, 49
 routine, regular disclosure, 645
 Modigliani, Franco, 223–224
 MoMiG reform, 264
 money-market instruments, 195
 Monks, Robert, 581
*Moody v. Security Pacific Credit
 Business, Inc.*, 987, 999–1013
 moral hazard of executive
 compensation, 501–502
 multi-company enterprises, 829
 multi-jurisdictional enterprises, 96
 multiple ballot structure, 362
 multiple voting rights, 316
 Murphy, Kevin, 503
mutatis mutandis, 120, 323, 895
 Myers, Stewart, 224
- Nasdaq Stock Market, 356–357, 514–515
 National Conference of Commissioners
 on Uniform State Law (NCCUSL),
 123–124
 national law, 33, 62, 74–76
 net profits test, 266
 New Deal, 54
 New York Stock Exchange (NYSE), 26,
 36, 324–325, 356–357, 514–515
 nimble dividends, 266
 no-shop agreements, 783–784
 no-talk agreements, 783–784
 nominal capital, 229–230, 235, 294
 nominal value requirement, 191
 non-family firms, 560
 non-union employees, 267
 nonfunctioning governance system,
 930
Norman v. Theodore Goddard, 404
North Delaware A-OK Campground,
 163
*Northside Developments Pty Ltd
 v. Registrar-General*, 370
 notarized excerpt, 374–375
 notional accounting value, 191
 null and void corporations, 164–166
numerus clausus, 778
- off-market purchases, 295
öffentliches Angebot, defined, 534
Official Gazette, 645
 on-lending arrangements, 872–874
 one share-one vote principle, 316
Ooregum Gold Mining Company case, 192
 operative management of partnerships,
 108
 options incentives, 502
 ordinary business, 111, 599–600
 ordinary governance, 927–928
 ordinary shares, 238, 312, 319
 ordinary tender offers, 297
 organizational behavior of family
 enterprise, 559
 ostensible authority, 371–374
 outreach statutes, 56–58
 over-the-counter markets (*Freiverkehr*),
 554
 owner-managed company, 580
 ownership interests of shareholders,
 577, 885
*Oxford Handbook to Comparative
 Law*, 6
- paid-in sums, 190
 Panel on Takeovers and Mergers
 (Takeover Panel), 26, 38
 par value of shares, 189–191, 266
*Paramount Communications Inc.
 v. QVC Networks Inc.*, 782, 784
 breach of fiduciary duties, 793–794
 facts, 790–793
 parent-subsidary “control contracts,”
 840
pari passu rights, 324–325
 participation/return ratio, 981
 partnership agreement
 amendments to, 111, 125
 approval of changes to, 109, 121
 death of partner, 112, 119
 dissolution of partnership, 127
 duty of care, 126, 128
 limited partnerships, 114, 121–122,
 127, 129–130
 ordinary business, 111
 overview of, 109, 114, 116–117, 120,
 132

- partnership as business organization
 - basic characteristics of, 132–133
 - corporations *vs.*, 105–107
 - discussion questions, 133
 - duties of, 132–133
 - England, 115–123, 116*t*
 - Germany, 108–115
 - informal establishment of, 132
 - management and capital with, 132
 - restrictions on transfer of shares, 133
 - United States, 123–131, 123*t*, 131*t*
- partnership property, 116
- paying for share capital increases, 232–233, 235–236, 239
- payout policy, 220
- pension benefits, 513
- performance-based compensation, 511
- performance-linked pay, 501–502
- pharmaceutical corporate groups, 827
- Phonogram Ltd v. Lane* (1982), 160, 180–184
- piercing corporate veil, 863–864
- Pistor, Katharina, 101
- “plurality” of the votes, 602–603
- point of establishment (*ex tunc*), 162
- policing disclosed information, 660–661
- “political” solution, 575
- political voice, 927–928
- post-acquisition assets, 986
- post-employment payments, 513
- post hoc* remedies, 324
- “post-incorporation” transaction, 198, 201
- post-transaction surplus, 304
- Pound, John, 582
- pre-company (*Vorgesellschaft*, *VorG*), 158–159
- pre-incorporation company (*Vorgründungsgesellschaft*), 158
- “pre-merger” review, 809
- pre-transaction surplus, 304
- preemption rights, 228, 232–235, 322, 502, 514–515
 - federal company law, 46–47
 - Germany, 232–235, 519
 - United Kingdom, 237–238
 - United States, 239–240
- preference shares, 312, 319
- preferred shares, 312, 314, 316–318, 323, 695, 805
- preferred stock purchases, 246–247
- premium beyond par, 189–190
- primary market disclosure, 645
- primary market* rules, 535
- private equity transactions, 982
- pro rata* basis for takeover bids, 893
- pro rata* payout of assets, 312
- pro rata* shares, 396, 905–906
- procedural rules, 53
- procedures of incorporation, 151–157
- professional partnership (*Partnerschaftsgesellschaft* or *PartG*), 110
- profit transfer agreement (*Gewinnabführungsvertrag*), 836
- Prokurists*, 370
- property interests, 306, 308–311
- property law in Germany, 777
- prophylactic rules on directors’ duties, 543–546
- proportional accumulation of voting rights, 577–579
- proprietary rights, 311
- protracted process, 657
- provision for entrenchment, 321
- proxy statement, 685–686
- Prussian hegemony, 359
- “pseudo-foreign” corporations, 41, 56
- public limited company, 153–156
- public offering of securities, 228
- public utilities, 831
- Public Utility Holding Company Act (1935), 54
- Puddephatt v. Leith*, 706–707
- purchase of assets, 769–771, 772*f*
- Qivive* (2009)
 - facts, 213–215
 - holding, 213
 - official headnote, 213
- quasi-loans, 406
- quorums for shareholder meetings, 687–688, 694, 702
- “race-to-the-top” strategy, 39
- Raiser, Thomas, 360

- rapid disclosure requirements, 548–549
- rational apathy, 583
- Re Polly Peck International plc*, 842
 - agent vs. nominee, 877–879
 - bond issues, 869–872
 - corporate personality and corporate veil, 876–877
 - notices of claim, 874–875
 - on-lending arrangements, 872–874
 - rule against double proof, 875
 - scheme of arrangement, 869
 - sham, pretence, cipher and facade, 879–880
 - single economic unit, 880–881
- Rechtsfortbildung*, 16
- redeemable shares, 320
- Regal (Hastings) Ltd v. Gulliver*
 - Lord MacMillen, 432
 - Lord Porter, 433
 - Lord Russell of Killowen, 427–432
 - Lord Wright, 432–433
 - overview, 407
 - Viscount Sankey, 421–427
- registration of a resolution, 751
- regulated market, 195, 201, 291, 295, 536, 646, 886, 889
- regulation of management in a corporation, 353, 355, 358
- Regulation S-K, 653
- regulatory competition, 25–26, 646–647
 - in Europe, 44–45
 - European Court of Justice, 40–42
 - European Union, 40–45, 188
 - United States, 45–53, 52*f*
- related party transactions, 832–834
- relevant provisions of community law, 73–74
- relevant provisions of national law, 74–76
- Remuneration Ordinance for Institutions, 524
- remuneration package for executives, 503, 505, 516–517
- Reorganization Act (*Umwandlungsgesetz*), 15–16
- Reorganization Act (UmwG), 749
- reputation, defined, 535
- required disclosure in takeover bids, 889–892, 896–898, 903–905
- required disclosure of executive compensation, 512–514, 517–518, 520–521
- required majorities in voting rights, 601
- residual claimant at dissolution, 310
- residual claimants, 579
- residuality, 309
- restitution for unlawful benefits, 263
- restrictions on transfer of partnership shares, 133
- restrictive covenants in loan agreements, 258
- restructuring agreement, 852
- retirement payments, 406
- retirement plans, 503–504, 513
- reverse leveraged buyout, 983
- Revised Uniform Limited Partnerships Act (RULPA), 128–130
- Revlon, Inc. v. MacAndrews & Forbes Holding, Inc.*, 934, 968–979, 986–987
- Richard, Jean-Francois, 101
- right to be bought out in mergers and acquisitions, 810–812
- rights-based theory of voting rights, 577–579
- risk-free security, 511
- Robert F. Broz and RFB Cellular, Inc. v. Cellular Information Systems, Inc.*
 - alignment of interests, 442–443
 - contentions of parties, 434–435
 - corporate opportunity doctrine, 438–441
 - facts, 435–438
 - head note, 434
 - presentation to the board, 441–442
 - summary of, 443
- Roman Law, 96, 396
- Romano, Roberta, 59
- routine, regular disclosure, 640, 644–655
- Royal British Bank v. Turquand*, 370, 378–379
- run with the assets, 310

- safe harbor, 297–298, 394
- sale of votes, 578
- Sam Weller & Sons Ltd, In Re* (1990), 255, 277–282, 561
- Sarbanes-Oxley Act (2002), 48, 52, 54, 58, 509
- Satzung*. See articles of incorporation
- Schmidt, Karsten, 34
- Schnell v. Chris-Craft Industries, Inc.*, 705–706
- screening management of a corporation, 352–358
- Second Company Law Directive (1976), 29, 31, 152, 193, 195, 197, 984–986
- secondary market, 534, 641, 645–646, 652
- secondary recourse, 126
- Securities Acquisitions and Takeovers Act (WpÜG), 896, 902
- Securities Act (1933), 645, 652, 803, 988
- Securities and Exchange Commission (SEC), 20, 49
 - exchange rules, 50–52
 - registration with, 358
 - safe harbor, 394
 - shareholder approval for mergers and acquisitions, 803
 - stock sales, 776
- Securities Exchange Act (1934), 10, 45, 543, 550–552, 598–599, 652
- Securities Exchange Act (1968), 716
- securities exchange listing, 533–536
- securities law, 43–44, 536
- Securities Prospectus Act, 897
- Securities Trading Act (WpHG), 16, 35–36, 536, 716–717
- security interests, 13
- segregated entity, 829
- Seifert, Bruce, 226
- self-dealing, 358, 399, 504–508, 507f, 514
- self-interest of lawyers, 748
- self-interest of management, 351, 448
- self-regulatory organizations (SROs), 51
- series classes, 322
- serious mismanagement, 447
- service contract, 405
- severance payments, 406, 506
- SEVIC Systems AG*, 768, 779
 - Articles 43 EC and 48 EC, 788
 - freedom of establishment, 788–789
 - judgement, 786
 - justification for restriction, 789
 - legal context, 787
 - preliminary ruling, 787
- shadow directors, 404
- share-based payment, 519
- share buy-backs, 289, 291
- share capital
 - in articles of incorporation, 151
 - cash payments, 195–196, 200–204
 - discussion questions, 205–206
 - disguised contributions in kind, 198–200
 - European framework, 194–195
 - Germany, 195–200
 - in-kind payments, 196–198, 203–205
 - introduction to, 188–194
 - minimum legal and, 191–193
 - paying for initial shares, 193–194
 - United Kingdom, 200–204
 - United States, 204–205
 - “watered stock,” 193–194
- share capital increases
 - approval for, 229–232, 235–236, 238–239
 - discussion questions, 240
 - European framework, 228–229
 - Germany, 229–235
 - getting approval for, 229–232
 - main legal issues, 227–228
 - paying for, 232–233, 236, 239
 - preemption rights, 232–235, 237–240
 - United Kingdom, 235–238
 - United States, 238–240
- share capital structure
 - determinants of, 220–227
 - firm’s value and, 221–224
 - introduction to, 219
 - legal and economic determinants, 224–227
 - sources of financing, 220–221
- share classes
 - bundling rights, 316–317, 319–320, 322–323

- share classes (cont.)
 - changing rights, 317–318, 320–321, 324
 - corporate statutes, 324–325
 - defined, 315–316, 318–319, 321–322
 - discussion questions, 325–326
 - economic and government functions of, 312–314
 - Germany, 315–318
 - property interests, 308–311
 - types of rights, 306
 - United Kingdom, 318–321
 - United States, 321–325
- share deal, tax effect, 771–772
- share premium account, 202
- share price manipulation, 510
- share repurchases
 - advantages, 287–288
 - capital market rules, 290–292
 - corporate law rules, 289–290
 - dangers, 288
 - Germany, 292–294
 - introduction to, 286–287
 - United Kingdom, 294–296
 - United States, 296–298
- shared ownership by investors, 841
- shareholder duties
 - discussion questions, 717
 - fiduciary duties, 713–715
 - introduction to, 712–713
 - to report significant holdings, 715–717
- shareholder forums, 681
- shareholder information rights
 - ad hoc* disclosure of significant events, 640, 655–660
 - discussion questions, 661–662
 - Germany, 642
 - introduction to, 640–641
 - policing disclosed information, 660–661
 - routine, regular disclosure, 640, 644–655
 - transparency directive disclosure requirements, 646–648
 - United Kingdom, 643
 - United States, 644
- shareholder meetings
 - annual general meetings, 683–684, 690, 699
 - casting votes, 689, 695–698, 703–704
 - for collective action, 680–683
 - counting votes, 690, 698, 704
 - discussion questions, 704
 - Germany, 690–698
 - information regarding issues, 692–693, 700–701
 - invitations to meetings, 684–685, 691, 699
 - mechanics of, 683
 - necessary quorum, 687–688, 694, 702
 - notifying shareholders, 685–686, 691–692, 699–700
 - proceedings of, 688, 694–695, 703
 - shareholder presentations at, 686–687, 693, 701
 - truthfulness of the information, 687, 693–694, 701
 - United Kingdom, 699–704
 - United States, 683–690
 - voters at, 688–689
- shareholder primacy, 398
- shareholder rights, 6. *See also* judicial enforcement of shareholder rights
- Shareholder Rights Directive, 516, 583, 703, 832, 834
- shareholder voting rights, 233, 312, 714
 - appointment rights, 585–587, 589, 591–592
 - collective action problems, 582–585, 584f
 - decision rights, 588–593
 - democracy theory of voting rights, 581–582
 - economic theory of voting rights, 579–581
 - Germany, 585–588, 593–595, 601
 - how matters come up for vote, 593
 - matters for vote, 585
 - options over, 575–576
 - preferred shares and, 312
 - removal of officers, 743
 - required majorities, 601
 - rights-based theory of, 577–579

- United Kingdom, 589–591, 595–597, 601–602
- United States, 591–593, 597–600, 602–603
- shareholders
 - active shareholders, 159
 - approval for mergers and acquisitions, 802–810
 - controlling shareholder status, 732–733
 - distribution limitations, 259
 - dominating interested shareholder, 734
 - equal treatment, 893–894
 - equal treatment of, 297
 - gains to selling shareholders, 928
 - investment decisions and, 640–641
 - irrational business decisions, 395
 - management interests vs., 354, 356, 358–359
 - management role in shareholders' decisions, 932–934
 - manager screening, 350–351
 - minority shareholders, 743, 803, 839
 - ownership interests of, 577, 885
 - ownership of corporate assets, 306–308
 - preemption rights, 232–235, 237–238
 - property interests, 308–311
 - restitution for unlawful benefits, 263
 - retention of voting power, 233
 - rights exercised cooperatively, 311
 - say on executive compensation, 514–515, 518–519, 522
 - share capital increases, 230–231
 - veto rights of shareholders, 831
- shares
 - common shares, 312–313
 - freely transferable shares, 106, 349
 - golden shares, 314
 - limits of, 114–115
 - ordinary shares, 238, 312, 319
 - par value of, 189–191, 266
 - preference shares, 312, 319
 - preferred shares, 312, 314, 316–318, 323, 695, 805
 - pro rata* shares, 396, 905–906
 - redeemable shares, 320
 - restrictions on transfer, 133
 - transfer of, 119
 - transferable shares, 841
 - value of, 152
- Sheilds Development Company v. Shields*, 561–562, 568–572
- short form mergers, 48, 803
- short-swing profits, 544
- show-of-hands vote, 601–602
- Siemens v. Neubürger*
 - facts, 413–417
 - holding, 413
 - official head note, 413
 - reasons, 417–420
- Siems, Mathias M., 397
- signatories, 370–371
- signature book, 374–375
- significant holdings, shareholder duties
 - to report, 715–717
- silent partnerships (*stille Gesellschaften*), 161
- Sinclair Oil Corp. v. Levien*, 714, 836, 841, 844–848
- Single European Act, 40
- single-shareholder company, 30
- Societas Europaea*, 780
- solvency restrictions on distributions, 264
- sources of financing, 220–221
- Soviet Union, economic development, 6
- special resolution, 238
- spring-loading, 509
- staggered board, 358
- stalking horse, defined, 782–783
- standard-based complaints *ex post*, 351
- standard of conduct, 393–394
- standards of due care. *See* duty of loyalty
- statutory invalidity claims, 963–965
- statutory merger, 773–775, 774–775f
- statutory rights, 315
- statutory rules on preemption rights, 238
- Stimmrechtsvollmacht*, 680
- Stock Corporation Act (*Aktiengesetz*) of 1965 (AktG)
 - bifurcated management/supervisory board, 514

- Stock Corporation Act (*Aktiengesetz*) of 1965 (AktG) (cont.)
 bundling rights, 316–317
 business judgment rule, 447–448
 capital maintenance rules, 262
 corporations in global market, 34–36, 37*f*
 de facto concern, 837–839
 directors' duties for listed companies, 539–540, 542
 enterprise agreements, 835–837
 German *Konzernrecht*, 832, 834–840
 leveraged buyouts, 988–990
 overview of, 14*f*, 14–17, 151–153
 repeal of, 42
 restricted reserve pursuant to, 196
 routine, regular disclosure, 644–645
 share capital increases, 229
 share repurchases, 293
 shareholder approval for mergers and acquisitions, 804–805
 shareholders, on executive compensation, 518–519
 supervisory directors, 518
 takeover bids, 900–901
 two-tier board structure, 352
 stock corporations, 14, 98, 156–157
 stock incentives, 502–503
 stock options, 503, 509–510, 664–665
 stock price, 510, 928
 stock purchases, 771–773, 776
 strict liability, 449
 strike price, 509, 511, 513
 sub-optimal bids, 887
 sub-prime borrowers, 983
 subservient sub-holding corporation, 827
 substantial non-cash asset, 405
sui generis, 810
 supermajority approval, 831
 supervisory board (*Aufsichtsrat*), 152, 352–353, 585
 supervisory directors, 512–514, 518, 521–522
 supply contracts, 398
 Supremacy Clause, 46
 systemic balance of state law, 54–56
Tabor Court Realty, 987
 Takeover Act (WpÜG), 16, 536, 749, 777
 takeover bids and management interference
 across borders, 934
 arguments against takeovers, 929–932, 931*f*
 discussion questions, 935
 Germany, 933–934
 hostile takeover evaluations, 927–929
 management role in shareholders' decisions, 932–934
 United States, 934
 takeover bids and prices
 defined, 885–886
 discussion questions, 907–908
 equal treatment of shareholders, 893–894, 899–900, 905–907
 Germany, 895–901
 regulation of, 886–888
 required disclosure, 889–892, 896–898, 903–905
 rules and regulators, 888–889, 895–896
 timing of, 893, 898–899, 905
 treatment of remaining shareholders, 895, 900–901, 907
 United Kingdom, 888–895
 United States, 901–907
 Takeover Code (UK), 888–889, 896, 902
 Takeover Directive, 536, 933
 Takeover Panel. *See* Panel on Takeovers and Mergers
 Target Co., 714–715
 tax law, 4, 13
 tax rates on capital gains, 288
 tax treatment of income, 13
 tender offer, 527–529, 885
 termination fee in mergers and acquisitions, 784
 third-party contracts, 366, 373
Timberline Equipment Co., Inc. v. Davenport (1973), 163, 173–177
 time-scheduled programs, 292
 timing of takeover bids, 893, 898–899, 905

- Timmermans, Christiaan, 97
Tooley v. Donaldson, Lufkin & Jenrette, Inc.
 direct vs. derivative actions, 755–757
 opinion, 754–755
 standards applied to, 757
 tort victims, 192, 256
 tracking stock, 313, 504
 trade law, 359
 tradeoff model, 224
 trading certificate, 156, 204
 trans-jurisdictional comparative law, 4
 transaction causation, 552
 transaction costs in asset purchases, 770–771
 transferable shares, 119, 841
 Transformation (or Reorganization) Act (*Umwandlungsgesetz*), 777
 transformative rules, 53
 transparency, defined, 534
 Transparency Directive Implementing Act (2007), 509, 536, 646–649, 892, 894
 transplantation, 94, 96, 99–101
 treasury shares, 297
 Treaty of Lisbon, 27
 Treaty on the Functioning of the European Union (TFEU), 27–29
 triangular merger, 774, 775f, 776
 Tröger, Tobias H., 44
 true authority, 368–371
 trust busting, 59
 Trust Indenture Act (1939), 19, 54
 trustee (*Treuhänder*), 395
 two-tier board structure, 352
 “two-tier” tender offers, 906

Überseering BV v. Nordic Construction Company Baumanagement GmbH (2002), 41–42
 capital maintenance rules, 262
 cross-border merger structures, 779
 first question findings, 65–72
 first question of court, 65
 judgment, 62–65
 main proceedings, 62–63
 national law, 62
 questions for preliminary ruling, 63–65
 second question of court, 73
 UK Corporate Governance Code, 521, 537
 UK Partnership Act (1890), 106
ultra vires doctrine, 367–368, 367f
 underwriting syndicate, 115
 undistributable reserves, 265, 985
 unethical labor practices, 580
 unfair prejudice action, 713
 unfairly prejudicial agreements, 562
 Uniform Fraudulent Conveyance Act, 987
 Uniform Fraudulent Transfer Act, 55
 uniform minimum capital, 192
 Uniform Partnership Act (UPA), 123–124
 United Kingdom. *See also* Companies Act 2006 (CA 2006)
 ad hoc disclosure of significant events, 658–659
 approval for share capital increases, 235–236
 company law, 20–24, 23t
 corporations in global market, 37–40
 directors’ duties for listed companies, 538–539, 541–542, 544–545
 dividend distribution and capital maintenance, 264–265
 duty of loyalty, 403–407
 executive compensation, 520–523
 exit from European Union, 60
 governing board of a corporation, 354–356
 insider trading, 552–554
 judicial enforcement of shareholder rights, 752–753
 leveraged buyouts, 990–991
 liability of promoters, 159–160
 liability of shareholders, 162
 mergers and acquisitions, 773, 778
 null and void corporations, 165
 partnership forms/characteristics, 123t
 paying for share capital increases, 236
 preemption rights, 237–238

- United Kingdom. (cont.)
 public limited company, 153–156
 right to be bought out in mergers
 and acquisitions, 812
 routine, regular disclosure, 650–651
 share capital, 200–204, 235–238
 share classes, 318–321
 share repurchases, 294–296
 shareholder approval for mergers
 and acquisitions, 806–809
 shareholder information rights, 643
 shareholder meetings, 699–704
 shareholder voting rights, 589–591,
 595–597, 601–602
 takeover bids and prices, 888–895
 United Nations (UN), 5
 United States. *See also* Delaware
 General Corporation Law
 ad hoc disclosure of significant
 events, 659–660
 approval for share capital increases,
 238–239
 capital structure and, 226
 cash payments, 204
 company law, 17–20
 constitutional position of federal
 government, 46–47
 corporate statutes, 309
 corporations in global market,
 45–53, 52*f*
 creditor protection, 266–267
 cross-border merger structures, 779
 DGCL mandatory rules, 52–53
 directors' duties for listed companies,
 538, 541, 543–544
 duty of loyalty, 407–410
 exchange rules, 50–52
 executive compensation, 511–516
 federal laws, 47–50
 governing board of a corporation,
 356–359, 357*f*
 in-kind payments, 204–205
 insider trading, 550–552
 judicial enforcement of shareholder
 rights, 753
 leveraged buyouts, 986–988
 liability of promoters, 160–161
 liability of shareholders, 162–164
 mergers and acquisitions, 775–777
 Model Business Corporation Act, 9
 null and void corporations, 166
 outreach statutes and foreign
 corporations, 56–58
 paying for share capital increases, 239
 preemption rights, 239–240
 regulatory competition, 45–53, 52*f*
 right to be bought out in mergers
 and acquisitions, 810–811
 routine, regular disclosure, 652–655
 security interests, 13
 share capital, 204–205
 share capital increases, 238–240
 share classes, 321–325
 share repurchases, 296–298
 shareholder approval for mergers
 and acquisitions, 802–804
 shareholder information rights, 644
 shareholder meetings, 683–690
 shareholder voting rights, 591–593,
 597–600, 602–603
 stable development, 58–60
 stock corporation, 156–157
 systemic balance of state and federal
 law, 54–56
 takeover bids and management
 interference, 934
 takeover bids and prices, 901–907
 United States partnerships
 as business organizations, 123–131,
 123*t*, 131*t*
 general partnership, 123*t*, 123–127
 limited liability company, 130–131,
 131*t*
 limited liability partnership, 127–128
 limited partnership, 128–130
Unocal Corp. v. Mesa Petroleum Co.,
 492–500, 929, 967–968
 US Bankruptcy Code, 987
 US Constitution, 57
 US Internal Revenue Code, 131
 US Model Business Corporation Act, 45
 US proxy rules, 929
 US Revised Uniform Partnership Act
 (RUPA), 106
 US Supreme Court, 48
 utmost care, 448

- Vahtera, Veikko, 225
Vantagepoint Venture Partners 1996 v. Examen, Inc. (2005), 47, 58
 California action, 85–86
 California Corporations Code, 90–91
 Court of Chancery decision, 88
 Delaware action, 85–86
 facts of, 87–88
 internal affairs, any forum, same law, 92–93
 internal affairs, doctrine, 89–90
 internal affairs, state law of incorporation, 92
 internal affairs, uniformity requirement, 91–92
 merger without mootness, 87
 standard of review, 89
 Vantage Point’s argument, 88
 venture capital (VC), 313–314
 veto rights of shareholders, 831
 Vodaphone, 527–531
 voice option in shareholder voting rights, 575–576
 voluntary, selective reception, 100
 voluntary creditors, 192
Vorstand (management board), 196, 230, 234, 353
 appointment rights, 585–587
de facto concern, 837–839
 directors’ duties for listed companies, 539–540, 542
 duty of loyalty, 400–402
 enterprise agreements, 835–837
 how matters come up for vote, 593–595
 information requests, 642
 power to represent, 368
 required disclosure in takeover bids, 896–898
 routine, regular disclosure, 644–645
 shareholder approval for mergers and acquisitions, 805–806
 supervisory directors, 518
Vorzugsaktien (preferred shares), 316
 voting rights of shareholders. *See* shareholder voting rights
 VW diesel scandal, 376
W. J. v. S. Sch. (1966)
 overview of, 146
 reasons for decision, 146–149
Wall Street Journal, 932
Walt Disney Company Derivative Litigation, In re
 acquisition of mobile communications company, 526–527
 acting in good faith, 482–483
 analysis, 484
 business judgment rule, 476–478
 certificate of incorporation, 481–482
 claim for waste, 484–485
 criminal proceedings headnote, 531–532
 duties of new board, 489–491
 fiduciary duty of due care, 478–480
 fiduciary duty of loyalty, 480–481, 484
 friendly takeover, 529–531
 gross negligence/bad faith, 485–489
 introduction to, 467–469, 525–526
 legal standards, 476
 Mannesmann supervisory board, 526
 Ovitz joins Disney, 469–471
 Ovitz’s performance at Disney, 472
 Ovitz’s termination from Disney, 473–476
 summary, 491
 tender offer, 527–529
 Vodaphone, 527–531
 waste, 478
 warrants, 314, 657
 “watered stock,” 193–194
 Watson, Alan, 99–100
 webcasts, 681
 Weimar Constitution (1919), 359
Weinberger v. UOP, Inc., 811, 814–823, 841, 904, 907
Wells Fargo Bank v. Desert View Building Supplies, Inc. (1978), 282–285
 Whincop, Michael, 309
 “wikinomic” participation, 682
 Wikipedia, 681
 Williams, Mary, 559
 Williams Act (1968), 716, 901
 Williamson, Oliver E., 446

1060

INDEX

“windfall” damages payment, 750	<i>Württembergische Metallfabrik AG</i> ,
Wood, Philip R., 4	890, 899
Works Council Act (<i>Betriebsrätegesetz</i>),	facts, 913–915
359	head note, 913
World Bank, 5	reasons, 915–918
write-down of value, 203	Wymeersch, Eddy, 289
wrongful act or omission in	
partnerships, 118	<i>Zapata Corp. v. Maldonado</i> , 757–762
wrongful trading, 24	zero-cost collars, 510–511
Wruck, Eric, 503	Zweigert, Konrad, 5