
TABLE OF CONTENTS

PREFACE TO THE NINTH EDITION	III
ACKNOWLEDGMENTS.....	V
TABLE OF CASES.....	XXVII
Introduction	1
PART I. VALUING THE FIRM AND ITS SECURITIES	
Introduction.....	7
Huff Fund Investment Partnership d/b/a Musashi II Ltd v. CKx, Inc.....	7
Note: The Shifting Roles of Corporate Law, Business Practice, and the Reviewing Court in Appraisal.....	18
Chapter 1. Elements of Fundamental Value.....	23
Section A. The Time Value of Money	23
1. Introduction	23
2. Compounding and Discounting	25
(A) Compounding.....	26
(B) Discounting.....	28
(C) Annuities.....	31
(D) Perpetuities.....	33
(E) Discounting in Bond Valuation	35
(F) Multiple Compounding	37
(G) Amortization	38
3. Discounting in Capital Budgeting Decisions.....	40
(A) The Net Present Value Method.....	40
(B) The Internal Rate of Return Method	41
(C) The Payback Method.....	42
Section B. The Composition of Expected Returns.....	43
1. Introduction.....	44
Warren Buffett, Chairman’s Letter, Berkshire Hathaway, Inc. 1986 Annual Report	44
2. From Accounting Earnings to Net Cash Flows	50
(A) Depreciation and Scrap Value.....	50
(B) Reinvestment.....	52
(C) Valuing a Firm	53
(D) Adjusting for Growth	54
3. Growth Models of Share Valuation.....	55
(A) Free Cash Flow as Corporate Net Cash Flow	55
(B) The Gordon Growth Model	58
(C) Nonconstant Growth and Terminal Value	60
(D) Case for Review	63
Note: Economic Value Added.....	64
Section C. Risk and the Capitalization Rate.....	65
1. Future Returns and Probability Distributions	65
2. Risk as Degree of Dispersion.....	69
3. Quantifying Dispersion.....	73

4.	Time and Risk Premium	75
	Note: Price/Earnings Ratios and Valuation Practice Pre- CAPM	77
Section D.	Measures of Risk—the Capital Asset Pricing Model and Beta	79
1.	Portfolio Theory	80
	(A) Risk Reduction Through Diversification	80
	(B) Portfolio Selection—Efficiency, the Critical Ratio, and the Separation Theorem	83
	(C) Covariance and Beta	89
	Brealey, Myers, and Allen, Principles of Corporate Finance	89
2.	The Capital Asset Pricing Model	97
	(A) The Model	98
	(B) Using the CAPM in Appraisal	101
	Cede & Co. v. Technicolor, Inc.	101
	Global GT LP v. Golden Telecom, Inc.	104
	(C) Using the CAPM in Capital Budgeting	113
	Brealey, Myers, and Allen, Principles of Corporate Finance	113
	Note: Shareholder Value, Risk Aversion, and Risk Neutrality	116
	(D) Empirical Testing of the CAPM and Multiple Factor Models	117
	(1) Empirical Results	117
	(2) The Three Factor Model	119
Chapter 2.	Market Price and Fundamental Value.....	123
Section A.	Introduction	123
	Tri-Continental Corp. v. Battye	123
	Note: Funds	128
	Note: Merger Appraisal Rights and the Closed-End Fund Discount	131
Section B.	Market Efficiency	132
1.	The Efficient Market Hypothesis	133
	Brealey, Myers, and Allen, Principles of Corporate Finance	133
	Note: Speculative Efficiency, Allocative Efficiency, and Incentive Problems	140
	In re Appraisal of Jarden Corporation	142
	Note: Fraud on the Market	148
	Note: Empirical Testing of the EMH	150
2.	Noise Trading, Behaviorism, and Other Alternatives to the Efficient Market Hypothesis	154
	Note: Arbitrage Correction	158
	Note: Behavioral Theory	160
	Note: Bubbles and Crashes	162
	Note: Heterogeneous Expectations Models	167

Chapter 3. Premiums and Discounts in Mergers and Acquisitions	169
Kraakman, Taking Discounts Seriously: The Implications of “Discounted” Share Prices as an Acquisition Motive	169
Note: Downward-Sloping Demand	176
Rapid-American Corp. v. Harris	176
Problem.....	181
Note: Premiums, Discounts, and Merger Gain	182
Borruso v. Communications Telesystems International	185
Note: Comparable Companies Valuation	188
Note: Comparable Acquisitions Valuation	190
Note: The Implicit Minority Discount	191
In re Appraisal of Columbia Pipeline Group, Inc.	192
Note: Context	201
 Chapter 4. Hedging and Derivatives: Economics and Regulation	 209
Section A. Economics	210
1. Risk Exposure.....	210
2. Hedging.....	212
(A) Forward Contracts	212
(B) Futures Contracts	214
(C) Swaps	217
Note: Equity Swaps	219
(D) Options.....	221
(1) Option Strategies.....	224
(2) Put-Call Parity.....	226
Note: Financial Engineering.....	231
(3) Call Option Valuation	232
Section B. Regulation of Derivatives	234
1. Overview	235
The Financial Crisis Inquiry Commission, The Financial Crisis Inquiry Report: Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States	235
Note: Early Warnings	238
2. Pre-Crisis Initiatives.....	240
3. Dodd-Frank.....	241
Note: Governance and Disclosure	243
4. Counterparty Relationships	244
(A) Contract and Bankruptcy	244
(B) Corporate Law Rights and Duties.....	246
Brane v. Roth.....	246
Note: Hedging, Shareholder Value, the CAPM, and the Irrelevance Hypothesis	249
Deephaven Risk Arb Trading Ltd. v. UnitedGlobalCom Inc.	251
Note: Empty Voting.....	256

(C) Securities Law	257
Caiola v. Citibank, N.A.	257
Note: Proceedings Respecting Bankers Trust	265
CSX Corporation v. The Children’s Investment Fund Management (UK) LLP	267
CSX Corporation v. The Children’s Investment Fund Management (UK) LLP	278
Section C. Financial Economics, Financial Innovation, and the Financial Crisis of 2008	286
UK Financial Services Authority, The Turner Review: A Regulatory Response to the Global Banking Crisis	286

PART II. DEBT FINANCING

Introduction	297
Eliassen v. Itel Corporation	297
Note: Priority of Claim	305

Chapter 5. Capital Structure and Leverage309

Section A. The Cost of Capital and the Value of the Firm	310
1. The Debt-Equity Ratio and the Rate of Return on the Common Stock	311
2. Debt, Equity, and the Derivation of A: NOI Versus NI	313
3. Durand Versus the Traditional View	316
Section B. The Modigliani-Miller Position and the Revised Concept of Optimal Capital Structure	317
1. The MM Thesis: Assumptions and Analysis	318
2. Relaxing MM’s Assumptions	321
(A) Institutional Constraints	322
(B) Taxes	323
Note: Taxation and the MM Theorem	326
(C) Bankruptcy Costs	327
(D) Agency Costs	330
Note: Fiduciary Law and Capital Structure	332
(E) Information Asymmetries	333
Note: The Pecking Order	335
Note: Capital Budgeting Revisited	339

Chapter 6. Debt Financing: Institutional Context and Contract Structure343

Section A. Debt Securities and Loans	343
1. Debt Securities: Bonds, Debentures, and Notes	344
2. Loans	358
Note: Revisiting the Security-Loan Distinction	362
3. Points of Comparison, Points of Convergence, and Determinants	363
Section B. Corporate Trust and the Trust Indenture Act of 1939	366
Elliott Associates v. J. Henry Schroder Bank & Trust Co.	366
Coherus BioSciences, Inc. Indenture, Article 11; Jarden Corporation Indenture, Article 7	368

Note: Corporate Trust..... 368

Note: The Trust Indenture Act of 1939 369

Trust Indenture Act of 1939 (as Amended 1990), Section 315,
 Appendix D 370

Senate Report No. 101–155 370

Section C. The Bondholder and the Going Concern..... 371

1. The Promise to Pay 371

 Coherus BioSciences, Inc. Indenture, Form of Note; Jarden
 Corporation Indenture, Form of Note 372

 Note Purchase Agreement, Appendix A, Form 1, Exhibit 1
 (Form of Senior Note)..... 372

 (A) Redemption Rights 372

 (B) Open Market Repurchases and Tender Offers..... 376

 (C) Sinking Funds and Puts 377

 (D) Sweeps in Bank Term Loans 378

 (E) Cases 379

 Morgan Stanley & Co., Inc. v. Archer Daniels Midland
 Co..... 379

 Note: Refunding Limitations 387

 Note: Timing 389

2. Bondholder Remedies upon Default 390

 Coherus BioSciences, Inc. Indenture, Article 8; Jarden
 Corporation Indenture, Article 6..... 390

 In the Matter of: MPM Silicones, L.L.C. 391

 Note: Default, Acceleration, and the Make-Whole Premium 394

3. Business Covenants: Promises That Protect the Value of the
 Promise to Pay..... 396

 Coherus BioSciences, Inc. Indenture, Articles 4 and 7; Jarden
 Corporation Indenture, Articles 4 and 5..... 396

 Note Purchase Agreement, Appendix A, Form 1, Sections 9
 and 10..... 396

 (A) The Control Problem 396

 (B) Affirmative Covenants 397

 Note: Reporting Obligations 398

 Note: Drafting..... 400

 (C) Negative Covenants 401

 (1) Financial Covenants..... 401

 (2) Restrictive Covenants 403

 (a) The Agency Costs of Debt..... 403

 (b) The Covenants 406

 Note: Negative Covenants..... 412

 (D) Judicial Interpretation of Negative Covenants..... 415

 Sharon Steel Corp. v. The Chase Manhattan Bank, N.A. ... 415

 Note: Comparison Cases 421

 Note: Successor Obligor Clauses 421

 Note: De Facto Redemption 426

 Note: Boilerplate Indenture Terms 428

 Note: Activist Bondholders 430

U.S. Bank National Association v. Windstream Services, LLC	431
Note: Incentive Skews?	439
Note: Asset Partitioning	440
Chapter 7. Security and Seniority	441
Section A. Traditional Security Arrangements	441
1. Mortgage Bonds	443
2. Leases	445
Section B. Asset Securitization	447
1. Overview	447
Note: Risk, Return, and Transaction Structure	450
2. Transaction Structure	451
3. Accounting Treatment	454
(A) Prior to 2010	454
(1) True Sale	455
(2) Bankruptcy Remoteness	455
(3) Qualification	456
(B) Since 2010	457
4. Bankruptcy Risks	458
In re LTV Steel Company, Inc.	459
Note: Further Disruption	462
Note: Policy Debates	463
5. Securitized Mortgages and the Financial Crisis of 2008	464
The Financial Crisis Inquiry Commission, The Financial Crisis Inquiry Report: Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States	467
Note: Collateralized Debt Obligations—Operative Assumptions	475
Congressional Oversight Panel, Special Report on Regulatory Reform, Modernizing the American Financial Regulatory System: Recommendations for Improving Oversight, Protecting Consumers, and Ensuring Stability	477
Note: Dodd-Frank and Securitization	479
Note: Collateralized Loan Obligations	480
Section C. Subordination	483
1. Seniors, Juniors, and Subordinated Lenders	483
2. Contractual Subordination of Unsecured Claims	485
Coherus BioSciences Indenture, Article 6; Jarden Corporation Indenture, Article 11	485
In the Matter of Envirodyne Industries, Incorporated	487
3. Second Lien Loans and Intercreditor Agreements	489
4. Asset Securitization	492
Concord Real Estate CDO 2006–1, Ltd. v. Bank of America N.A.	492

Chapter 8. Credit Derivatives	501
Section A. The Contracts and the Players.....	501
Eternity Global Master Fund Limited v. Morgan Guaranty Trust Company of New York	505
Note: The ISDA Agreement.....	511
Note: CDS and the Terms of Debt Contracts	513
Note: Saboteurs and Engineers.....	514
Section B. Counterparty Relationships	517
VCG Special Opportunities Master Fund Ltd. v. Citibank, N.A.	518
Note: In over Their Hedge	521
Section C. Synthetics: Credit Default Swaps Meet Collateralized Debt Obligations	522
The Financial Crisis Inquiry Commission, The Financial Crisis Inquiry Report: Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States.....	524
Financial Guaranty Insurance Co. v. The Putnam Advisory Company	528
Note: Abacus 2007-AC1	531
Note: Other Litigation	532
Section D. Credit Default Swaps and the Financial Crisis of 2008	535
The Financial Crisis Inquiry Commission, The Financial Crisis Inquiry Report: Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States.....	535
 Chapter 9. High Leverage Restructuring.....	 539
Section A. Leverage and Management Discipline	539
Note: Empirical Testing.....	541
Section B. The Rise, Decline, and Reappearance of Leveraged Restructuring	542
1. The 1980s Leveraged Restructuring Movement	542
2. The Private Equity Buyouts of the 2000s.....	545
(A) Boom.....	545
(B) Bust and Recovery	548
(C) Leveraged Speculation or Productive Improvement?	550
Note: Performance.....	551
Note: Politics.....	555
Section C. Event Risk and Bond Contracts	556
1. Unprotected Bonds.....	556
Metropolitan Life Insurance Company v. RJR Nabisco, Inc.	556
Note: The Aftermath of the RJR Nabisco Restructuring.....	566
Note: Fiduciary Theory, Good Faith Duties, and Other Bases for Judicial Protection of Bondholders.....	567
Note: Spin-Offs	569
2. Contractual Adjustment—Poison Puts.....	570
Coherus BioSciences, Inc. Indenture, Section 4.2; Jarden Corporation Indenture, Article 3.....	570

Kallick v. Sandridge Energy, Inc.	571
Note: Board “Approval” and Dead Hand Proxy Puts.....	575
Chapter 10. Debtor Distress: Altering the Bond Contract.....	579
Aladdin Hotel Co. v. Bloom	580
Trust Indenture Act of 1939 (as Amended 1990), Section 316, Appendix D.....	584
Coherus BioSciences, Inc. Indenture, Article 9; Jarden Corporation Indenture, Article 9	584
Note Purchase Agreement, Appendix A, Form 1, Section 17	584
Katz v. Oak Industries Inc.	585
Note: Coerced Votes and Hold Outs	594
Note: Vulture Investors.....	600
Note: The Rise and Fall of the Broad Reading of TIA Section 316(b)	601
Note: Prepackaged Bankruptcy	606
Chapter 11. Debtor Distress: Creditor Protection in Law	609
Section A. Regulation of Capital Structure	609
1. Public Utilities	609
2. Investment Companies	610
3. Margin Requirements.....	613
4. Bank Capital	615
Tarullo, International Harmonization of Banking Regulation and Agency Accountability	616
Note: Basel III and Dodd-Frank	618
Section B. Corporate Law Legal Capital Rules.....	621
1. The Stated Capital Requirement	622
2. Dividends and Distributions	624
(A) Traditional Statutes	624
Klang v. Smith’s Food & Drug Centers, Inc.	626
Note: Restrictions on Distributions.....	630
(B) New Model Statutes	631
Section C. Fraudulent Conveyance Law.....	631
Uniform Voidable Transactions Act, § 4. Transfers and Obligations Voidable as to Present and Future Creditors.....	631
Bankruptcy Code, 11 U.S.C. § 548. Fraudulent transfers and obligations.....	632
In re Color Tile, Inc.	633
Wieboldt Stores, Inc. v. Schottenstein	636
Note: Fraudulent Conveyance Avoidance of Leveraged Buyouts	642
Section D. Fiduciary Duty	647
Credit Lyonnais Bank Nederland, N.V. v. Pathe Communications Corp.....	648
Note: <i>Healthco</i>	649
North American Catholic Educational Programming Foundation, Inc. v. Gheewalla.....	650
Note: Further Implications	653
Note: Hardball.....	656

Chapter 12. Insolvency Reorganization	659
Section A. Introduction: The Reorganization Bargain and Limits on the Parties' Bargaining Freedom.....	659
Section B. The Rise and Decline of Absolute Priority.....	662
1. From the Equity Receivership to the Bankruptcy Act of 1938.....	662
Bratton and Skeel, Bankruptcy's New and Old Frontiers	662
Note: Issues Under Absolute Priority	667
Note: The Composition Tradition and the Best Interest of Creditors Standard.....	670
2. The Bankruptcy Act of 1978.....	671
House Report No. 95-595	672
Section C. Reorganization Under the Bankruptcy Code.....	674
1. Overview	674
In re Zenith Electronics Corporation	674
Note: Proceedings Under Chapter 11	684
2. Absolute Priority Under Chapter 11.....	689
House Report No. 95-595	689
Debates on the Bankruptcy Reform Act of 1978	691
Note: Issues Under the Code	693
Note: Empirical Results—Deviations from Absolute Priority.....	695
3. Rethinking Traditional Reorganization.....	697
(A) Rethinking Creditors' Rights—the Common Pool and the Creditors' Bargain	698
(B) Rethinking the Reorganization Process—Different Approaches.....	699
(1) Market-Based Proposals	699
(a) Cash Auction	699
(b) Securities Market Test	701
(c) Options	701
(d) Judicially-Supervised Auction	702
(2) Contractual Proposals	702
(a) Automatic Conversion	702
(b) Contractual Choice	703
Section D. The Move to Creditor Control and Asset Sales	704
Bratton and Skeel, Bankruptcy's New and Old Frontiers	704
Note: Incidents of Creditor Control	706
In re Chrysler LLC.....	709
Note: Section 363 Sales	718
Section E. Absolute Priority <i>Redux</i>	722
Czyzewski v. Jevic Holding Corp.	722

**PART III. FINANCING WITH MULTIPLE CLASSES
OF EQUITY AND HYBRID SECURITIES**

Introduction.....	731
Chapter 13. Preferred Stock Financing.....	733
Section A. Rights and Preferences	733
1. Preferred Stock Defined.....	733

2.	The Preferred Stock Contract	734
	General Technology, Inc. Series A Preferred Stock, Certificate of Designations, Appendix A, Form 2.....	735
	(A) Financial Terms	735
	(B) Voting Rights	737
	(1) Voting and Contingent Voting Preferred	737
	(2) Voting on Amendments	739
	(C) Standing to Sue	741
	(D) Accounting Treatment	742
3.	Issuer Motivations and Holder Expectations.....	744
Section B.	Claims to Dividends	747
	General Technology, Inc. Series A Preferred Stock, Certificate of Designations, Appendix A, Form 2, Sections 2, 4, 7, 12	747
1.	Preferred Stock Dividend Provisions	747
2.	Board Discretion to Withhold Payment.....	748
	(A) Cumulative Preferred	748
	(B) Noncumulative Preferred	749
	(C) Issuer Tender and Exchange Offers to Holders of Preferred in Arrears	751
	Eisenberg v. Chicago Milwaukee Corp.	751
	Note: The Prior Preferred Exchange Offer	753
	(D) Board Discretion and Voting Control.....	753
Section C.	Claims to Principal, Including Arrearages.....	755
1.	The Liquidation Preference	755
	General Technology, Inc. Series A Preferred Stock, Certificate of Designations, Appendix A, Form 2, Section 6	755
2.	Redemption Rights.....	756
	General Technology, Inc. Series A Preferred Stock, Certificate of Designations, Appendix A, Form 2, Sections 7–9	756
	Mueller v. Kraeuter & Co.	758
	SV Investment Partners, LLC v. ThoughtWorks, Inc.	761
	Note: Duties of Redeeming Boards of Directors and Controlling Stockholders	771
Section D.	Alteration of Financial Rights.....	774
1.	By Charter Amendment	774
	Goldman v. Postal Telegraph	774
	Note: Delaware’s Statutory Class Vote	777
	Note: A Junior Hold up.....	780
2.	By Merger	781
	Bove v. The Community Hotel Corporation of Newport, Rhode Island	781
	Note: Drafting into Liquidation Value	787
	Note: Class Voting and Appraisal Rights in Respect of Mergers	788
Section E.	Judicial Review of Merger Allocations.....	795
1.	<i>De Facto</i> Theories.....	795
	Rothschild International Corporation v. Liggett Group Inc.	795
	Note: Case for Comparison	798

2.	Fairness Scrutiny	799
	LC Capital Master Fund, Ltd. v. James	800
	Note: Prior Cases.....	811
Chapter 14. Convertible Securities and Warrants.....		817
	Introduction.....	817
	Section A. Terms and Valuation	818
1.	Traditional Convertibles.....	818
	(A) Elements of Convertible Bond Value	819
	(B) The Conversion Premium	821
	(C) Issuer Call Rights.....	822
	(D) Recent Trends.....	823
	(E) Why Convertibles?.....	824
	(1) Traditional Explanations	824
	(2) Information-Based Explanations	825
	(3) Agency-Based Explanations	826
	(4) Other Explanations	827
2.	Variations on the Traditional Convertible	827
	(A) Original Issue Discount	827
	(B) Puttable.....	828
	(C) Equity-Linked.....	828
	(D) Floating Price (“Toxic”)	829
	Section B. Conflicts of Interest.....	833
1.	Protective Contract Provisions.....	833
	Coherus BioSciences, Inc. Indenture, Section 5.05; Jarden Corporation Indenture, Sections 10.03, 10.04, 10.05	833
	Note: Implied in Fact Antidilution Protection	835
	Note: Authorized Stock	837
2.	Judicial Interpretation of Antidilution Provisions	838
	HB Korenvaes Investments, L.P. v. Marriott Corporation	839
	Note: Convertible Hedges	851
	Note: Big Dividends	852
	Note: Interpretation <i>Contra Proferentum</i>	853
	Note: Drafting Practice	855
	Note: Ratchet Averted.....	856
	Broad v. Rockwell International Corp.	857
	Note: Cashout Merger Cases	864
	Note: Drafting Response	866
	Note: Case for Comparison	866
	Note: Appraisal Rights.....	869
3.	The Duty to Notify	871
	Jarden Corporation Indenture, Sections 10.01(b), 10.01(c), 10.03	871
	Note: Implied Duties	871
Chapter 15. Venture Capital Finance		877
	Section A. History and Characteristics	877
	Note: Earlier Stages.....	879

Section B. Deal Structure and Documentation	880
Equity-Linked Investors, L.P. v. Adams	880
National Venture Capital Association Term Sheet, Appendix A, Form 3.....	890
1. Overview.....	890
2. Staged Financing—Initial and Subsequent Rounds.....	893
(A) First Round.....	893
(B) Later Rounds	894
(C) Inside Rounds	895
(D) Unicorns.....	898
3. Control Arrangements.....	901
(A) Board Seats.....	901
National Venture Capital Association Voting Agreement, Section 1	901
National Venture Capital Association, Amended and Restated Certificate of Incorporation, Fourth, Section 3.2.....	902
National Venture Capital Association, Voting Agreement, Section 1	902
(B) Vetoes.....	903
National Venture Capital Association, Amended and Restated Certificate of Incorporation, Fourth, Section B. 3.3	903
4. Exit.....	905
In re Good Technology Corp. Shareholder Litigation	905
Note: Drag Alongs and Appraisal Rights	907
In re Trados Incorporated Shareholder Litigation	908
Note: Opinion After Trial	915
Note: <i>Trados</i> and Trade Sales.....	916
Note: <i>Orban v. Field</i>	916
Note: Drafting	919
Chapter 16. Multiple Class Common Stock Capital Structures	921
Section A. Background.....	921
Section B. The Dual Class Common Recapitalizations of the 1980s	922
Note: Evolving Listing Requirements	925
Note: Fiduciary Scrutiny	926
Section C. Twenty-First Century IPOs.....	931
Snap Inc. Pre-IPO Charter, Paragraphs IV.A and IV.F.....	931
Section D. Allocational Problems	933
Levco Alternative Fund v. The Reader’s Digest Association, Inc.	933
Note: Merger Allocations	935
In re Delphi Financial Group Shareholder Litigation.....	936
Note: Sales of Control Blocks	940
Note: Regulation of Control Sales After Feldmann	944

PART IV. PAYOUT POLICY

Introduction.....	949
Chapter 17. Payout Policy—Dividends and Retained Earnings.....	951
Earnings.....	951
Introduction.....	951
Section A. Cash Dividends and Dividend Policy	952
1. Dividends and Stock Valuation	952
(A) The Gordon Growth Model	952
(B) The Retention Rate	952
2. The Role of Dividend Policy	953
(A) Traditional Dividend Practice—the Lintner Picture	954
Note: Payout Practice.....	956
Note: Special Dividends	958
(B) Dividends as a Financing Decision—the Dividend Puzzle	959
(1) Dividend Policy Under the Irrelevance Hypothesis	960
(2) Taxes, Other Imperfections, and the Low Payout Hypothesis	962
(3) Information Asymmetries, Signaling, and Pecking Order Theory.....	966
(4) Management Dividend Policies and Agency Theory	968
(5) A Trend Toward Cash Retention.....	971
Section B. Legal Standards	972
Berwald v. Mission Development Company.....	973
Wertheim Schroder & Co. Incorporated v. Avon Products, Inc.	977
Note: Dividends and Conflicts of Interest	983
Section C. Stock Dividends and Splits.....	986
New York Stock Exchange, Listed Company Manual	989
Note: Reverse Splits and Fractional Shares	991
Section D. Restructuring by Dividend—Spin-Offs and Tracking Stock ..	993
1. Spin-Offs	995
2. Tracking Stock.....	997
Chapter 18. Payout Policy—Share Repurchases.....	1001
Introduction.....	1001
Section A. The Mechanics and Economics of Share Repurchases.....	1001
1. Repurchase Transactions	1001
2. Theoretical Irrelevance Between Dividends and Repurchases.....	1002
3. Volume and Stated Purpose	1006
(A) Volume	1006
(B) Flexibility—Repurchases Versus Dividends	1007
(C) Management Motivations	1007
(D) Accelerated Share Repurchases	1010
Section B. Fiduciary and Disclosure Obligations.....	1011
1. The Scope of the Problem	1011
2. Fiduciary Duty	1013
Strassburger v. Earley.....	1013

	Note: Coercive RTOs	1020
	Note: Greenmail and Defensive Repurchases	1020
3.	Federal Securities Laws—Repurchase Tender Offers.....	1023
	Securities Exchange Act, Section 13(e) and Rule 13e-4, Appendix D	1023
	Note: Federal Regulation of Repurchase Tender Offers.....	1024
4.	Federal Securities Laws—Open Market Repurchases	1026
	(A) Manipulation—Securities Exchange Act Section 9(a)(2)	1026
	(B) Safe Harbor for Potentially Manipulative Repurchases.....	1029
	Securities Exchange Act, Rule 10b-18, Appendix D.....	1029
	Note: OMRs as a Source of Income	1031
Section C.	Dividends, Repurchases, Corporate Governance, and Public Policy	1032

PART V. MERGERS AND ACQUISITIONS

Introduction	1039
Chapter 19. Mergers—Motivations and Regulatory Structure.....	1043
Section A. The Move to Merge.....	1043
1. Merger Waves.....	1043
(A) Patterns	1043
(B) Empirical Analysis	1045
2. Value Creation and Allocation	1047
3. Buy-Side Motivations.....	1050
Section B. Accounting and Taxes	1054
1. Accounting for Mergers—Purchase, Pooling, and Accounting for Goodwill.....	1054
Note: Testing Goodwill for Impairment.....	1056
2. Tax Treatment of Mergers.....	1057
Carney, Mergers & Acquisitions: Cases and Materials.....	1057
Section C. Formal Aspects of Merger.....	1062
1. The Mechanics of the Process.....	1062
(A) Classical Mergers	1063
(1) Classical Stock for Stock Merger	1063
(2) Small Scale Merger	1063
(3) Classical Merger with Cash Consideration	1064
(4) Parent Subsidiary Mergers.....	1064
(B) Sale of Assets—an Alternative to the Classical Merger	1065
Hollinger, Inc. v. Hollinger International, Inc.	1067
(C) Share Purchase and Share Exchange	1070
(D) Triangular Mergers.....	1071
(E) Tender Offer—Merger Combinations	1073
2. De Facto Mergers	1074
Hariton v. Arco Electronics, Inc.	1079
Note: Successor Liability	1081

3. Appraisal.....	1082
In re Appraisal of Columbia Pipeline Group, Inc.....	1082
Note: Context.....	1082
Section D. Negotiation and Pricing.....	1082
Red Hat, Inc., Schedule 14A Proxy Statement Pursuant to Section 14(a) of the Securities Exchange Act of 1934, December 12, 2018, Background of the Merger, at 33–42.....	1082
Red Hat, Inc., Schedule 14A Proxy Statement Pursuant to Section 14(a) of the Securities Exchange Act of 1934, December 12, 2018, Summary of Financial Analyses, at 62–64	1086
Note: Bankers and Fairness Opinions.....	1090
Section E. The Merger Agreement.....	1093
Agreement and Plan of Merger, by and Among International Business Machines Corporation, Socrates Acquisition Corp., and Red Hat, Inc., Dated as of October 28, 2018	1093
1. Overview	1093
2. MACs/MAEs	1095
3. Termination Provisions	1100
4. Cases	1102
IBP, Inc. v. Tyson Foods, Inc.....	1102
Hexion Specialty Chemicals, Inc. v. Huntsman Corp.....	1106
Note: Recent Developments.....	1119
Chapter 20. Mergers—Fiduciary Review	1123
Introduction.....	1123
Section A. Freeze-Outs	1124
1. Introduction.....	1124
2. Alternative Perspectives: Substantive Scrutiny Versus Free Market License.....	1125
3. Fiduciary Review: Process Scrutiny.....	1130
Note: Appraisal Exclusivity.....	1136
Note: Special Committees and Burden Shifting	1140
Note: Tender Offers by Controlling Shareholders	1142
Glassman v. Unocal Exploration Corp.	1145
Note: Interrelations Between Fiduciary and Appraisal Actions.....	1148
In re Pure Resources, Inc., Shareholders Litigation.....	1150
Note: Impact	1156
In re MFW Shareholders Litigation	1157
Section B. The Duty of Care	1161
Note: The 102(b)(7) Defense	1164
Note: Asset Sales.....	1165
Section C. Enhanced Scrutiny.....	1166
Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc.	1166
Note: The <i>Unocal</i> Background	1171
Note: The <i>Revlon</i> Tests.....	1173
Paramount Communications Inc. v. QVC Network Inc.	1176
Note: Enhanced Scrutiny and 102(b)(7)	1185

Note: The Meaning of “Sale of Control” After <i>Paramount</i>	1187
Omnicare, Inc. v. NCS Healthcare, Inc.	1188
Note: Lockups.....	1195
Lyondell Chemical Company v. Ryan.....	1197
Corwin v. KKR Financial Holdings LLC	1203
Note: <i>Corwin</i> and Tender Offers.....	1208
Section D. The Investment Banker-Advisor.....	1208
In re Del Monte Foods Co. Shareholder Litigation.....	1208
Note: Club Deals and Staples	1215
Note: Banker Cases	1217
Note: The Investment Banker’s Primary Duty	1222
Appendix A. Financial Contract Forms.....	A-1
Form 1. Note Purchase Agreement	A-3
Form 2. Preferred Stock Charter Provisions	A-65
Form 3. National Venture Capital Association Term Sheet.....	A-78
Appendix B. State Corporate Codes	B-1
Part 1. Provisions of the Model Business Corporation Act	B-4
Part 2. Provisions of the Delaware General Corporation Law	B-42
Appendix C. The Bankruptcy Code	C-1
Appendix D. Provisions of the Federal Securities Laws and	
Rules Promulgated Thereunder	D-1
Appendix E. Discounting and Compounding Tables	E-1
INDEX	I-1