Aston Business School
Birmingham

BFM122 COMPARATIVE CORPORATE LAW

Number of Aston Credits: 30

Number of ECTS Credits: 15

Staff Member Responsible for the Module:

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https://wass.aston.ac.uk/wass/

Pre-requisites for the Module:

None

Mode of Study:

On Campus

Module Objectives and Learning Outcomes:

This module aims to:

- Provide students with a knowledge of the different forms of association in selected comparative jurisdictions and the historical and other contextual background to the development of the corporate law regime in these jurisdictions
- Provide students with an overview of current regulatory principles and reform issues in selected common law and civil law jurisdictions, taking into account both international and European developments.
- Enable students to consider critically the effectiveness of particular forms of regulation in achieving the desired policy objectives and to advocate appropriate reform solutions for English corporate law on the basis of experience in other jurisdictions
- Encourage detailed evaluation and assessment of comparative corporate laws
- Ensure students appreciate the different governance issues arising in the context of small businesses and multinationals.
- Provide students with opportunities to realise these aims through the deployment of seminar presentations and discussions, and library-based research.

Learning outcomes:

At the end of this module the student should be able to:

- Identify the international developments and issues for debate in terms of the legal regulation of companies;
- Demonstrate a basic understanding of the historical development of corporations law in selected jurisdictions and the policy considerations influencing the nature of the regulation;
- Demonstrate a detailed and systematic knowledge of those legal principles, such as legislation and case law, governing areas of corporate regulation in selected jurisdictions;
- Critically analyse the choice of these regulatory structures and the effectiveness of their operation;
- Formulate, investigate and refine suggestions for the development and/or reform of existing regulatory principles by reference to comparative experience.
- Apply the knowledge and understanding referred to above, plan and produce detailed research, using appropriate research techniques, thereby demonstrating the capacity for sustained independent thought;

Effectively communicate the results of this research using different techniques, including the seminar presentation and extended legal writing, making use of appropriate legal and commercial terminology and supported by accurate citation of source materials.

Module Content:

Week 4: Introduction
- Influences on the development of English corporate law and governance codes
- The study of comparative law
- The “Delaware Effect”; the “real seat” or place of registration theory and the decision in Centros v Erhvervs-og Selskabsstyrelsen.

Week 6: Systems and forms
- Civil law and common law systems; civil and commercial distinction in civil law jurisdictions
- Forms of association in different jurisdictions and the issue of convergence.
- Influences on the development of principles in different jurisdictions
- EU Harmonisation. The EEIG and the European Company Statute. The European Private Company Statute. The work of the High Level Group of Company Law Experts.
- Reform agendas.

Weeks 8 and 10: Legal treatment of the small enterprise
- Corporate personality and the characteristics of corporate status in England and Wales
- The importance of limited liability
- Limited Liability Partnerships.
- Choice of form and the treatment of the “small business” in different jurisdictions

Week 12: Legal treatment of the corporate group

- Comparative assessment of the legal treatment of the corporate group – parental liability for debts of subsidiary, the position of directors in the subsidiary company and minority shareholders in a subsidiary company
- Issues relating to the multinational

Weeks 14 and 16: Corporate Governance – management structure and accountability

- The stockholder/stakeholder debate – interests in a company
- Management Structure and the relationship between the different organs in the company – a comparative examination
- Board structure and control of management power (management and supervisory board operation). Accountability. Sarbanes-Oxley
- The role of non-executive directors
- The role of employees in companies – employee directors, works councils and share ownership schemes

Weeks 18 and 20: Directors' Duties

- Duties of directors – fiduciary duties and the duty to act in the best interests of the company
- Duties of directors – the standard of skill and care; development in the UK and the dual objective/subjective standard.
- Safe harbours and relief from liability.
- Directors' duties and creditors. Position of directors in the event of insolvency.

Week 22: The position of shareholders and minority protection

- Shareholder rights – personal and corporate wrongs
- Shareholder remedies in selected jurisdictions. The relationship between the derivative action and the oppression/unfairly prejudicial conduct action.

Week 24: Takeover Regulation

- Conflicts arising in the takeover context (e.g., target board versus target shareholders)
- The Takeover Directive
- Constraints on the target company board
- Poison pills and other defensive mechanisms
- Mandatory bid rules

Week 26: Revision

Week 30: Examination

Some individual elements of the syllabus might not be covered in a particular academic year. The syllabus will reflect the emphasis of current trends and developments.

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Corporate Connections:

Robert Goddard contributes to the OUP Annotated Companies Acts looseleaf publication and his website is used by practitioners, academics and students throughout the world.

International Dimensions:

This module is concerned with comparative corporate law and this necessarily involves an evaluation of assessment of the corporate laws of a number of jurisdictions including the United States, Canada, Australia, New Zealand and both European corporate law and the substantive laws of France and Germany.

Contribution of Research:

This module is informed by Robert Goddard's research in this area, particularly in the area of shareholder rights. Robert has published widely in the leading UK law journals and maintains the only UK based blog dedicated to developments in corporate law and governance. This module is also informed by the research of other members of the Finance, Accounting and Law Group, particularly in relation to corporate governance issues.

Method of Teaching:

Seminars involving student presentations and discussion around directed reading and questions.

Method of Assessment and Feedback:

Assessment is by a 3 hour examination, which will be closed book except for the provision of limited statutory and other materials. Students will be required to answer a formative exam style question and will have the opportunity to practice answering other exam style questions throughout the module.

Learning Hours:

Lectures and seminars	24
Directed Learning	273
Assessment (Exam)	3
Total	**300**

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Essential Reading:

Andenas, M and Wooldridge, F, European Comparative Company Law (Cambridge University Press, 2009).

Cahn, A. and Donald, D., Comparative Company Law (Cambridge University Press, 2010).

Davies, P., Gower and Davies' Principles of Modern Company Law (Sweet and Maxwell, 2008)

Indicative Bibliography:

Adams, M, Essential Corporate Law (Australia), Routledge, 2005.

Ali, P. and Gregoriou, G., International Corporate Governance Under Sarbanes-Oxley (John Wiley & Sons Inc., 2006).

Armour, J. and Payne, J. (eds.), Rationality and Company Law: Essays in Honour of DD Prentice (Hart Publishing, 2008).

Austin, R.P., & Ramsay, I.M., Ford's Principles of Corporations Law, 13th ed. (LexisNexis, Sydney, 2007).

Bachner, T., Creditor Protection in Private Companies: Anglo-German Perspectives (Oxford University Press, Oxford, 2009).

Blumberg, P.I., The Multinational Challenge to Corporation Law: The Search for a New Corporate Personality, (Oxford University Press, New York, 1993)

Boros, E.J., Minority Shareholders' Remedies, (Clarendon Press, Oxford, 1995)

Boyle, A.J. Minority Shareholders' Remedies, (Cambridge University Press, Cambridge, 2002)

Cadbury, A., Corporate Governance and Chairmanship: A Personal View (Oxford University Press, 2003).

Charkham, J., Keeping Better Company: Corporate Governance 10 years on, a study of corporate governance in five countries, (Oxford University Press, 2nd edn, 2008).

Cheffins, B, Company Law: Theory, Structure and Operation, (Oxford University Press, Oxford, 1997)

Cheffins, B., Corporate Ownership and Control (Oxford University Press, 2009).

Davies, P, An Introduction to Company Law, (Oxford University Press, Oxford, 2002)

De Cruz, P, Comparative Law in a Changing World (3rd edn, Routledge, 2007)

De Lacy, J, The Reform of UK Company Law, (Cavendish, London, 2002)
Dine, J, The Governance of Corporate Groups, (Cambridge University Press, Cambridge, 2000, pbk 2008)

Drury, R. R. & Xuereb, P.G., European Company Laws: A Comparative Approach (Dartmouth, Aldershot, 1991)

Easterbrook F. and Fischel, D., The Economic Structure of Corporate Law (Harvard University Press, 1991).

Ferrarini, G. et al, Reforming Takeover and Company Law in Europe (Oxford University Press, 2004).

Grantham, R, & Rickett, C, Corporate Personality in the 20th Century, (Hart Publishing, Oxford, 1998)

Green, S., Sarbanes-Oxley and the Board of Directors: Techniques and Best Practices for Corporate Governance (John Wiley & Sons Inc., 2006).

Hopt, K, et al., Comparative Corporate Governance: the state of the art and emerging research (Oxford University Press, Oxford, 1998).

Hopt, K. et al., Corporate Governance in Context: Corporations, States and Markets in Europe, Japan and US (Oxford University Press, 2005).

Hopt, K. and Wymeersch, E., European Company and Financial Law – Texts and Leading Cases (Oxford University Press, 2007).

Hopt, K. and Wymeersch, E., Capital Markets and Company Law (Oxford University Press, 2003).

Johnson, A., EC Regulation of Corporation Governance (Cambridge University Press, 2009).

Kraakman, R. et al, The Anatomy of Corporate Law: A Comparative and Functional Approach (Oxford University Press, 2009).

Le Gall, J.P., & Morel, P, French Company Law, 2nd ed. (Longman, London, 1992)

Mallin, C., Corporate Governance (Oxford University Press, 2009).

McCahery, J. et al., Corporate Governance Regimes: Convergence and Diversity (Oxford University Press, 2002).

McCahery, J. and Vermeulen, E., Corporate Governance of Non-Listed Companies (Oxford University Press, 2008).

McCahery, J., Timmerman, L. and Vermeulen, E., Private Company Law Reform (Cambridge University Press, 2010).

Monks, R. and Minnow, N., Corporate Governance (Blackwell Publishing, 2007).

Morak, R., Corporate Governance around the World (Chicago University Press, 2007).
Parkinson, J., Corporate Power and Responsibility - issues in the theory of company law (Clarendon Press, Oxford, 1993)

Plessis, J.J., et al, German Corporate Governance in International and European Context, (Springer, 2007).

Prentice, D.D., & Holland, P, Contemporary Issues in Corporate Governance, (Oxford University Press, Oxford, 1993).

Reisberg, A., Derivative Actions and Corporate Governance: Theory and Operation (Oxford University Press, 2007).

Rider, B, The Corporate Dimension, (Jordans, Bristol, 1998).

Roe, M., Political Determinants of Corporate Governance (Oxford University Press, 2002).

Solomon, J., Corporate Governance and Accountability (John Wiley & Sons, 2010).

Vandekerckhove, K, Piercing the Corporate Veil : A Transnational Approach (Kluwer Law International, 2007).

Van Gerven, D and Storm, P.M., The European Company, Vols 1 and 2, (Cambridge University Press, 2006 and 2008).