



A Case Based Study on Duties and Liabilities of Board Members

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Presentation

- The underlying project: Siems & Cabrelli (eds), *Comparative Company Law: A Case Based Approach*, 2013: overview of core topics based on first and last chapters
- My case study: directors' duties in ten countries; practical and theoretical implications

Comparative Company Law

A Case-Based Approach

General Editors
Mathias Siems and David Cabrelli



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Country contributions

Gordon Smith (US)



David Cabrelli (UK)



**Pierre-Henri Conac
(France)**



**Chuck Ito and
Hiroyuki Watanabe
(Japan)**

**Lena Nordman
(Finland)**



**Pablo Igelias
(Spain)**

**Marco Ventoruzzo
and Corrado
Malberti (Italy)**



**Mathias Siems
(Germany)**



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**Kamil Szmíd and
Michał Zurek
(Poland)**



Motivation for project

- Growing interest in comparative corporate governance; search for ‘best’ legal rules
- But in company law also need to consider how particular cases are solved
- Thus, aim to fill gap in literature; to address important questions of academic research in company law; also practical dimension



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Chapter 1: core topics

- Background – questions in literature: do corporate governance systems converge? Are some legal origins better than others? Can legal transplants work?
- Book discusses these topics, based on three main corporate constituencies (directors, shareholders, creditors)
- Choice of countries; practicalities of project (eg, use of different types of companies)



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Chapter 12: core ideas

- Coding of two elements per case in terms of (a) legal rules, (b) sources of law, and (c) results enables quantitative comparative analysis (with relevant examples)
- All of this responds to major discussions in literature, eg, on similarities in terms of legal origins; claims about preferences for certain groups (shareholders etc.)



Data analysis – extract (1)

Table 1: Prevalence of sources of law (max 20, three highest values highlighted)

	<i>FRA</i>	<i>GER</i>	<i>ITA</i>	<i>SPA</i>	<i>FIN</i>	<i>POL</i>	<i>LAT</i>	<i>UK</i>	<i>US</i>	<i>JP</i>
Legislation	17	17	19	17	18	16	17	15	8	18
Case law	11	13	5	3	2	2	1	15	15	10
Academic	1	11	7	9	3	6	2	0	0	2
Self-regulation	0	0	0	1	2	0	0	4	0	0
Discretion	0	0	0	0	0	0	0	0	2	0
None	0	0	1	0	1	3	3	0	2	1

Comments: legislation US outlier; case law: UK and US but also Germany; academic: civil law countries; self-regulation: UK, discretion: US; none: Eastern European countries



Data analysis – extract (2)

Table 3: Preference for interests of directors, shareholders and creditors (highest values highlighted)

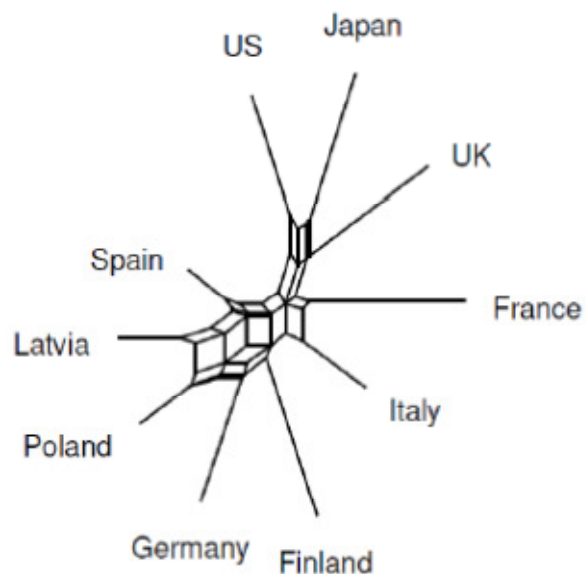
	<i>FRA</i>	<i>GER</i>	<i>ITA</i>	<i>SPA</i>	<i>FIN</i>	<i>POL</i>	<i>LAT</i>	<i>UK</i>	<i>US</i>	<i>JP</i>
Directors	6	5	6	6	4	3	6	6	9	4
Shareholders	4	4	5	3	6	4	3	5	3	4
Creditors	2	2	1	2	1	2	2	1	1	2
Majority shareholders	3	2	1	2	2	3	3	7	4	6
Minority shareholders	4	5	4	2	4	4	4	1	0	1
Unclear	1	2	3	5	3	4	2	0	3	3

Comments: director primacy in US; shareholder protection in UK, Italy and Finland; creditors: possible legal origin effect; minority shareholder protection: possible role of ownership structures

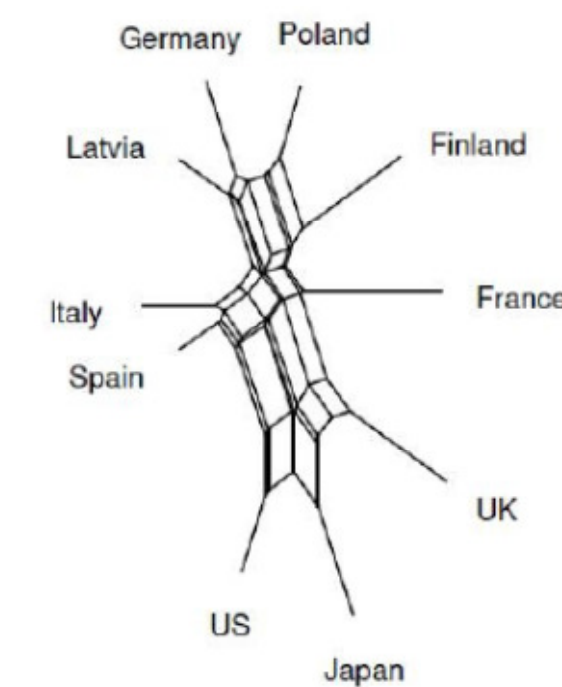
Neighbour networks



based on similarity of legal rules



based on similarity of results



Comments: similar features, eg, similarity US and Japan; Germany, Poland, Finland; also France and UK shows some evidence that law matters; confirmed by high correlation coefficient (0.84)



Chapter 12: conclusions

- Data show 'American exceptionalism' in all three categories; some Europeanisation but UK occasionally outlier
- Legal origins play some role; but not absolute, eg in terms of sources of law
- Also no evidence that in common law countries better shareholder protection than in civil law ones



Contents of Chapter 2

directors' duties in ten countries; practical and theoretical implications

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- The case: A (Latvian) director of a company in distress
- Shareholder A1 owns 95% / Shareholder A2 owns 5%
 - Management by Director B
 - Remaining cash reserves for 3 weeks
 - Decision 1: Sale of 25% of stock 50% below market price / no consent obtained
 - Decision 2: Loan 150% above commercial bank rate / consent by majority shareholder
 - But: Company eventually runs out of money
 - Director requests a legal opinion on whether his conduct may have constituted a breach of his duties



For Latvia:

- Directors of a Latvian private limited liability company (sabiedrība ar ierobežotu atbildību SIA)
- Duties of directors
- Breach
- Personal liability of directors



Conclusions for 10

- Similar: Due care, corresponding to a reasonable business man's judgement
- Establishing a business judgment rule
- Similar: Proof of damage and due care, onus?
- Different: Shareholder consent requirement



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