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

Available from January 2013!

General Editors
Mathias Siems and David Cabrelli

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<table>
<thead>
<tr>
<th>Country</th>
<th>Name</th>
</tr>
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<tbody>
<tr>
<td>US</td>
<td>Gordon Smith</td>
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<tr>
<td>UK</td>
<td>David Cabrelli</td>
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<tr>
<td>US</td>
<td>Pierre-Henri Conac</td>
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<tr>
<td>UK</td>
<td>Lena Nordman (Finland)</td>
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<td>Japan</td>
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<td>Spain</td>
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<td>Italy</td>
<td>Marco Ventoruzzo and Corrado Malberti</td>
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<td>Poland</td>
<td>Kamil Szmid and Michal Zurek (Poland)</td>
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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, e.g., 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)

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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)

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<tr>
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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
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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
bnt offices

Bratislava
Budapest
Kyiv
Minsk
Nürnberg
Praha
Riga
Tallinn
Vilnius
Warszawa

From 1 January 2013

Sofia