

UNITED STATES CORPORATION LAW I

John Coyle



CORPORATE LAWYERING

“You didn't go to law school because you thought you're getting to sit in front of a computer screen for hour after hour after hour reviewing documents.”

- Steven Harper

CORPORATE LAWYERING I

- **How is the work performed by a U.S. corporate lawyer different from the work performed by litigators?**
 - Prospective vs. Retrospective
 - Arms-length vs. Adversarial
 - Client vs. Lawyer

CORPORATE LAWYERING II

- **What are the different roles that U.S. corporate lawyers play in representing their clients?**
 - Advocate
 - Guardian
 - Counselor
 - Facilitator

CORPORATE LAWYERING III


- **As a junior lawyer working on corporate deals in the United States, what sort of tasks am I likely to be asked to perform?**
 - Organization
 - Due Diligence
 - Simple Drafting



STARTING A BUSINESS

“Entrepreneurs are willing to work 80 hours a week to avoid working 40 hours a week.”

- Lori Greiner



WHY CREATE AN ENTITY?

- Entity status
- Ability to raise massive amounts of capital
- Ability to separate ownership from control
- Limited liability
- Eternal life (potentially)
- Taxes as a wildcard



TYPES OF ENTITIES

- Sole Proprietorship
- General Partnership
- Limited Liability Partnership (LLP)
- Limited Liability Company (LLC)
- Corporation

	Entity Status	Capital Accumulation	Separation of Ownership / Control	Limited Liability	Eternal Life	Taxes
Sole Proprietorship	No	No	No	No	No	Single
General Partnership	Yes	No	No	No	No	Single
Limited Liability Partnership (LLP)	Yes	No	No	Yes	Yes	Single
Corporation	Yes	Yes	Yes	Yes	Yes	Double
Limited Liability Company (LLC)	Yes	Yes	Yes	Yes	Yes	Single



WHERE TO FORM?

- Internal affairs rule
- Home state
- Delaware
- The “race-to-the-top/race-to-the-bottom” debate

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CORPORATE FINANCE

“Finance is not merely about making money. It’s about achieving our deep goals and protecting the fruits of our labor. It’s about stewardship and, therefore, about achieving the good society.”

- Robert Shiller



SOURCES OF CAPITAL

- Personal savings
- Friends and family
- Bank loan
- Credit cards
- Angel investors
- Incubators / Accelerators
- Venture Capital Funds



STRUCTURING
THE
INVESTMENT

- Equity (common stock)
- Debt
- Equity (preferred stock)



THE YOGURT SHOP I

Your lifelong dream has been to open a yogurt shop. After inheriting \$30,000 from a wealthy aunt, you finally have the capital you need to realize your dream. You and two friends team up to launch the venture. You put up the capital necessary to purchase the machines, the tables, the chairs, and other necessary supplies. Your friends agree to provide “sweat equity” in the form of labor. In exchange for your respective contributions, you receive the following ownership interests in the company...

The Yogurt Shop

	Shares Owned (60 issued)	Ownership Stake
You	40 (of 60)	66%
Friend #1	10 (of 60)	17%
Friend #2	10 (of 60)	17%

The Yogurt Shop earns \$1000 in profits, which are paid out in dividends.

	Shares Owned (60 issued)	Dividends
You	40 (of 60)	\$660
Friend #1	10 (of 60)	\$170
Friend #2	10 (of 60)	\$170



THE YOGURT SHOP II

Business is booming. So much so that you decide you need to purchase an additional yogurt machine to keep up with demand. The problem? You don't have enough money to buy a machine and nobody is willing to rent one to you. This leaves you with two options. You can either issue additional equity to tennis legend **Boris Becker** or you can go to **Bank of America** and ask for a loan.

Original Scenario

	Shares Owned (60 issued)	Ownership Stake
You	40 (of 60)	66%
Friend #1	10 (of 60)	17%
Friend #2	10 (of 60)	17%

Boris Becker Equity Scenario (Common Stock)

	Shares Owned (100 issued)	Ownership Stake
You	40 (of 100)	40%
Boris Becker	40 (of 100)	40%
Friend #2	10 (of 100)	10%
Friend #1	10 (of 100)	10%

Boris Becker Equity Scenario (Common Stock)

	Shares Owned (100 issued)	Ownership Stake
You	40 (of 100)	40%
Boris Becker	40 (of 100)	40%
Friend #2	10 (of 100)	10%
Friend #1	10 (of 100)	10%

Bank of America Debt Scenario

	Shares Owned (60 issued)	Ownership Stake
You	40 (of 60)	66%
Friend #2	10 (of 60)	17%
Friend #1	10 (of 60)	17%
Bank of America*	0	0%

*Bank of America must be paid \$5,500 per year for next four years. If they are not paid, the Yogurt Shop is in default and the entire debt is payable immediately.



EQUITY
V.
DEBT I

After obtaining the capital from either the bank or Boris Becker, you buy the new machine. The very next year, the business generates \$4000 in profit. Success! Or is it...

Dividends Under Boris Becker Equity Scenario (Common Stock) (\$4,000 profit)

	Ownership Stake	Dividend Payment
You	40%	\$1600
Boris Becker	40%	\$1600
Friend #1	10%	\$400
Friend #2	10%	\$400

Dividends Under Bank of America Debt Scenario (\$4,000 profit)

	Ownership Stake	Dividend Payment
You	66%	\$0
Friend #1	17%	\$0
Friend #2	17%	\$0
Bank of America*	0%	Default!

*Bank of America must be paid \$5,500 per year for next four years. If they are not paid, the Yogurt Shop is in default and the entire debt is payable immediately.



EQUITY
V.
DEBT II

After obtaining the capital from either the bank or Boris Becker, you buy the new machine. The very next year, the business generates \$40,000 in profit. Success!

Dividends Under Boris Becker Equity Scenario (common stock) (\$40,000 Profit)

	Ownership Stake	Dividend Payment
You	40%	\$16,000 (40,000 * .40)
Boris Becker	40%	\$16,000 (40,000 * .40)
Friend #1	10%	\$4,000 (40,000 * .10)
Friend #2	10%	\$4,000 (40,000 * .10)

Dividends Under Bank of America Debt Scenario (\$40,000 Profit)

	Ownership Stake	Dividend Payment
You	66%	\$22,770 (34,500 * .66)
Friend #1	17%	\$5,865 (34,500 * .17)
Friend #2	17%	\$5,865 (34,500 * .17)
Bank of America*	0%	\$0

*Bank of America must be paid \$5,500 per year for next four years



PREFERRED STOCK

- Convertible to common stock (maybe)
- Greater voting power (maybe)
- Greater economic rights (maybe)
- Liquidation preference (maybe)

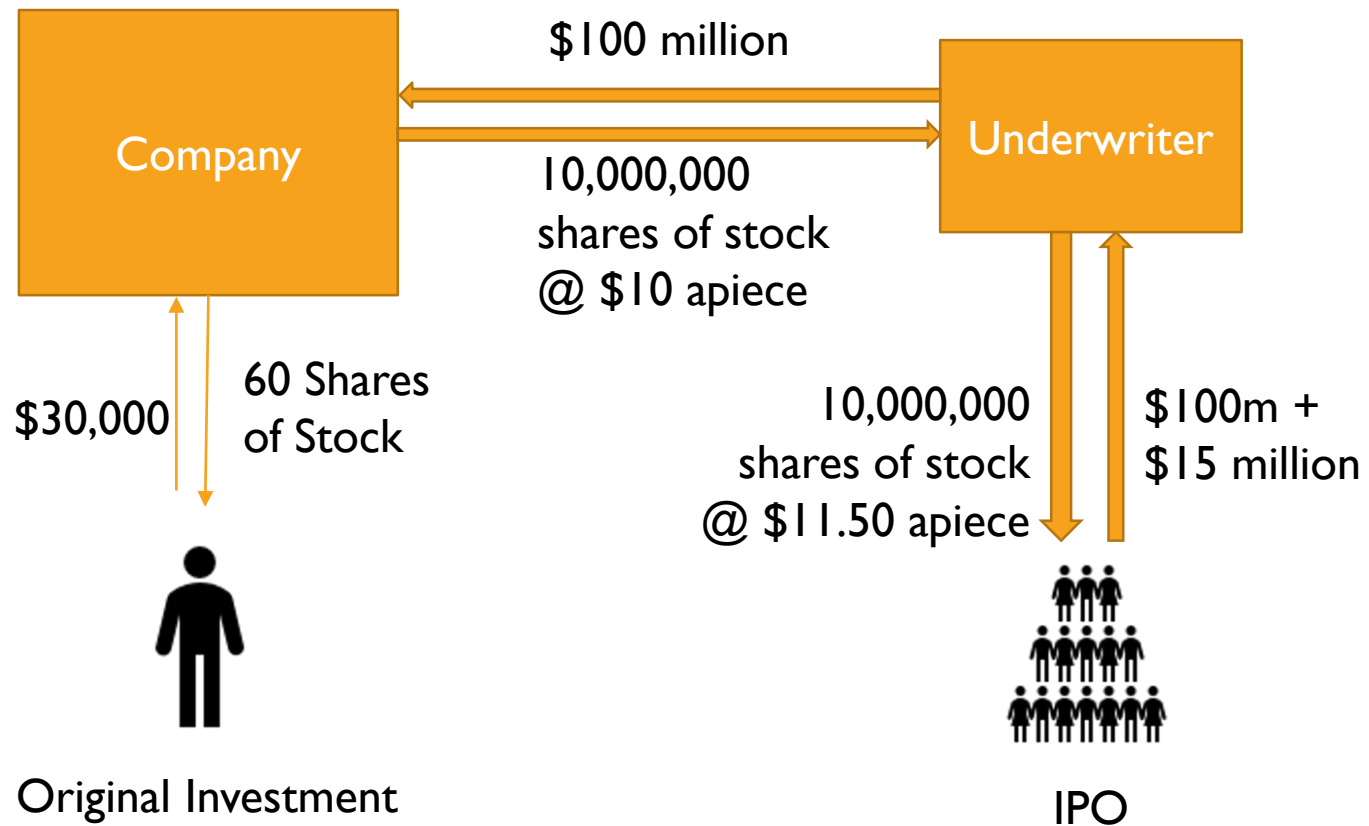


GOING PUBLIC

Going public for the sake of going public is not really an optimal thing. You're going public because as a company you believe it is the right thing to do and it will benefit the ability of the company to achieve its long-term objectives.

- Jeff Weiner

THE INITIAL PUBLIC OFFERING





WHY GO PUBLIC?

- Raise capital for the company to expand
- Allow early investors to cash out some of their stock
- Attract new talent by issuing stock that can be easily sold
- Bragging rights

WHY STAY PRIVATE?

- Loss of control via dilution
- Loss of privacy via mandatory disclosure
- Cost of regulatory compliance

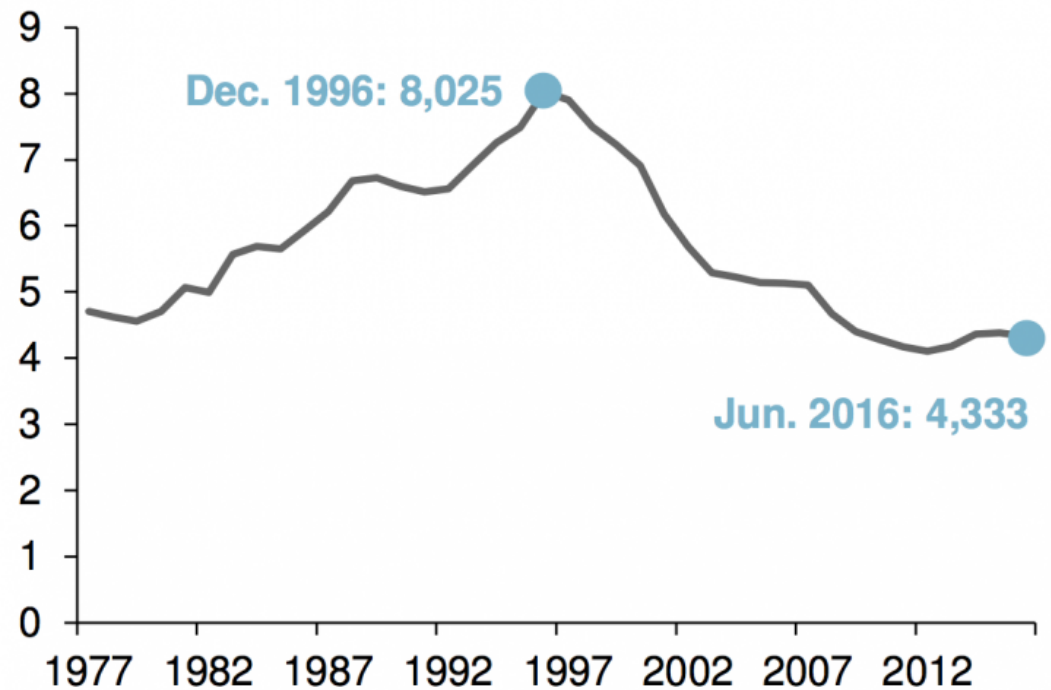


REQUIRED DISCLOSURE

- Detailed financial statements that have been audited by a certified public accountant, or a CPA
- A section in which these statements are analyzed in plain English.
- An overview of the industry in which the company operates.
- An explanation of how the company fits into that industry
- An explanation of exactly how the company's executives are compensated.
- An explanation of what the company's business strategy is
- A description of the company's perceived competitive advantages are.
- A list of any and all risk factors that may impact the performance of the company in the future.

MORE
FIRMS ARE
STAYING
PRIVATE

Listed U.S. company count is down 46% from peak
Domestic companies listed on U.S. exchanges, thousands





NEW
SOURCES
OF CAPITAL

- Mutual funds
- Private equity funds
- Hedge funds