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# COMPENDIUM: RECENT GRADUATE STUDENT DISSERTATION AND THESIS ABSTRACTS

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### CORPORATION AS A NEXUS OF GRADATIONAL JURAL (POWER) RELATIONS: A THEORETICAL PREDICATE FOR THE SHAREHOLDER PRIMACY NORM

BY IGE BOLODEOKU, D. JUR.

This thesis is a contribution to the theoretical literature on corporate governance and corporate relationships. It proposes that the corporation is a "nexus of gradational jural relations," and that the jural relational components in each subset of intra-corporate relationships are key foundations to the powers, rights, and responsibilities that the corporation, shareholders, directors, management, and other primary stakeholders claim or may claim. Specifically, it conceptualizes the act of incorporation as a jural act conferring distinct claims, powers, and duties on the corporation, the shareholders, and the board of directors. With the jural relational framework, I argue in this thesis that the respective relationships between a corporation and its (1) shareholders, and (2) board of directors and that between the board of directors and management, represent different but related gradations of jural relations, all of which require harmonization. This framework also provides some juridical insights into the nature of the claims of other corporate constituents such as creditors and employees.

Against the backdrop of a general clamour for the involvement of

other corporate constituents in corporate governance, the jural relations theory helps to explain how the jural relations of the other constituents could shape their roles in governance. The theory also provides further insights into why directorial paternalism cannot be an effective device for protecting the interests of other corporate constituents. I argued, using the jural relations theory, that the interests of other corporate constituents would be best protected if the constituents were allowed to participate in designing governance mechanisms adapted to their respective interests.

In employing the jural relations theory of the corporation as a possible basis for the shareholder primacy norm, the thesis focuses on two key aspects of the shareholders' jural relational rights, i.e., the right of voice and the right of exit. This theory also offers juridical explanations for the rights of voice and exit against the backdrop of existing related theories of corporation and corporate governance, and explores how the two rights could function as governance mechanisms. As a normative theory, the "jural relations" theory explains how lawmakers and judges should relate to the shareholders' rights of voice and of exit. As a positive theory, it provides explanations for, as it challenges, some of the provisions in the corporation codes in some Anglo-American jurisdictions relating to shareholders' relational powers and rights. In particular, this thesis uses the "jural relations" theory of the corporation to analyze the effect of existing laws on takeover bids on the shareholders' rights of exit.

PROPOSED UNIFORM RULES FOR BUSINESS-TO-BUSINESS  
PAYMENTS ON THE INTERNET: ADAPTION OF  
DOCUMENTARY CREDIT RULES FOR NORTH AMERICAN  
SMALL AND MEDIUM-SIZED ENTERPRISES

BY MARC LACOURSIERE, D. JUR.

International payments have always been an important issue in international commercial law. Negotiable instruments, electronic funds transfers, and documentary credits have all proven to be successful, at least to some extent. Electronic commerce raises a new challenge in this respect, since none of these instruments are adapted for an open network environment.

A major characteristic of Internet commerce is that buyers and sellers trade at a distance without having much information about each other. On the one hand, the buyer is interested in receiving the merchandise in good condition; on the other hand, the seller wants to be paid. The risk of non-delivery or non-payment is very important for the counterparties.

Thus far, international trade has been mainly the domain of large

multinational corporations, although smaller firms have taken advantage of cross-border business for some time. The Internet has revolutionized this trend and has fostered the activities of small and medium-sized enterprises in international trade. However, these small enterprises encounter several difficulties. First, the current payment system is not well suited for smaller commercial transactions. Second, North American legislation and interbanking regulations are not adapted for Internet small value business payments, and furthermore, there is no harmonization. Third, the intrinsic nature of the Internet represents a serious challenge for the resolution of conflicts of laws and jurisdictions.

Under these circumstances, electronic commerce requires a specific and efficient payment system for small value transactions in North America. The first contribution of this thesis is to propose an Internet payment scheme adapted to the needs of North American small and medium-sized enterprises. Such a model should work in a delivery versus payment pattern—used in documentary credit transaction—in order to lower the risk of non-delivery or non-payment.

The second contribution focuses on the opportunity to model the proposed scheme of payment after international conventions. This thesis argues that the most appropriate manner to govern the proposed payment scheme is via uniform rules, which would be advantageous for both parties to the transaction.

#### THE SOCIAL UNION FRAMEWORK AGREEMENT: MEDICARE IN THE (RE)BALANCE?

BY WENDY SUTTON, LL.M.

The Social Union Framework Agreement, signed at a First Ministers' Conference in Ottawa in February of 1999, was hailed as a positive step forward in intergovernmental fiscal relations. Completed in advance of the February 16 federal budget, the Agreement represented a refreshing pan-Canadian effort on the part of Canada's governments to ameliorate their troubled fiscal relationship. More specifically, the thrust of the Agreement, which focused squarely on health care financing, enabled the transfer of additional federal funds for health care to each of the provinces. In order to receive the funds, the provinces signed, among other things, a commitment ensuring that money earmarked for health care would indeed be so allocated.

The Social Union Framework Agreement was not, however, without its detractors. For some, the Agreement represented a continuation of the unsatisfactory process of informal constitutional negotiation taking place among the country's first ministers, behind closed doors and without

adequate public consultation. Others were concerned that underlying the consultations was a dangerous drive by the provinces to “rebalance” intergovernmental fiscal relations in their favour, particularly through limiting the federal government’s use of its spending power.

Combined with the fact that the only qualification for provincial receipt of the new funding was that it be spent on health care, critics were also worried that the Social Union Framework Agreement had the potential to loosen federal controls on internal provincial funding allocations. This concern was directed at the provinces of Alberta and Ontario in particular, because the neoliberal ideologies of the incumbent governments, which already demonstrated a proclivity for the privatization of health care services, posed the greatest threat to the universal Medicare system.

This thesis addresses the potential of the Social Union Framework Agreement to alter the character of the governance of Canada’s health care system. It begins with an exploration of the development and content of the Agreement, and then proceeds to an analysis of a number of significant factors that led to its creation. These factors include federalism, and within it fiscal federalism and the operation of the federal relationship, ideology and national unity. The overarching impact of public perceptions of the health care system, as well as its values and vulnerabilities, is also taken into account.

The thesis proceeds to argue that the ramifications of the Social Union Framework Agreement constitute, at least in spirit, a significant change in the manner in which Canada’s intergovernmental relations operate. In the specific context of health care, the thesis argues that the Agreement has the potential to encourage privatized health care services across Canada and significantly undermine the universal character of Canada’s system of health care.