

**CENTRE FOR BANKING & FINANCE LAW AND ETH ZURICH PRESENTS:**

**LAW AND FINANCE COLLOQUIUM**

**15 JANUARY 2015**

**9.00AM – 4.00PM, MOOT COURT (BESIDE THE SUMMIT CAFETERIA)**

**FACULTY OF LAW, NUS**

**About the Colloquium**

There are significant differences across countries in ownership concentration, corporate governance and access to finance. The Law & Finance undertaking aims at analyzing how lawmakers around the globe address these issues, using a functional approach and focusing on the efficiency and workability of diverse sets of legal solutions. The purpose of the Colloquium is to discuss recent Law & Finance contributions that provide an introduction to the Law & Finance methodology and are of practical interest for a Singapore audience.

**Programme**

<b>0830 – 0900</b>	<b>Registration</b>
<b>0900 – 0915</b>	<b><u>Welcome by Colloquium Convenors</u></b> Assoc Prof Dora Neo, Director, Centre for Banking & Finance Law, National University of Singapore (NUS) Professor Gerard Hertig, Professor of Law, ETH Zurich and Peter Ellinger Visiting Professor, NUS
<b>0915 – 0945</b>	<b><u>Economic Crisis and Share Price Unpredictability: Reasons and Implications</u></b> by Ronald J. Gilson, Meyers Professor of Law and Business, Stanford Law School and Stern Professor of Law and Business, Columbia Law School
<b>0945 – 1000</b>	Commentator: Paul Davies, Allen & Overy Professor of Corporate Law Emeritus, University of Oxford and Kwa Geok Choo Distinguished Visitor, Faculty of Law, NUS Moderator: Ng Wai King, Joint Managing Partner, WongPartnership
<b>1000 – 1030</b>	<b>Q&amp;A</b>
<b>1030 – 1045</b>	<b>Coffee Break</b>
<b>1045 – 1115</b>	<b><u>The Economic Structure of Business Transactions</u></b> by Michael Klausner, The Nancy and Charles Munger Professor of Business and Professor of Law, Stanford Law School
<b>1115 – 1130</b>	Commentator: Umakanth Varottil, Assistant Professor, Faculty of Law, NUS Moderator: Lan Luh Luh, Associate Professor, NUS Business School and Faculty of Law, NUS
<b>1130 – 1200</b>	<b>Q&amp;A</b>
<b>1200 – 1330</b>	<b>Lunch</b>
<b>1330 – 1400</b>	<b><u>The Business Judgment Rule</u></b> by Holger Spamann, Assistant Professor, Harvard Law School
<b>1400 – 1415</b>	Commentator: Gerard Hertig, Professor of Law, ETH Zurich and Peter Ellinger Visiting Professor, NUS Moderator: Sandra Booyesen, Assistant Professor, Faculty of Law, NUS
<b>1415 – 1445</b>	<b>Q&amp;A</b>
<b>1445 – 1500</b>	<b>Coffee Break</b>
<b>1500 – 1600</b>	<b>Market Efficiency: Panel with Presenters &amp; Commentators</b> Moderator: Gerard Hertig, Professor of Law, ETH Zurich and Peter Ellinger Visiting Professor, NUS
<b>1600</b>	<b>End of Colloquium</b>

**Speakers & Abstracts**



**Ronald J. Gilson**  
**Meyers Professor of Law and Business, Stanford Law School**  
**Stern Professor of Law and Business, Columbia Law School**

An experienced practitioner of corporate and securities law before entering academia, Ronald J. Gilson is the Meyers Professor of Law and Business at Stanford Law School, the Stern Professor of Law and Business at Columbia Law School and a Senior Fellow at the Stanford Institute of Economic Policy Research. Professor Gilson is the author of major casebooks on corporation law and the law and finance of corporate acquisitions. He has written widely on U.S. and comparative corporate governance, venture capital and on the intersection of contract law and innovation, and was a reporter of the American Law Institute's Corporate Governance Project. Professor Gilson is a fellow of the American Academy of Arts and Sciences and the European Corporate Governance Institute and is the independent board chair for the American Century Mountain View-based family of mutual funds, managing some \$40 billion in assets. [Click here to read full abstract.](#)

Before joining the Stanford Law School faculty in 1979, Professor Gilson was a partner at a San Francisco corporate law firm. He clerked for Chief Judge David L. Bazelon of the U.S. Court of Appeals for the District of Columbia Circuit.

**Economic Crisis and Share Price Unpredictability: Reasons and Implications**

For some 35 years prior to the financial crisis of 2008-09 financial economics has become ever more integrated into corporate and securities law. This is as it should be. Corporate and securities law is, at its core, about valuation. Investors purchase claims on the corporation's future cash flows. The size of those flows then depends on management's choice of what real assets to acquire and how they are managed over time. The capital market's pricing of these financial claims is in effect a valuation of future cash flow. Corporate and securities law

provides a framework within which a firm's managers make these investment and operating decisions. The Financial Crisis of 2008 poses puzzles for understanding how the capital market prices common stocks and, in turn, for the intersection between law and finance. During the crisis, there was a dramatic spike, across all industries, in the volatility of individual firm share prices after adjustment for movements in the market as a whole. In this Article, we demonstrate that a similar spike has occurred with each major downturn in the economy since the 1920s. The existence of this long history of crisis-induced spikes has not been previously recognized.

We evaluate a number of potential explanations for these recurrent spikes in firm-specific price volatility, a pattern that poses a puzzle in terms of existing financial theory. The most convincing explanations relate to reasons why information specifically concerning individual firms would become more important in difficult economic times.

This discovery of a long history of crisis-induced spikes in firm-specific price volatility has important implications for several areas of corporate and securities law. With regard to securities law, we conclude, for example, that because of these spikes, private damages actions are much less effective deterrents to corporate misstatements and insider trading in crisis times than in normal times. Consequently, substantial additional resources should be devoted to SEC enforcement actions play a relatively more important role during crisis times. We also consider the most contentious corporate law issue of the last 30 years: the extent to which a target board of directors will be allowed to prevent shareholders from accepting a hostile takeover bid. The Delaware Supreme Court's approach to this question has been based in important respects on the belief that shareholders might make the wrong choice, victims of "substantive coercion." The Article concludes that these spikes could be a way of giving real meaning to the "substantive coercion" justification for board approval of takeover defenses but that the instances where this justification is appropriate will be rare.



**Michael Klausner**  
The Nancy and Charles Munger Professor of Business and Professor of Law  
Stanford Law School

Michael Klausner is the Nancy and Charles Munger Professor of Business and Professor of Law at Stanford Law School. He teaches courses on corporate law, corporate governance, business transactions and regulation of financial institutions. In recent years, most of his writing has been on corporate governance. He maintains a database on securities class actions and SEC enforcement actions, and has published several papers and blog posts based on that database. In addition, Professor Klausner is writing a book on the economics of business transactions.

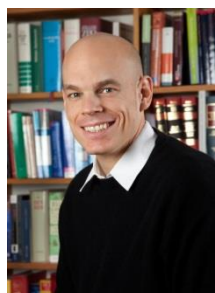
Before beginning his academic career, Professor Klausner practiced law in Washington, D.C. and Hong Kong. He was a White House Fellow from 1989 to 1990, a law clerk for Judge David Bazelon on the United States Court of Appeals for the District of Columbia Circuit in 1981-82 and a law clerk for Justice William Brennan on the United States Supreme Court. He is a graduate of the University of Pennsylvania (B.A) and Yale University (J.D. and M.A. in Economics).

#### **The Economic Structure of Business Transactions**

This paper is actually not a paper. It is a proposal for a book that I am now writing on business transactions. The book stems from a course that I teach at Stanford and that others teach elsewhere. The book's objective is to analyze a wide range of business transactions from an economic perspective. The book's thesis is twofold: first, that all business transactions can be usefully understood as addressing a small set of underlying economic challenges; and second, that lawyers and business people who design transactions must understand the economics of the mechanisms they employ in order to accomplish their goals effectively.

More specifically, deals must accomplish one or more of the following familiar economic challenges: (i) execution of an exchange, (ii) ex ante uncertainty and information asymmetry, (iii) ex post uncertainty and information asymmetry, (iv) asset specificity, and (v) exogenous uncertainty. In contrast to books or papers on contract theory, this book starts with transactions, and uses economic theory to illuminate them—rather than explaining the economic theory and using simplified examples to support the explanation. The primary contribution of the book will be the breadth of transactions it analyzes and the parallels that appear among them when viewed from an economic perspective. A secondary contribution will be an illumination of the grey area between economic concepts that occurs when the analysis begins with transactions rather than theory.

The book proposal uses two case studies to illustrate the themes of the book. Both involve "exit rights"—mechanisms by which a party can exit a deal with value that meets its expectations, and that does not impair ex ante incentives to create maximal value during the term of the deal. In one of the case studies, the exit mechanisms were well designed; and in the other, they were not.



**Holger Spamann**  
Assistant Professor  
Harvard Law School

Holger Spamann is Assistant Professor at Harvard Law School, where he teaches corporations, corporate finance, and a seminar on the financial crisis of 2008. His research employs theoretical and empirical tools from economics and comparative law. His main area of interest is corporate governance and financial markets. He has also worked on judicial behavior, comparative crime, conflict of laws, and international trade. Before embarking on his academic career, he practiced with the law firm Debevoise & Plimpton in New York and clerked for two years in Europe. He holds an A.M. and Ph.D. in economics from Harvard University, a B.Sc. in economics from the London School of Economics, a doctorate in law (S.J.D.) from Harvard Law School, and basic law degrees from the Sorbonne and the University of Hamburg. His articles include The "Antidirector Rights Index" Revisited, 23 REVIEW OF FINANCIAL STUDIES 467 (2010), Regulating Bankers' Pay (with Lucian Bebchuk), 98 GEORGETOWN LAW JOURNAL 247 (2010), Large-Sample, Quantitative Research Designs for Comparative Law?, 57 AMERICAN JOURNAL OF COMPARATIVE LAW 797 (2009), and Fixing Public Sector Finances: The Accounting and Reporting Lever (with Jim Naughton), 62(3) UCLA LAW REVIEW (forthcoming 2015)

#### **The Business Judgment Rule**

I use a simple model to clarify four points about the business judgment rule (BJR), i.e., the corporate law rule that managers (and directors) are not liable for bad business decisions. First, managerial risk aversion is neither necessary nor sufficient to justify the BJR. Second, it would be trivially suboptimal to hold managers liable for simple losses either by law (strict liability) or by judicial distortion of the law (hindsight bias). But the law (negligence liability) and leading cases (Smith v. van Gorkom) do not fall into that mold. Third, managerial negligence liability would be optimal (that is, the BJR would be suboptimal) if the cost-precision tradeoff in ascertaining the quality of business decisions ex post in litigation is sufficiently favorable. In conclusion, the only coherent reason for the BJR is that courts are particularly bad at assessing business decisions. I argue that this last concern is generally plausible given the one-off nature of business decisions as opposed to, e.g., medical treatment choices. At the same time, this insight provides a rationale for exceptions from the BJR for minimal standard procedures like the monitoring systems required under Caremark.

### **About The Commentators**



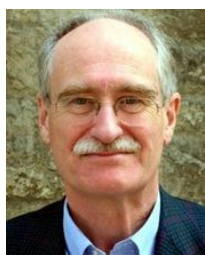
**Gerard Hertig**  
Professor of Law, ETH Zurich

Gerard Hertig has been Professor of Law at ETH Zurich since October 1995. Prior to that, he was Professor of Administrative Law at the University of Geneva Law School and Director of its Centre d'Etudes Juridiques Européennes (1987-1995). He has also been visiting professor of law at the College of Europe, Columbia, Louvain-la-Neuve, NYU, NUS and University of Tokyo.

Principal research interests are in Law & Finance and European integration. Recent publications include 'Governance by Institutional Investors in a Stakeholder World' (forthcoming in Handbook of Corporate Law and Governance, OUP); 'Shadow Resolutions as a No-No in a Sound Banking Union' (with Luca Enriques, forthcoming in Financial Regulation: A Transatlantic Perspective, CUP); 'Governments as Investors of Last Resort: Credit Crisis Comparative Case Studies' (2012 Theoretical Inquiries in Law); 'Trading and Clearing Reforms in the EU: A Story of Interest Groups with Magnified Voice' (2011 Zeitschrift fuer Bankrecht und Bankwirtschaft), 'Improving the Governance of Financial Supervisors' (with Luca Enriques, 2011 European Business Organization Law Review); and Empowering the ECB to Supervise Banks: A Choice-Based Approach" (with Ruben Lee and Joseph A. McCahery, 2010 European Company and Financial Law Review). Gerard Hertig is also a co-author of 'The Anatomy of Corporate Law' with Reinier Kraakman et al. (2d ed., OUP 2009).

Gerard Hertig is ECGI (European Corporate Governance Institute) fellow and a member of CLEF (Comparative Law and Economics Forum). Professional appointments currently include memberships of the ECGI Board and Research Committee, Brussels; Research Advisory Council,

SAFE (Sustainable Architecture for Finance in Europe), Frankfurt; Research Advisory Council, CFS (Center for Financial Studies, House of Finance), Frankfurt; Scientific Committee, IAST (Institute for Advanced Study in the Social Sciences), Toulouse; Conseil Scientifique, Labex ReFi (Laboratoire d'Excellence Regulation Financiere), ESCP Europe, Paris.



**Paul Davies**  
**Senior Research Fellow**  
**Faculty of Law, University of Oxford**

Paul Davies is a Senior Research Fellow at Harris Manchester College. He was the Allen & Overy Professor of Corporate Law from 2009 to 2014. He was educated at the Universities of Oxford (MA), London (LLM) and Yale (LLM). He was elected a Fellow of the British Academy in 2000, an honorary Queen's Counsel in 2006 and an honorary Bencher of Gray's Inn in 2007. He is a deputy chairman of the Central Arbitration Committee. His first teaching job was as Lecturer in Law at the University of Warwick (1969-1973). Then he was elected Fellow and Tutor in Law at Balliol College Oxford and successively CUF Lecturer, Reader and Professor in the Faculty. Between 1998 and 2009 he was the Cassel Professor of Commercial Law at the London School of Economics and Political Science.



**Umakanth Varottil**  
**Assistant Professor**  
**Faculty of Law, National University of Singapore**

Umakanth Varottil is an Assistant Professor at the Faculty of Law, National University of Singapore. He specializes in corporate law and governance, mergers and acquisitions and cross-border investments. While his work is generally comparative in nature, he focuses particularly on India and Singapore. He has co-authored two books on Singapore law and practice, published articles in international journals and founded the Indian Corporate Law Blog. He has also taught on a visiting basis at the Fordham Law School in New York, the University of Trento in Italy and at various law schools in India. He is the recipient of several academic medals and honors.

Prior to his foray into academia, Umakanth was a partner at Amarchand Mangaldas, a pre-eminent law firm in India. During that time, he was also ranked as a leading corporate/mergers and acquisitions lawyer in India by the Chambers Global Guide.

**Organised by:**



Centre for Banking & Finance Law  
Faculty of Law

The Centre for Banking & Finance Law (CBFL) at the Faculty of Law, National University of Singapore, seeks to generate scholarship and promote thinking about the vibrancy, robustness and soundness of the banking sector, capital markets and other financial services. Through the research our scholars undertake and the events we organise, we seek to create and share knowledge, to engage stakeholders in an exchange of ideas, and to enhance the appreciation of legal and regulatory issues. We aim to bring greater theoretical and analytical clarity to these issues, to examine their policy impact, and to be a catalyst for ideas on how to improve banking and financial systems at the national, regional and global levels.



ETH Zurich is one of the leading international universities for technology and the natural sciences. It is well-known for its excellent education, ground-breaking fundamental research and for implementing its results directly into practice. Founded in 1855, ETH Zurich today has more than 18,000 students from over 110 countries, including 3,900 doctoral students. To researchers, it offers an inspiring working environment, to students, a comprehensive education. Twenty-one Nobel Laureates have studied, taught or conducted research at ETH Zurich, underlining the excellent reputation of the university.



**Public CPD Points: 4**  
**Practice Area: Banking and Finance**  
**Training Level: General**

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