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COMPENDIUM: RECENT GRADUATE STUDENT DISSERTATION AND THESIS ABSTRACTS

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GLOBALISATION AND CORPORATE GOVERNANCE IN DEVELOPING COUNTRIES (A MICRO ANALYSIS OF GLOBAL CORPORATE INTERCONNECTION BETWEEN DEVELOPING AFRICAN COUNTRIES AND DEVELOPED COUNTRIES)

BY BONIFACE AHUNWAN, D.JUR.

Globalization denotes economic liberalization and deregulation, the intensification of international economic relations and interdependence, and changes in the mode of production and the nature and exercise of state powers. In this context, business corporations also implement global corporate structures and strategies such as cross-border sales and listing of security, and cross-border mergers and takeovers.

This dissertation examines corporate governance in developing African countries, using Nigeria and Ghana as case studies, in the broader context of these modern global economic, social, and political changes and global corporate structures and strategies. In the context of an unsettled debate on the future of global corporate governance: whether national corporate governance systems would be path dependent or driven purely by economic efficiency, I argue that the shape and structure of corporate

governance in many African countries such as Nigeria have been largely influenced by their historical starting points, colonization. Modern reforms based on economic efficiency have only solidified the existing structures and practices. With a dominant path-dependent influence, economic efficiency is also exerting pressure, limited by an unfavourable macro-economic context. Future corporate governance will be a hybrid based predominantly on existing structures—the inherited British structure—modified by global influences and the macro-economic environment.

I further argue that globalization has effects on corporate governance other than convergence or divergence, path dependence, or economic efficiency of governance systems that contemporary literature canvasses. Global corporate interconnection has created new problems of corporate governance for developing countries and developed countries as well:

(a) in corporate interconnection through cross-border sales and listings of securities, mergers, and takeovers, corporate governance problems in one country are transferred to another

(b) global corporate interconnection is in fact ushering in an international system of corporate control through the global capital market and global product market responses to corporate activities;

(c) the international capital market has several dysfunctions, as it is influenced by the macro-economic and political context of developing countries rather than the strength of the management of their corporations. Therefore, the international capital market as a mechanism of corporate control is defective because it is not so much a discipline on abuse but a discipline on the macro-economic and political underdevelopment of these countries.

CORPORATE LAW, PENSION LAW, AND THE TRANSFORMATIVE POTENTIAL OF PENSION FUND INVESTMENT ACTIVISM

BY FREYA KODAR, LL.M.

Pension funds, the funds held in trust to support occupational pension plans, represent significant funds of capital. Together with other institutional investors such as mutual funds and hedge funds they have

become important actors in financial markets—nationally and internationally. They have significant holding in national and transnational corporations. They are also deeply implicated in the financial instability of global financial markets, and free market globalization.

In the past decade some members of the labour movement have sought to have more active involvement in pension fund investment decision making. They have seen this involvement as a strategy for influencing corporate management and practice, and for encouraging productivity, local and regional development, and long-term growth and sustainability. More radically, they have seen it as a means to create new conceptions of "value" that include factors other than monetary return, and to transform capital by gaining greater social and democratic control over it. They have pursued strategies such as advocating for greater representation on pension plan boards of trustees or investment advisory committees, shareholder activism including proxy voting, investment screening, and economically targeted or community investing.

This thesis assesses these strategies within the Canadian context and looks at their transformative potential in light of pension law and corporate law principles and practice. It argues that the current strategies of pension fund activists, even if extended to other types of investors—individuals and institutional—are not likely to lead to more democratic and social systems of corporate regulation. It also suggests that pension fund activists have not fully explored the possibilities created by the fact that pension funds have many "owners" and "beneficiaries"—legal or otherwise. Nor have their strategies adequately considered the suggestion that the uncertainties of corporate law make completing the separation of the corporation from the shareholder, and creating democratic and social systems of corporate regulation, a more appropriate and meaningful political project. In short, they have not challenged the limitations of pension law and corporate law with strategies that recognize the corporation and markets as social institutions that should be democratically and socially regulated. One avenue for doing this appears to be through utilizing the public pension system, particularly by expanding a funded public pension system, and democratizing the fund investment decision-making process.

CONSTITUTIONAL LAW AND IDEOLOGY: THE MECHANISM COMPONENT OF IDEOLOGICAL CRITIQUE

BY VIDYA S.A. KUMAR, LL.M.

Put simply, the purpose of this thesis is to ask and answer the following question: does legal ideology, as evinced by the creation of legal

meanings in recent Canadian and South African constitutional jurisprudence, reinforce "relations of domination," and if so, how? Samples of recent Canadian and South African jurisprudence are examined to determine whether their creation of legal meanings sustain patterns of social inequality.

This thesis examines legal ideology as it is important to determine not only whether law creates meaning through legal discourse, but whether this discourse plays a role in the production or reproduction of social relations. In order to answer its question, this thesis employs John B. Thompson's "depth hermeneutical" procedure, as it pays particular attention to the act of interpreting ideology. This procedure consists of three phases: i) social analysis; ii) discursive analysis; and iii) interpretation. The social analysis phase outlines the social conditions and backdrop underlying the adjudication of Canadian and South African constitutional jurisprudence. The discursive analysis examines whether ideological modes (i.e. legitimation, dissimulation, unification, reification, and naturalization) and ideological strategies (such as inversion, displacement, and performative contradiction) can be seen to reinforce the relations of domination depicted in phase one. The final phase demonstrates *how* legal meanings serve to sustain relations of domination. This thesis concludes that legal ideology in Canadian and South African constitutional jurisprudence reinforces relations of domination through the operation of various ideological modes and discursive strategies. As this thesis and its conclusion in effect delineate the "mechanism" component of ideology inquiry or critique (i.e. identifying *how* ideology operates), it admittedly leaves open and unanswered the important question of ideology's genesis (i.e. *why* ideology exists).

DISABLEMENT AND THE LAW IN THE UNITED STATES AND CANADA

BY WAYNE OAKES, LL.M.

In this thesis, I examine the law of disability discrimination in the United States and Canada. Comparisons are drawn between the statutes and case law in the two countries with respect to anti-discrimination issues. I argue that disability discrimination law in the United States has failed to achieve many of its objectives and that there are important lessons for Canadian policy makers interested in similar laws in Canada. The first and foremost failure of U.S. disability law is the fact that almost all plaintiffs lose their discrimination cases and defandants almost always win.

The discussion contained herein begins with a review of theoretical foundations upon which disability law is based. I argue that the different

theories form the basis on which disability and anti-discrimination legislation is structured. An amalgam of market-based, capabilities, and rights-based theories have produced law and jurisprudence in the United States that limits the capacity of people with disabilities to obtain judicial remedies. Canadian statutes, administrative tribunals, and courts have developed a broader conception of disability than exists in the United States. This has resulted in a set of holdings more favourable to those with disability claims involving employment discrimination. Similar findings were also found in an examination of cases dealing with access to higher education and the professions. United States courts have been quite unfriendly to disability claims involving access to higher education, preferring to defer to the decisions of academic decision makers. Few Canadian holdings deal with these issues. It will be interesting to see how Canadian courts will deal with similar cases when they do eventually arrive before them.

I conclude that the *Americans with Disabilities Act* may need amendment by Congress to improve its effectiveness as an anti-discrimination statute. Similarly, Canadian provinces should consider passage of proactive legislation to improve the effectiveness of the human rights laws used in Canada. The lack of legislation dealing specifically with the removal of architectural barriers is one of the more serious deficiencies in Canadian disability law.