FACULTY FEATURES: PROFESSOR ROBERTO TALLARITA

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What follows is the result of an hour-long conversation with Roberto Tallarita, Assistant Professor of Law at Harvard Law School. We discussed his work, from current trends in corporate governance to an application of legal philosophy to contemporary debates. We further discussed recent events in Delaware and Texas, as well as Professor Tallarita's work in the classroom. This conversation has been added for clarity and length, with citations added to assist the reader.

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Interviewer: Thank you again for taking the time to meet with me, Professor Tallarita.

Professor Tallarita: It's a pleasure.

I. Question #1

Interviewer: For my first question, because you worked quite a bit in Milan and Italy before coming to the States, was how practice in the States, you also started your career at Kirkland. How your career in Italy was different than the States, or at least in practice?

Professor Tallarita: I think it's less different than people would expect since Italy and the United States are two very different countries. But when it comes to transactional legal work, I think there's a common language, especially on large deals, that has developed in the last few decades. There are differences because of the size of the firms. Italian big law is less bureaucratized than U.S. or, particularly, New York big law. It feels more like how legal work used to feel, when as an associate you felt like an independent professional within a firm, rather than just a cog in the machine.

But it was equally brutal. I mean, you would think that, in Milan at six, you can go out and there's aperitivo, so you start drinking and eating with your friends. But no, we were there 8, 9, 10 sometimes two in the night. I think it's the homogenizing effect of that kind of business: that kind of transaction with that kind of clients. At the end of the day, the kind of work and the culture that develops around it gets closer and closer even across different countries and cultures. Clients are more or less the same, so the demands on lawyers become the same and the work style that develops around these demands gets similar.

II. Question #2

Interviewer: How was the transition from your work in Italy to the U.S.?

Professor Tallarita: It's a completely different job. It's a big jump and I did it later than most people. The thing that bothered me the most in practice after a while was that I didn't learn as much as I'd like. I like learning new things. And after several years of experience, you know the drill, the kind of transaction, the clients, and the work. While many details change, it got boring for me. And my temperament has always been more academic.

I could just live buried in books and I'd be happy. Being in practice was a parenthesis, a very long temporary job. But it was a big and risky transformation to leave that career. Trying a new one is always a gamble, especially since academic jobs are hard to find. It was a big risk, but it was worth taking because this is what I like. Practice was exciting for several years. But at this stage of my life, this fits my personality better.

III. Question #3

Interviewer: How has it been since coming to HLS?

Professor Tallarita: It's been great. This is a fantastic place to be an academic, of course. In my field, corporate law, this is probably one of the best places—I would say the best, but I don't want to offend anyone—to be a corporate law professor. We have a fantastic team of senior and junior people who have changed the way corporate law is studied and made over the years. It's a privilege to engage in conversations with these giants of the discipline. So, I feel very, very fortunate to be here.

IV. Question #4

Interviewer: For the first question on your academic work, I wanted to talk about your paper last year charting the effect of law firms on dual class contracting. How does your paper factor into the ongoing debate about this facet of corporate governance?

Professor Tallarita: The idea for my paper, Dual-Class Contracting,[1] came from a simple observation. There's been a literature on standardization and tailor-made contracts versus standard contracts in corporate law. The way corporate law works in Delaware, and in the United States more broadly, gives the parties, as corporate planners, a lot of freedom on how to design corporate governance. The policy idea behind this is that these are sophisticated parties, managers and investors. In the end, one size doesn't fit all, so they should be given the ability to freely contract with one another.

Corporate planners, when they go public, will propose a charter, but in anticipating how investors will think about it, they will design the charter in a way to maximize firm value, based on specific characteristics of the company. But there's always been a puzzle that corporate charters do not vary much, and there have been many theories as to why. But one exception that people always mention is a paper by Mike Klausner that has been a seminal paper in this space on this topic of standardization, which basically says that the only exception to these charters being very homogeneous across companies is dual class, which is a major deviation from the default principle of one share, one bond.[2]

I decided to look into this because the traditional way of looking at this issue is that dual class is a major deviation from one share, one vote. It's a tailor-made solution as opposed to the standard typical default rule. But dual

[1] Roberto Tallarita, *Dual-Class Contracting*, 49 J. Corp. L. 971 (2024).

[2] Michael Klausner, *The Contractarian Theory of Corporate Law: A Generation Later*, 31 J. Corp. L. 779, 782 (2006).

class is not just one thing. Dual class simply means that there are two or sometimes things. It's always called dual for explicitly classes of shares with different voting power. But how different voting power is across classes of shares can change. In theory, you can tailor your voting rules a lot.

The question of the paper is, are there really variations across dual class companies with respect to the magnitude and duration of voting inequality, along with all the various characteristics of the voting design? I found that actually there are not a ton of variations. About two-thirds, for example, of companies, choose a similar or identical magnitude of voting inequality.[3] Dual class seems to be an exception to variation across corporate charters.

When I looked into this, it isn't really an exception that there is a big choice that companies make between single class and dual class. But when they choose dual class, there's not much differentiation across the different kinds of dual class structures that companies choose. This is a puzzle in itself. If you choose to go dual class, why don't you tailor your voting rules in a more precise way? I discuss possible theories around that.

I also have a survey of more than three dozen IPO lawyers, mostly based in Silicon Valley, because dual class as a structure is very much loved by tech companies, because the founders can keep control of their companies despite losing a majority of the equity. The paper's thesis—which cannot be empirically proved, but I think there's enough suggestive evidence that makes it plausible—is that the lawyers actually play an important role in policing compliance with this kind of market norms of how these things are done typically and warning their clients that deviating from these norms is not good.

That's why I think that's part of the reason why dual class companies tend to converge on a similar kind of design, despite all kinds of individual difference across companies. This part of the paper is almost a sociology of Silicon Valley. Because what these lawyers told me, which I think makes sense and resonates with most lawyers' experience, is that clients talk to each other. It's a small community. There are the founders, the VCs, the lawyers, and the investment bankers. It's a small community where these kinds of social market norms get created and transmitted from one deal to another and from one group of lawyers to another.

It remains a puzzle, I believe, if voting rules are important for firm value. There's a lot of money at stake. I think it's puzzling why founders do not choose different rules, and if they leave money on the table. One possible answer is that whatever the prevalent norm is, it is already very favorable to founders. So, investors probably get a better deal there. But of course, these are things that are very hard to measure.

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[3] Roberto Tallarita, *Dual-Class Contracting*, 49 J. Corp. L. 971, 1032 (2024).

V. Question #5

Interviewer: On that point about testing empirically, how do you think about testing conclusions in the market, especially as it's so hard to test the counterfactual?

Professor Tallarita: I think empirical studies are fascinating, and it's important to test your theories and conjectures on real facts. That attitude I very much like. I have several empirical papers, including some that are more a mix of quantitative and qualitative, like this dual class paper. Others are more descriptive, and others are even a bit more technical with fancier empirical methodology. I like the attitude of the empiricist in the sense that the empiricist always asks, where is the data? Is this theory of yours real? Is it true? Let's test it, right?

This idea of trying to test conjectures and hypotheses is super important. It's at the core of any progress in knowledge about the world, in social sciences, and in life. Of course, there's been a great increase in the use of empirical tools in legal studies. Sometimes some things, even good things, become fashionable. Certainly, empirics have become fashionable in law schools among legal scholars. And sometimes they get overused, right?

We shouldn't make the mistake of relying too much on or asking too much of the empirical tools that we have, especially in corporate governance where a lot of the things that we observe are endogenous. It's very difficult to prove that something follows from something else for a causal reason.

I think we should certainly keep using these tools in an intelligent way. But we should be more humble about what these tools can prove and use them as just one piece of a more complex picture of the world, the markets, and the effects of policy and law, while being open to a broader toolbox in order to understand how corporations, markets, or any other legal institutions work.

VI. Question #6

Interviewer: Shifting from testing the market as it is, but to what it could be. How did you come to your paper on reframing corporate debates through Hohfeld's map of rights, duties and privileges,[4] and what lessons can we learn from this reframing?

Professor Tallarita: Some of my interests are empirical, while others are more theoretical and philosophical. The Hohfeld paper grew out of a frustration with how we talk about corporate purpose and its surrounding debate. I've been a participant myself in the debate with several papers, including on whether we should trust institutional investors or on climate policy and

[4] Roberto Tallarita, *Hohfeld in the Boardroom*, 43 Yale J. on Regul. (forthcoming 2026).

climate change mitigation. In the last ten years or so, there's been a lot of interest in the role that corporations can or should play in mitigating climate change or addressing other societal problems and challenges.

This is a very old problem. The problem until recently went under the label of ESG and was called corporate social responsibility 20 years ago. Even before that it was the corporate purpose debate. For more than 100 years, law professors have been debating about what the purpose of the corporation should be, and whether to maximize shareholder value or to care about other things, such as prioritizing other things like stakeholder welfare, societal welfare, etc. And in those one hundred plus years, we haven't made much progress in this debate.

I think part of the reason is that the language we use for this contrast between shareholder primacy and stakeholder governance is a bit misleading. This paper is a bit heterodox compared to the mainstream corporate law literature and tries to apply the conceptual framework developed by a legal philosopher of early 20th century, Wesley Hohfeld, to this particular problem. The basic claim of the paper is that this old concept of corporate purpose is not a thing that you can simply reorient away from shareholders towards stakeholders. It's a complex bundle of legal relations.[5]

We should decompose this bundle to talk about the components, without being distracted by the grand—but a bit airy and misleading—contraposition between shareholders and stakeholders. There are a number of ideas that I borrow from Hohfeld for the purposes of revisiting the corporate purpose debate. First, Hohfeld thought that all legal relations can essentially be reduced to combinations of a very small number of key elements, like molecules, which can be decomposed into atoms. Basically, Hohfeld thought that there were eight atoms in law, and you can combine them to represent and understand what's going on in any complex legal situation.[6]

One important relationship in corporate governance is between the corporate decision makers and other corporate players, such as the shareholders, along with different kinds of stakeholders, and the state in its various manifestations, such as federal agencies. For simplicity, we can think of the corporate decision maker as the CEO, though less important decisions will be lower-level management and more important decisions might be directly with the board. So, we can ask if the corporation should build less expensive but more polluting plants, or more expensive but greener plants. The first is better for shareholders; the second one is better for society in general. Thinking of this decision in terms of purpose is a bit too abstract, right?

Hohfeld would say, what kind of legal relations are we talking about? The corporate decision maker, does she have a right, which means that someone

[5] *Id.* at 5.
[6] *Id.* at 16.

has a duty to do something, or does she have a privilege, meaning that she has permission to do something, but no one else has a right to prevent her from doing something. Does she have other kinds of these atoms? This analysis gets us into the microstructure of what we call corporate purpose.

What I argue in the paper is that if we look at things this way, we find that the rhetoric of shareholders versus stakeholders is hopefully inadequate to explain our real disagreements in the debate. That changes corporate purpose. Proposal reforms need to be very specific about what kind of relations the proponents of this reform are trying to change and how. Because it's easy to say corporations should build the less polluting plants, even if it's more expensive. But what does it mean in practice in terms of legal duties? Who has the legal duty?

For Hohfeld, it is a legal duty only if there is a corresponding right in the hands of someone else. Who has the right to sue, for example, if you build a less polluted plant? When you ask this more specific question, you try to identify the actual legal relations that you want to change and the way you want to change them. The debate gets much more specific and the disagreements become disagreements about specific designs of legal relations. And we'll find that many of the puzzles and the fusing aspects of the corporate purpose debate become clear. At least that's my thesis.

There's also a lesson for aspiring reformers and policymakers in how Hohfeld thought of legal relations as adversarial, in the sense that the rights in Hohfeld's scheme are always paired with a duty.[7] There's no rights without the duty of another person, and there's no duty without the corresponding rights of another person. Same with privilege, which has a corresponding incident, called no-rights. Power has a counterpart called liability, et cetera.

So, all the legal elements of the Hohfeld scheme are relational. I say adversarial in the sense that we cannot talk of a duty of someone if there isn't someone else with a corresponding right. I think this is extremely important because a lot of talk around ESG and corporate purpose is talk about duty without a corresponding talk about rights. There's scarcely conversation about who is the right holder in relation to these socially oriented duties.

This adversarial way of thinking about this illuminates what is missing in the debates: how to design legal relations that make sense from a relational perspective, so that there are corresponding parties with actual entitlements on the other side of the relation, making them effective in the real world. Because when you try to get real world socially oriented effects by just giving managers or other corporate actors a privilege—a mere permission to do something—you are assuming more or less implicitly that these market players have some kind of benevolent or altruistic disposition, and they will indeed use their privilege to choose the socially oriented course of action.

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[7] *Id.* at 44.

But if you don't have any evidence of this altruistic, benevolent disposition, you should go the old-fashioned way and simply impose duties if you want that particular outcome, while putting corresponding rights in the hands of people who can actually hold corporate decision makers to account. That is the policy design implication of this very old philosophical theory.[8]

Interviewer: It cuts back at the stakeholderism argument for empowering corporate managers and instead going towards empowering someone to check corporate power.

Professor Tallarita: Right, I think many academics, and I've written this in other work, would take a more traditional economic approach to the problem of corporate purpose. Many of the so-called stakeholders' proposals, since they do not identify the specific right-duty relationships, end up expanding the sphere of managerial privilege. But again, if you expand the sphere of privilege of managers, you're basically making a risky bet on the fact that managers will use these expanded privileges to do what's good for society. But I mean, this is not how typically legal design works, right? We don't simply trust the goodwill and benevolence of people to do the right thing. If we want to design a system, we typically try to precisely pair duties with rights in order to make the desired outcome happen.

VII. Question #7

Interviewer: I had the privilege of going to a talk you moderated on the new Texas Business Law Courts. What are your thoughts on recent policy developments in Texas and Delaware?

Professor Tallarita: Well, there's a lot of talk about corporations leaving Delaware because of something. Okay, the main complaint is nominally that Delaware court decisions have become unpredictable. I think this is all silly. Even if you look at the actual controversial decisions coming out of the Delaware Chancery, they are just a handful. Delaware judges decide a vast number of extremely complicated technical corporate law cases every year. And they continue to do so and in a very effective way.

If you look at the numbers, the vast majority of new IPOs this year have still chosen Delaware. A majority of large corporations still are incorporating in Delaware. There have been a few visible cases of companies, especially controlled companies, moving to Texas or Nevada.

I think it's ironic, you know. Corporate boards mentioned unpredictability as a reason to go to Texas, but Texas has basically no corporate case law. So, it's very difficult to predict how a given case will turn out because Texas has a

[8] *Id.*

very small number of public corporations and the precedents on complicated questions, for which Delaware has cases, are very few or non-existent.

When I asked some Delaware lawyers about how *Tornetta v. Musk*[9] would have been decided in Texas, they basically had no clue because there's no case law in Texas on conflicted controlling shareholders. That some corporate leaders, including, very recently, Coinbase, say that the reason they are leaving Delaware for Texas is the unpredictability of Delaware is, I mean, clearly impossible.

It can't be the true reason, right? So, the question becomes why. Certainly, Texas and Nevada offer a much more plaintiff-hostile environment. Texas now allows charters to introduce a three percent ownership threshold for derivative lawsuits,[10] which would basically kill shareholder lawsuits. So, now we're talking, right?

This is, perhaps, a plausible reason why they're doing this, although they don't mention it in op-eds. But you can only do this if you are a particular kind of company. I'd be surprised if a large number of companies will actually leave or decide to incorporate outside of Delaware when they go public. But I might be wrong, and actually, what people call "DExit" is going to happen for real. But to me right now, it's just some disturbance in a trend which clearly continues to indicate the dominance of Delaware in the corporate landscape.

VIII. Question #8

Interviewer: As an aside, did you think much about Delaware when you were working in Italy?

Professor Tallarita: I didn't think about it, you know. I mean, it still was a laboratory of innovation. So, we paid attention to what came out of the United States, especially in terms of transactional solutions. But we didn't really pay much attention to the doctrine for obvious reasons, because governing laws were typically Italian or English law.

IX. Question #9

Interviewer: Between your empirical questions and more philosophical work, how do you think about balancing your academic scholarship between interests?

Professor Tallarita: That's a good question. I don't have a good method. Actually, I would like to have one. I think my intellectual appetites are too broad. So sometimes, just like with my physical appetite for food, I have to go

[9] 310 A.3d 430 (Del. Ch. 2024).
[10] S.B. 29, 89th Leg., Reg. Sess. (Tex. 2025).

on a diet and try to keep myself more disciplined because otherwise I would be interested in too many things.

I try to be moderately disciplined, though I haven't found a good method yet. Sometimes it gets hijacked by current news. This was the case for all the ESG corporate purpose papers,[11] and now with my new paper on S.B. 21,[12] which is the Delaware corporate law reform in response to these controversial cases, particularly *Tornetta v. Musk*.[13] This was the Delaware legislature's attempt to stop what it perceived as a threat to Delaware as the state for incorporation of those large American companies.

So, I follow current issues. But other times I try to combine currentness with very old questions and very old themes like the Hohfeld paper,[14] which is a very old theory and a very old-fashioned way of looking at this but applied to a very hot topic. I'm not sure I have a good method of balancing all these things, but I try my best.

Interviewer: The method, perhaps, is what strikes your interest, which was part of what led you to academia.

Professor Tallarita: Well, you have to be careful with that, because while this is a great job where you can actually follow your interests, there are constraints. You're still part of a conversation. What other people are talking about and how other people talk about things inevitably shapes the way you participate. There's a lot of freedom, but it is a dialogue after all, not a monologue.

X. Question #10

Interviewer: Moving into perhaps a constraint on your academic scholarship, you also teach classes. How do you think about balancing or working your academic interests into your courses?

Professor Tallarita: I love teaching, so I get a lot of utility from it, to talk like an economist. I like interacting with students, preparing courses, and trying to innovate a little bit. I change things from one year to another to avoid my own boredom and student's boredom. Teaching, even if it doesn't look like this from the outside, takes a lot of time and energy. During the semester, when I teach, my time for researching, thinking, writing and working on data or whatever other methodology I'm doing at that time is much, much more difficult.

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[11] *See, e.g.*, Roberto Tallarita, *The Limits of Portfolio Primacy*, 76 Vand. L. Rev. 511 (2023); *see also* Lucian A. Bebchuk and Roberto Tallarita, *The Perils and Questionable Promise of ESG-Based Compensation*, 48 J. Corp. L. 37 (2022).

[12] Kenneth Khoo and Roberto Tallarita, *The Price of Delaware Corporate Law Reform* (June 24, 2025) (unpublished manuscript).

[13] 310 A.3d 430 (Del. Ch. 2024).

[14] *Hohfeld*, *supra* note 4.

But I love the balance between the two things, because I would get too absorbed in either. It's good to get out of your projects and do other things with more immediate feedback and payoffs like teaching. When you teach a class, you get a sense of, more or less, if students liked it, if the questions were good, if the answers were good, your perception of how you did.

Teaching is a more short-term feedback activity. With research, you can go sometimes for a year or more before you have something that you can talk about to an audience and get feedback on. While different, I think it's healthy to do both. And just in terms of my psychological well-being, each check on the potential unhealthy effects of the other.

XI. Question #11

Interviewer: You're teaching a class next semester on Cicero, in addition to Corporations. How did you come to the idea of teaching Cicero for lawyers?

Professor Tallarita: That's an experiment. It's a one credit course where we will read and discuss a bunch of speeches by Marcus Tullius Cicero, the greatest orator of ancient Rome and possibly the greatest practitioner of the art of persuasion in the history of the West. The idea is a passion of mine. My first law degree, in my previous life, was in Italy, and I was trained in Roman law, in both the history of Roman law and actual Roman private law, as well as constitutional or public law.

That's part of my training and my education as a lawyer. But this will not be a course about Roman law, but about rhetoric, argumentation, and persuasion. That's what lawyers do, right? Lawyers try to persuade other people all the time. Different kinds of lawyers have different genres or styles, but they still engage in the art of persuading other people. If you're a litigator, you try to persuade judges or juries. If you're a transactional lawyer, you try to persuade the opposing counsel how a certain deal should be designed, or how certain contract clauses should be read. If you're in policy, you try to persuade policymakers or think-tanks.

Different kinds of lawyers do very different things. But most of them, and most of us as human beings, engage in the practice of persuasion all the time. So, persuasion is very important. It's super important for lawyers, but we don't really pay much attention to it in law school. This course is an experiment in trying to think rigorously about persuasion; not in the abstract, but by reading some very effective examples of persuasion: Cicero's speeches. Some are political speeches, while some are defense speeches, like the in the liberty courts against or in favor of some defendants. We'll try to dissect them and understand what Cicero is doing here, from how persuasive the argument is to the different techniques that Cicero used 2,000 years ago and their relevance for lawyers today.

I hope it's going to be fun. I polled my Corporations students last year to see if they would take such a strange class. Surprisingly, a large number of them said that they would, or at least that they would consider it. So, I'm experimenting with this. For students who are interested in the ancient world, and also in rhetoric and oration, I think it will be a fascinating opportunity to read some top materials by one of the greatest in this field. And I hope we'll have fun. I think we will.

Interviewer: Awesome. Thank you so much, Professor Tallarita.

Professor Tallarita: You're very welcome, Alex.