

## Ex Ante Costs of Violating Absolute Priority in Bankruptcy

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### ABSTRACT

A basic question for the design of bankruptcy law concerns whether value should be divided in accordance with absolute priority. Research done in the past decade has suggested that deviations from absolute priority have beneficial ex ante effects. In contrast, this paper shows that ex post deviations from absolute priority also have negative effects on ex ante decisions taken by shareholders. Such deviations aggravate the moral hazard problem with respect to project choice—increasing the equityholders incentive to favor risky projects—as well as with respect to borrowing and dividend decisions.

### REFERENCES

Adler, Barry E., 1992, Bankruptcy and risk allocation, *Cornell Law Review* 77, 439–489.

[PubMed](#) | [Web of Science®](#) | [Google Scholar](#)

Aghion, Philippe, Oliver Hart, and John Moore, 1992, The economics of bankruptcy reform, *Journal of Law, Economics and Organization* 8, 523–546.

[Google Scholar](#)

Baird, Douglas G., 1986, The uneasy case for corporate reorganizations, *Journal of Legal Studies*, 15, 127–147.

[Web of Science®](#) | [Google Scholar](#)

Baird, Douglas G., 1991, The initiation problem in bankruptcy, *International Review of Law and Economics* 11, 223–232.

[Google Scholar](#)

Bebchuk, Lucian A., 1988, A new approach to corporate reorganizations, *Harvard Law Review* 101, 775–804.

[Web of Science®](#) | [Google Scholar](#)

Bebchuk, Lucian A., 1991, The effects of Chapter 11 and debt renegotiation on ex ante corporatedecisions, Discussion Paper No. 104, *Program in Law and Economics, Harvard Law School*.

[Google Scholar](#)

---

Bebchuk, Lucian A., 1998, Chapter 11, in *The New Palgrave Dictionary of Economics and the Law* (Macmillan, London).

[Google Scholar](#)

---

Bebchuk, Lucian A., 1999, A generalization of the option scheme in bankruptcy, mimeo, Har-vard University.

[Google Scholar](#)

---

Bebchuk, Lucian A., 2000, Using options to divide value in corporate bankruptcy, *EuropeanEconomic Review* 44, 829-843.

[Google Scholar](#)

---

Bebchuk, Lucian A., and Howard Chang, 1992, Bargaining and the division of value in corpo-rate reorganization, *Journal of Law, Economics and Organization* 8, 253-279.

[Google Scholar](#)

---

Bebchuk, Lucian A., and Jesse Fried, 1996, The uneasy case for the priority of secured claimsin bankruptcy, *Yale Law Journal* 105, 857-934.

[Web of Science®](#) | [Google Scholar](#)

---

Bebchuk, Lucian A., and Jesse Fried, 2001, A new approach to valuing secured claims in bank-ruptcy, *Harvard Law Review* 114, 2386-2436.

[Web of Science®](#) | [Google Scholar](#)

---

Bebchuk, Lucian A., and Randal Picker, 1993, Bankruptcy rules, managerial entrenchment, and firm-specific human capital, *Law & Economics Working Paper No. 16, The University of Chicago Law School*.

[Google Scholar](#)

---

Berkovitch, Elazar, and Ronen Israel, 1998, The bankruptcy decision and debt contract renego-tiations, *European Finance Review* 2, 1-27.

[Google Scholar](#)

---

Berkovitch, Elazar, and Ronen Israel, 1999, Optimal bankruptcy law across different economicsystems, *The Review of Financial Studies* 12, No. 2, 347-377.

[Web of Science®](#) | [Google Scholar](#)

---

Berkovitch, Eli, Ronen Israel, and Jaime F. Zender, 1997, An optimal bankruptcy law and firm-specific investments, *European Economic Review* **41**, 487–497.

[Web of Science®](#) | [Google Scholar](#)

---

Berkovitch, Eli, Ronen Israel, and Jaime F. Zender, 1998, The design of bankruptcy law: A case for management bias in bankruptcy reorganizations, *Journal of Financial and Quantitative Analysis* **33**, 441–464.

[Google Scholar](#)

---

Betker, Brian, 1995, Management's incentives, equity's bargaining power, and deviations from absolute priority in Chapter 11 bankruptcies, *Journal of Business* **68**, 161–183.

[Web of Science®](#) | [Google Scholar](#)

---

Bhattacharyya, Sugato, and Rajdeep Singh, 1999, The resolution of bankruptcy by auction: Allocating the residual right of design, *Journal of Financial Economics* **54**, 269–294.

[Web of Science®](#) | [Google Scholar](#)

---

Brown, David T., 1989, Claimholder incentive conflicts in reorganization: The role of bankruptcy law, *Review of Financial Studies* **2**, 109–123.

[Web of Science®](#) | [Google Scholar](#)

---

Carapeto, Maria, 2000, Is bargaining in Chapter 11 costly? Working Paper, London City University Business School.

[Google Scholar](#)

---

Cutler, David N., and Lawrence G. Summers, 1988, The costs of conflict resolution and financial distress: Evidence from the Texaco-Pennzoil litigation, *Rand Journal of Economics* **19**, 157–172.

[Web of Science®](#) | [Google Scholar](#)

---

Eberhart, Allan C, William T. Moore, and Rodney L. Roenfeldt, 1990, Security pricing and deviations from the AP rule in bankruptcy proceedings, *Journal of Finance* **45**, 1457–1469.

[Google Scholar](#)

---

Eberhart, Allan C, and Lemma W. Senbet, 1993, Absolute priority rule violations and risk incentives for financially distressed firms, *Financial Management*, 101–114.

[Web of Science®](#) | [Google Scholar](#)

Franks, Julian R., Kjell Nybourg, and Walter N. Torous, 1996, A comparison of U.S., U.K., and German insolvency codes, *Financial Management* 25, 19–30.

[Google Scholar](#)

---

Franks, Julian R., and Walter N. Torous, 1989, An empirical investigation of U.S. firms in reorganization, *Journal of Finance* 44, 747–769.

[Google Scholar](#)

---

Franks, Julian R., and Walter N. Torous, 1994, A comparison of financial restructuring in distressed exchanges and Chapter 11 reorganizations, *Journal of Financial Economics* 35, 349–370.

[Web of Science®](#) | [Google Scholar](#)

---

Gertner, Robert, and David Scharfstein, 1991, *A theory of workouts and the effects of reorganization law*, *Journal of Finance* 46, 1189–1222. M. Giammarino, Ronald, 1989, The resolution of financial distress, *Review of Financial Studies* 2, 25–47.

[Google Scholar](#)

---

Gilson, Stuart C, Kose John, and Larry H. P. Lang, 1990, Troubled debt restructurings: An empirical study private reorganization of firms in default, *Journal of Financial Economics* 27, 315–353.

[Web of Science®](#) | [Google Scholar](#)

---

Green, Richard C, 1984, Investment incentives, debt, and warrant, *Journal of Financial Economics* 13, 115–136.

[Web of Science®](#) | [Google Scholar](#)

---

Hart, Oliver, 1995, *Firms, Contracts, and Financial Structure*, Clarendon Lectures in Economics (Oxford University Press, Oxford).

[Google Scholar](#)

---

Heinkel, Robert, and Josef Zechner, 1993, Financial distress and optimal capital structure adjustments, *Journal of Economics & Management Strategy* 2, No. 4, 531–565.

[Web of Science®](#) | [Google Scholar](#)

---

Jensen, Michael, 1991, Corporate control and the politics of finance, *Journal of Applied Corporate Finance* 4, 13–33.

[Google Scholar](#)

Jensen, Michael C, and William H. Meckling, 1976, Theory of the firm: Managerial behavior, agency costs and ownership structure, *Journal of Financial Economics* 3, 305-360.

[Google Scholar](#)

Lang, Larry, and Rene Stulz, 1992, Contagion and competitive intra-industry effects of bank-ruptcy announcements, *Journal of Financial Economics*, 45-60.

[Google Scholar](#)

Povel, Paul, 1996, Optimal "Soft" or "Tough" Bankruptcy Procedures, Financial Markets Group Discussion Paper No. 240, *London School of Economics*.

[Google Scholar](#)

Rhodes-Kropf, Matthew, and S. Viswanathan, 2000, Corporate reorganizations and non-cash auctions, *Journal of Finance* 55, 1807-1849.

[Web of Science®](#) | [Google Scholar](#)

Smith, Clifford W, Jr., and Jerold B. Warner, 1979, On financial contracting: An analysis of bond covenants, *Journal of Financial Economics* 7, 117-161.

[Google Scholar](#)

Warner, Jerold B., 1977, Bankruptcy costs: Some evidence, *Journal of Finance* 32, 337-347.

[Web of Science®](#) | [Google Scholar](#)

Weiss, Lawrence A., 1990, Bankruptcy resolution: Direct costs and violation of priority of claims, *Journal of Financial Economics* 13, 137-151.

[Google Scholar](#)

White, Michelle J., 1989, The corporate bankruptcy decision, *Journal of Economic Perspectives* 3, 129-151.

[Google Scholar](#)

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