

Family Firms and Closed Companies in Germany and Spain

Edited by
HOLGER FLEISCHER, ANDRÉS RECALDE,
and GERALD SPINDLER

*Max-Planck-Institut
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Mohr Siebeck

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Preface

Family firms and closed companies in general play a crucial role in economic development across the globe. They are the most widespread form of business organization today, and this is particularly true for Germany and Spain. Despite all this, they have been neglected as a research topic for many years. More recently, however, there are signs that the academic tide is turning: Family firms and closed companies are slowly, but steadily receiving more attention in law schools and business schools. This encouraged us to make them the focus of our German-Spanish symposium, to take stock of the current state of legal research in this area and to explore promising avenues for future research.

This volume is based on the updated presentations delivered at the German-Spanish symposium in March 2019 at the Max Planck Institute for Comparative and International Private Law in Hamburg. We would like to thank all participants for their valuable and much appreciated contributions. Janina Jentz, Jennifer Trinks and Ina Freisleben took care of the editing process, and their help is gratefully acknowledged. Last, but not least, our sincere thanks go to Jocasta Godlieb and Michael Friedman for providing valuable language editing service.

Hamburg, Madrid and Göttingen,
November 2020

Holger Fleischer
Andrés Recalde
Gerald Spindler

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Abbreviations

AAMN	Anales de la Academia Matritense del Notariado
AcP	Archiv für die civilistische Praxis
ADC	Anuario de Derecho Civil
AG	Aktiengesellschaft/ Die Aktiengesellschaft (Journal)
AktG	Aktiengesetz
Am. J. Comp. L. Supp.	The American Journal of Comparative Law Supplements
AP	Audiencia Provincial
Ariz. L. Rev.	Arizona Law Review
BB	BetriebsBerater
BeckRS	Beck-Online (Rechtsprechung)
BEE	Boletín de estudios económicos
Berkeley Bus. L. J.	Berkeley Business Law Journal
BGB	Bürgerliches Gesetzbuch
BGBI.	Bundesgesetzblatt
BGH	Bundesgerichtshof
BGHZ	Entscheidungen des Bundesgerichtshofes in Zivilsachen
Brook. J. Int'l L.	Brooklyn Journal of International Law
BT-Drs.	Bundestagsdrucksache
CA	United Kingdom Companies Act
Cal. L. Rev.	California Law Review
Cambridge L. J.	Cambridge Law Journal
CC	Código Civil
CCom	Código de Comercio
CDC	Cuadernos de Derecho y Comercio
CEO	Chief Executive Officer
cf.	confer
CFO	Chief Financial Officer
Clev. St. L. Rev.	Cleveland State Law Review
Colum. L. Rev.	Columbia Law Review
CP	Código Penal
CPI	Consumer Price Index
DB	Der Betrieb
DGRN	Dirección General de los Registros y del Notariado
DNotZ	Deutsche Notar-Zeitschrift
DStR	Deutsches Steuerrecht
EBOR	European Business Organization Law Review
ECFR	European Company and Financial Law Review
ECL	European Company Law

ECLE	European Company Law Experts
ed(s).	edition/editor(s)
e.g.	exempli gratia
et al.	et alii/aliae/alia
et seq.	et sequens
EU	European Union
Eur. J. Law Econ.	European Journal of Law and Economics
FBR	Family Business Review
Fordham L. Rev.	Fordham Law Review
FuS	Zeitschrift für Familienunternehmen und Strategie
GDP	Gross Domestic Product
GmbH	Gesellschaft mit beschränkter Haftung
GmbHG	Gesetz betreffend die Gesellschaften mit beschränkter Haftung
GmbHG-E	Entwurf für ein Gesetz betreffend die Gesellschaften mit beschränkter Haftung
GmbHR	GmbH-Rundschau
Harv. Int'l L. J.	Harvard International Law Journal
Harv. L. Rev.	Harvard Law Review
HGB	Handelsgesetzbuch
Hous. Bus. Tax L. J.	Houston Business and Tax Law Journal
i.e.	id est
INE	Instituto Nacional de Estadística
J. Corp. L.	Journal of Corporation Law
J. Econ. Persp.	Journal of Economic Perspectives
JFBS	Journal of Family Business Strategy
J. Finance	The Journal of Finance
J. Fin. Econ.	Journal of Financial Economics
JM	Juzgado de lo Mercantil
JME	Journal of Monetary Economics
JUR	Sentencias y autos de la Audiencia Nacional, Tribunales Superiores de Justicia, Audiencias Provinciales y Juzgados Aranzadi
JZ	JuristenZeitung
KG	Kommanditgesellschaft
LC	Ley Concursal
LEC	Ley de Enjuiciamiento Civil
LLC	Limited Liability Company
LLM	La Ley Mercantil
LMV	Ley de Mercado de Valores
LSA	Ley de Sociedades Anónimas
LSC	Ley de Sociedades de Capital
MAB	Mercado Alternativo Bursátil

marg. no.	margin number
MBCA	Model Business Corporation Act
MittBayNot	Mitteilungen des Bayerischen Notarvereins, der Notarkasse und der Landesnotarkammer Bayern
NJW	Neue Juristische Wochenschrift
NZBLQ	New Zealand Business Law Quarterly
NZG	Neue Zeitschrift für Gesellschaftsrecht
Ohio St. L. J.	Ohio State Law Journal
OLG	Oberlandesgericht
OLGR	OLG-Report
p.	page
para.	paragraph
RabelsZ	Rabels Zeitschrift für ausländisches und internationales Privatrecht
RCDI	Revista Crítica de Derecho Inmobiliario
RD	Real Decreto
RDBB	Revista de Derecho Bancario y Bursátil
RDCyP	Revista de Derecho Concursal y Paraconcursal
RDGRN	Resolución de la Dirección General de los Registros y del Notariado
RDLeg	Real Decreto Legislativo
RDM	Revista de Derecho Mercantil
RDP	Revista Aranzadi de Derecho Patrimonial
RdS	Revista de Derecho de Sociedades
REFC	Revista Española de Financiación y Contabilidad
RG	Reichsgericht
RGD	Revista General de Derecho
RGLJ	Revista General de Legislación y Jurisprudencia
Riv. dir. civ.	Rivista di diritto civile
Riv. soc.	Rivista delle società
RIW	Recht der Internationalen Wirtschaft
RJ	Repertorio de Jurisprudencia Aranzadi
RJC	Revista Jurídica de Cataluña
RJN	Revista Jurídica del Notariado
RPT	Related Party Transaction
RQFA	Review of Quantitative Finance and Accounting
RRM	Reglamento del Registro Mercantil
RTDcom.	Revue Trimestrielle de Droit Commercial
RTDF	Revue Trimestrielle de Droit Financier
S.A.	Sociedad Anónima
SE	Societas Europea
sent.	sentence
S.L.	Sociedad de Responsabilidad Limitada
SME	Small and Medium-sized Enterprise
SPE	Societas Privata Europaea

SPV	Special Purpose Vehicle
SRD II	Directive (EU) 2017/828 of the European Parliament and of the Council of 17 May 2017 amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement (Shareholder Rights Directive II)
Stan. L. Rev.	Stanford Law Review
StGB	Strafgesetzbuch
TS	Tribunal Supremo
UK	United Kingdom
UMAG	Gesetz zur Unternehmensintegrität und Modernisierung des Anfechtungsrechts
U. Pa. L. Rev.	University of Pennsylvania Law Review
US/USA	United States of America
Va. L. Rev.	Virginia Law Review
vid.	vidit
Vol.	Volume
Wash. & Lee L. Rev.	Washington and Lee Law Review
Yale J. Int'l L.	Yale Journal of International Law
Yale L. J.	Yale Law Journal
ZCG	Zeitschrift für Corporate Governance
ZfB	Zeitschrift für Betriebswirtschaft
ZGR	Zeitschrift für Unternehmens- und Gesellschaftsrecht
ZHR	Zeitschrift für das gesamte Handelsrecht und Wirtschaftsrecht
ZIP	Zeitschrift für Wirtschaftsrecht

An Introduction to Law and Management of Family Firms

Holger Fleischer

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I. Introduction

Family businesses have long been neglected as a research topic, both from a legal and economic perspective.¹ They share this fate with closed companies

¹ From an economic point of view *I. Lansberg/E. L. Perrow/S. Rogolsky*, Family Business as an Emerging Field, *FBR* 1 (1988) 1, 3: “Until very recently, neither organiza-

in general, dominating the corporate landscape nearly everywhere in terms of numbers,² but nonetheless outweighed by large listed stock corporations in terms of academic attention. From an economic point of view, the scholarly neglect of family firms is partly due to the paucity of readily available data that makes empirical research difficult.³ From a legal point of view, one of the main reasons lies in the significant dynamics of capital market regulation which have fascinated many business law professors over the last two decades, leaving them little time for supposedly old-fashioned corners of company law. However, there are signs that the academic tide is turning: Family firms are slowly, but steadily receiving more attention in law schools and business schools.⁴ This encouraged us to make them the focus of our German-Spanish Symposium, to take stock of the current state of legal research on family businesses and explore promising avenues for future research.

This introductory paper addresses four major topics which will be dealt with one after the other: First, it explains in detail why we should be interested in family firms (II.). Second, it points out what makes family businesses different from other businesses (III.). Third, it takes a closer look at the legal forms in which family firms are organized (IV.). Finally, it analyses the governance framework for family businesses through the lens of company law and contract law (V.).

II. Why Should We be Interested in Family Firms?

As regards the motivation for a closer look at family firms, three points seem to be worth highlighting.

tional nor family theorists have paid much attention to family businesses.”; from a legal point of view *B. Means*, *The Contractual Foundation of Family-Business Law*, Ohio St. L. J. 75 (2014), 675: “Most U.S. businesses are family owned, and yet the law governing business organizations does not account adequately for family relationships. Nor have legal scholars paid sufficient attention to family businesses.”

² For a comparative account *H. Fleischer*, *The Law of Close Corporations*, in: Schauer/Verschraegen (eds.), *General Reports of the XIXth Congress of the International Academy of Comparative Law* (Cham 2017) 319 et seq.

³ See also *Lansberg/Perrow/Rogolsky*, *supra* note 1, 3 et seq., putting forward other important reasons as well: “[R]esearchers find it difficult to study both the family and the business simultaneously. They are trained in one field or the other, and they have gained entry through only one of the two systems.”

⁴ See *F. W. Kellermann/F. Hoy*, *Introduction to the Family Business Companion*, in: Kellermann/Hoy (eds.), *The Routledge Companion to Family Businesses* (New York 2017) 1: “Family firm research has seen an exponential growth in output, quality and topics studies. Despite the youth of the field, growing academic interest has been documented through the publication of annotated bibliographies, reflection pieces, literature reviews, meta-analyses and edited volumes.”

1. Family Firms are Fashionable

To begin with, family firms are fashionable. They seem to be everybody's darling these days. Management thinkers like them because family businesses are considered to take a longer-term view than other firms.⁵ They are regarded as a bulwark against short-termism and myopia, under such key terms as patient capital and sustainability.⁶ Politicians like family firms as well because they provide lots of relatively secure jobs and hesitate to lay off staff in times of crisis.⁷ And the public also likes them because they think family firms are more in touch with local communities than firms owned by anonymous shareholders or foreign institutional investors.⁸

2. Family Businesses as the Backbone of the Economy

Moreover, and more importantly, family firms play a crucial role in economic development across the globe. They are the most widespread form of business organization today,⁹ and this is particularly true for Germany. Here, the Foundation for Family Businesses has been investigating the economic significance of family businesses on a regular basis for more than a decade.¹⁰ These are the current figures:

- Family firms account for 90% of all privately-organized firms in Germany,
- they employ 58% of the private sector workforce,
- they generate 52% of the total turnover in the private sector.¹¹

In addition to those data, here are some more remarkable facts from a comparative perspective:

Compared to other modern industrialized economies, there is a high percentage of very large family firms in Germany almost all of which are household names. The illustrious list of the 500 largest family businesses in terms of turnover is headed by the *Schwarz-Group*, operating under the brand name

⁵ See "Schumpeter Reluctant Heirs", *The Economist*, 5 December 2015, 67.

⁶ See *S. Sharma/P. Sharma*, *Patient Capital. The Role of Family Firms in Sustainable Business* (Cambridge 2019).

⁷ "Schumpeter Reluctant Heirs", *supra* note 5, 67.

⁸ "Schumpeter Reluctant Heirs", *supra* note 5, 67.

⁹ See *A. Cahn/D. C. Donald*, *Comparative Company Law* (2nd ed., Cambridge 2018) 558: "Available data shows family firms to be widespread, if not dominant, in most economies."; *T. Zellweger*, *Managing the Family Business* (Cheltenham 2017) 24: "Depending on the definition one uses, roughly 70% to 90% of all firms across the globe are family firms. However, given the lack of a shared definition among the studies on this topic, the exact estimates and their international variation should be taken with a grain of salt."

¹⁰ Beginning with *Stiftung Familienunternehmen*, *Die volkswirtschaftliche Bedeutung der Familienunternehmen* (1st ed., Munich 2007).

¹¹ Figures taken from *Stiftung Familienunternehmen*, *Die volkswirtschaftliche Bedeutung der Familienunternehmen* (5th ed., Munich 2019) 7.

“Lidl”, the fourth-largest retailer in the world, and *Robert Bosch*, producer of automotive components, followed by the *Aldi-Group*, again a discounter, the *Metro-Group*, the *Phoenix-Group*, *Heraeus*, *Henkel*, *Bertelsmann*, *Boehringer Ingelheim* and *Merck*.¹² Depending on the definition¹³ one may also add the carmakers *Volkswagen* and *BMW* to this list, as a leading German newspaper does in its most recent survey of family firms¹⁴: *Volkswagen* had a workforce of 671,000 employees worldwide and generated a turnover of 252,000 billion Euros in 2019, making it the second largest enterprise in Europe, second only to *Royal Dutch Shell*.

Furthermore, a huge majority of the so-called hidden champions¹⁵ in Germany, highly specialized, unknown world market leaders in niche markets, e.g. in the engineering and automotive industries, are family firms.¹⁶ In fact, two-thirds of those hidden champions are family-owned and managed. Overall, one-third of German family firms are exporters which lies at the root of the often-lamented German trade surplus in Europa and the world. In fact, the 500 largest family firms in Germany are almost all globally oriented and have just expanded their foreign market dealings to amount to more than 50% of their total sales.¹⁷

Another interesting fact, albeit often overlooked, is the enormous importance of family firms in underdeveloped rural areas; family firms are key figures in the countryside as taxpayers and employers.

Finally, it is worth mentioning that the top 500 family firms in Germany are on average 101 years old; 26 of them were founded before 1800.¹⁸ The median is in the year 1926, meaning that half of this sample of family businesses were founded in or before that year. The oldest German family businesses are the *Coatinc Company Holding GmbH*, a galvanizing company from Siegen in North Rhine-Westphalia (1502), the *William Pry Holding GmbH*, a company for sewing accessories and automotive supplier from Stolberg near Aachen (1530), and *Freiherr von Poschinger Glasmanufaktur*, a glazier from Frauenau

¹² See *Stiftung Familienunternehmen*, *supra* note 11, 29.

¹³ See *infra* III.1.

¹⁴ See “Die großen deutschen Familienunternehmen”, *Frankfurter Allgemeine Zeitung*, 8 July 2020, 22.

¹⁵ Coining this term *H. Simon*, ‘Hidden champions’: Speerspitze der deutschen Wirtschaft, *ZfB* 60 (1990) 9.

¹⁶ Explaining the background in depth *H. Simon*, *Hidden Champions, Lessons from 500 of the World’s Best Unknown Companies* (Boston 1996); more recently *H. Simon*, *Hidden Champions of the Twenty-First Century: The Success Strategy of Unknown World Market Leaders* (New York 2009).

¹⁷ See *Stiftung Familienunternehmen*, *supra* note 11, 42.

¹⁸ See *Stiftung Familienunternehmen*, *supra* note 11, 30.

in Bavaria (1568).¹⁹ This list unequivocally shows that family firms have always been a formative part of Germany's business landscape.²⁰

3. Family Business Studies and Family Business Law as Emerging Research Fields

Given the economic importance of family firms, it comes as no surprise that they have increasingly triggered academic interest worldwide, both at business and law schools. Business practitioners took the lead, with the first Family Business Center founded in 1962 in Cleveland, Ohio.²¹ The first Chair in family business in the US was established in 1978 at Baylor University, the first European Chair in 1987 at IESE in Spain.²² A major step forward in creating a new field of research was the establishment of the "Family Business Review" in 1988, the first journal devoted exclusively to publishing research on family firms.²³ Today, we find plenty of evidence that family business studies is a subject in its own right²⁴ with annual conferences on family enterprises, specialized textbooks²⁵, handbooks²⁶ and two other journals, the "Journal of Family Business Strategy" launched in 2010 and the "Journal of Family Business Management" launched in 2011.

Legal scholarship is lagging behind. Family business law, the law of family firms, as a separate field of study is almost non-existent at major US and UK law schools. It is a playground for corporate practitioners, for tax and estate planners,²⁷ but not, as many scholars seem to think, for serious legal research – many may be reminded of the old joke about the famous 'non-

¹⁹ According to the list published by the *Stiftung Familienunternehmen*, Die ältesten Familienunternehmen Deutschlands, 6 July 2019.

²⁰ For more illustrations see the family firms covered in *W. Seidel*, Die ältesten Familienunternehmen Deutschlands (Munich 2019).

²¹ See *D. B. Parsons/C. Clarke*, Family Business Centers, in: Kellermann/Hoy (eds.), *The Routledge Companion to Family Businesses* (New York 2017) 580: "Leon and Katie Danco created the first family business center in 1962 in Cleveland, Ohio. The Danco's Center for Family Businesses was independent of any supporting organization."

²² See *P. Sharma/L. Melin/M. Nordquist*, Introduction: Scope, Evolution and Future of Family Business Studies, in: Melin/Nordquist/Sharma (eds.), *The SAGE Handbook of Family Business* (Los Angeles 2014) 1, 12.

²³ Explaining the academic motivation behind this the Editors' Notes by *Lansberg/Perrow/Rogolsky*, *supra* note 1, 1 et seq.

²⁴ Emphasizing this point *Sharma/Melin/Nordquist*, *supra* note 22, 1: "Family business studies is a multidisciplinary field of research that is distinguished from its sister disciplines by its singular focus on the paradoxes caused by the involvement of family in business."

²⁵ See, e.g., *T. Zellweger*, *Managing the Family Business. Theory and Practice* (Cheltenham 2017).

²⁶ See, e.g., *L. Melin/M. Nordquist/P. Sharma* (eds.), *The SAGE Handbook of Family Business* (Los Angeles 2014).

book', *Law of the Horse* consisting of five chapters: Chapter 1: Contracting for a Horse, Chapter 2: Owning a Horse, Chapter 3: Torts by a Horse and Chapter 4: Litigating over a Horse.²⁸ The upshot here is that the horse is not a very useful organizing principle for the study of law.²⁹

This is different with family firms which offer the necessary *distinctiveness* for a new field of legal study.³⁰ Family business law occupies a distinctive factual context at the intersection of different disciplines: company law, family law, and succession law. Family business law therefore merits consideration as a separate field of legal study. Indeed, a couple of German law schools have established Institutes for Family Business Law in recent years, for example in Witten, Bayreuth and Hamburg at Bucerius Law School. At our Institute, we started a research agenda on family firms three years ago. We focus particularly on the comparative legal and interdisciplinary dimensions of family firms, teaming up with our colleagues from the Hamburg School of Business Administration. Our first joint conferences covered topics such as "Family Constitutions" (2017)³¹, "Financing the Family Firm" (2018) and "Ownership Management in Family Firms" (2019)³². The academic groundwork for much of the ensuing legal scholarship was laid in a pioneering handbook written by two Austrian colleagues³³, and has since been com-

²⁷ See *G. Zwick/J. J. Jurinsky*, Tax and Financial Planning for the Closely Held Family Business (Cheltenham 2019).

²⁸ For the standard version of this joke *H. Koh*, Is There a 'New' New Haven School of International Law? *Yale J. Int'l L.* 32 (2007) 559, 572 n. 85.

²⁹ In this sense *D. M. Ibrahim/D. G. Smith*, Entrepreneurs on Horseback: Reflections on the Organization of Law, *Ariz. L. Rev.* 50 (2008) 71, 72. Elaborating on this argument *F. H. Easterbrook*, Cyberspace and the Law of the Horse, 1996 University of Chicago Legal Forum 207: "Lots of cases deal with sales of horses; others deal with people kicked by horses; still more deal with the licensing and racing of horses, or with the care veterinarians give to horses, or with prizes at horse shows. Any effort to collect these strands into a course in 'The Law of the Horse' is doomed to be shallow and to miss unifying principles."

³⁰ Stressing the criterion of distinctiveness for creating a coherent field of legal study *Ibrahim/Smith*, *supra* note 29, 76: "In our view, a new field of legal study is justified when a discrete factual setting generates the need for distinctive legal solutions. This distinctiveness may manifest itself in the creation of a unique set of legal rules or legal practices, in the unique expression or interaction of more generally applicable legal rules, or in unique insights about law."

³¹ From this see for example, *H. Fleischer*, Family Firms and Family Constitution: A Legal Primer, ECL 2018, 11.

³² From this, see, for example, *H. Fleischer*, Organisation der Inhaberfamilie und Ownership Management in Familienunternehmen – eine rechtliche Bestandsaufnahme, BB 2019, 2819.

³³ *S. Kalss/S. Probst*, Familienunternehmen. Gesellschafts- und zivilrechtliche Fragen (Vienna 2013).

plemented by several conference volumes³⁴ and a comprehensive handbook compiled by practitioners and academics.³⁵ Meanwhile, a couple of doctoral theses have also been published on different aspects of family business law.³⁶ A specialized German journal was launched in 2016, “FuS – Zeitschrift für Familienunternehmen und Stiftungen”, which sees itself as a platform for research on family businesses, and publishes both legal and economic papers.

III. What’s Different about Family Firms?

What’s different about banks?, asks a famous paper by *Eugene Fama*.³⁷ Echoing this title, it is crucial to find out in our context: What’s different about family firms? What distinguishes them from non-family firms?

1. Defining Family Firms

Defining family firms is a thorny issue. The definitional debate has troubled family business researchers for years, and seems set to remain a thicket of contention for years to come.³⁸ We will probably have to accept that there is no consensus definition,³⁹ no single definite answer to this question, even less so on an international level, where country-specific features and cultural differences add an additional layer of complexity. This is clearly troublesome because until researchers agree on what a family business is, they will find it difficult to build on each other’s work and to develop a usable knowledge base.⁴⁰

For business law professors, this is reminiscent of the very similar difficulties in defining the closed corporation.⁴¹ Those difficulties have given rise to the witty but nonetheless accurate remark that a closed corporation is like a spiral staircase, hard to describe but recognizable when you see one.⁴² Simi-

³⁴ See, e.g., H. U. Vogt/H. Fleischer/S. Kalss (eds.), *Recht der Familiengesellschaften* (Tübingen 2017).

³⁵ C. Bochmann/J. Cziupka/J. Prütting (eds.), *Münchener Handbuch des Gesellschaftsrechts*, Bd. 9: *Recht der Familienunternehmen* (Munich 2021).

³⁶ See, e.g., G. Krämer, *Das Sonderrecht der Familiengesellschaften, Befund eines gesellschaftsrechtlichen Realtyps und ausgewählte Rechtsfragen* (Baden-Baden 2019).

³⁷ E. Fama, *What’s different about banks?*, JME 15 (1985) 29.

³⁸ For an overview of different approaches to the definitional problem *Zellweger, supra* note 9, Chapter 2: *Defining the family business*, 4 et seq.

³⁹ Coming to the same conclusion A. Colli, *The History of Family Business, 1850–2000* (Cambridge 2003) 6: “Despite its relevance, a useful definition of the family firm is elusive.”

⁴⁰ In this sense *Lansberg/Perrow/Rogolsky, supra* note 1, 2.

⁴¹ See H. Fleischer, *Internationale Trends im Recht der geschlossenen Kapitalgesellschaft*, NZG 2014, 1081 et seq.

larly, a number of definitional proposals for family companies have been made in the corporate law discourse, none of which has prevailed.⁴³ For our purposes, however, the definitional debate does not need to be gone into here. A working definition is sufficient. Thus, two cumulative criteria are important: (a) the majority of the decision-making rights are in the hands of the family, the *control element*, occasionally reduced to a significant influence-element, and (b) the intention of the family to pass the business on to their descendants, the *intergenerational element*.⁴⁴

2. Coordinating Three Social Subsystems: Family – Business – Ownership

Proceeding further on the basis of this working definition, the easiest way to point out the unique features of family firms is to refer to the Three-Circle Model of the Family Business System (see next page)

This model was developed at Harvard Business School by *Renato Tagiuri* and *John Davies* in 1978,⁴⁵ and remains the dominant paradigm today worldwide.⁴⁶ It clearly presents three interdependent and overlapping groups, three circles, elements that make up the family business: family, business and ownership. These three social subgroups have their own beliefs and value systems: What counts in a family context, is love, affection, and solidarity. What matters in a business setting is performance. Company owners tend to primarily value return on equity.

The uniqueness of, and challenge for, family firms is the interaction and coordination of all three subsystems. With the help of this model, one can identify different groups of people with different needs and expectations: There are people who are merely family members, others that are family members and employees, and others again that are family members, employees and shareholders. There are also non-family members, employees and shareholders as well.

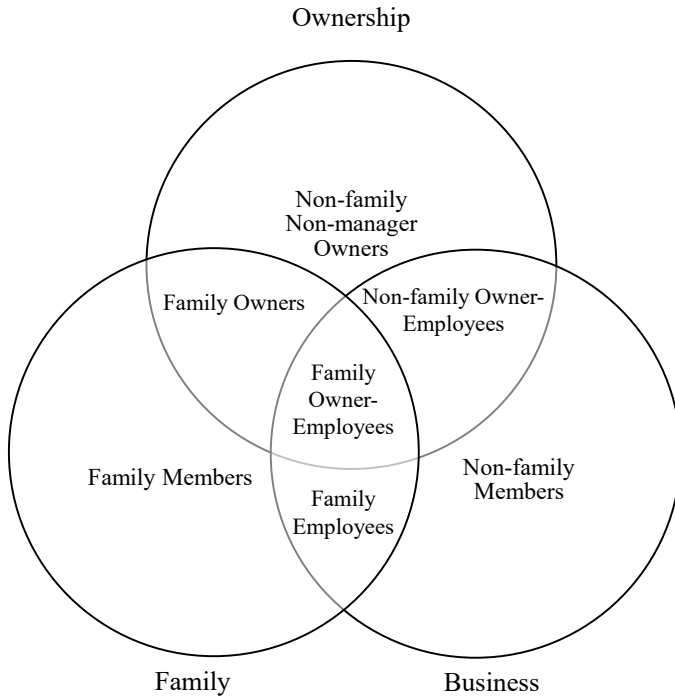
⁴² In this sense *R. A. Kessler*, *With Limited Liability For All: Why Not a Partnership Corporation?*, *Fordham L. Rev.* 36 (1967) 235, 255.

⁴³ For a comprehensive list of these proposals *Krämer*, *supra* note 36, § 3: *Der Meinungsstand zum Begriff der Familiengesellschaft*, 52 et seq.

⁴⁴ For a similar family business definition *Zellweger*, *supra* note 9, 22: “A family firm is a firm dominantly controlled by a family with the vision to potentially sustain family control across generations.”

⁴⁵ For a refined version *R. Tagiuri/J. Davis*, *Bivalent attributes of the family firm*, *FBR* 9 (1996) 199.

⁴⁶ Discussing the advantages and disadvantages of circle models *Zellweger*, *supra* note 9, 18 et seq.

Three-Circle Model of the Family Business System*3. Taxonomies of Family Firms*

Continuing our classification exercise, one can group family firms according to various criteria: their field of business, the strength of the family influence, whether they are listed or not, their size, their age.⁴⁷ These numerous classification features already suggest that the universe of family businesses is more diverse than it may seem at first glance. Therefore, while the fundamental distinction between family and non-family firms remains vital, one must not lose sight of the significant heterogeneity within the population of family firms.

A taxonomy which deserves closer attention in a legal context is one organized around different types of owners in the lifecycle of the family firm. Starting with the founder and sole owner, a typical evolutionary pathway will lead to a sibling company in the second generation and a cousin consortium in the third one, ending up with a true family dynasty at a later stage.⁴⁸ As the

⁴⁷ See *A. Davis*, Toward a Typology of Family Business Systems, in: Tàpies/Ward (eds.), *Family Values and Value Creation* (Basingstoke 2008) 127 et seq.; *P. Sharma/M. Nordquist*, A Classification Scheme for Family Firms, *ibid.*, 71 et seq.

⁴⁸ See *Zellweger*, *supra* note 9, 59 et seq.

number of family shareholders increases and the business grows in size, more sophisticated governance structures will have to be implemented.

Empirical evidence seems to suggest that, for a variety of reasons, it is rare for a family firm to survive three generations.⁴⁹ In fact, many nations and languages have some variant of the American saying: “From shirtsleeves to shirtsleeves in three generations”.⁵⁰ In England they prefer to say “From clogs to clogs in three generations”, the French explain the cycle of wealth and poverty as the ‘law of three generations’: “La première génération construit, la deuxième développe, quand en s’entend, et la troisième fout la boîte par terre”, and the Germans put it like this: “Der Vater erstellt’s, der Sohn erhält’s, dem Enkel zerfällt’s”. This widespread phenomenon of the rise and decline of a family firm within three generations is usually referred to as the *Buddenbrooks syndrome*,⁵¹ deriving its name from German Nobel Prize-winner *Thomas Mann’s* novel “Buddenbrooks”, published in 1901. If one reads the novel carefully, this is actually not fully correct, as Senator *Thomas Buddenbrook* was already a representative of the fourth generation when the trading business was liquidated after his premature death.

It is nonetheless informative and entertaining to analyze a family business in literature from a law and literature perspective.⁵² One of my pet projects is to collect older and more recent novels about family firms. By now, we have identified the usual suspects, with *Charles Dickens’* “Dombey and Son” from the UK, France’s *Emile Zola’s* “The Ladies’ Paradise”, and from Turkey *Orhan Pamuk’s* “Cevdet and his Sons”, and a couple of others⁵³ Along the same lines, a recent paper written by two economists sees great promise in drawing on literary fiction for family business research.⁵⁴ They argue convincingly that

⁴⁹ See *T. Zellweger/R. Nason/M. Nordquist*, From longevity of firms to transgenerational entrepreneurship of families, *FBR* 25 (2012) 136.

⁵⁰ Discussing this commonality *S. Rau*, The Riddle of the Three Generations. Why so many family firms around the world don’t survive long term, Inaugural lecture, King’s College London, 2016; see also *Zellweger*, *supra* note 9, 322.

⁵¹ See *T. C. Barker/M. Lévy-Leboyer*, An Inquiry into the Buddenbrook Effect in Europe, in: *Hannah* (ed.), From Family Firms to Professional Management (Budapest 1982) 10; *T. Hilker*, Das Buddenbrook-Syndrom – Ursache des Niedergangs von Familienunternehmen, *Familiendynamik. Systemische Praxis und Forschung* 26 (2001) 338; *C. Lorandin*, Looking beyond the Buddenbrooks Syndrome: the Salvadori Firm of Trento, 1660s–1880s, *Business History* 57 (2015) 1005.

⁵² See with a broader approach also *V. Chilese*, Die Macht der Familie. Ökonomische Diskurse in Familienromanen, in: *Galli/Costagli* (eds.), *Deutsche Familienromane: Literarische Genealogien und internationaler Kontext* (Munich 2010) 121 et seq.

⁵³ More recently *N. Bossong*, *Gesellschaft mit beschränkter Haftung* (Munich 2012); *E.-W. Händler*, *Fall* (Frankfort-on-the-Main 1997); *M. V. Jung*, *Phönix oder Suppenhuhn: Ein Roman über Nachfolge in einem Familienunternehmen* (Cologne 2018).

⁵⁴ See *M. Nordquist/W. B. Gartner*, Literature, Fiction and the Family Business, *FBR* 33 (2020) 122.