

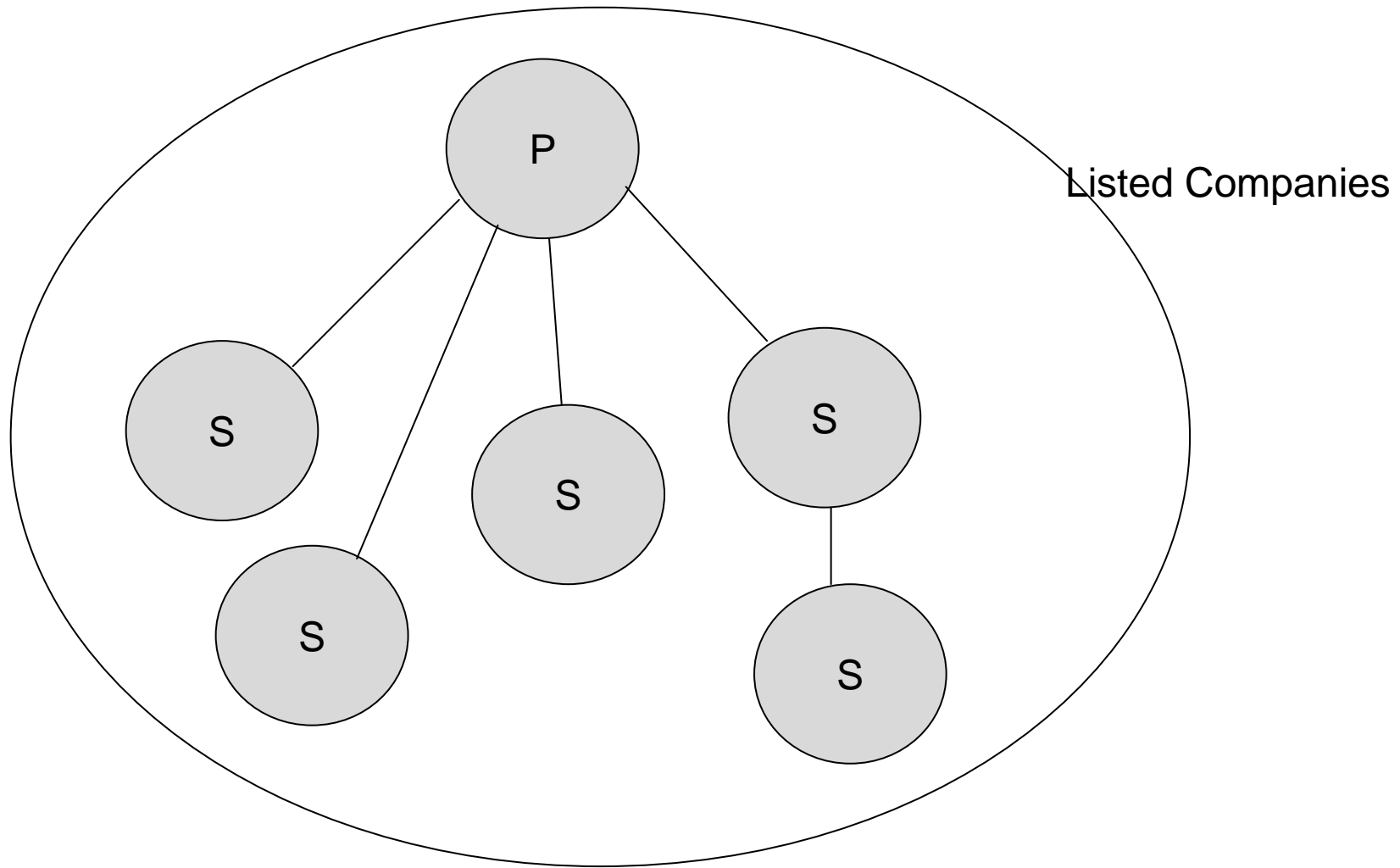
Corporate Governance in Groups of
Companies:
A Perspective of Corporate Law and
Securities Regulation

September 7, 2005

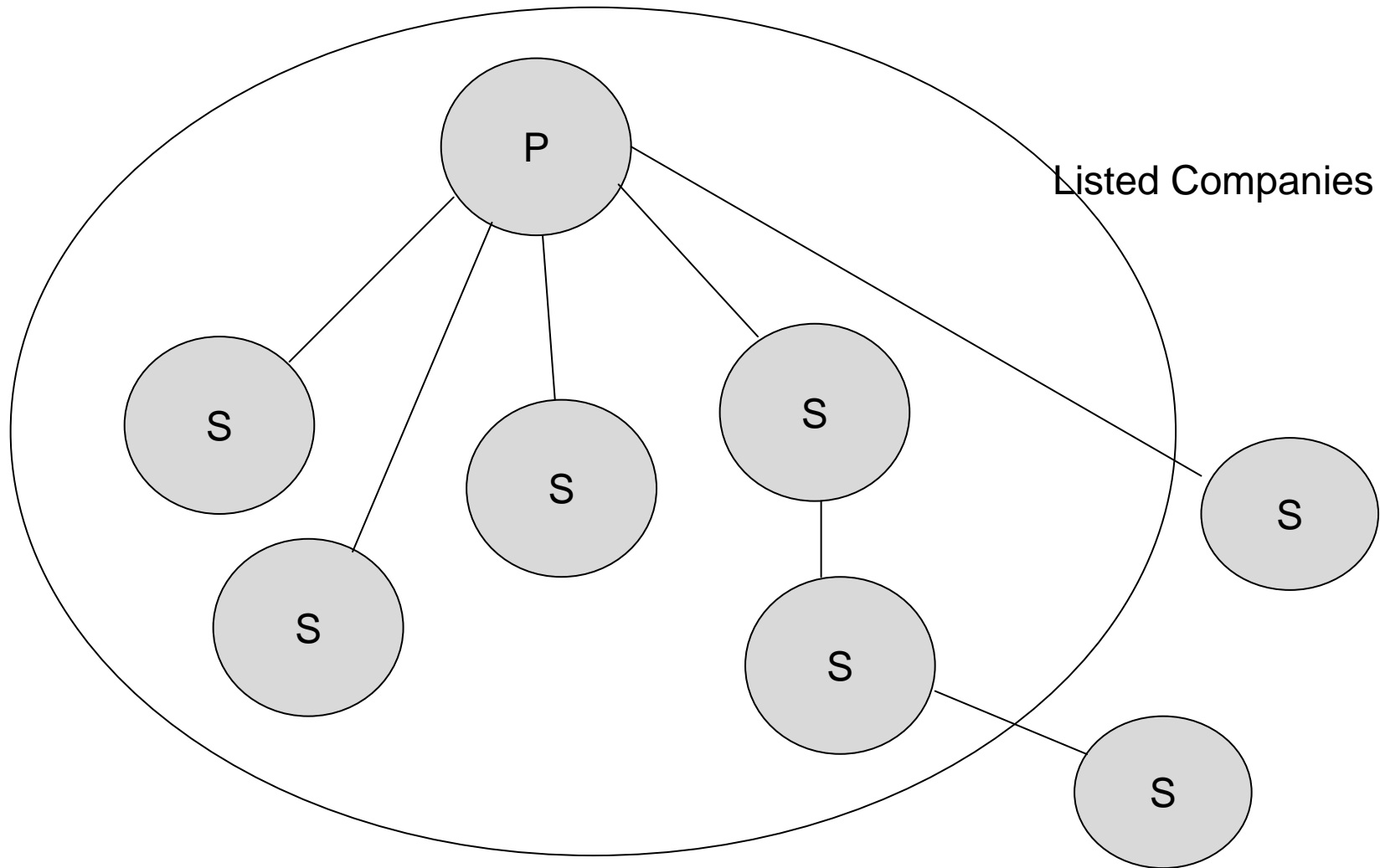
Hideki Kanda

University of Tokyo

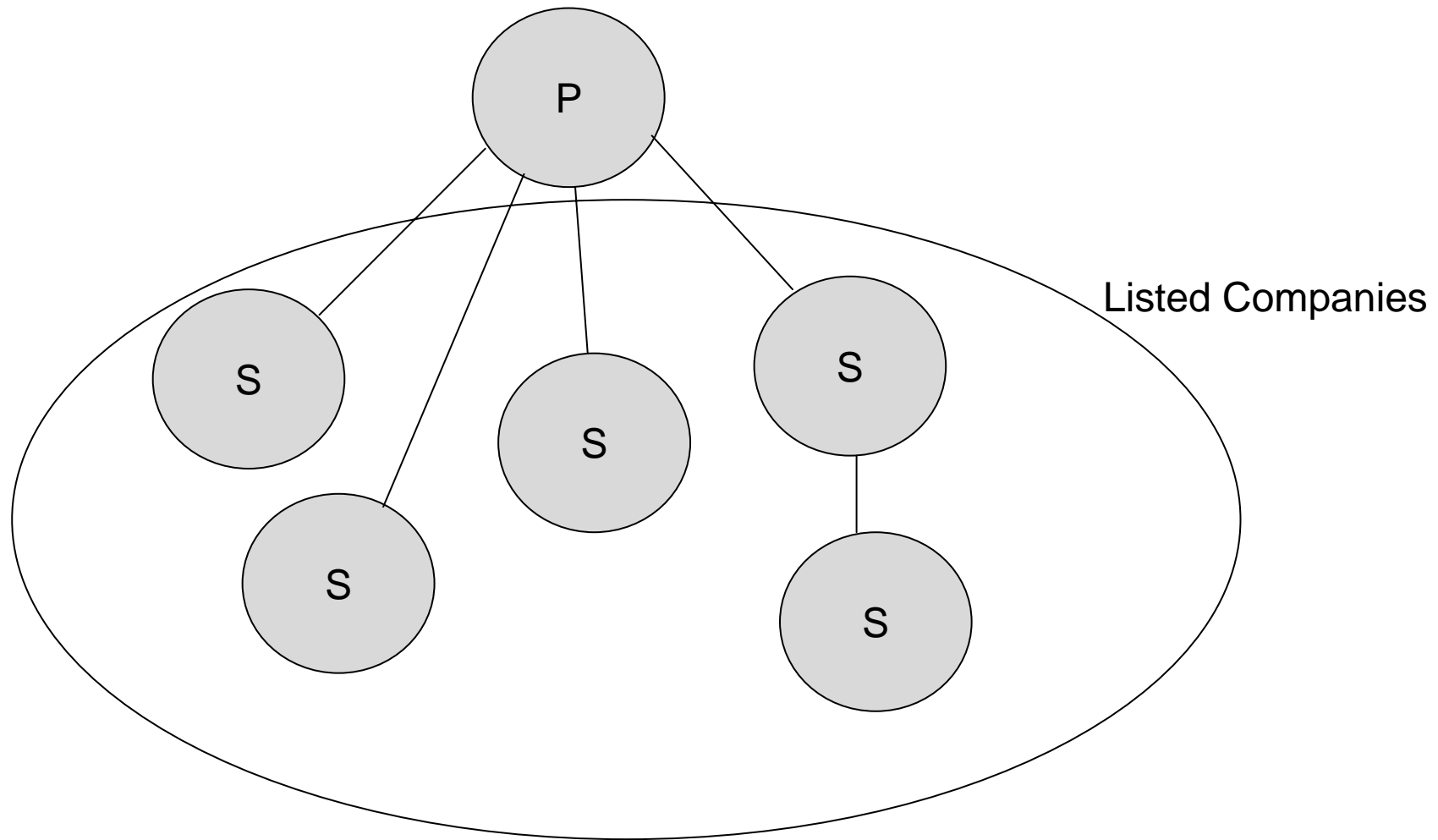
Corporate Groups in Japan : Type 1



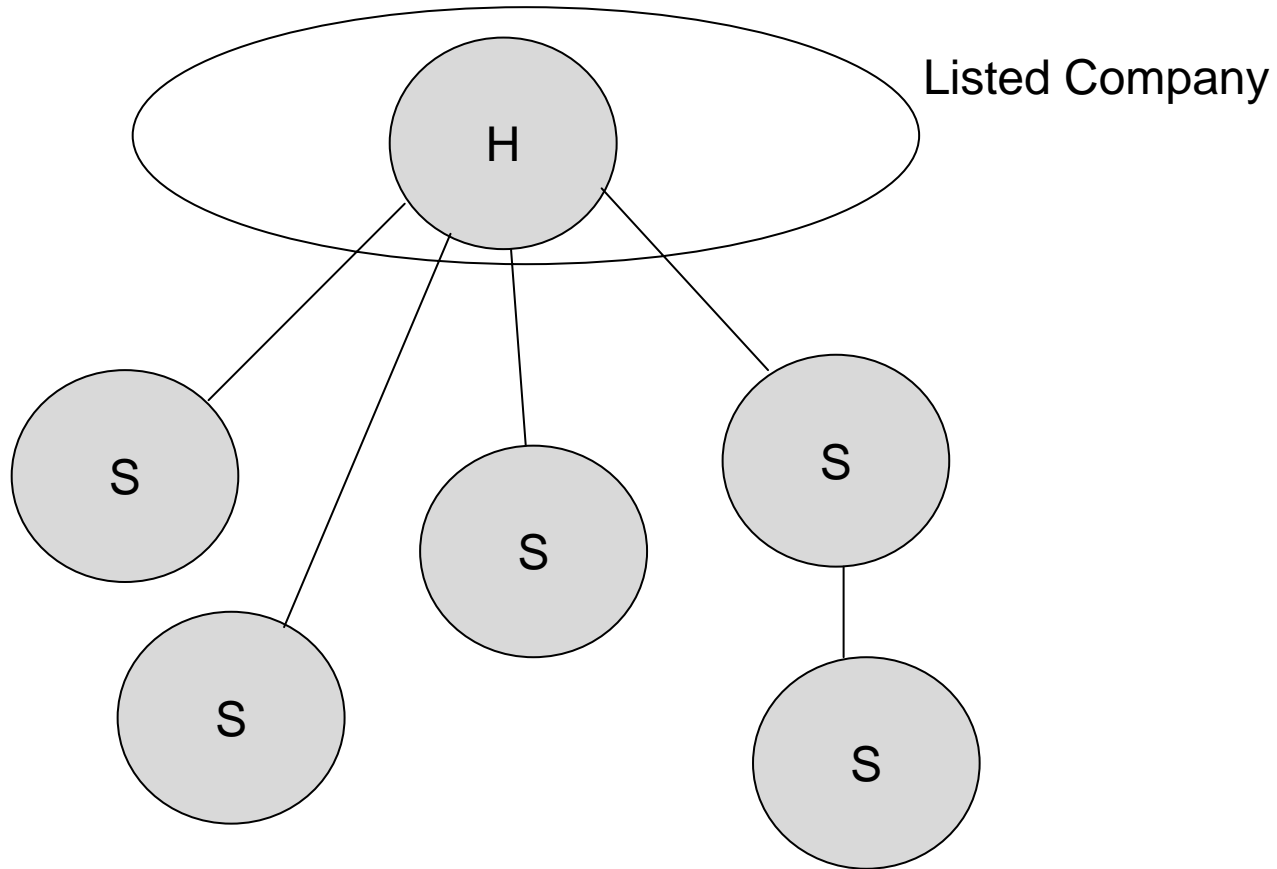
Corporate Groups in Japan : Type 1a



Corporate Groups in Japan : Type 2



Corporate Groups in Japan : Type 3



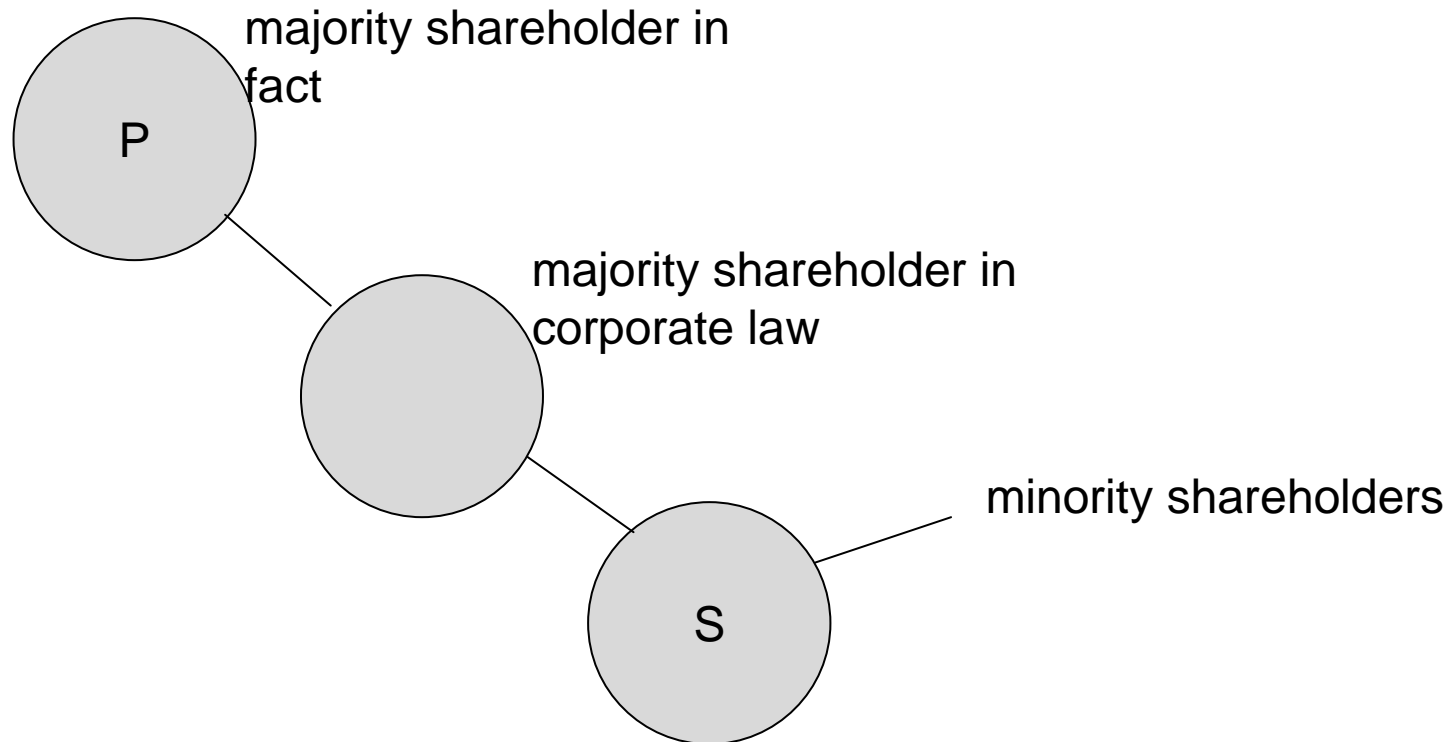
Problems in Corporate Law and Securities Regulation

- Agency Problems
 - Managers/Directors versus Shareholders
 - Majority (or Controlling) Shareholders versus Minority Shareholders
 - Managers/Shareholders versus Other Constituencies (such as Creditors)

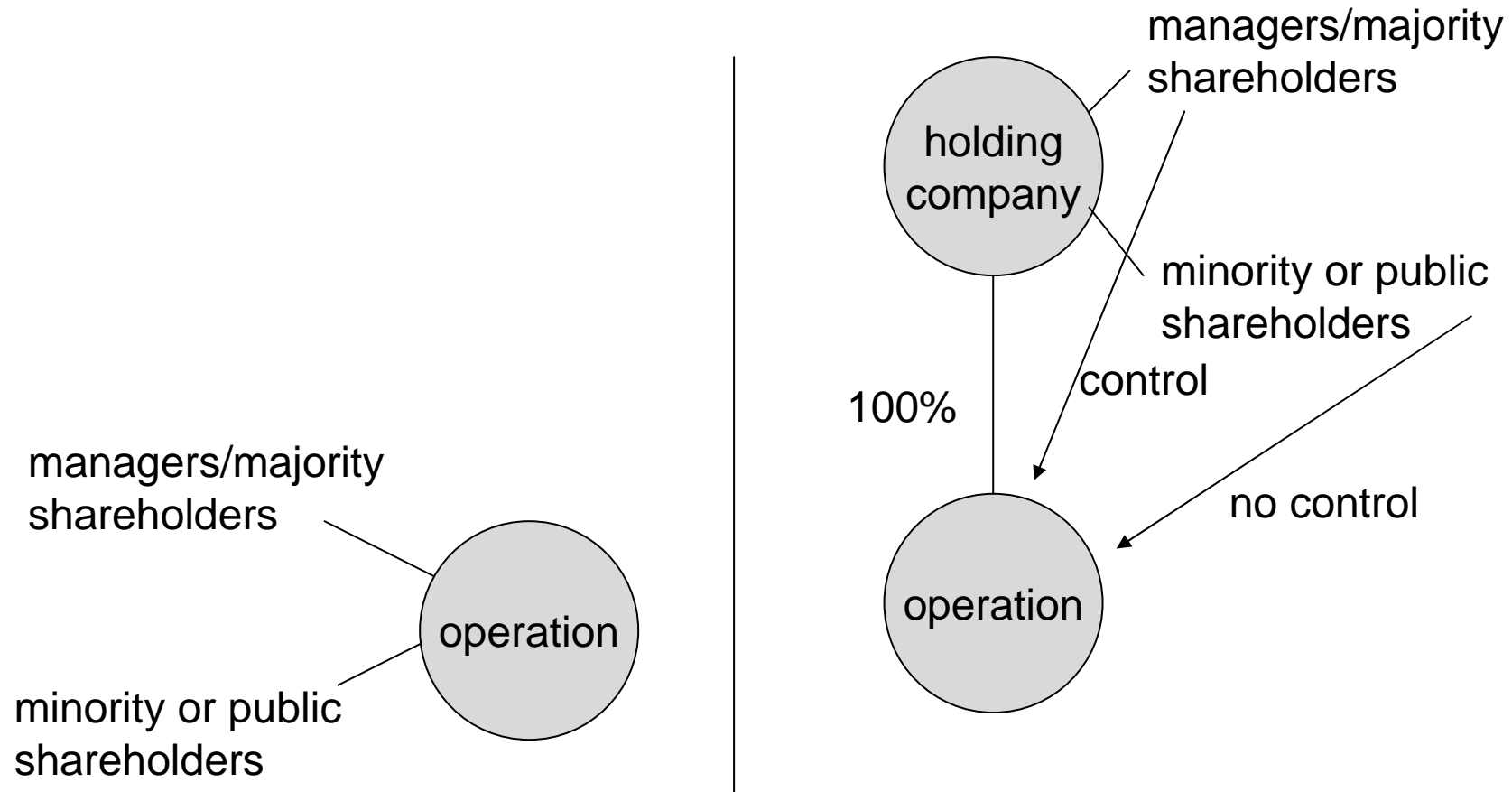
Responses in Corporate Law and Securities Regulation

- Responses
 - Disclosure
 - financial reporting on a consolidated basis
 - disclosure of intra-group transactions
 - disclosure of ownership structure
 - Ex Ante Rules
 - equal treatment of shareholders
 - Ex Post Standards
 - fiduciary duty
 - Other

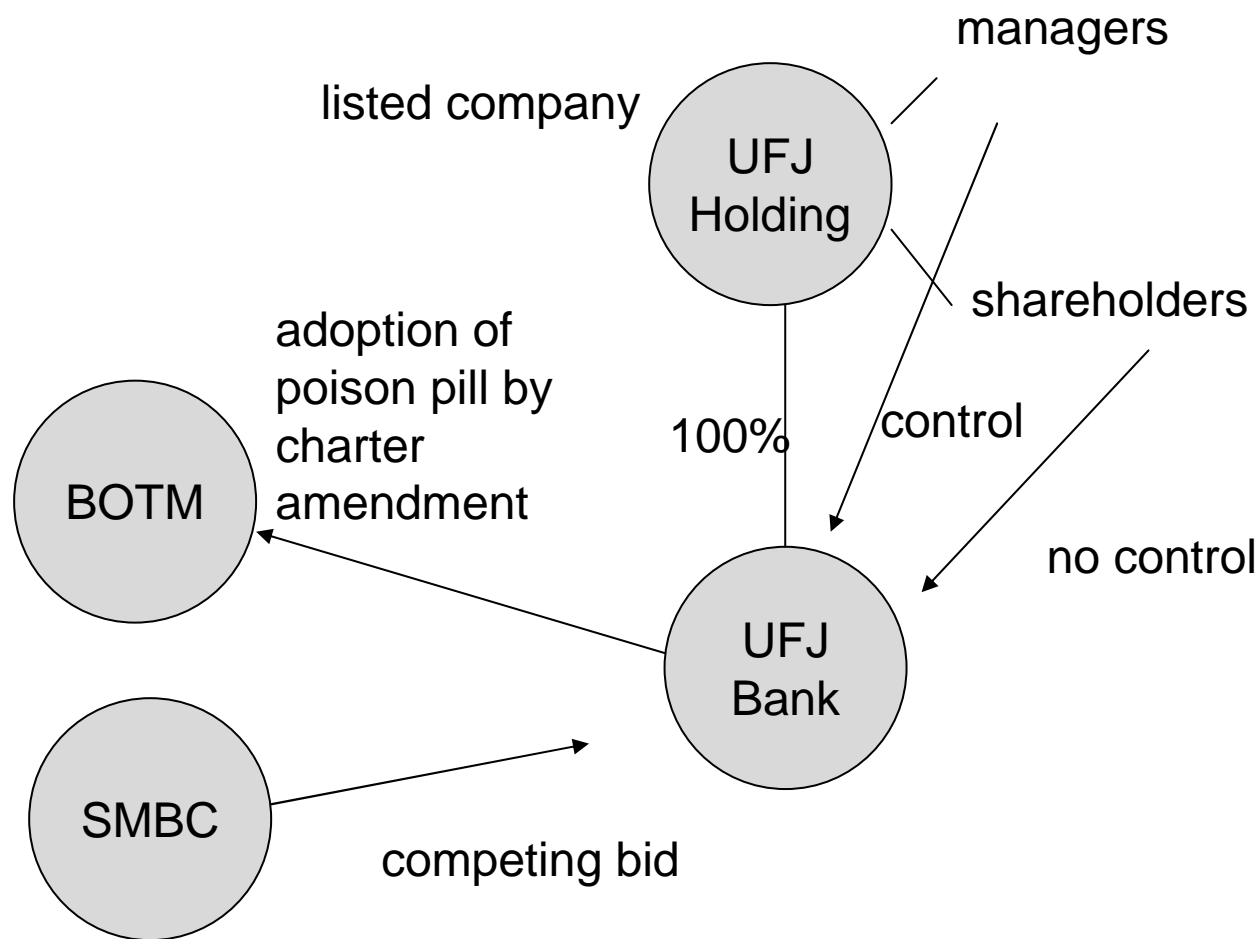
Theme 1-1: A group structure may aggravate agency problems: a simple example



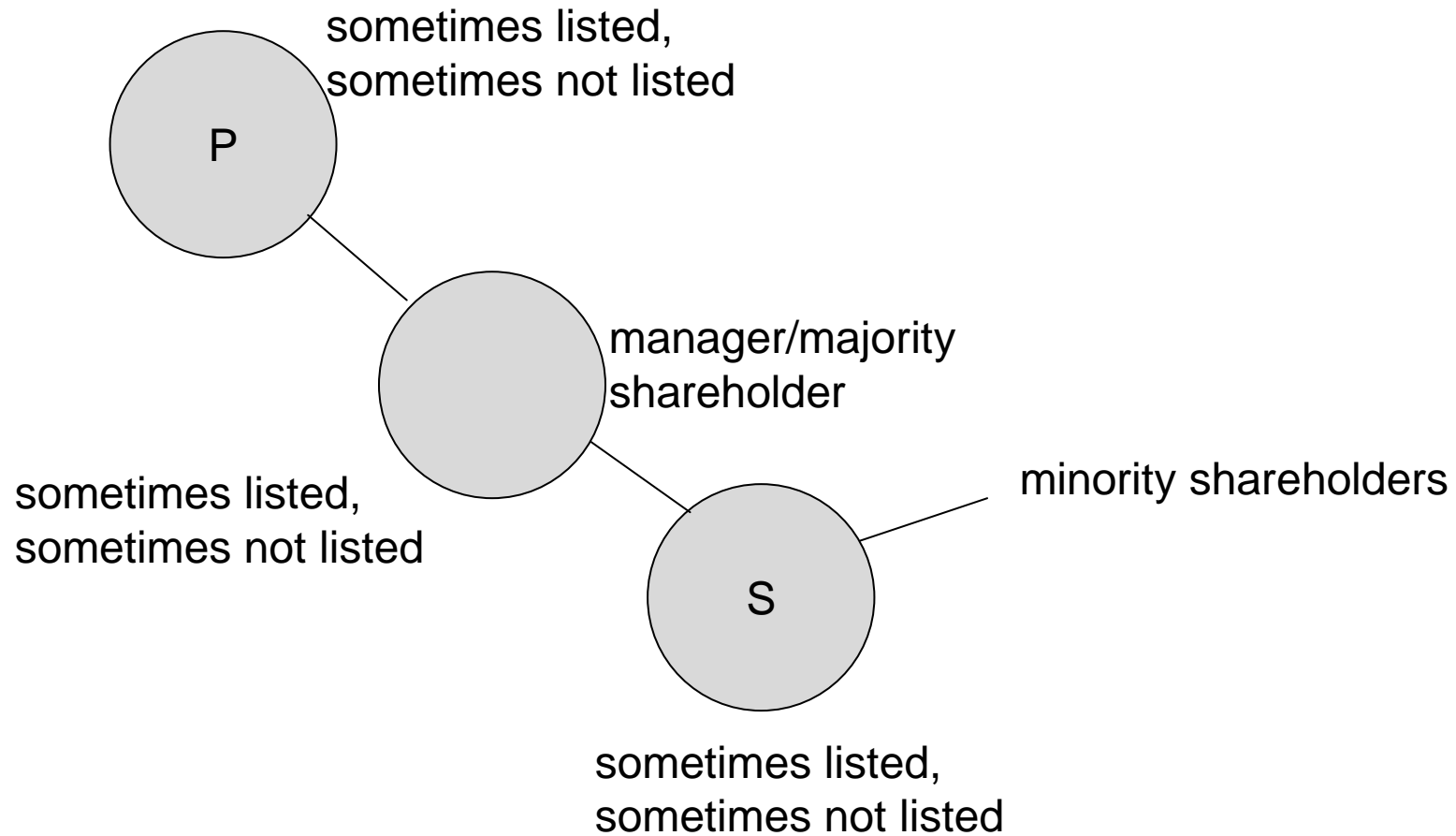
Theme 1-2: A group structure may aggravate agency problems: a holding company example



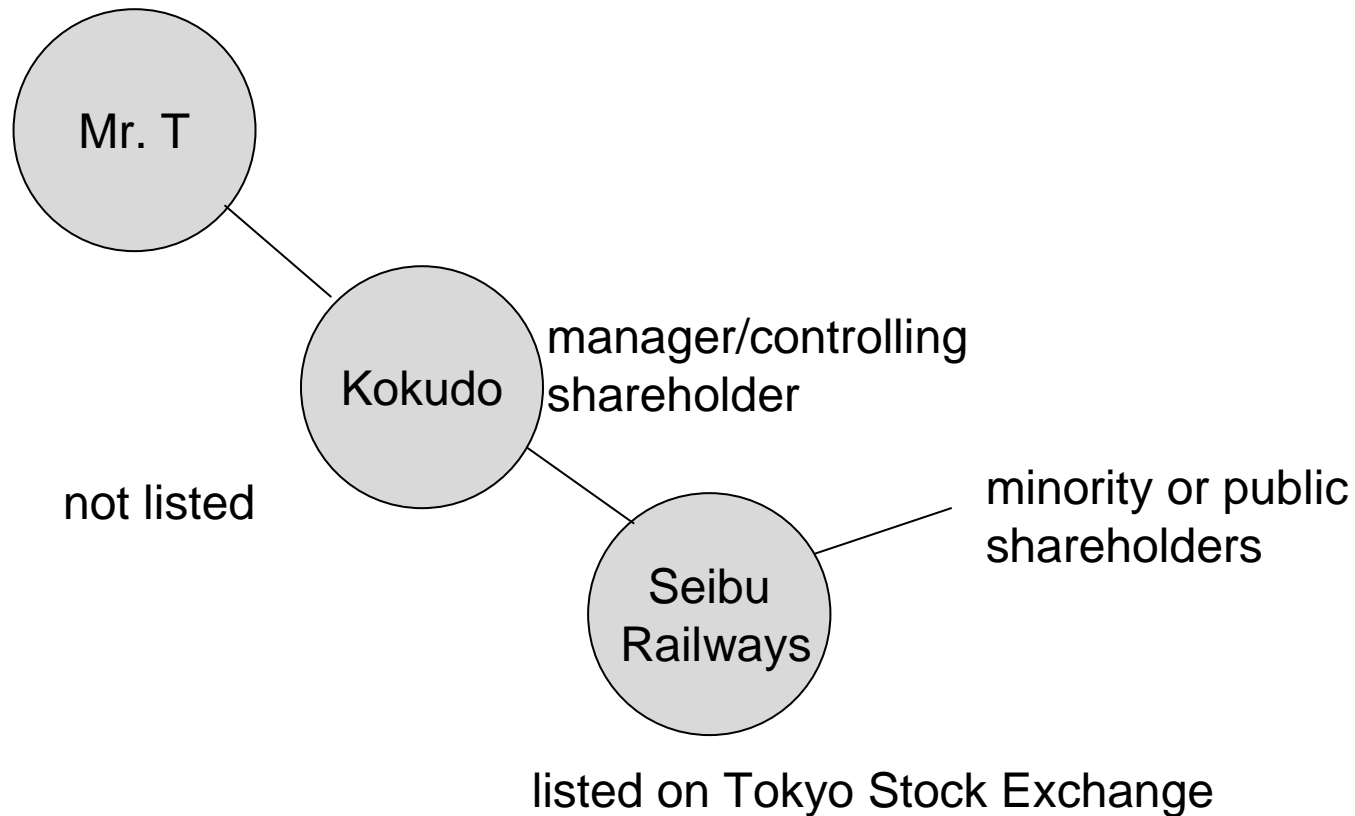
A Real Example for Theme 1-2: A group structure may aggravate agency problems



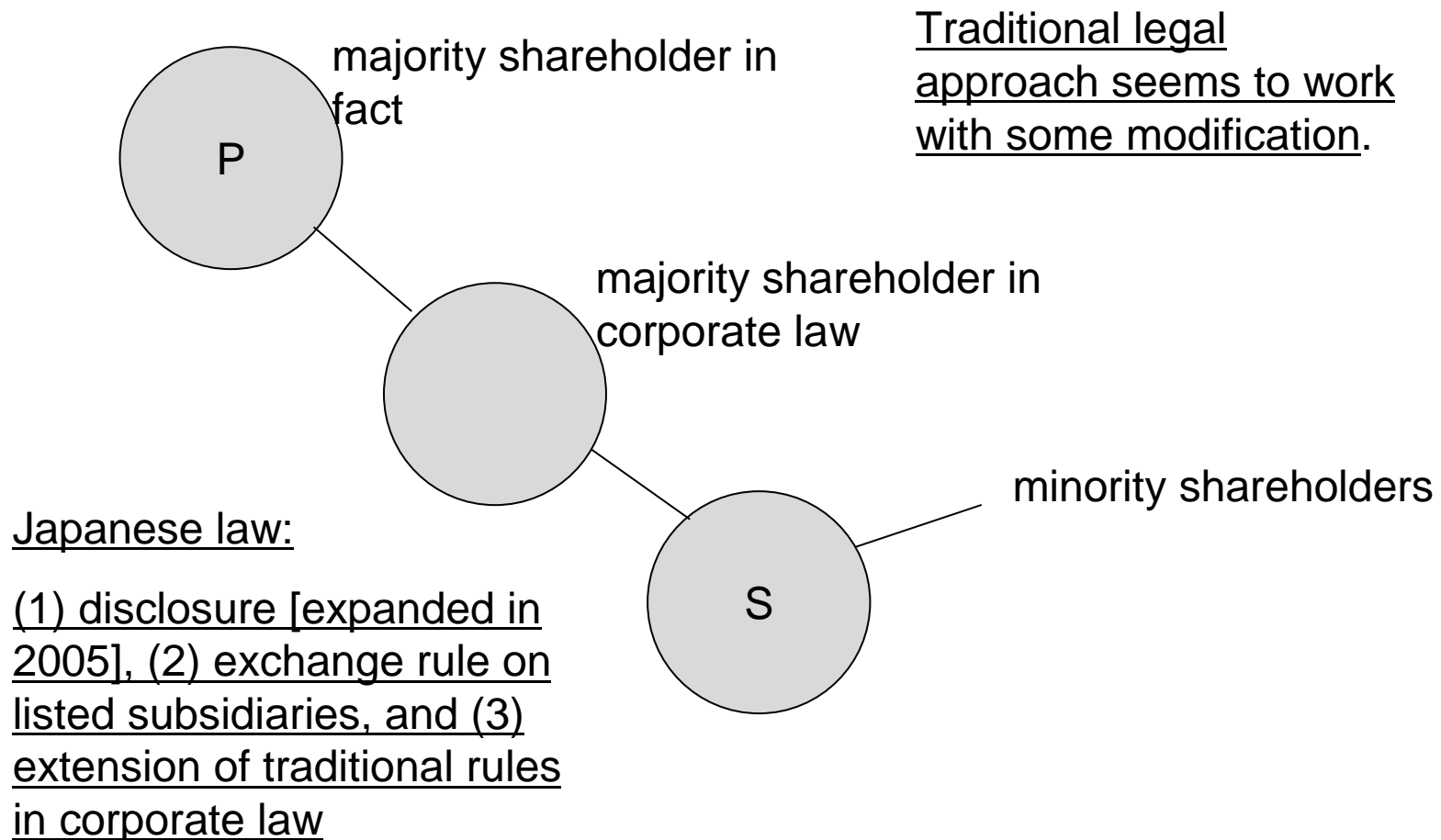
Theme 2: A group may pursue the interest of the group, not the interest of the individual company



A Real Example for Theme 2: A group may pursue the interest of the group, not the interest of the individual company



Pattern 1-1: A group structure may aggravate agency problems: a simple example

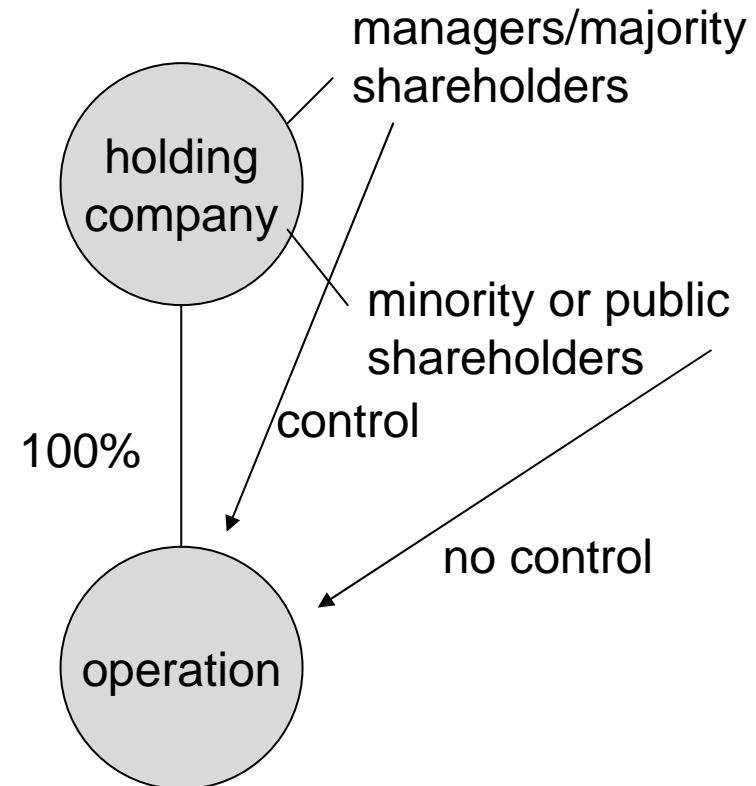


Pattern 1-2: A group structure may aggravate agency problems: a holding company example

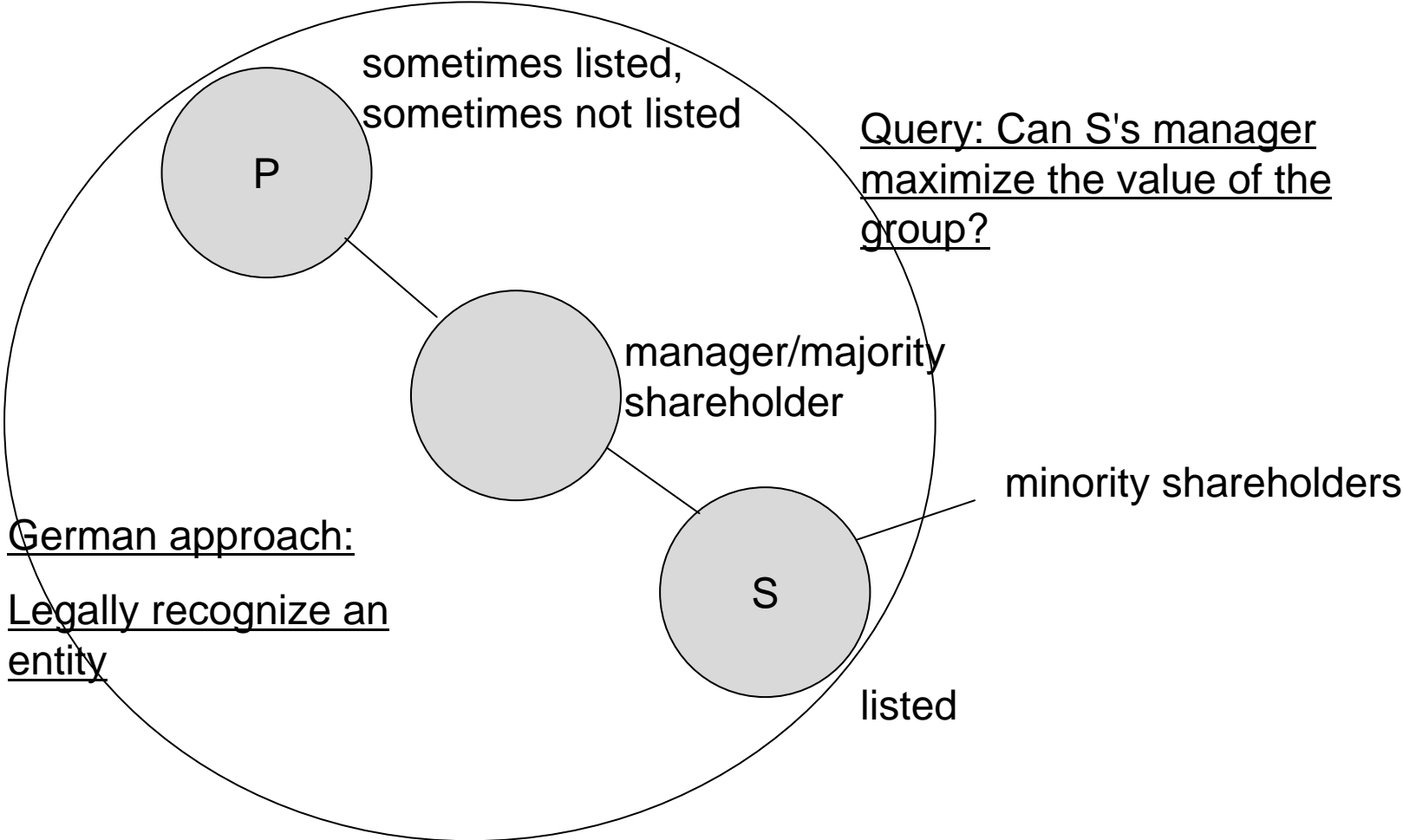
Traditional legal approach seems to work with some modification.

Japanese law:

(1) disclosure, and (2) extension of traditional rules in corporate law



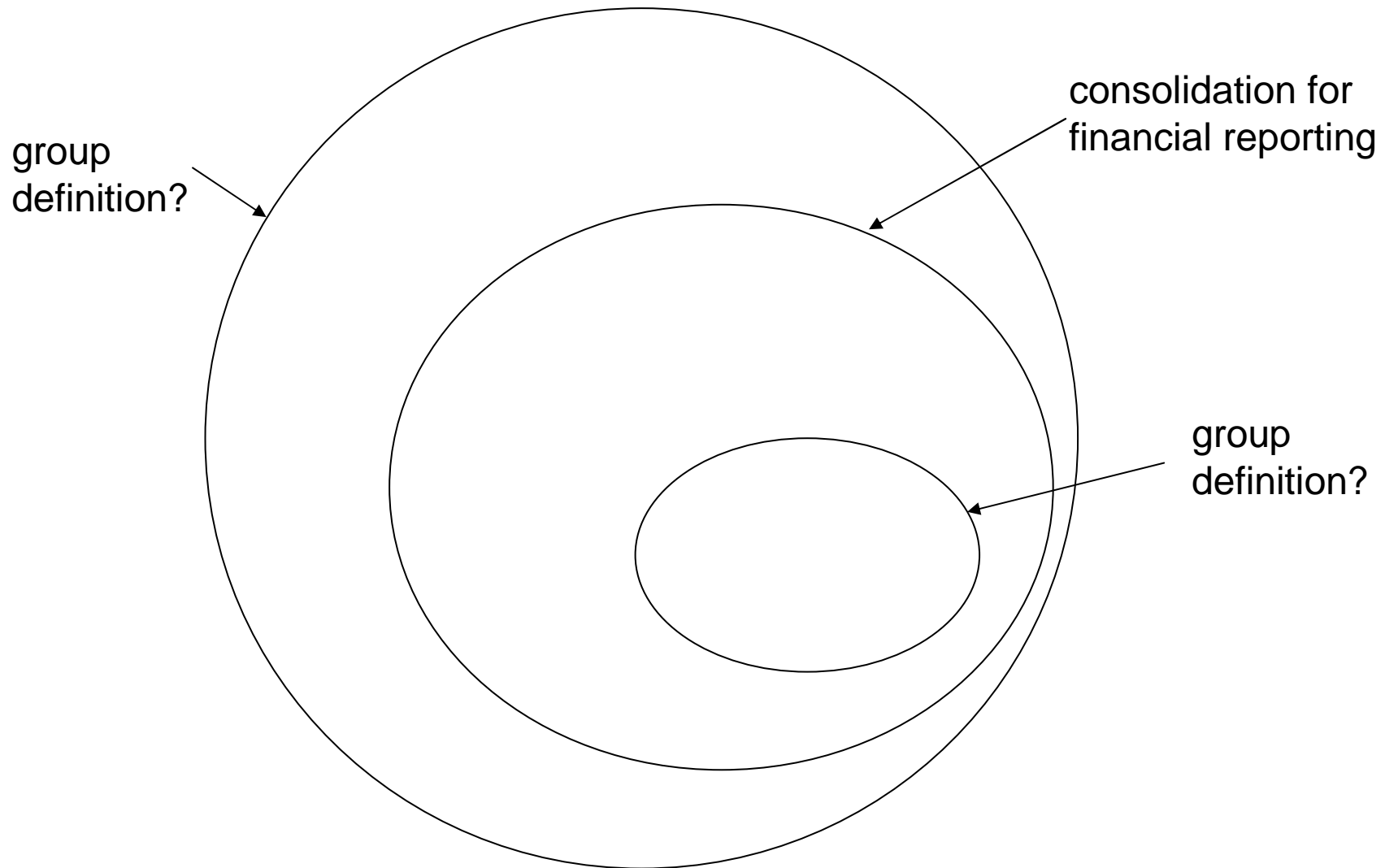
Pattern 2: A group may pursue the interest of the group, not the interest of the individual company



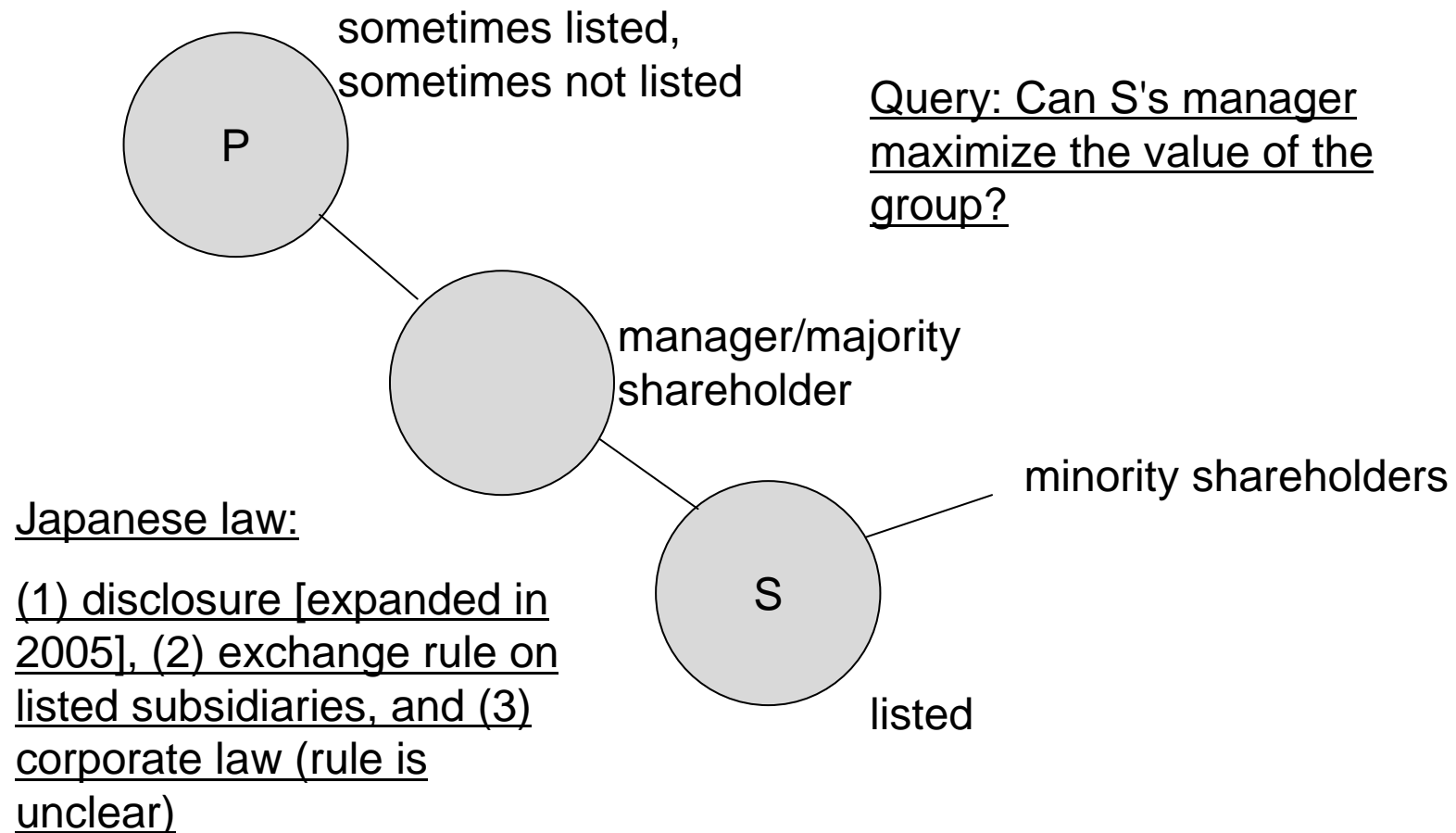
Fundamental Problem in Law's Recognizing a Group as One Entity

- There are a variety of groups.
- It is difficult to define a group and apply "rules and standards" provided by traditional corporate law.
- As a result, any attempt to define a group and regulate it may lead to being over-inclusive or under-inclusive.

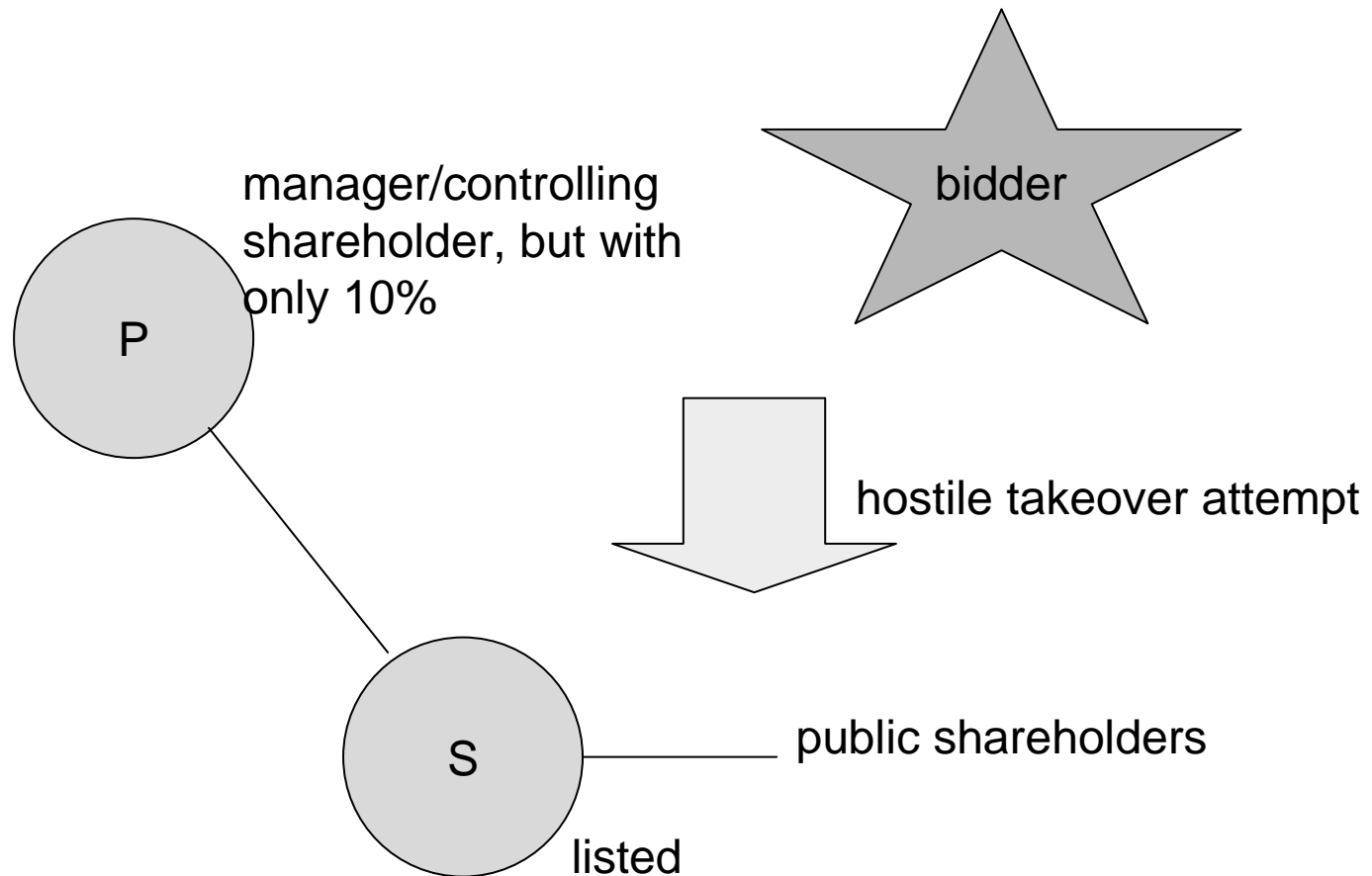
Scope of Consolidation and Group



Pattern 2: A group may pursue the interest of the group, not the interest of the individual company



An addendum: rethinking listed subsidiaries hostile takeover battles and the market for corporate control in Japan



Conclusion

- Disclosure
 - Disclosure is helpful.
 - Disclosure delegates the solution to the market place.
 - For disclosure to work, proper infrastructure is important.
- Rules and Standards
 - Pattern 1 seems relatively easy.
 - Pattern 2 seems more difficult.
- How can we regulate an entity which the law does not recognize?