

Seminar in Advanced Comparative Corporate Law – FALL 2018

LAW 6936 - 2 credits

Prof. Seth Chertok
Visiting Associate Professor of Law
University of Florida Levin College of Law

Welcome to this Seminar. I hope that you will all enjoy the semester as much as getting one step closer to becoming excellent corporate lawyers!!!

Course Duration: Tuesday, Aug. 14 – Tuesday, Nov. 14

Class Meeting Times and Place: Tuesday afternoons at 3:00 – 4:40 pm, in Room 354

Office Hours: As needed

Paper Turn-In Date: Thursday, December 13 by 5 PM EST at the latest (this is the very end of the exam period and the school will not permit any extensions – I advise turning in the paper a bit before the deadline, so that I can give you constructive feedback)

Course Overview

The central question in corporate law is, from an internal corporate governance perspective, how to make the corporate system successful, for both the shareholder owners of the corporation and the broader society. Unlike in a standard corporations class, we'll examine this question comparatively and study answers that are as converging as diverging!

Our course will start with a 2018 Chertok article on comparative corporate law, then we'll proceed to working through an introductory casebook and finally conclude with global law review articles.

Course Objectives

General thinking skills

- Learn to piece together the individual “trees” that we study to develop a compass to find your own “stars”
- Understand the interrelationships of the different corporate law topics that we study, and how you might apply those interrelationships to novel problems in law and business
- Improve critical thinking skills, so that you will have the intellectual foundation to quickly learn additional business law areas as well as new areas, beyond business
- Develop comparative knowledge, skills, and attitudes that improve inter-cultural competence
- Learn to find ex ante solutions for clients – in short, learn how to counsel corporate clients

Corporate law skills

- Read, understand, apply and strategize about how to proceed in the face of U.S. and comparative corporate law statutes and cases, which are essential for corporate lawyers, like physicians that need to understand physiology and pathology, i.e. the law of the body, to diagnose and solve problems
- Learn how to evaluate the theoretical soundness of corporate law, in the light of its purposes, and think about how the law might change in relation to other countries' corporate law purposes
- Master the higher-level principles prized by senior corporate counselors - the federal securities, plus state corporate law corporate governance rights, duties and responsibilities of those who are part of the corporation (shareholders, controlling shareholders, boards, executives and stakeholders), in the face of corporate decision making as well as nonfeasance

Grading and Testing

Seminar Paper Plan

This class will not have a final exam, so you won't be directly held accountable for any specific information. Instead, you should focus on using the course material to enrich your mind to prepare for higher level creative thesis work. Papers can be written on any topic in U.S. or comparative corporate or M&A law. I'm also open to considering a corresponding topic on securities regulation.

Let's please plan to catch up at regular intervals and I'll help you with formulating your paper topics and organizing your outlines. I'm also happy to review and comment on drafts of your papers as needed. I'm available to speak with you by skype or in person and can work with you remotely even after hours in the evenings. I highly recommend bouncing your paper progress by me as your work develops. Please don't put yourself in a last minute effort position!!! My office is in 312H across from the Tax Office and my skype name is sethchertok

Course Grading

The projected weight of each of the components of your Course Grade is as follows:

	Weighting
Class Participation	Roughly 9-14% (<i>though I reserve the right to make a slightly different adjustment</i>)
Seminar Paper	Roughly 86-91%

This class adheres to UF's posted grading policy:

Letter Grade	Point Equivalent
A (Excellent)	4.0
A-	3.67
B+	3.33
B	3.0
B-	2.67
C+	2.33
C (Satisfactory)	2.0
C-	1.67
D+	1.33
D (Poor)	1.0
D-	0.67
E (Failure)	0.0

Further information for UF grading policies for assigning points can be found at:

<https://catalog.ufl.edu/ugrad/current/regulations/info/grades.aspx>

Other UF Policies

Honesty Policy

UF students are bound by The Honor Pledge which states, “We, the members of the University of Florida community, pledge to hold ourselves and our peers to the highest standards of honor and integrity by abiding by the Honor Code. On all work submitted for credit by students at the University of Florida, the following pledge is either required or implied: ‘On my honor, I have neither given nor received unauthorized aid in doing this assignment.’”

The Honor Code (<http://www.dso.ufl.edu/sccr/process/student-conduct-honor-code/>) specifies a number of behaviors that are in violation of this code and the possible sanctions. Furthermore, you are obligated to report any condition that facilitates academic misconduct to appropriate personnel. If you have any questions or concerns, please consult with Prof. Chertok.

Class Attendance, Make-Up Exams, Etc.

Per ABA requirements, please attend all classes, unless you e-mail me in advance with a legitimate excuse. “Requirements for class attendance and make-up exams, assignments, and other work in this course are consistent with university policies that can be found at:

<https://catalog.ufl.edu/ugrad/current/regulations/info/attendance.aspx>

ABA Standard 310 Policy

Students should expect to spend, on average, approximately two hours preparing for every hour of class. It is expected that you will spend time preparing the Q&A in the Pre-Class Slides, as well as the readings, all per the Syllabus.

Disability Policy

Students with disabilities requesting accommodations should first register with the Disability Resource Center (352-392-8565, www.dso.ufl.edu/drc/) by providing appropriate documentation. Once registered, students will receive an accommodation letter which must be presented to Student Affairs (Dean Rachel Inman). Students with disabilities should follow this procedure as early as possible in the semester. Please don't e-mail your request to Prof. Chertok, to preserve student anonymity.

Online Course Evaluations Policy

Students are expected to provide feedback on the quality of instruction in this course by completing online evaluations at <https://evaluations.ufl.edu>. Evaluations are typically open during the last two or three weeks of the semester, but students will be given specific times when they are open. Summary results of these assessments are available to students at <http://evaluations.ufl.edu/results/>.

Technical Issues

If you have technical problems, please contact the UF Help Desk at <http://helpdesk.ufl.edu>

Wellness

If you or a friend is in distress, please contact umatter@ufl.edu or 352-392-1575 so that a team member can reach out to you or your friend.

Reading List

Required Textbook: Marco Ventoruzzo, et al., Comparative Corporate Law (2015)

Supplementary Treatise: Rainier Kraakman, et al., The Anatomy of Corporate Law: A Comparative and Functional Approach (3rd ed. 2017) (*my favorite theoretical corporate law treatise*)

(available as e-book from Oxford University Press -
<http://uf.catalog.fcla.edu/permalink.jsp?20UF035138809>)

Statutory Supplement: My version will be the latest version of: Commentaries and Cases on the Law of Business Organizations, Statutory Supplement, by William T. Allen, Reinier Kraakman and Guhan Subramanian, but you should feel free to use another if you so desire

Global Law Review Articles: See section c. of the Syllabus

Suggested Additional Readings for Law Practice (all on reserve in the library):

- Charles M. Fox, Working with Contracts: What Law School Doesn't Teach You (2d ed. 2008) (*for students interested in how real lawyers would draft corporate contracts – useful to hit the ground running as corporate associates*)
(available as e-book from Bloomberg, w/ password -
<http://uf.catalog.fcla.edu/permalink.jsp?20UF032817458>)
- ABA's Model Merger Agreement for the Acquisition of a Public Company
(access through Bloomberg Law)
- Model Asset Purchase Agreement (vol. 1 and 2)
(access through Bloomberg Law)
- Model Stock Purchase Agreement with Commentary, 2nd ed., vols. I, II
(access through Bloomberg Law)
- The M&A Process: A Practical Guide for the Business Lawyer
(access through Bloomberg Law)
- Manual on Acquisition Review
(on reserve in the library)

Syllabus

Preliminary Notes

- Reading assignments are supplemented with my own slides about the materials, which will be posted on the course portal – to prepare for each class, please work through the questions and problems in my slides, apart from the readings
- I've marked "skim" in the syllabus for readings that I believe can be read quickly – otherwise, please spend time reflecting more about the material
- **Section assignments below WILL NOT track how much we'll cover each class – estimate our pace, by preparing typically up to 60-70 slides in advance, per class!!!**

a. Introduction:

- i. Lesson 1 Slides
- ii. Chertok article (posted on course portal)

b. Ventoruzzo Casebook

- i. Ch. 1 (Comparative Corporate Law: The Building Blocks):
 1. Lesson 2 Slides
 2. Skim p. 1-34
- ii. Ch. 2 (Choice of Applicable Corporate Laws and Regulatory Competition):
 1. Lesson 2 Slides
 2. Intro – p. 35-40
 3. Freedom of Incorporation:
 - a. America Intro (State of Incorporation Doctrine) – p. 40
 - i. Wilson case (CA approach) – p. 40-49
 - ii. Examen case (DE approach) – p. 49-55
 - iii. Carbone case (CT approach) – p. 55-59
 - b. EU Intro (Real Seat Doctrine) – p.63
 - i. French Cass. case – p.64-65
 - ii. Centros case – p. 65-74
 - iii. Uberseering case – p. 74-89
 - iv. Skim Ventoruzzo regulatory competition article – p. 109-127
 - v. German Federal Court case – p. 89-92
 - c. Regulatory Competition Theory – Race to Top or Bottom?
 - i. Cary article, Race to Bottom – p. 100-104
 - ii. Roe article, Delaware's Politics – p. 104-109
- iii. Ch. 3 (The Incorporation Process and Limits on Limited Liability):
 1. Lesson 3 Slides
 2. Introduction, p. 129-131

3. The Incorporation Process + Limited Liability, p. 131-134
4. Governance:
 - a. For Practice – Charter + Bylaws Templates, p. 134-144
5. The Protection of Creditors:
 - a. Minimum Legal Capita, p. 144-151
 - b. Piercing the Corporate Veil:
 - i. Intro, p. 151-152
 - ii. Involuntary Tort Creditor Piercing Cases:
 1. Baatz case (SD), p. 153-155
 2. Walkovsky case (NY), p. 156-160
 3. Empirical note, p. 186-188
 - iii. Comparative Piercing:
 1. UK approach:
 - a. VTB Capital case, skim p. 160-171
 2. French approach:
 - a. Denis Facques case, skim p. 171-173
 - b. Roussy case, skim p. 173-175
 3. Japanese approach:
 - a. Tokyo case, skim p. 175-178
 4. German approach:
 - a. TBB case, skim p. 179-182
 - b. Trihotel case, skim p. 182-185
 5. China, skim p. 185-186
 - iv. [We will proceed to finish the whole Ventoruzzo casebook – I'll post more readings as I prepare more lessons].

c. Global Law Review Articles

- i. [Readings to be posted].