**SYLLABUS**

**CORPORATIONS (Fall 2020)**

August 4, 2020 version

CONTACT: Holland Hall # 359

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CLASSROOM: MoWe 10:00 AM 1:10 PM HH-180

Tu 9:05 AM 12:15 PM HH-180

OFFICE HOURS: Tuesday – 1pm-2pm or by appointment (virtual)

FINAL EXAM: **Friday, December 4**

**TEXTBOOKS**

Jeffrey Bauman, Russell Stevenson & Robert Rhee, Business Organizations Law and Policy, West, 9th ed., 2017

We will study the Delaware corporation statute (DGCL). And the model statute (MBCA).

You can purchase the statutory supplement: Corporations and Other Business Associations: Statutes, Rules, and Forms, 2020 Edition, Douglas K. Moll, ISBN: 9781684679614.

**COURSE GRADING**

80% final exam

20% problems (assigned throughout the course)

Up to 2 points total of class participation (Sokol top 3 picks and class top 2 picks)

**FINAL EXAM FORMAT**

Our final exam will be online. It will be a three hour exam.

## **GRADING INFORMATION**

The Levin College of Law’s mean and mandatory distributions are posted on the College’s website and this class adheres to that posted grading policy. The following chart describes the specific letter grade/grade point equivalent in place:

|  |  |
| --- | --- |
| Letter Grade | Point Equivalent |
| A (Excellent) | 4.00 |
| A- | 3.67 |
| B+ | 3.33 |
| B | 3.00 |
| B- | 2.67 |
| C+ | 2.33 |
| C (Satisfactory) | 2.00 |
| C- | 1.67 |
| D+ | 1.33 |
| D (Poor) | 1.00 |
| D- | 0.67 |
| E (Failure) | 0.00 |

The law school grading policy is available at: <http://www.law.ufl.edu/student-affairs/current-students/academic-policies#9>.

**WORKLOAD AND CLASS PREPARATION**

It is anticipated that you will spend approximately 2 hours out of class reading and/or preparing for in class assignments for every 1 hour in class.

**STUDENT LEARNING OUTCOMES**

After completing this course, students should be able to:

1. Know and analyze the legal form of the corporation and the laws applicable to the internal affairs of the corporation and corporate governance in general.
2. Consider issues related to advising the board and officers of matters arising under corporation law, including issues related to their fiduciary duties.
3. Know basic aspects of business transactions related to corporations, such as mergers and acquisitions, and transactions of securities.
4. Know and apply basic business concepts in accounting, finance, and economics specifically relevant and related to the understanding of corporations and corporation law.
5. Read and analyze essential corporate documents such as certificate of incorporation, bylaws, proxies, and annual reports.

**How This Course Relates to the Student Learning Outcomes in the College of Law:**

This course builds core competencies in the business law curriculum with regard to particular types of business entities.  We will address issues of formation, governance, and exit.  These issues emerge in more advanced courses in the business law curriculum.

**ATTENDANCE AND SAFETY PROTOCOLS**

**We will have face-to-face instructional sessions to accomplish the student learning objectives of this course. In response to COVID-19, the following policies and requirements are in place to maintain your learning environment and to enhance the safety of our in-classroom interactions:**

* **You are required to wear approved face coverings at all times during class and within buildings. Following and enforcing these policies and requirements are all of our responsibility. Failure to do so will lead to a report to the Office of Student Conduct and Conflict Resolution. You also will no longer be permitted on the UF Law campus. Finally, Dean Inman will also report your noncompliance to the relevant state board of bar examiners.**
* **This course has been assigned a physical classroom with enough capacity to maintain physical distancing (6 feet between individuals) requirements. Please utilize designated seats and maintain appropriate spacing between students. Please do not move desks or stations.**
* **Sanitizing supplies are available in the classroom if you wish to wipe down your desks prior to sitting down and at the end of the class.**
* **Follow your TA’s guidance on how to enter and exit the classroom.  Practice physical distancing to the extent possible when entering and exiting the classroom.**
* **If you are experiencing COVID-19 symptoms (**[**https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html**](https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html)**), please do not come to campus or, if you are already on campus, please immediately leave campus. Please use the UF Health screening system and follow the instructions about when you are able to return too campus.**[**https://coronavirus.ufhealth.org/screen-test-protect/covid-19-exposure-and-symptoms-who-do-i-call-if/**](https://coronavirus.ufhealth.org/screen-test-protect/covid-19-exposure-and-symptoms-who-do-i-call-if/)**.**
* **Course materials will be provided to you with an excused absence, and you will be given a reasonable amount of time to make up work.**[**https://catalog.ufl.edu/UGRD/academic-regulations/attendance-policies/**](https://catalog.ufl.edu/UGRD/academic-regulations/attendance-policies/)**.**

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>.

Many students find that this course is difficult. Some legal concepts require background knowledge in business, economics, finance, and accounting, which will be foreign to many students. These concepts will be explained and discussed in class. Class attendance and preparation will be important to doing well in the course. The single best thing that a student can do to maximize the possibility of doing well in the course in terms of a grade is to keep up with the class reading assignments and to attend class regularly. The final exam will draw from the work done in course and the class discussion.

Any student that misses more than six (6) classes for the course may be dropped from the class. I use may rather than shall because health issues will be treated differently from other absences (so long as you email me in advance). Habitual tardiness to class will be treated the same as absence from the class. I take attendance in the beginning of each class. I take this policy seriously because in the real word, absenteeism and tardiness are punished. You need to start thinking and acting like a professional while in school. I can give you lots of war stories of people who do not hit the ground running in practice and were tainted with a bad reputation from Day 1. Do not let it happen to you.

I may need to reschedule some classes during the course of the semester. My preference is to front load these make-up dates so as to provide for some cushion later on in the class.

Finally, let me address a subject that has agitated a great many electrons on the law professor blogs and listservs: the use of laptop computers in class for things other than taking notes or looking at the statutes. I think it is anachronistic and honestly, beneath me, to do anything so draconian as to force students to write instead of type (I work almost exclusively on a keyboard). I am going to work very, very hard to teach this complex material in a way that makes sense and highlights the theory and practice in a digestible way. I hope you reciprocate by using (i.e. not using) your electronic window to the world and others responsibly while in class.

**ACCOMMODATIONS**

Students requesting accommodation for disabilities must first register with the Disability Resource Center (<http://www.dso.ufl.edu/drc/>). Once registered, students will receive an accommodation letter which must be presented to the Assistant Dean for Student Affairs (Dean Mitchell) when requesting accommodation. Students with disabilities should follow this procedure as early as possible in the semester.

Also, with prior notification to the professor, students are entitled to be excused from class or other scheduled academic activity to observe a religious holy day of their faith. Students are entitled to have a reasonable amount of time to make up the material or activities covered in their absence. Students will not be penalized due to absence from class or other scheduled academic activity because of religious observances.

**ACADEMIC HONESTY**

Academic honesty and integrity are fundamental values of the University community. Students should be sure that they understand the UF Student Honor Code at <http://www.dso.ufl.edu/students.php>.

**COURSE EVALUATIONS**

Students are expected to provide professional and respectful feedback on the quality of instruction in this course by completing course evaluations online via GatorEvals. Guidance on how to give feedback in a professional and respectful manner is available at <https://gatorevals.aa.ufl.edu/students/>. Students will be notified when the evaluation period opens, and can complete evaluations through the email they receive from GatorEvals, in their Canvas course menu under GatorEvals, or via <https://ufl.bluera.com/ufl/>. Summaries of course evaluation results are available to students at <https://gatorevals.aa.ufl.edu/public-results/>.

**UF Policies**

University Policy on Accommodating Students with Disabilities: Students requesting accommodation for disabilities must first register with the Dean of Students Office (<http://www.dso.ufl.edu/drc/>). The Dean of Students Office will provide documentation to the student who must then provide this documentation to the instructor when requesting accommodation. You must submit this documentation prior to submitting assignments or taking the quizzes or exams. Accommodations are not retroactive, therefore, students should contact the office as soon as possible in the term for which they are seeking accommodations.

University Policy on Academic Misconduct: Academic honesty and integrity are fundamental values of the University community. Students should be sure that they understand the UF Student Honor Code at <http://www.dso.ufl.edu/students.php>.

Netiquette: Communication Courtesy: All members of the class are expected to follow rules of common courtesy in all email messages, threaded discussions and chats. See <http://teach.ufl.edu/docs/NetiquetteGuideforOnlineCourses.pdf>

Getting Help:

For issues with technical difficulties for E-learning in Sakai, please contact the UF Help Desk at:

* [Learning-support@ufl.edu](mailto:Learning-support@ufl.edu)
* (352) 392-HELP - select option 2
* <https://lss.at.ufl.edu/help.shtml>

\*\* Any requests for make-ups due to technical issues MUST be accompanied by the ticket number received from LSS when the problem was reported to them. The ticket number will document the time and date of the problem. You MUST e-mail your instructor within 24 hours of the technical difficulty if you wish to request a make-up.

Other resources are available at <http://www.distance.ufl.edu/getting-help> for:

* Counseling and Wellness resources
* Disability resources
* Resources for handling student concerns and complaints
* Library Help Desk support

Should you have any complaints with your experience in this course please visit <http://www.distance.ufl.edu/student-complaints> to submit a complaint.

Statement related to workload/ABA Standard 310:

· Students should expect to spend, on average, approximately two hours preparing for every hour of class.

**Policies**

See generally <http://www.registrar.ufl.edu/catalog/policies/regulationgrades.html>. Grading is based on the final exam. I will award 5 points total for class participation that will count towards the final raw score. Three points (three students) total will be awarded by me. Two points (two students) total will be awarded by the class based on blind voting.

**Makeups**

I will have a series of makeups during the semester. We will discuss make-up days the first day of class.

**Disability Syllabus Statement**

The University of Florida is committed to providing equal educational access to students with disabilities. As you are developing and/or updating your syllabi for the spring semester, please take a moment to review the university’s “[Policy on Course Syllabi](http://www.aa.ufl.edu/Data/Sites/18/media/policies/syllabus-policy-current.pdf)” which specifies the inclusion of the following recommended statement related to accommodations for students with disabilities:

“Students with disabilities requesting accommodations should first register with the Disability Resource Center (352-392-8565, [www.dso.ufl.edu/drc/](http://www.dso.ufl.edu/drc/)) by providing appropriate documentation. Once registered, students will receive an accommodation letter which must be presented to the instructor when requesting accommodations. Students with disabilities should follow this procedure as early as possible in the semester.”

A disability syllabus statement serves to open the lines of communication between an instructor and a student by making the student feel included when approaching an instructor regarding accommodation needs and/or disability-related concerns.

Additional resources for faculty can be found on the Disability Resource Center’s Instructor Resources webpage (<https://www.dso.ufl.edu/drc/faculty/resources-for-instructors>). Please contact the Disability Resource Center at 352-392-8565 or via e-mail at [accessuf@dso.ufl.edu](mailto:accessuf@dso.ufl.edu) if you have any questions.

**Other Issues**

I want to see how carefully you are reading this syllabus. During the first day of class I will mention that you need to certify that you have read this syllabus and ask you to sign a piece of paper. Because we deal with corporate governance and oversight, I want to run an experiment of how closely you read. If you have read this, email me by the end of the first week of class with the subject line “I got it.” Then, in the body include your name.

**ASSIGNMENTS**

**Note to students: The textbook has a number of Problems in the form of hypotheticals. Do not read these Problems since we will not be covering them in class.**

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| **Class #** | **Topics, Issues, and Cases** | **Text** | **Statutes** |
| 1 | CHAPTER 1   1. Allocating risk and return 2. Beyond agency cost 3. Business planning   CHAPTER 2   1. Taxonomy of business organizations 2. Why do firms exist? | 7-26  (pages 19) |  |
| 2 | 1. Basic legal attributes of firms 2. Basic terms and concepts of business entities  * Problem: Chesapeake Marine Services | 52-70  (18 pages) |  |
| 3 | CHAPTER 3   1. Basic terms and concepts of business entities  * *Bayer v. Beran* * *Schnell v. Chris-Craft Industries, Inc.* * *Bove v. Community Hotel Corp.*   CHAPTER 3   1. Tort creditors  * *Walkovszky v. Carlton* | 70-79  81-95  (23 pages) | DGCL § 102(b)(6) |
| 4 | CHAPTER 3   1. Contract creditors  * *Freeman v. Complex Computing Co.* * *Kinney Shoe Corp. Polan*  1. Parent-subsidiary corporations  * *Gardemal v. Westin Hotel Co.* * *OTR Associates v. IBC Services, Inc*. | 101-18  (18 pages) |  |
| 5 | CHAPTER 9   1. Financial accounting  * Problem: Precision Tools (Part 7) | 364-83  (19 pages) |  |
| 6 | CHAPTER 10   1. Corporate securities  * Problem: Precision Tools (Part 9)  1. Corporate capital structure 2. Legal capital | 399-417  (18 pages) |  |
| 7 | 1. Limitation on distributions  * *Klang v. Smith’s Food & Drug Centers, Inc*. * *Kamin v. American Express Co.* * *Dodge v. Ford Motor Co.* | 417-31  (14 pages) | DGCL § 154, § 160(a)(1), § 170(a) |
| 8 | CHAPTER 12   1. Models of corporate governance 2. Internal affairs doctrine as constitutional principle | 471-491  (15 pages) |  |
| 9 | CHAPTER 12   1. Internal affairs doctrine as constitutional principle  * *CTS Corp. v. Dynamics Corp.* * *Louis K. Liggett Co. v. Lee*  1. The choice of state of incorporation 2. The future shape of state corporate law | 491-507  (16 pages) |  |
| 10 | CHAPTER 13   1. The role of corporate director  * Problem; Fibernet Corp. (Part 1)  1. Formalities of board action  * Problem: Widget Corp.  1. Governance in the modern board  * Problem; Fibernet Corp. (Part 2) | 509-27  (18 pages) |  |
| 11 | CHAPTER 14   1. Mechanics of shareholders’ meetings 2. Election and removal of directors 3. Inspection of books and records 4. Dynamics of shareholder voting  * Problem: Universal Netware Inc. (Part 1) | 539-59  (20 pages) |  |
| 12 | CHAPTER 14   1. Federal proxy regulation  * Problem: Universal Netware Inc. (Part 2) * *Long Island Lighting Co. v. Barbash*  1. Shareholder proposals  * Problem: Universal Netware Inc. (Part 3) * *Auer v. Dressel* | 559-80  (21 pages) |  |
| 13 | 1. Shareholder proposals  * *Lovenheim v. Iroquois Brands* * *Trinity Wall Street v. Wal-Mart Stores Inc.* | 580-96  (16 pages) |  |
| 14 | Guest lecture on ESG: Bett Huber, co-head of Davis Polk’s ESG group Problem: ESG hypo | Materials to be posted on Canvass  and 3 point quiz due before class |  |
| 15 | CHAPTER 14   1. Shareholder nomination of directors and bylaw amendments  * *AFSCME Employees Pension Plan v. AIG* * *CA, Inc. v. AFSCME Employees Pension Plan*  1. Role of shareholders in executive compensation: say-on-pay | 596-19  (23 pages) | DGCL § 112, § 113 |
| 16 | CHAPTER 15   1. Implied federal private action for proxy fraud  * Problem: National Metal Products * *TSC Industries, Inc. v. Northway, Inc.* * *Basic, Inc. v. Levinson*  1. Materiality  * *Gantler v. Stephens* * *Mills v. Electric Auto-Lite Co.* | 621-43  (22 pages) |  |
| 17 | CHAPTER 15   1. Causation  * *Virginia Bankshares, Inc. v. Sandberg*  1. Culpability in proxy fraud action 2. Duty of disclosure under state law  * *Malone v. Brincat* | 643-62  (pages 19) |  |
| 18 | CHAPTER 16   1. Introduction  * Problem: Prime Part Inc. (Part 1) * Problem: Prime Part Inc. (Part 2) * *Tooley v. Donaldson, Lufkin & Jenrette*  1. Who qualifies as a plaintiff?  * *In re Fuqua Industries* | 663-81  (pages 18) |  |
| 19 | CHAPTER 16   1. The demand requirement  * *Aronson v. Lewis* * *Rales v. Blasband* * *Einhorn v. Culea* | 681-98  (pages 17) |  |
| 20 | CHAPTER 16   1. Inspection of books and records  * *Saito v. McKesson HBOC, Inc*. * *Seinfeld v. Verizon Communications, Inc*.  1. Bylaws dealing with derivative litigation 2. Termination when demand is excused 3. On the independence of directors  * *Orman v. Cullman* * *In re eBay, Inc. Shareholder Litigation*  1. Settlement and attorneys’ fees | 698-715  738-42  (pages 21) | DGCL  § 220  § 102(f)  § 109(b) |
| 21 | CHAPTER 17   1. Fiduciary duties and standard of care  * Problem: FiberNet Corp. (Part 3)  1. Business judgment rule  * *Shlensky v. Wrigley* | 747-64  (17 pages) |  |
| 22 | CHAPTER 17   1. Business judgment rule  * *In re Walt Disney Derivative Litigation*  1. Duty of oversight  * *Francis v. United Jersey Bank* | 764-79  (15 pages) |  |
| 23 | CHAPTER 17   * *In re Caremark Int’l Inc. Derivative Litigation* * *In re Citigroup Inc. Derivative Litigation* * *Marchand v. Barnhill* (on Canvas or discuss in class) | 779-98  (19 pages) |  |
| 24 | CHAPTER 17   1. Duty to become informed  * Problem: FiberNet Corp. (Part 4) * *Smith v. Van Gorkom* | 799-816  (pages 17) |  |
| 25 | CHAPTER 17   1. Duty to become informed 2. Avoidance of liability  * Problem: FibertNet Corp. (Part 5) | 816-42  (pages 26) |  |
| 26 | CHAPTER 18   1. Director self-dealing and conflict of interest  * Problem: Starcrest Corp. (Part 1) * *Remillard Brick Co. v. Remillard-Dandini Co.* * *Benihana of Tokyo, Inc. v. Benihana, Inc.* | 843-58  (pages 15) | DGCL  § 144 |
| 27 | CHAPTER 18   1. Director self-dealing and conflict of interest  * *Lewis v. Vogelstein* * *Harbor Finance Partners v. Huizenga* * *Gantler v. Stephens* | 858-78  (pages 20) |  |
| 28 | CHAPTER 18   1. The evolution of “good faith”  * *Stone v. Ritter* * *ATR-Kim Eng Financial Corp. v. Araneta* * *McPadden v. Sidhu* | 878-99  (21 pages) |  |
| 29 | CHAPTER 18   1. Corporate opportunity doctrine  * Problem: Starcrest Corp. (Part 2) * *Farber v. Servan Land Co.* * *Burg v. Horn* | 899-919  (20 pages) |  |
| 30 | CHAPTER 19   1. Transactions within corporate groups  * Problem: Starcrest Corp. (Part 3) * *Sinclair Oil Corp. v. Levien* | 921-33  (12 pages) |  |
| 31 | CHAPTER 19   1. Cash-out transactions  * *Weinberger v. UOP, Inc*. * *Kahn v. Lynch Comm’n Sys. (Lynch I)* | 933-47  949-59  (24 pages) |  |
| 32 | CHAPTER 19   1. Cash-out transactions  * *Kahn v. M&F Worldwide Corp.* * *In re Pure Resources, Inc.* | 964-80  (16 pages) |  |
| 33 | CHAPTER 20   1. Structuring corporation combinations  * Problem: LaFrance Cosmetics (Part 1)  1. Tax aspects of corporate reorganizations 2. De facto merger doctrine  * *Hariton v. Arco Electronics, Inc*. | 999-1018  (19 pages) | DGCL  § 251  § 253  § 259 |
| 34 | CHAPTER 20   1. Sale of all or substantially all of assets  * Problem: LaFrance Cosmetics (Part 2) * *Gimbel v. Signal Companies, Inc*.   CHAPTER 21   1. The policy debate, and contests for control 2. The regulatory framework | 1018-23  1025-37  (17 pages) |  |
| 35 | CHAPTER 21   1. Judicial review of takeover defenses  * *Cheff v. Mathes* * *Unocal Corp. v. Mesa Petroleum Co*.  1. Statutory limitations | 1038-57  (19 pages) |  |
| 36 | CHAPTER 21   1. When the corporation is “for sale”  * *Revlon, Inc. v. MacAndrews & Forbes* | 1057-74  (17 pages) |  |
| 37 | CHAPTER 21   1. When the corporation is “for sale”  * *Paramount v. Time* * *Paramount v. QVC*  1. Proxy contests and tender offers 2. Limits on protecting negotiated acquisitions  * *Omnicare, Inc. v. NCS Healthcare, Inc*. | 1074-93  (19 pages) |  |
| 38 | CHAPTER 22   1. What is wrong with insider trading 2. Materiality 3. Insider trading: state corporation law  * *Goodwin v. Agassiz* * *Diamond v. Oreamuno*  1. Insider trading: Rule 10b-5  * *Chiarella v. United States* | 1095-1115  (20 pages) |  |
| 39 | CHAPTER 22   1. Insider trading: Rule 10b-5  * *Dirks v. SEC* * *United States v. O’Hagan* * *Salman v. United States* * Problem: Standard Electric Corp.  1. Remedies for insider trading violations | 1115-35  (20 pages) |  |
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| **FINAL EXAM: Friday, December 4, 1:00 PM to 4:00 PM (3 hours)** | | | |