**Corporations**

**Law 6063 (15453-27715)**

**University of Florida, Levin College of Law**

**Spring 2021**

Professor Andrew Winden

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CLASSROOM: Holland 180

CLASS TIME: Tuesday & Thursday: 1:15 p.m. to 2:40 p.m.

OFFICE HOURS: Wednesday: 3:00 p.m. to 5:00 p.m.

or by appointment

FINAL EXAM: Flexible (4 hours)

**TEXTS & MATERIALS:**

Alan Palmiter, Frank Partnoy and Elizabeth Pollman, *Business Organizations: A Contemporary Approach* (West Academic, 3rd Ed. 2019)

I will also post statutes, restatements of law, articles, case studies and other materials on CANVAS from time to time.

I will post reading and other assignments on CANVAS a week in advance of class. An outline of the class and the assignments for the first two classes are below at the end of the syllabus.

**COURSE OVERVIEW**

This 3-unit course surveys the legal rules governing corporations with an emphasis on Delaware law and the duties of the officers, directors, and controlling shareholders of public corporations. We will review the basics of agency, which underlie all business organizations, as well as topics in corporate law such as asset partitioning, limited liability, fiduciary law, shareholder voting, derivative suits, control transactions, and basic aspects of mergers and acquisitions. We will also discuss the role of the corporation in society and corporate personhood. In addition to lectures, the course will include discussion of problems and case studies in transactional settings, considering financial and strategic, as well as legal considerations.

**COURSE OBJECTIVES and STUDENT LEARNING OUTCOMES**

Upon completion of this course, students should be able to:

Knowledge-Related Learning Outcomes:

Identify the sources of corporate law

Identify and explain the rules and principles that determine:

* Organizational principles of corporations
* Powers of corporate directors, officers and equity owners
* Basic rights and liabilities of business entity directors, officers, creditors and equity owners

Skill-Related Learning Outcomes:

* Understand the basic processes for establishing and governing corporations
* Apply rules and principles of corporate organization and management to real-world cases
* Develop ability to consider and apply ethical and strategic considerations to real-world cases

**RESOURCES**

***Resources if you feel lost:***

Come to office hours, e-mail me, call me or come see me after class.

Corporate Law:

* Stephen Bainbridge, *Corporate Law* (3rd Ed. 2015), available in various forms on Amazon.
* Alan Palmiter, *Examples and Explanations: Corporations*

Accounting and Finance:

* Howell Jackson, et al., *Analytical Methods for Lawyers* (any edition), Chapters 4 & 5.
* William A. Klein & John C. Coffee, Jr., *Business Organizations and Finance*

***Resources if you feel ambitious:***

Romano, *Foundations of Corporate Law* (2nd Ed. 2012)

Ramseyer, ed., *Corporate Law Stories* (2009)

**COURSE GRADING**

Grading will be consistent with College of Law policy. Your grade will be based on a final exam (100% of the final grade) and class participation. The final exam will be an in-class, open-resource exam. The exam will include multiple-choice questions, an issue-spotter transactional essay and a policy essay. Exam grades are done on a blind basis. All grades are final. I will not regrade exams, except to correct any mathematical or clerical errors in computing the final score. As explained below under “Attendance, Preparation and Participation”, I may raise or lower your grade by a third of a letter grade (e.g., from B to B+ or B -) based on exemplary or poor class participation. Because the course must adhere to a mandatory mean grade, participation may also be used to differentiate among students with equal final exam grades. The law school policy on exam delays and accommodations can be found [here](http://www.law.ufl.edu/student-affairs/current-students/forms-applications/exam-delays-accommodations-form).

**ASSIGNMENTS**

The initial reading assignments are included in the Class Outline attached hereto. I may supplement these initial readings with additional materials when necessary. Such additional materials will be distributed via CANVAS.

I will assign questions from the casebook. I will cold-call you on these questions, so be prepared to answer them in class. Questions will be assigned through CANVAS.

I will occasionally assign homework in the form of quizzes, drafting projects and case studies. These will be graded on a pass-fail basis and included in your class participation grade. These assignments will be distributed through CANVAS.

**ATTENDANCE, PREPARATION AND PARTICIPATION**

You will be requested to record your attendance and preparation by signing in to class. **By signing in,** **you confirm that you are prepared for class.** It is your responsibility to sign in before class begins. **You may not sign in if you arrive in class after I have begun teaching.** It is a serious violation of the Academic Honesty policy to sign in for another person or to have others sign in for you.

**If you fail to sign in (either because you are absent or because you are unprepared) more than four times during the semester, I will lower your final grade by at least one-third of a point.**

You do not need to tell me why you are absent or unprepared. If, however, you expect to be absent from class more than four times due to a family emergency or medical situation, please notify me. Observance of a University-recognized religious holiday does not count as an absence. However, please notify me of such absences in advance.

I expect each of you to attend class prepared. Preparation includes completing the assigned reading and thinking through assigned questions and problems. Consistent with American Bar Association Standard 310, you should expect to spend at least *six hours* per week preparing for this three-hour course. **I expect you to come to class prepared to discuss how you would answer the questions and problems I assign from the casebook. I will cold call on these questions and problems.** Sometimes, I will ask you to discuss problems in groups in class before I call on someone.

Your grade may be affected by the quality of your participation in class. Exemplary participation means offering a few thoughtful comments or questions in more than half of all classes (at least 13 classes), listening to and engaging with ideas raised by other students, and exercising judgment to foster participation by your classmates. You do not have to agree with your classmates, but I expect you to treat them with respect.

**USE OF LAPTOPS**

You are permitted to use laptops to take notes in class, however any other use of laptops during class is prohibited. Impermissible uses include, but are not limited to, looking at emails or instant messages, visiting social media sites, or any other use of the Internet, unless I explicitly invite you to look something up. **Misuse of laptops during class may result in you losing the privilege of using a laptop in the classroom and may negatively affect the class participation portion of your grade.** I will make the PowerPoint slides used in class available to you on CANVAS. Studies have shown that students taking notes by hand perform better than students taking notes on computers. I have seen that anecdotally in my classes as well.

**UNIVERSITY POLICIES:**

**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>.

**Grading information and grading scale:**

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 table describes the specific letter grade/grade point equivalent in place:

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

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

**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.

**Online Course Evaluation Process:**

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/>.

**COVID-19 Related Matters:**

Many students 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. I may take noncompliance into account when grading students or determining if a student may remain in the course.

* 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.
* Be mindful of how to properly 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>), 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 to campus.  (See <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. (See <https://catalog.ufl.edu/UGRD/academic-regulations/attendance-policies/>).”

**Photos & Videos**:

Students may not take, circulate, or post photos or videos of classroom discussions, whether they are in-person, hybrid, or completely online. Students failing to follow this rule will be referred to the College of Law Honor Code Council and the University’s Office of Student Conduct and Conflict Resolution.

**CLASS OUTLINE**

The following outline provides a general overview of the topics we will cover throughout the semester. Reading assignments, questions and other assignments for each class will be posted on CANVAS approximately one week in advance. References to “Chapter” are to chapters of Palmiter, Partnoy & Pollman’s *Business Organizations* text. Other materials will be available on CANVAS.

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| --- | --- | --- |
| **Class** | **Topic** | **Readings, Quizzes, Case Studies and Practice Assignments** |
| **Class 1**  **Tuesday,**  **January 19** | **Intro to the Course**  **Intro to Corporations**  Why do we have corporations?  History of corporations  Risk allocation in business | * Spamann & Subramanian, *Corporations* (2018), pp. 5-10 [available in CANVAS on 1/10] * Chapter 5, pp. 103 – 111 * Chapter 1, pp. 9-21 |
| **Class 2**  **Thursday, January 21** | **The Purpose of Corporations**  The Corporation in Society | * Chapter 6 * *Ebay v. Newmark* excerpts (to be posted on CANVAS) |
| **Class 3**  **Tuesday,**  **January 26** | **Basic Concepts of Corporate Law**   * Vocabulary of Corporate Law * Sources of Corporate Law * Constitutional (or Constituent) Documents * Internal Affairs Doctrine   Federalism in Corporate Law | Chapter 4, pp. 71-88  Chapter 5, pp. 112-132 |
| **Class 4**  **Thursday, January 28** | **Incorporation**   * Incorporation Process * Corporate Powers & Ultra Vires Doctrine   **Corporate Actions**  Actions binding the corporation  Director as agents of shareholders  Board actions | * Chapter 9 * Chapter 10 |
| **Class 5**  **Tuesday, February 2** | * **Corporate Accounting &** * **Valuing the Corporation** | * Chapter 11 |
| **Class 6**  **Thursday, February 4** | **Corporate Capital Structure**  Capital Structure  Distributions to Shareholders (Dividends) | Chapter 12 |
| **Class 7**  **Tuesday, February 9** | **Role and Rights of Shareholders:**  Shareholder Voting | * Chapter 16, pp. 399-424 * Chapter 18, pp. 475-478 (Rosenfeld case) |
| **Class 8**  **Thursday, February 11** | **Role and Rights of Shareholders:**   * Shareholder Proposals * Shareholder Information Rights | * Chapter 18, pp. 481-497 * Supp. (*Walmart* case excerpt) * Chapter 17, pp. 431-443 |
| **Class 9**  **Tuesday, February 16** | **Review of Corporate Governance** | * Review Sections of DGCL * Quiz on DGCL Provisions |
| **Class 10**  **Thursday, February 18** | **Close Corporations: Control** | * Chapter 25 |
| **Class 11**  **Tuesday, February 23** | **Close Corporations: Oppression** | Chapter 26 |
| **Class 12**  **Thursday, February 25** | **Dealing with Corporate Externalities:**  **Limited Liability and Rights of Contract & Tort Creditors**  Limited Liability   * Piercing the Corporate Veil | * Chapter 13 |
| **Class 13**  **Tuesday, March 2** | * **Agency:** * Definition and Creation of the Agency Relationship * Rights and Duties Between Principal and Agent   **Fiduciary Duties:**   * The Duty of Care and the Business Judgment Rule | * Chapter 2, pp. 27-33 * Chapter 20, pp. 543-576 |
| **Class 14**  **Thursday, March 4** | **Fiduciary Duties:**   * The Duty of Loyalty: Conflicts and Self-Dealing | * Chapter 21, pp. 587-589, 594-602, and 605-623 |
| **Class 15**  **Tuesday, March 9** | **Fiduciary Duties:**  The Duty of Loyalty: Corporate Opportunities | * Chapter 21, pp. 623-635   Supp. (*eBay* case excerpt) |
| **Class 16**  **Thursday,**  **March 11** | **Fiduciary Duties**:  The Duty of Loyalty:  Good Faith and Oversight (Exec Comp) | * Chapter 22, pp. 637-667 |
| **Class 17**  **Tuesday, March 16** | **Fiduciary Duties**:  The Duty of Loyalty:  Good Faith and Oversight  (Corporate liabilities & risk management) | * Chapter 23, pp. 669-706 * Supp. (*Marchand v. Barnhill* case excerpt) |
| **Class 18**  **Thursday, March 18** | **Duties of Controlling Shareholders** | * Chapter 24 * Chapter 30, Section A (skip *Harris*, *Perlman*, *Essex* cases, read notes) |
| **Class 19**  **Tuesday, March 23** | **Enforcement of Corporate Laws**  Shareholder Litigation, including:  Shareholder Derivative Actions   * Demand Requirement | * Chapter 19, pp. 501-10 * Supp. (*UF & CW Union v. Zuckerberg* excerpt) |
| **Class 20**  **Thursday, March 25** | **Enforcement of Corporate Laws**  Shareholder Litigation, including:   * SLCs & Independent Directors * Indemnification and Insurance * Plaintiffs * Policy Implications of Shareholder Litigation | * Chapter 19, pp. 520-23; 536-41 * Chapter 20, pp. 576-585 (about indemnification and insurance) * Supp. (Case excerpts for *Oracle*, *Americas Mining*, and *Trulia*) |
| **Class 21**  **Tuesday, March 30** | * **Sale of the Corporation & M&A**   Voting Mechanics | * Chapter 30, Section B |
| **Class 22**  **Thursday, April 1** | **Antitakeover Protections & M&A**  Takeover Defenses  Heightened Scrutiny: *Unocal* | * Chapter 31, pp. 937-958   Unocal Case Study |
| **Class 23**  **Tuesday, April 6** | * **Deal Protections & M&A**   Sale of Control: *Revlon*  Change of Control: *Time*/*QVC* | Chapter 31, pp. 959-968  Chapter 32, pp. 969-990  Revlon Case Study |
| **Class 24**  **Thursday, April 8** | **Corporate Personhood**  Responsibilities of Personhood  (Regulating Corporate Externalities):  Corporate Criminality   * Corporate Environmental Liability | * Chapter 14 * Chapter 15 |
| **Class 25**  **Tuesday, April 13** | * **Corporate Personhood** * Rights of Personhood: * Corporation as Political Actor | * Chapter 7 |
| **Class 26**  **Thursday, April 15** | **Corporate Personhood & Wrap-Up**  Rights of Personhood:   * Reviewing the Purpose of the Corporation | * **TBD** |
| **Final Exam: Flexible (4 Hours)** | | |