**Corporations**

**Law 6063 (14758)**

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

**FALL 2021**

Professor Andrew Winden

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CLASSROOM: Holland 285C

CLASS TIME: Tuesday & Thursday: 10:30 a.m. to 11:55 a.m.

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

or by appointment (email me)

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:

* Spamann, Hirst & Rauterberg, *Corporations in 100 Pages* (2020)
* Stephen Bainbridge, *Corporate Law* (4th Ed. 2020)
* 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.

**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 list questions for each class in assignments on Canvas. I will cold-call you on these questions, so be prepared to answer them in class.

I will occasionally assign homework in the form of quizzes, drafting projects and case studies. Your efforts on these assignments will be included in your class participation grade. These assignments will be distributed through Canvas. Some of the assignments will be group projects.

**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 on Canvas. 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.

**PREFERRED NAME AND PRONOUNS**

It is important to the learning environment that you feel welcome and safe in this class;

and that you are comfortable participating in class discussions and communicating with me on any issues related to the class.  If your preferred name is not the name listed on the official UF roll, please let me know as soon as possible by e-mail or otherwise.  I would like to acknowledge your preferred name, and pronouns that reflect your identity.  Please let me know how you would like to be addressed in class, if your name and pronouns are not reflected by your UF-rostered name. I welcome you to the class and look forward to a rewarding learning adventure together.

You may also change your “Display Name” in Canvas. Canvas uses the "Display Name" as set in myUFL.  The Display Name is what you want people to see in the UF Directory, such as "Ally" instead of "Allison."   To update your display name, go to one.uﬂ.edu, click on the dropdown at the top right, and select "Directory Proﬁle." Click "Edit" on the right of the name panel, uncheck "Use my legal name" under "Display Name," update how you wish your name to be displayed, and click "Submit" at the bottom.  This change may take up to 24 hours to appear in Canvas.   This does not change your legal name for ofﬁcial UF records.

**Discourse, Inclusion, and the Classroom Ethos**

As a law student and future lawyer, it is important that you be able to engage in rigorous discourse and critical evaluation while also demonstrating civility and respect for others. This is even more important in the case of controversial issues and other topics that may elicit strong emotions.

As a group, we are likely diverse across racial, ethnic, sexual orientation, gender identity, economic, religious, and political lines. As we enter one of the great learning spaces in the world—the law school classroom—and develop our unique personality as a class, I encourage each of us to:

* commit to self-examination of our values and assumptions
* speak honestly, thoughtfully, and respectfully
* listen carefully and respectfully
* reserve the right to change our mind and allow for others to do the same
* allow ourselves and each other to verbalize ideas and to push the boundaries of logic and reasoning both as a means of exploring our beliefs as well as a method of sharpening our skills as lawyers

As part of my commitment to teaching and serving the diverse UF Law community, I have signed the UF Law Anti-Racism Resolution.

**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: <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/uf-law-student-handbook-and-academic-policies>.

**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 (Assistant Dean Brian Mitchell) when requesting accommodation. Students with disabilities should follow this procedure as early as possible in the semester. 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).

**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/>.

**Audio & Video Recordings**:

Students are allowed to record video or audio of class lectures. However, the purposes for which these recordings may be used are strictly controlled.  The only allowable purposes are (1) for personal educational use, (2) in connection with a complaint to the university, or (3) as evidence in, or in preparation for, a criminal or civil proceeding.  All other purposes are prohibited.  Specifically, students may not publish recorded lectures without the written consent of the instructor.

A “class lecture” is an educational presentation intended to inform or teach enrolled students about a particular subject, including any instructor-led discussions that form part of the presentation, and delivered by any instructor hired or appointed by the University, or by a guest instructor, as part of a University of Florida course. A class lecture does notinclude lab sessions, student presentations, clinical presentations such as patient history, academic exercises involving solely student participation, assessments (quizzes, tests, exams), field trips, private conversations between students in the class or between a student and the faculty or lecturer during a class session.

Publication without permission of the instructor is prohibited. To “publish” means to share, transmit, circulate, distribute, or provide access to a recording, regardless of format or medium, to another person (or persons), including but not limited to another student within the same class section. Additionally, a recording, or transcript of a recording, is considered published if it is posted on or uploaded to, in whole or in part, any media platform, including but not limited to social media, book, magazine, newspaper, leaflet, or third party note/tutoring services. A student who publishes a recording without written consent may be subject to a civil cause of action instituted by a person injured by the publication and/or discipline under UF Regulation 4.040 Student Honor Code and Student Conduct Code.

**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. References to “Supp.” are to the course supplement available on Canvas. Other materials will be available on Canvas.

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| --- | --- | --- |
| **Class** | **Topic** | **Readings, Quizzes, Case Studies and Practice Assignments** |
| **Class 1**  **Tuesday,**  **August 24** | **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 on Canvas] * Chapter 5, Section A (pp. 104 – 111) * Chapter 1, Section A (pp. 9-22) |
| **Class 2**  **Thursday, August 26** | **The Purpose of Corporations**  The Corporation in Society | * Chapter 6 |
| **Class 3**  **Tuesday,**  **August 31** | **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, Sections A&B (pp. 71-88)  Chapter 5, Sections B&C (pp. 112-126) |
| **Class 4**  **Thursday, September 2** | **Incorporation & Powers**   * Incorporation Process * Corporate Powers & Ultra Vires Doctrine * Distribution of power in the Corporation | * Chapter 9, Section A   Alphabet & Kona Grill Problems |
| **Class 5**  **Tuesday, September 7** | **Corporate Actions**  Actions binding the corporation  Directors as agents of shareholders  Board actions | * Chapter 10 (skip *Sarissa v. Innoviva*) * Hypo 10.1 Assignment |
| **Class 6**  **Thursday,**  **September 9** | **Corporate Capital Structure**  Capital Structure  Distributions to Shareholders (Dividends) | Chapter 12 |
| **Class 7**  **Tuesday,**  **September 14** | **Role and Rights of Shareholders:**  Shareholder Voting | * Chapter 16, pp. 399-424 * Chapter 18, pp. 475-478 (*Rosenfeld* case) |
| **Class 8**  **Thursday,**  **September 16** | **Role and Rights of Shareholders:**   * Shareholder Information Rights * Shareholder Communications | * Chapter 17, pp. 431-450 * Chapter 18, pp. 457-58; 478-481 |
| **Class 9**  **Tuesday,**  **September 21** | **Role and Rights of Shareholders**  Shareholder Proposals  Board Diversity | * Chapter 18, pp. 481-497 * SEC Rule 14a-8 * Supp. (*Trinity v Walmart* case excerpt) * Shareholder Proposal Exercise * Board Diversity Materials (TBA) |
| **Class 10**  **Thursday, September 23** | **Review of Corporate Governance** | * Review Sections of DGCL * Quiz on DGCL Provisions * Village Inc. Problem |
| **Class 11**  **Tuesday,**  **September 28** | **Dealing with Corporate Externalities:**  **Limited Liability and Rights of Contract & Tort Creditors**  Limited Liability   * Piercing the Corporate Veil | * Chapter 13 |
| **Class 12**  **Thursday,**  **September 30** | * **Close Corporations** | * Excerpts of Chapters 25 & 26 * or alternative (TBA) |
| **Class 13**  **Tuesday,**  **October 5** | * **Agency:** * Agency Relationship * Principal and Agent Duties   **Fiduciary Duties:**   * The Duty of Care and the Business Judgment Rule | * Chapter 2, pp. 27-33 * Chapter 20, pp. 543-576 |
| **Class 14**  **Thursday, October 7** | **Fiduciary Duties:**   * The Duty of Loyalty: Conflicts and Self-Dealing | * Chapter 21, pp. 587-589, 594-602, and 605-623 |
| **Class 15**  **Tuesday,**  **October 12** | **Fiduciary Duties:**  The Duty of Loyalty: Corporate Opportunities | * Chapter 21, pp. 623-635   Supp. (*eBay* case excerpt) |
| **Class 16**  **Thursday,**  **October 14** | **Fiduciary Duties**:  The Duty of Loyalty:  Good Faith and Oversight  (Exec Comp) | * Chapter 22, pp. 637-667 |
| **Class 17**  **Tuesday,**  **October 19** | **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, October 21** | **Duties of Controlling Shareholders** | * Chapter 30, Section A (skip *Harris*, *Perlman*, *Essex* cases, read notes) * Chapter 24 |
| **Class 19**  **Tuesday, October 26** | **Enforcement of Corporate Laws**  Shareholder Litigation, including:  Shareholder Derivative Actions   * Demand Requirement * SLCs & Independent Directors | * Chapter 19, pp. 501-10; 520-523 * Supp. (*UF & CW Union v. Zuckerberg* excerpt; *Oracle* excerpt) |
| **Class 20**  **Thursday, October 28** | **Enforcement of Corporate Laws**  Shareholder Litigation, including:  Class Actions  Attorney’s Fees   * Indemnification and Insurance | * Chapter 19, pp. 536-41 * Chapter 20, pp. 576-585 (about indemnification and insurance) * Supp. (Case excerpts for *Americas Mining*, and *Trulia*) |
| **Class 21**  **Tuesday, November 2** | * **M&A Structures and Defenses**   Voting Mechanics  Takeover Defenses | * Chapter 30, Section B * Chapter 31, Section A * Unocal Case Study |
| **Class 22**  **Thursday, November 4** | **M&A, Antitakeover Protections and Deal Protections**  Heightened Scrutiny: *Unocal* | * Chapter 31, Sections B & C (up to p. 959) * Chapter 32, Section A   Morev Case Study |
| **Class 23**  **Tuesday,**  **November 9** | **M&A, Deal Protections and Change of Control**  Sale of Control: *Revlon*  Change of Control: *Time*/*QVC* | Chapter 31, pp. 959 – 968  Chapter 32, Section C |
| **Class 24**  **Tuesday,**  **November 16** | **Corporate Personhood**  Responsibilities of Personhood  (Regulating Corporate Externalities):  Corporate Criminality   * Corporate Environmental Liability | * Chapter 14 * Chapter 15, Section B (pp. 395-96) * The Yates Memo: Corporate v. Individual Criminal Liability * Declining Corporate Prosecutions |
| **Class 25**  **Thursday,**  **November 18** | * **Corporate Personhood** * Rights of Personhood: * Corporation as Political Actor | * Chapter 7 * Adam Winkler, The Long History of Corporate Rights (2018) * Macey and Strine, *Citizens United* as Bad Corporate Law (2018) * Mark Underberg, Corporate "Free Exercise" and Fiduciary Duties of Directors (2014) |
| **Class 26**  **Tuesday,**  **November 23** | **Corporate Personhood &**  **Wrap-Up**   * Personhood, Purpose, PBCs * Review of key issues in *Ebay* | * Supp. *Ebay v. Newmark* excerpts * Additional readings re Public Benefit Corporations and Corporate Purpose |
| **Final Exam: Flexible (4 Hours)** | | |