

CORPORATIONS
Larry Catá Backer
Course Information & Syllabus
Spring Semester 2022

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**CORPORATIONS
BUSLW 963-201
COURSE INFORMATION
SPRING SEMESTER 2022**

MEETING ROOM:	116 Katz
MEETING TIME:	Mondays and Wednesdays 01:30 P.M. - 02:15 P.M.
OFFICE:	239 Katz Building
TELEPHONE:	814.863.3640 (direct)
E-MAIL	lcb11@psu.edu
WEBSITE	http://www.personal.psu.edu/lcb11
BLOG	http://lcbackerblog.blogspot.com
CONFERENCE HOURS:	Mondays and Wednesdays 4:00 P.M. TO 6:00 P.M., AND BY APPOINTMENT
QUESTIONS:	e-mail anytime; e-conferencing encouraged
FINAL EXAM DATE:	CLASS RELATED; VIA EMAIL/ZOOM 24 HOUR TAKE HOME FINAL 28 April (9.00 A.M.) -- 12 May (4:00 P.M.) 2022

The Law School course description provides:

This course primarily addresses organization and operation of commercial organizations in the Anglo-American community. Preliminarily, sole proprietorships and partnerships are considered, after which corporations-for-profit are emphasized with some attention to business trusts and non-profit corporations. In the corporate context, duties of promoters, directors, officers, and other insiders are considered. Availability in the U.S. of the derivative action is treated in terms of both unincorporated and corporate forms of organization. Also treated are the basics of securities regulation at the federal and state levels in the U.S. and the provincial level in Canada.

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Statement of Learning Outcomes and Assessment

Learning Outcomes:

Students are expected to acquire a working knowledge of the following. As a baseline, students will become familiar to legal approaches under both the Model Business Corporation Act and the Delaware Code and the basic principles of corporate law consisting of some combination of the following:

1. *Corporate Law in Context*: business and risk; constitutional constraints on corporate governance; corporation and societal governance; choice of organizational form (brief introduction to partnerships and LLCs).
2. *Organizing the Corporation; The Law of Corporate Organization and Internal Functioning*: corporate formation; introduction to financial accounting; corporate financing and financial structures; introduction to securities issuance; asset partitioning and veil piercing.
3. *The Law of the Relationship Among Key Corporate Actors; The Standard model of Corporate Governance*; officers and authority; directors and collective action; shareholders and voting, inspection of books and records; deviations from the standard model—the closely held corporation.
4. *Shareholder litigation*: direct action; derivative action; demand requirement.
5. *Fiduciary Duty*: monitoring duty of care; transactional duty of care; business judgment rule; duty of loyalty; duty to disclose; corporate opportunities; domination and control.
6. *[Optional; if we have time]Corporate Combinations and Fundamental Changes*: amendments to corporate charter (policy and mechanics); mergers; triangular mergers; sales of assets; appraisal rights.

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Learning Outcomes Assessment:

Student achievement in all learning outcomes will be measured in the final examination. Learning Outcomes will be monitored through the short answers to the problems that appear in each chapter of the text and as otherwise assigned.

COURSE MATERIALS

REQUIRED:

1. JEFFREY D. BAUMAN, RUSSELL B. STEVENSON, JR., AND ROBERT J. RHEE, BUSINESS ORGANIZATIONS: LAW AND POLICY; MATERIALS AND PROBLEMS, (9th ed. 2017) [TEXT]
Publisher: LEG, Inc., DOB West Academic (1-877-888-1330)
ISBN-13: 978-1-63460-594-6
2. DOUGLAS MOLL, CORPORATIONS AND OTHER BUSINESS ASSOCIATIONS, STATUTES, RULES, AND FORMS, 2020 Edition (Selected Statutes) Paperback – July 2021 [STATUTES]
Publisher: LEG, Inc., DOB West Academic (1-877-888-1330)
ISBN 9781684679614

RECOMMENDED (PURCHASE OPTIONAL):

1. BRYAN A. GARNER (ED.), A HANDBOOK OF BUSINESS TERMS (1999)
Publisher: West (1-800-328-9352)
ISBN-13: 9780314239358
2. KLEIN AND COFFEE, BUSINESS ORGANIZATION AND FINANCE, (11th ed. 2010).
Publisher: Thompson-West (1-800-328-9352)
ISBN: 9781599414492
3. ALAN R. PALMITER, CORPORATIONS: EXAMPLES AND EXPLANATIONS (9th ed., 2021).
Publisher: Wolters Kluwer Law & Business (1-800-638-8437)
ISBN-13: 9789781543805659

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4. ARTHUR R. PINTO AND DOUGLAS M. BRANSON, UNDERSTANDING CORPORATE LAW (5th ed. 2018)
Publisher: LexisNexis
ISBN-13: 978-15310100-03
5. LYNN M. LOPUCKI, THE READABLE DELAWARE GENERAL CORPORATION LAW, Visilaw Publishing through CreateSpace Independent Publishing Platform; 2015-2016 edition (September 30, 2016)
ISBN-13: 978-1512350265

COURSE INFORMATION AND RULES

Course meetings time are set out above. I am generally available to talk with you during office hours on Mondays and Wednesdays, or, otherwise, by appointment. I am also available via e-conferencing (e.g., Skype and Zoom). ***Pending the end of the pandemic all meetings and other interactions poutside of class will be undertaken remotely.***

Required readings will be announced in class from time to time and are available on *Canvas* in the “Readings” Modules. Substantially all such readings will be drawn from the Text, and Statute. Additionally, recommended readings from PALMITER, EXAMPLES may be announced from time to time. Further readings may be added or substituted throughout the semester. I plan to follow the Text. Review of the table of contents of those chapters of the Text will give you a good idea of the materials to be covered this semester and may serve as a useful framework for study. **Understand that there is no guarantee that we will be able to cover in class all material assigned for reading for that class session, or that we will get through all of the assignments described in the syllabus by semester’s end.** Anticipate, therefore, that there may be occasions when you will have read ahead. If there are concerns with respect to my course pacing decisions, please feel free to contact me. ***You will be tested only on the materials covered in class unless otherwise indicated.***

I expect that you know how to read and apply cases and statutes. We may spend less time in class in the traditional case analysis; I generally emphasize application and assume close reading of cases by students prior to class. Please be aware that corporate law is to a large extent a creature of statute. I will spend more time on statutory analysis and case law interpretation of statutes. More specifically, corporate law is best understood as a hybrid field of law in the United States. Legal sources are divided at a primary level between federal statutes (the securities laws) which cover transactions in securities, and state corporate law. State corporate law, in turn is a hybrid combination of state and caselaw. The statutes provide, at a minimum, a legal framework and

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legislative rules respecting much of the technical aspects of corporate law. It also sets out the basic principles of law. Courts spend much of their time applying, interpreting and fleshing out statutes. But there are significant areas of corporate law that are substantially still creatures of caselaw. Among the more important are the rules of fiduciary duty. In these areas caselaw rather than statute predominates, especially in Delaware. Note as well that in many areas the statutes provide a framework within which caselaw has been used to fill in the gaps sometimes in substantial ways. Lastly, the corporate law permits a substantial amount of private lawmaking. Corporations may be regulated either through permitted deviations from corporate statute incorporated into their own governance documents or in agreements among shareholders. This private law of corporate governance is technically treated as contract, but is binding all the same. The student should be sensitive to these framing considerations in approaching questions of corporate law.

With respect to statutory systems:

I will be emphasizing the Revised Model Business Corporation Act (“RMBCA”) and the corporation laws of Delaware. We will spend a lot of time on the interplay on statutory gap filling and interpretation by courts, and the differences in approaches between the Delaware Corporate Law and the RMBCA. ***I will also occasionally make reference to the corporation laws of other states, especially the laws of New York, Pennsylvania and California.*** Since the economic downturn of 2007, there has been greater activity at the international level as well. These efforts will be referenced from time to time, especially with respect to the problems of the multinational corporation.

Please have Text, Statutes, and any other assigned readings available to you during class meetings; I may ask you to access these then and they will prove helpful for reference in class discussion. Please note that you will be responsible for all assigned readings whether or not discussed in class. **PLEASE NOTE: This semester we will continue to be working with the 9th edition of the TEXT. It varies substantially from previous editions. Please use this current version.**

There are many ways to approach the teaching of corporate law. **I will be emphasizing client problem solving and advice**, rather than litigation strategy or student oriented case analysis, or corporate law as a species of legal theory. The course is designed to be practical and lawyer training oriented. The pedagogy of the class is designed to orient you to ways of approaching corporate law issues from the perspective of a junior associate in a corporate practice. *As a consequence, we will be spending far more time on statutes, and reading cases with a client counseling rather than a litigator perspective.* The problems presented in the Text will provide a thematic and systematic introduction to the sorts of problems the practitioner encounters in the practice of corporate law. Those problems ordinarily will be the focus of class discussion. As such, ***I recommend that in preparing for class you focus on the problems in the Text and to be***

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prepared to discuss them in class. Note also that my final exam is patterned on the problems we discuss in class; practice with the problems in the Text will aid you immeasurably in preparing for the final exam.

Chapter Problems: Several Chapters of the TEXT includes Problems. You will be expected to work through the problems as directed in the syllabus and to prepare a one page summary answer to be submitted to me no later than the end of the class at which the problem is assigned. FAILURE TO TURN IN THE PROBLEMS MAY RESULT IN LOWERING YOUR COURSE GRADE BY ONE HALF LETTER (E.G., FROM A TO A-) AT MY DISCRETION. I MAY ASSIGN ONE OR MORE STUDENTS TO LEAD CLASS DISCUSSION FOR EACH PROBLEM (WITH PRIOR NOTICE).

ATTENDANCE AND CLASS PARTICIPATION

Law School rules require me to notify students of my attendance policy. First year and gateway courses (like corporations) provide the foundation for your legal education. It is important for you to attend class. Also, *I remind you the final exam is drawn largely from the readings and discussion in class.*

Class attendance is required. Law school policy imposes on students the obligation to attend class regularly and punctually. I take attendance seriously. **Attendance will be taken on the honor system. All students will be assumed to be present unless they send me an email indicating that they are absent. Students are honor bound to report all absences, and failure to report absences will be treated as an honor code violation.**

You are responsible for marking your own attendance via email to me.

Students with more than four (4) unexcused absences can have their grade lowered one full grade (from A to A- for example) at my discretion.

Class participation is required. All students are expected to be prepared for each class session (that is, to have carefully read the material assigned). Please note that I will try to avoid making this a lecture course. All of you will find yourselves participating in at least some of the discussion. At the end of each class I will designate one or more students as class

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participation leaders for the next class. I reserve the right to call on students at random. **Outstanding participation may result in an increase in your grade, again at my discretion.**

SEATING IS ASSIGNED. You will be asked to fill out a seating chart during the second day of class.

My approach to class:

This is not a lecture course. The course involves a lot of give and take and some banter. It is designed to familiarize students with the range of interactions they may encounter in practice and to prepare them to overcome the personal and professional limitations and failings of others as they work to providing their best professional services for their client. The tone of class is also designed to prepare students for dealing with clients, and more senior lawyers in the firms. That means that the student will be exposed to all sorts of people with all sorts of failings and all sorts of ways of communicating, many of which may not produce a positive effect on the student (from a personal perspective). The pedagogy is meant to help students identify and overcome these challenges to deliver quality service to clients. For purposes of this course, I will consider you all to be my young associates working for a range of senior corporate lawyer and client types. You should begin think like a corporate lawyer, how to argue and defend a position before your peers, how to handle “ridiculous” claims and posturing, and how to approach the legal and business considerations underlying the typical "problems" your business clients will present you with (just like you'll have to do in court or at a meeting). To that end, I will try to emphasize interaction (with the understanding that lecture may be necessary, sometimes to a greater degree than other times in the course). **WARNINGS: *Please expect that at times I may appear to make you work for the answer yourself, especially if the answer is in a statute that was specifically assigned as part of the assigned reading but was discussed through the assigned readings, or if in the form of a challenge an obviously correct answer. Acquiring a feel for a corporate code, how it is organized, what the statutes ordinarily provide, how to work with multiple provisions simultaneously, and how courts interpret and apply them, are important parts of the learning experience this semester. Defending the obvious is sometimes the burden a good lawyer has to undertake for clients, senior lawyers and against adverse parties and their counsel.***

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To Repeat: You should anticipate being challenged on every answer you give and every question you ask. You will be expected to learn to work in an environment in which you are dealing with senior members of your firm, clients and opposing counsel on issues that can potentially expose your client or firm to significant liability. They may expect you to justify your answers, or may reject your approach, however reasonable it may seem to you. Be prepared to meet that challenge and to learn how to handle challenges in ways that provide effective representation of your client.

Understand that one of my goals for this year is to teach you how to defend your answers, and present your analysis, even under aggressive questioning. **Don't take it personally.** As the semester progresses, ask yourself often the following two questions: (1) what substantive rules am I learning, and (2) how am I being taught to go about understanding the substantive rules and the process of applying them creatively in a business context in which a client will not accept from you any response that begins: "You cannot do that."

Class Notes and Recording of Class. Take notes as you like. Please feel free to get together with your classmates for studying and sharing notes. Please remember that the purpose of the course is NOT to provide experience in stenographic techniques. Participation rather than the taking of dictation is encouraged. To that end, ***all of my classes are recorded and you are encouraged to review those recordings at your convenience. Recordings will be available through the end of the Examination Period.***

NO PERSONAL RECORDING OF CLASS.

[Policy Regarding Creation of, and Access to, Recordings by the Law School of Class Sessions](#)

All law school courses occur in classrooms equipped with audiovisual telecommunications equipment that is capable of making an audiovisual recording of each class session as it occurs. In order to provide the potential educational benefits of recorded classes to our students, the law school has decided to automatically record, and to archive for a limited period of time, all class sessions occurring in law school classrooms. The purpose of the recordings is to permit

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students enrolled in each recorded course to access the recordings outside of the regularly scheduled class period, according to rules established by the professor. Access to recorded classes will be controlled via a secure course management platform, such as CANVAS, and will be restricted to students enrolled in the recorded course, the professor, and those University IIT personnel necessary to maintain the system. All recordings will be deleted following the conclusion of the semester in which the recorded course occurs (unless all identifying student images are edited out of the recording, in which case the professor and law school jointly may decide to retain the edited recording for other purposes).

By registering for or attending law school courses, a student consents to the law school's making and display of class recordings within the scope of this policy.

The office of the Associate Dean for Academic Affairs has provided you with this statement; please familiarize yourself with all of its terms. In case of doubt about meaning, please contact the Office of the Associate Dean:

A. Student Access to Class Recordings; Open Access:

All Class/Open Access. All class recordings will be posted on the course ANGEL site for access by any student enrolled in this course. Access will end the last day of the final exam period. Your Professor may not consent to or authorize access to or distribution of class recordings beyond the students enrolled in that course.

B. Student Use of Recordings and Materials:

A student may not record any part of a class by any means without prior express authorization of the faculty member. If a student receives faculty authorization to record a class, the student may not copy or download such recording to a computer or other device, distribute it to any other person, or use the recording for any purpose other than personal education and study except with the prior express authorization of the faculty member. Unauthorized recording, distribution, or use of a class recording is a violation of the Honor Code.

A student may not use course materials such as slides or other documents posted on ANGEL for any purpose other than personal education and study and may not disseminate, publish, or alter course materials without prior express authorization of the faculty member. Unauthorized use of course materials is a violation of the Honor Code.

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Penn State Law Honor Code, Violation 2.1(1) covers unauthorized recording and unauthorized use of class recordings or course materials. It prohibits "Taking, using . . . or otherwise abusing the property of another, including, without limitation, books, briefs, class notes, outlines, or any other academic items, without authorization."

C. Questions, Special Requests. You should direct any questions, concerns or requests regarding classroom recordings or any classroom technology to the AV Team at av@law.psu.edu.

GRADING

The course grade will be based on a **take home exam**.

THE EXAM IS OPEN BOOK. You must work alone. You may reference any materials you have prepared in groups. CITATION TO ALL WORK QUOTED OR PARAPHRASED IS MANDATORY, INCLUDING MATERIALS SOURCED FROM CLASS NOTES, GROUP WORK, AND MORE TRADITIONAL SOURCES. You will have 24 hours to complete the exam from the time you pick it up. Students will be given the option of choosing the time you take the exam. The exam may be picked up on any day from the first day of final exams to 4:00 P.M. on the last day of the final exams period (April 28 through May 12, 2018).

The Law School determines the technology used to administer its exams, including this one. That technology changes from time to time. The class will adhere to the rules developed for those technologies. That will be determined closer to exam time and you will be informed in due course by those with the power to establish these procedures and rules. **I will not police you – you are on your honor to comply with final exam rules.**

The [HONOR CODE MAY BE ACCESSED HERE](#).

ANY EXAM DELIVERED AFTER 4 P.M. ON MAY 12, 2022 OR ATTEMPTED DELIVERY MORE THAN 24 HOURS AFTER STARTING THE EXAM WILL RECEIVE A GRADE OF “F”.

The awarding of grades is based on the curve system adopted by the faculty of the Law School and is subject to the limitations of those curve rules. The Grading Norms may

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be accessed [HERE](#). I will adhere to this system. Students interested in discussing the curve system itself, its wisdom, or making proposals with respect to the system, are advised to consult their academic dean.

ACADEMIC HONESTY AND INTEGRITY

Both Penn State Law (PSL) and the School of International Affairs (SIA) safeguard and promote the ideals of honor and integrity by prohibiting lying, cheating, stealing, and other dishonorable conduct. Accordingly, all students should act with personal integrity, respect other students' dignity, rights and property, and help create and maintain an environment in which all can succeed through the fruits of their efforts.

Dishonesty of any kind will not be tolerated in this course. Dishonesty includes, but is not limited to, cheating, plagiarizing, fabricating information or citations, facilitating acts of academic dishonesty by others, having unauthorized possession of examinations, submitting work of another person or work previously used without informing the instructor, or tampering with the academic work of other students. Students who are found to be dishonest will receive academic sanctions and will be reported to the relevant authorities for possible further disciplinary sanction. For an explanation of what types of conduct constitute plagiarism, see the definition of plagiarism in the Law School Honor Code section 1.2 (R) at <http://www.law.psu.edu/Honor/Contents.cfm>.

See also <http://istudy.psu.edu/FirstYearModule/CopyrightPlagiarism/StudentGuide.html> and <http://its.psu.edu/turnitin/TurnitinHandout.rtf>.

All acts of academic dishonesty will be dealt with and punished in accordance with applicable Penn State University, Penn State Law, SIA and Graduate School policies, as applicable.

CONFERENCES

I try to maintain an open door policy. I encourage you to see if me should you have any questions or concerns. While face time is important, students should not consider it necessarily the

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best or exclusive means for communicating with me. There is little excuse for the complaint – ‘he is not available’ – when technological advances have made communication possible by telephonic and electronic means.

TECHNOLOGY HAS MADE IT EASY TO COMMUNICATE.

PLEASE TAKE ADVANTAGE OF IT.

You are encouraged to contact me by e-mail. I will respond promptly.

<lcb911@me.com>

CANVAS

This year I will be relying on PSU’s CANVAS system for most of communication with you. I will post questions to the CANVAS class site and send e-mails via that site. Please check in regularly for information about the course. It will be your responsibility to keep apprised of the information posted there.

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Additional University Policies and Statements

UNIVERSITY DISABILITIES POLICY STATEMENT

To comply with University policy regarding persons with disabilities, this statement is included in this course syllabus:

Penn State welcomes students with disabilities into the University's educational programs. Every Penn State campus has an office for students with disabilities. The Student Disability Resources Web site provides [contact information for every Penn State campus: http://equity.psu.edu/sdr/disability-coordinator](http://equity.psu.edu/sdr/disability-coordinator). For further information, please visit the [Student Disability Resources Web site: http://equity.psu.edu/sdr](http://equity.psu.edu/sdr).

In order to receive consideration for reasonable accommodations, you must contact the appropriate disability services office at the campus where you are officially enrolled, [participate in an intake interview, and provide documentation: http://equity.psu.edu/sdr/applying-for-services](http://equity.psu.edu/sdr/applying-for-services). If the documentation supports your request for reasonable accommodations, your [campus's disability services office](#) will provide you with an accommodation letter. Please share this letter with your instructors and discuss the accommodations with them as early in your courses as possible. You must follow this process for every semester that you request accommodations.

Counseling & Psychological Services (CAPS)

<http://studentaffairs.psu.edu/counseling/>

CAPS staff work with thousands of Penn State students per year in group therapy, individual counseling, crisis intervention, and psychiatric services as well as providing prevention, outreach, and consultation services for the University community. Services at

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CAPS are designed to enhance students' ability to fully benefit from the University environment and academic experience.

As specialists in working with undergraduate and graduate students, staff at CAPS can help you address your concerns in a caring and supportive environment. CAPS can help students resolve personal concerns that may interfere with their academic progress, social development, and satisfaction at Penn State. Some of the more common concerns include anxiety, depression, difficulties in relationships (friends, roommates, or family); sexual identity; lack of motivation or difficulty relaxing, concentrating or studying; eating disorders; sexual assault and sexual abuse recovery; and uncertainties about personal values and beliefs.

Protocol for Responding to Bias Motivated Incidents

Penn State University has adopted a “Protocol for Responding to Bias Motivated Incidents.” It may be accessed [HERE](#). It is grounded in the policy that the “University is committed to creating an educational environment which is free from intolerance directed toward individuals or groups and strives to create and maintain an environment that fosters respect for others.” That policy is embedded within an institution traditionally committed to academic freedom (the policy may be accessed [here](#)) and free and open discussion. Bias motivated incidents include conduct that is defined in University Policy AD 91 (accessed [here](#)). Students who experience a possible bias motivated incident, as well as students, faculty or staff who are witnesses of the same, are urged to report the incident immediately by doing one of the following:

* Contact your County Emergency Dispatch by dialing 911 in cases where physical injury has occurred or is imminent;

* File a report on the Report Bias website: <http://equity.psu.edu/reportbias/statement>;

* Contact one of the following offices:

University Police Services, University Park	814-863-1111
MRC Counselor/Diversity Advocate for Students	814-865-1773
Office of the Vice Provost for Educational Equity	814-865-5906
Office of the Vice President for Student Affairs	814-865-0909
Affirmative Action Office	814-863-0471

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COVID-19 Syllabus Statement

We know from existing data that wearing a mask in public can help prevent the spread of COVID-19 in the community (Lyu & Wehby, 2020; CDC, 2020; Johns Hopkins Medicine, 2020). In accordance with PA Department of Health regulations and guidance from the Centers for Disease Control and Prevention (CDC), The Pennsylvania State University has determined that everyone will be required to wear a face mask in university buildings, including classrooms. You **MUST** wear a mask appropriately (i.e., covering both your mouth and nose) in the building if you are attending class in person. Masks have been provided for students, instructors, and staff, and everyone is expected to wear one.

Students who choose not to wear a mask may not attend class in person. This is to protect their health and safety as well as the health and safety of their classmates, instructor, and the university community. Anyone attending class in person without a mask will be asked to put one on or leave. Instructors will end class if anyone present refuses to appropriately wear a mask for the duration of class. Students should also be sure they are situated at least six feet away from their fellow students and seated in a seat that is designated to ensure that distance. Students who refuse to wear masks appropriately or adhere to other stated requirements may face disciplinary action for Code of Conduct violations.

On a case-by-case basis, students may consult with Student Disability Resources for accommodations if they cannot wear a mask. Students requiring such accommodations may be advised to take advantage of and participate in the course through synchronous remote learning, if available. Students requiring such accommodations should consult with academic advisors before the end of the drop/add period to locate alternative course offerings that will allow their participation through remote learning.

Finally, students who are experiencing COVID-19 related symptoms should not attend class in person and are encouraged to contact a health care provider.

Centers for Disease Control and Prevention. (2020, April 3) Recommendation Regarding the Use of Cloth Face Coverings, Especially in Areas of Significant Community-Based Transmission. <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover.html>

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Johns Hopkins Medicine. (2020, June 17) Coronavirus Face Masks & Protection FAQs. <https://www.hopkinsmedicine.org/health/conditions-and-diseases/coronavirus/coronavirus-face-masks-what-you-need-to-know>

Lyu, W. and Wehby, G.L. (2020, June 16) Community Use Of Face Masks And COVID-19: Evidence From A Natural Experiment Of State Mandates In The US. Health Affairs. https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2020.00818?url_ver=Z39.88-2003&rfr_id=ori%3Arid%3Acrossref.org&rfr_dat=cr_pub++0pubmed&

A portion of the grade for this course is directly tied to your participation in this class. Successful participation is defined as consistently adhering to University requirements, as presented in this syllabus. It also includes engaging in group or other activities during class that solicit your feedback on the readings or material in the lecture.

As you enter class (or, As we begin class), I expect that each of you is wearing a mask that covers your mouth and nose. Please also be sure you are situated at least 6 feet away from your fellow students and seated in a seat that is designated to ensure that distance. (Add other appropriate language specific to the class here.) It is also important to remember that masks are required to be worn in any University building. These requirements are in place to promote the safety of our entire community.

Penn State's Code of Conduct defines failure to comply as "Failing to comply with reasonable directives from University or other officials when directed to do so. This includes, but is not limited to failure to provide identification, to report to an administrative office, to complete sanctions assigned as part of the conduct process or, when reasonable cause exists, failure to leave University-controlled premises (both physical and virtual) or dangerous situations when directed to do so by properly authorized persons, including police and/or University faculty and staff" University Code of Conduct, 2019.

Disruptive behavior is defined as "Obstruction or disruption of classes, research projects, conduct processes and/or investigations (University or police), University governance proceedings, or other activities or programs of the University; or obstructing access to University facilities, property, or programs. An action or combination of actions by one or more individuals that unreasonably interferes with, hinders, obstructs, or prevents the operation of the University or infringes on the rights of others to freely participate in its programs and services. (Also see policy AD-57)" University Code of Conduct, 2019.

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Referrals to the OSC for noncompliance will result in the student being immediately informed they may not return to class until the matter is addressed through the University's conduct process. A student who returns to the class before being expressly given permission will be in violation of the Code of Conduct. An OSC case manager will meet with the student to address the behavior and gather relevant information. The case manager will also connect with the instructor to gather information and communicate next steps in the conduct process. If it is determined through the conduct process that the student violated the Code of Conduct, sanctions will be assigned designed to hold the student accountable for the violation and to set clear expectations regarding future behavior and adherence to stated requirements. However, if appropriate and warranted (e.g., in cases of significant disruption, repeated non-compliance, or threatening behavior), the student may be prevented from participating in person or removed from the class permanently. In any case, conduct outcomes relevant to the classroom environment will be communicated to the instructor prior to the student being allowed to return to the classroom.

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SYLLABUS:¹

A Note on Pedagogy and a summary description of the order of the syllabus. It is usually useful to provide students with a roadmap of where they will be taken during the course of the semester. It is equally important to try to explain the reasons for taking a particular path from the start to the end of the course materials.

What follows are the class assignments for the semester arranged chronologically.

Before working through them, students might want to consider the reason for this sequence: The course materials are arranged to provide students with a view of the corporation, and the laws, norms, and principles through which it is regulated, interpretations of law are justified, and clients and lawyers weigh the risks of particular actions against the probability of affirmation of their legality by a court.

This is undertaken from the outside in.

Part 1 of the materials (Classes 1-3) introduces students to the context in which people engage in economic activity, and construct law to aid in its rationalization, and in the protection of the integrity of transactions and their enforcement. To that end, students are introduced to the lawyer as a mediating agent and the normative and behavior expectations of lawyers in the context of the regulation of economic activity (especially in corporate form). Students then consider the behavioral framework within which such activity is understood and the rationalization for its organization and valuation. That study focuses on an introduction to risk and to the principal stakeholders in organized economic activity—those who control capital, those who offer labor, and those who manage the relations between them. Risk is the way in which such interactions are valued, and value maximization is the objective of actions. Risk also explains the value (to individuals and society) of permitting the aggregation of capital (we leave the value of the aggregation of other means of production, especially of labor, to other courses) Lastly, students are introduced to the fundamental principle of organized economic activity—the principles of agency. Corporate law presents a very specific application of rules and cultural expectations around the premise that people may be hired to undertake tasks not for themselves but for others. That applies as much to shareholders delegating managerial

¹ AS MENTIONED ABOVE; ALL PROBLEMS ARE TO BE WRITTEN, STUDENTS WILL EMAIL ME A 1 PAGE SUMMARY RESPONSE BY THE CLOSE OF CLASS.

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authority to directors, as it does to directors delegating the responsibility for the day to day operations of the enterprise son managers.

Part 2 of the materials (classes 4-9) then considers the legal framework built around the valuation-risk premises around which economic activity is organized. Here students are exposed to the way in which law constructs the “outer shell” of the corporate form, and develops expectations around its operations which are then expressed and applied through legal doctrine—statutes, cases, and the private law of corporate organization. It is also the section where much of the specialized vocabulary of corporate law is introduced, along with core basic concepts. Students start with vocabulary and legal structure building—an overview of the legal attributes of corporate form , the fundamental role of agency expressed through the fiduciary duty principle, the role of equity in corporate regulation, and a very brief demarcation of the walls between what may be regulated within the enterprise so constructed (the internal affairs rule) and the regulation of the enterprise itself within the social and political collective of the nation. Students are then introduced to the structures and ideologies underlying the construction of corporate statutes—how to read them, how to understand their interconnection with caselaw, and how judges perform two quite distinct tasks in relation to both: interpreting statutes and developing judge based law. Students are then introduced to the now contentious issue of corporate personality (is a corporation property in the hands of shareholders, an instrumentality of the state, or an autonomous entity) and corporate purpose (to maximize shareholder welfare, stakeholder welfare, or the welfare of the nation). Students also consider the circumstances under which the corporate form may be disregarded (veil piercing) and the difficult problems of agency when undertaking corporate decision making. Lastly, the extent of the corporation’s social responsibility (philanthropy mainly but also human rights and sustainability) is introduced.

Part 3 of the materials (classes 10-18) then brings students inside the corporate form. Here students are introduced to the standard model of corporate governance: (1) shareholders bear all residual risk retain all residual reward and are limited in the exercise of their power to voting; (2) directors have no authority as individuals but act collectively as the fiduciaries of shareholders charged with the duty to manage and oversee the affairs of the corporation the board of directors has the authority to bind the enterprise; (3) managers are responsible for the day to day activities of the enterprise under the authority of the board of directors. In short, shareholders vote, directors set policy and bind the enterprise, and managers operate the enterprise. Students are then exposed to the way that the law permits variation in the standard model through (a) special provision for closely held enterprises, and through statutory rules that are enacted as default provisions but

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which permit some sometimes substantial deviation if set forth in the corporate charter or in the bylaws or sometimes in shareholder agreements. This Part 3 introduces students as well to close reading of sometimes highly technical statutory provisions. First students consider the technical requirements of corporate formation and the role of the lawyer (our exposure to corporate legal ethics and the problems of privilege). Then students consider in more detail the and the demarcation of the walls between what are the subjects subject to regulation under standard model of corporate governance principles within the enterprise so constructed (the internal affairs rule) and the regulation of the enterprise itself within the social and political collective of the nation. Then they consider the rules for the financing of enterprises. These include both an understanding of the nature of financial instruments and the differences between them (e.g., equity and its sub-forms as well as the variations of the forms of debt). Students are introduced to the concept of “par value” and of dividends and its legal constraints. Lastly, students study the more technical aspects of the role of shareholders (the complexities of rights and forms of shareholder voting); the role of directors (requirements for meeting and valid action and their role in governance; the role of officers, and lastly the role of lawyer-advisors. Included here are the increasingly important rules governing shareholder inspection and its connection to the materials we then cover in the next part, derivative litigation.

Part 4 of the materials (classes 19-20) introduce students to the basics of shareholder litigation. This Part briefly introduces students to the basics of shareholder litigation. Students consider the way that the law distinguishes between direct and derivative litigation and the consequences. They consider then the general outlines of the requirements and procedural movement of derivative litigation. These include rules on capacity (who can sue), reliance, causation, and injury. Much attention is paid to the fundamental core of shareholder litigation in contemporary times—the demand requirement (the requirement that absent a waiver or excuse) shareholder litigants must make a demand on the board to correct the breaches alleged before they may file their derivative action in court. These are rules of both process and substance and provide a useful segue to the last set of materials considered in this introduction to corporate law.

Part 5 of the materials (classes 21-27) caps off the course with a more granular consideration of the meaning and application of fiduciary duty in a wide variety of contexts. The course ends with a more systematic and detailed discussion of fiduciary duty. In a sense, that discussion provides a capstone in the sense that it draws together all of the elements of corporate law that had been discussed through the first parts of the semester and puts together various elements of corporate conduct that have been discussed in the

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margins respecting each. The materials first start with the overall framework for fiduciary duty by distinguishing between fiduciary duty as a normative (conduct)s standard and as a standard of liability. It also distinguishes between the conduct of an individual director (which may or may not result in liability) and the actions of the board (which do). Also distinguished is the difference between fiduciary duty and the procedural requirements that must be undertaken to move from allegation to a finding of liability. This involves the introduction of the core concept of the “business judgment rule.” The BJR is, like fiduciary duty itself, both a normative rule (courts will not second guess board decisions and boards have a very wide scope of discretion in managing a corporation) and a rule of process (determining the rules under which the normative presumptions of the BJR can be overcome and the shifting burdens of production and proof that must be met to move to liability). Students then untangle the various forms of fiduciary duty that are been developed by the courts: (1) duty of care (monitoring); (2) duty of care (transactional); (3) duty of loyalty (conflicts of interest); (4) duty of loyalty (independence); (5) duty of loyalty (good faith); and (6) duty to disclose. All of these are then applied in varying contexts in which they tend to arise.

Class	Topic	Pages
1	Syllabus Review. Readings: Leo Strine, “Perfectly Frank: A Reflection on Quality Lawyering in Honor of R. Franklin Balotti,” <i>Business Lawyer</i> 72: 607-621 (2017)	Read Strine Article
2	Business and Risk --Prepare answers to hypothetical pp. 7-8	TEXT Chapter 1
3	Intro to the problem of Officers: Agency --Prepare Problem: Agency Relations	TEXT Chapter 2 pp. 19-52
4	Intro to Business Entities and Concepts: Overview of Legal Attributes	TEXT Chapter 2

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	Fiduciary Duty and Equitable limits	pp. 52-79
5	The Statutory Basis of Corporate Law <i>--Be prepared to review the structures of Del. Corp Code and RMBCA</i>	STATUTES
6	Piercing the Corporate Veil	TEXT Chapter 3
7	The Business Entity and Legal Personality <i>--Prepare Problem: Regulating Corporate Lobbying</i>	TEXT Chapter 4
8	Corporation and Society <i>--Prepare Exogen Inc Part I & Part 2 problems</i> --Framework Issues; Lawyer's role	TEXT Chapter 5; 157-182; 200-210 State by State Analysis Benefit Corp Statutes
9	Corporation and Society: Law of Corporate Charitable Giving; <i>--Prepare Union Airlines Problem;</i> <i>US State Dept. Guidance on UNGPs</i>	TEXT Chapter 5; 182-210
10	Planning in the Close Corporation <i>-- Precision Tools Parts 1-4</i>	TEXT chapter 6 pp- 213-242
11	Oppression in the Close Corp. <i>--Precision Tools Revisited Problem Part 5</i>	TEXT chapter 6 pp. 242-262
12	Introduction to Financial Accounting <i>--Prepare Problems Precision Tools Part 7</i>	TEXT Chapter 9 SKIM pp. 385-98
13	Financial Structure of the Corporation:	TEXT Chapter 10

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	Corporate Securities, <i>--Prepare precision Tools Problem Part 9</i>	pp. 399-413
14	Legal Capital; Dividends	TEXT Chapter 10 pp. 413-31
15	Forming the Entity; Advising the Entity <i>--Prepare Precision Tools Problem Parts 10-11</i>	TEXT Chapter 11 <u>Argos Holdings Inc. v. Wilmington Trust, National Association (2019)</u>
16	Governance Public Corporation	TEXT Chp 12 (pp. 486; 494-502); <u>Salzberg, et al. v. Sciabacucchi</u> , No. 346, 2019 (Del. Mar. 18, 2020) (Models of governance and the internal affairs doctrine)

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	Shareholder proposals Shareholder Inspection	pp. 539-49; 572-596 <i>High River Limited Partnership v. Occidental Petroleum Corp.</i> , C.A. No. 2019-0403-JRS, 2019 WL 6040285 (Del. Ch. Nov. 14, 2019) (Slights, V.C.)
19	Shareholder Nomination Shareholder Disclosure rules (State law)	TEXT ch 14 596-619 Ch 15; 651-662
20	Shareholder Litigation Direct v. Derivative Action Shareholder Inspection Rights	TEXT chapter 16 pp. 663-682; <i>Brookfield Asset Management</i> (2021) pp. 698-707
21	Shareholder Litigation Demand Requirement Director independence	TEXT chapter 16 pp. 682-692 <i>United Food & Commercial Workers Union & Participating Food Industry Employers Tri-State Pension Fund v. Zuckerberg</i> (2021) pp. 707-742
22	The Duty of Care: Overview	TEXT Chapter 17 747-768
23	The Duty of Care: Duty of Oversight	TEXT Chapter 17 769-798

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[*In re Clovis
Oncology, Inc.
Derivative Litigation*](#)
2016 WL 660133)(Oct
2019).

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| 24 | The Duty of Care: Duty to become informed
Avoidance of liability
--Prepare Problem: <i>FiberNet Corp. Part 4</i> | TEXT Chapter 17
799-842 |
| 25 | Duty of Loyalty: Self-Dealing
--Prepare <i>Starcrest Corp Problem Part 1</i> | TEXT Chapter 18
843-878 |
| 26 | Duty of Loyalty: Good Faith | TEXT Chapter 18
878-900 |
| 27 | Duty of Loyalty: Corporate Opportunity Doctrine
--Prepare <i>Starcrest Corp. Problem Part 2</i> | TEXT Chapter 18
900-921 |
| 28 | Duty of Loyalty:
Transactions Within Corporate Groups
Cash out Transactions | TEXT Chapter 19
921-981 |
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