

**Course Outline**

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<b>COURSE:</b>	<b>LAWS 4209B – Topics in Business Law – Controversial Issues in the Regulation of Corporations</b>
<b>TERM:</b>	<b>WINTER 2019</b>
<b>PREREQUISITES:</b>	<b>LAWS 2908, 0.5 credit from LAWS 2201 or LAWS 2202 and Fourth-Year Honours standing</b>
<b>CLASS:</b>	<b>Day &amp; Time: Fridays 14:35 – 17:25</b> <b>Room: Please check with Carleton Central for current room location</b>
<b>INSTRUCTOR:</b>	<b>Professor Alberto R. Salazar V. PhD</b>
<b>CONTACT:</b>	<b>Office: C470 Loeb Building</b> <b>Office Hrs: Fridays 12pm – 1:30pm</b> <b>Telephone: 613-520-2600 x, 3269</b> <b>Email: alberto.salazar@carleton.ca</b>

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**CALENDAR COURSE DESCRIPTION**

Examination of a selected advanced topic in business law. The topics of this course may vary from year to year and are announced in advance of registration.

**COURSE DESCRIPTION**

This seminar seeks to provide students with the opportunity to reflect upon controversial issues in corporate governance and business law from critical and interdisciplinary perspectives. The first section examines selected corporate governance problems such as the principle of limited liability and environmental harm; workers' participation in the governance of the corporation; institutional shareholder activism; corporate social responsibility and human rights; and corporate bribery and corruption. The second section discusses new policy developments in two general business law fields, namely, consumer law and international trade. Throughout the course the goals will be (1) to undertake normative and socio-legal analysis of the key issues and (2) to develop critically informed insights into the possible legal and non-legal responses to the problems addressed

**REQUIRED MATERIALS**

Readings are available via ARES (Carleton University).

**EVALUATION**

**(All components must be completed in order to get a passing grade)**

Standing in a course is determined by the course instructor subject to the approval of the Department and of the Faculty Dean. This means that grades submitted by the instructor may be subject to revision. No grades are final until they have been approved by the Department and the Dean.

## TEACHING METHOD

The course is largely based on class discussions. The professor will provide an introduction to the topics explaining the central issues and presenting provocative questions. This will be followed by students' reading presentations. In every session, two students will discuss the readings under the guidance of the professor. The discussions will clarify, illustrate (with examples and modern applications) and criticize the claims made by the authors. This method seeks to engage students in an intensive discussion of the materials, which in turn will help them develop their critical skills.

## ASSIGNMENTS, GRADING AND DEADLINES

**All components must be completed in order to get a passing grade.**

Standing in a course is determined by the course instructor subject to the approval of the Department and of the Faculty Dean. This means that grades submitted by the instructor may be subject to revision. No grades are final until they have been approved by the Department and the Dean.

		DEADLINE
Research Paper (12-15 pages)	60%	April 5, 2019
Class Participation	20%	T.B.A.
Reading Presentation	20%	T.B.A.

## RESEARCH PAPER

### The Final Paper

While the emphasis will be placed on the novelty of the argument and the critical analysis thereof, the papers will be graded on the basis of the following considerations:

1. Topic: free topic but must be related to the course topics, relevant, very narrow!
2. Thesis: clear statement of argument at the outset (ideally in the introduction), novelty!
3. Research: breadth and depth of research focusing on argument.
4. Analysis: critical, interdisciplinary, depth, focus on argument, logic, balance
5. Originality: novelty, insight, thought-provoking.
6. Evidence: primarily scholarly references to support claims; avoid quotations, instead paraphrase authors' ideas using your own words and citing source.
7. Readings: a minimum of 5 readings from the course kit must be cited. References to course readings do not necessarily have to be central to the paper argument. In part, this requirement is to confirm that students are familiar with the course materials and class discussions. Outside readings are welcome.

8. Organization: clear structure throughout paper i.e. introduction, development of argument by articulating the key claims with supportive references, conclusion
9. Style: clarity, flow, avoid long sentences and paragraphs, correct citation format (McGill format is preferred) and grammar.
10. Length: maximum 12-15 double-spaced pages. Please do not waste space and time describing the topic without developing your argument or discussing issues that are not central to the argument of your paper.
11. Deadline: April 5, 2019.
12. Submission: students must hand in their final essays by the deadline and in class. Email submissions of final papers are not permitted. Late submissions will be penalized (i.e. deduction of 2% per weekday).

### **The Process of Writing the Paper**

The process of writing the paper involves three main steps. First, every student will submit and present her or his paper plan (1-2 pages) on the day scheduled for small group presentations. A paper plan must include a narrow topic, potential or working argument, ideas about how the argument will be developed and some initial sources. Second, students will also submit and present a full-written, well-referenced draft of their papers in small groups. This first draft must be submitted to the professor 2 days before the day scheduled for presentation. Students must highlight the thesis/argument statement and at least 2-3 key points and references that develop and support the thesis throughout their paper drafts. The discussion of paper drafts in class should provide important feedback that students should seriously consider in order to improve their papers. Students that have specific questions about their draft or the professor's feedback should consider emailing the professor to seek assistance. The third and last step involves the submission of the revised research papers on the deadline. While the submission of paper plans and drafts do not have a separate grade, compliance with these requirements will be factored in the final grade for the papers. The schedule is as follows:

Presentations of Paper Plans: February 8 and 15, 2019

Presentations of First Paper Draft: March 15, 22 and 29, 2019

Submission of Final Paper: April 5, 2019 (early submission on March 29, 2019 is encouraged)

The schedule of presentations of paper plans and paper drafts will be confirmed in the first class.

### **READING PRESENTATIONS**

Every student will give a presentation on the readings. This presentation will take the form of a summary of, or a critical response to, the assigned readings. For every class, there will be, at least, two students presenting on the readings. The first student will provide a brief summary of ALL the readings assigned for the relevant session. The summary should focus on analyzing the central claims and supportive evidence of the authors. The second student (the respondent) will criticize the authors' claims and provide comments on the presentation of the summary. This response must articulate a view as to whether the respondent agrees with the authors' claims and the presenter of the summary. Drawing on the readings, the strength of the summary presentation and the response should lie in the ability to examine or challenge the authors' views. Students

are encouraged to use examples, counter-examples, outside readings, audio-visual materials or other evidence to support their positions on the issues. Both the presenter and the respondent must submit by email a brief written statement (1-2 pages) of their respective presentations 2 days before the day scheduled for presentation. Both the summary presentation and the response will be graded as part of the 20% portion of the total grade. This grade will mainly reward the serious effort made by the student to examine the materials. While students will take the materials seriously, there is no expectation that students will understand all the details of the readings.

The schedule of reading presentations will be confirmed in the first class. There are approximately 11-12 sessions in the term and it is expected that every student will have the opportunity to give a presentation.

## **CLASS PARTICIPATION**

This portion of the grade will be based on weekly attendance and informed contribution to the class discussions. It is assumed that students will attend the sessions having read the materials assigned for each class. Every student must be prepared to provide informed comments on the readings. The professor will verify this by informally asking students to comment on the readings before or during the class discussion. Students' participation will be evaluated throughout each term. Students should consider multiple ways of actively engaging in the class discussion such as raising issues for discussion, asking questions, agreeing or disagreeing with the authors and class presentations, providing answers to important problems, taking minutes of the discussion or presenting examples or counter-examples (e.g. business news) to support a position.

## **LAPTOPS AND CELLPHONES IN CLASS**

Students are expected to use technology respectfully in class and to consider the impact of their actions on their fellow students and on my ability to deliver a lecture or conduct a class discussion. If a student is using technology in a way that interferes with the learning environment, I may ask the student to curtail the use of cell phones or laptops in class.

## **SCHEDULE OF TOPICS AND READINGS**

### **I. ISSUES IN CORPORATE GOVERNANCE**

#### **Jan 11<sup>th</sup> Week 1 Introduction**

**Jan 18<sup>th</sup> Week 2 Theories of the Firm and Divergence of Corporate Governance Systems:** What are the dominant corporate governance theories? Does the Shareholder Primacy Model of Governance work? Does System Theory of Corporate Law provide a superior approach to Corporate Governance?

- Belinfanti and Stout, “Contested Visions: The Value of Systems Theory for Corporate Law”, 166 U. Pa. L. Rev. 579 (2018)

**Jan 25th Week 3 Limited liability, Environmental Harm and Tort Creditors:** Define the principle of limited liability in corporate law. To what extent does this principle of limited liability create barriers for compensating victims of torts caused by corporations?

- Easterbrook, Frank H. and Fischel, Daniel R. “Limited Liability” in Frank H. Easterbrook and Daniel R. Fischel. *The Economic Structure of Corporate Law* (Cambridge, Mass.: Harvard University Press, 1991), pp. 40-62. ISBN: 067423538X.
- Blumberg, Phillip I. *The Multinational Challenge to Corporation Law: the Search for a New Corporate Personality* (New York: Oxford University Press, 1993) Chapter 6, 121-150 (“Economic Dimensions: The Role of Limited Liability”)

**Feb. 1st Week 4 Executive Compensation and Wealth Concentration:** Is executive compensation excessive? If so, what are the common policy responses? Do they work? What can we learn from the Japanese pattern of executive compensation?

- Alarie, Benjamin “Executive Compensation and Tax Policy: Lessons for Canada from the Experience of the United States in the 1990s” (2003) 61 (1) University of Toronto Faculty of Law Review 39 (pp. 39-75). ISSN: 0381-1638
- Salazar, Alberto and John Raggiunti, “Why Does Executive Greed Prevail in the United States and Canada but Not in Japan? The Pattern of Low CEO Pay and High Worker Welfare in Japanese Corporations” (2016) American Journal of Comparative Law. Forthcoming.

**Feb 8<sup>th</sup> Week 5 Shareholders’ and Stakeholders’ Activism:** What is institutional shareholder activism? Does institutional shareholder activism contribute to improving the governance of modern corporations? Do pension funds play an important role in corporate governance?

- Romano, Roberta “Less is More: Making Institutional Investor Activism a Valuable Mechanism of Corporate Governance” 18 (2001) Yale Journal on Regulation 174.
- Anderson, Kirsten & Ian Ramsay, “From the Picketline to the Boardroom: Union Shareholder Activism in Australia” (Research Report, 2005) (The Centre for Corporate Law and Securities Regulation and the Centre for Employment and Labour Relations Law at the University of Melbourne) pp. 57-78 only. Freely available in the internet. ISBN 0 7340 3583 7.

**Feb 15<sup>th</sup> Week 6 Governance and Labor:** Why do workers not participate in corporate decision-making? What are the potential ways in which workers can participate in corporate governance?

- Roth, Markus “Employee participation, corporate governance and the firm: a transatlantic view focused on occupational pensions and co-determination” (2010) 11(1) European Business Organization Law Review, 51-85.
- Supplementary Reading: O'Connor, Marleen "Labor's Role in the American Corporate Governance Structure" (2000) 22 Comparative Labor Law & Pol'y J. 97.

**Feb. 22nd Week 7: NO CLASSES - WINTER BREAK (Feb 18<sup>th</sup>-22nd, 2019)**

**March 1st Week 8 Corporate Social Responsibility:** What is corporate social responsibility? Do corporations contribute to society's welfare? Are corporations socially responsible in rich and poor countries?

- Williams, Cynthia A., "Corporate Social Responsibility and Corporate Governance" (2016). *Articles & Book Chapters*. Paper 1784, [http://digitalcommons.osgoode.yorku.ca/scholarly\\_works/1784](http://digitalcommons.osgoode.yorku.ca/scholarly_works/1784).

**March 8<sup>th</sup> Week 9 Corporate Social Responsibility and Human Rights:** Do corporations violate human rights? Do directors and officers of corporations owe a duty to respect human rights? Is it possible to hold directors and officers legally liable for human right violations?

- Williams, Cynthia A. & John M. Conley, “Is there an Emerging Fiduciary Duty to Consider Human Rights?” (2005) 74 (1) University of Cincinnati Law Review 75. ISSN: 0009-6881.

**March 15<sup>th</sup> Week 10 Corporate Bribery and Corruption:** How serious is the problem of corporate bribery? What legal and non-legal measures are being taken in the US and Canada to combat corporate bribery? Is the Mandatory Disclosure of Payments from Canadian Mining Companies to Foreign Governments likely to be effective in combating corruption?

- Vlastic, Mark V. & Peter Atlee, “Myanmar and the Dodd-Frank whistleblower “bounty”: the U.S. Foreign Corrupt Practices Act and curbing grand corruption through innovative action” (2014) 29 (2) American University International Law Review 441, online: <http://www.auilr.org/pdf/29/29.2.6.pdf>
- The Resource Revenue Transparency Working Group, “Recommendations on Mandatory Disclosure of Payments from Canadian Mining Companies to Governments” (Jan 16, 2014), [http://mining.ca/sites/default/files/documents/RRTWG\\_Recommendations\\_Jan2014.pdf](http://mining.ca/sites/default/files/documents/RRTWG_Recommendations_Jan2014.pdf)

## II. SOME CRITICAL ISSUES IN BUSINESS LAW

**March 22<sup>nd</sup> Week 11 Consumer Protection Law and Advertising Regulation:** How does consumer law protect consumers? Is information provision critical to protect consumers? Is the restriction of soft drink advertising appropriate?

- Hadfield, Gillian K. et al., “Information-Based Principles for Rethinking Consumer Protection Policy” (1998) 21 *Journal of Consumer Policy* 131.
- Lin Mei Tan & James Xun Liu, “Curbing the Consumption of Soft Drinks in New Zealand: Is Tax the Solution?” (2014) *New Zealand Journal of Taxation Law and Policy* pp. 203-210 only.
- CAP, UK. “Help Note on Food and soft drink product advertisements and children”, <http://www.cap.org.uk/~media/Files/CAP/Help%20notes%20new/Food%20and%20soft%20drinks%20advertisements%20and%20children.ashx>
- BBC, “Mexico restricts soft drink TV ads to fight obesity”, *BBC News, Latin America & Caribbean* (July 16, 2014)

**March 29<sup>th</sup> Week 12 Paper Draft Submissions (last group) and Discussions**

**April 5<sup>th</sup> Week 13 Trade, NAFTA Chapter 11 and Foreign Investment:** When is a government regulation expropriatory and thus a violation of NAFTA Chapter 11? Why is regulatory expropriation based on NAFTA Chapter 11 problematic? Provide examples.

- Salazar, Alberto “NAFTA Chapter 11, Regulatory Expropriation, and Domestic Counter-Advertising Law” (2010) 27 *Arizona Journal of International and Comparative Law* 31. ISSN: 0743-6963. Available online: <http://www.ajicl.org/AJICL2010/2.27.1Salazar.pdf>

## END OF THE TERM

### ACADEMIC ACCOMMODATIONS

You may need special arrangements to meet your academic obligations during the term. For an accommodation request the processes are as follows:

**Pregnancy obligation:** Please contact me with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. For more details, visit the Equity Services website: [carleton.ca/equity/wp-content/uploads/Student-Guide-to-Academic-Accommodation.pdf](http://carleton.ca/equity/wp-content/uploads/Student-Guide-to-Academic-Accommodation.pdf)

**Religious obligation:** write to me with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. For more details, visit the Equity Services website: [carleton.ca/equity/wp-content/uploads/Student-Guide-to-Academic-Accommodation.pdf](http://carleton.ca/equity/wp-content/uploads/Student-Guide-to-Academic-Accommodation.pdf)

**Academic Accommodations for Students with Disabilities:** If you have a documented disability requiring academic accommodations in this course, please contact The Paul Menton Centre (PMC) at 613-520-6608 or [pmc@carleton.ca](mailto:pmc@carleton.ca) for a formal evaluation. If you are already registered with the PMC, contact your PMC coordinator to send me your Letter of Accommodation at the beginning of the term, and no later than two weeks before the first in-class scheduled test or exam requiring accommodation (if applicable). After requesting accommodation from PMC, meet with me as soon as possible to ensure accommodation arrangements are made. Please consult the PMC Website for their deadline to request accommodations for the formally-scheduled exam (if applicable) [www.carleton.ca/pmc](http://www.carleton.ca/pmc)

### **Plagiarism**

Plagiarism is presenting, whether intentional or not, the ideas, expression of ideas or work of others as one's own. Plagiarism includes reproducing or paraphrasing portions of someone else's published or unpublished material, regardless of the source, and presenting these as one's own without proper citation or reference to the original source. Examples of sources from which the ideas, expressions of ideas or works of others may be drawn from include but are not limited to: books, articles, papers, literary compositions and phrases, performance compositions, chemical compounds, art works, laboratory reports, research results, calculations and the results of calculations, diagrams, constructions, computer reports, computer code/software, and material on the Internet. Plagiarism is a serious offence.

More information on the University's Academic Integrity Policy can be found at:  
<https://carleton.ca/registrar/academic-integrity/>

### **Survivors of Sexual Violence**

As a community, Carleton University is committed to maintaining a positive learning, working and living environment where sexual violence will not be tolerated, and survivors are supported through academic accommodations as per Carleton's Sexual Violence Policy. For more information about the services available at the university and to obtain information about sexual violence and/or support, visit: [carleton.ca/sexual-violence-support](http://carleton.ca/sexual-violence-support)

### **Accommodation for Student Activities**

Carleton University recognizes the substantial benefits, both to the individual student and for the university, that result from a student participating in activities beyond the classroom experience. Reasonable accommodation must be provided to students who compete or perform at the national or international level. Please contact your instructor with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. <https://carleton.ca/senate/wp-content/uploads/Accommodation-for-Student-Activities-1.pdf>

For more information on academic accommodation, please contact the departmental administrator or visit: [students.carleton.ca/course-outline](http://students.carleton.ca/course-outline)

### **Department Policy**

The Department of Law and Legal Studies operates in association with certain policies and procedures. Please review these documents to ensure that your practices meet our Department's expectations.

<http://carleton.ca/law/current-students/>