

Course Outline

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<b>COURSE:</b>	<b>LAWS 4209B – Topics in Business Law – Corporate Law and the New Industrial Revolution</b>
<b>TERM:</b>	<b>SUMMER 2020</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: Mondays and Wednesdays 8:30 – 11:30 (via Zoom)</b> <b>Room: This class will be offered online using Zoom</b>
<b>INSTRUCTOR: (CONTRACT)</b>	<b>Professor Alberto R. Salazar V., PhD</b>
<b>CONTACT:</b>	<b>Office: C470 Loeb Building</b> <b>Office Hrs: Mondays and Wednesdays 11:30 – 12:30 pm</b> <b>Telephone: 613-520-2600 x. 3269</b> <b>Email: alberto.salazar@carleton.ca</b>

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**CALENDAR COURSE DESCRIPTION****Topics in Business Law**

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.

Prerequisite(s): [LAWS 2908](#), 0.5 credit from [LAWS 2201](#) or [LAWS 2202](#), and fourth-year Honours standing.

**COURSE DESCRIPTION**

This seminar discusses issues on Canadian and comparative corporate law and governance arising from the impact of the fourth industrial revolution. The rapid expansion of blockchain technology, artificial intelligence, automation and e-commerce and the rise of big tech and platform corporations in Canada and around the world are increasingly modifying traditional business law concepts, norms and policies. These revolutionary changes require an examination of the ways in which business law should be adjusted to respond to the new economy and societal demands. The course will examine issues such as the new technology-driven changes to corporate law and governance; the impact of the new financial technology on business law; fiduciary duties of directors and officers in the gig economy and the transformation of employees' rights; executive pay and stakeholder capitalism; corporate social responsibility in the digital economy; government intervention in recessionary economies and health emergencies; smart contracts and blockchain technology; the regulation of e-commerce; antitrust concerns associated with global big tech companies and platform corporations; consumer protection law, smart contracts and the health risk of the new technology.

**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 (10-15 double-spaced pages)	60%	August 12, 2020
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, students should consider the following ideal paper expectations:

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 4 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:** 10-15 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:** August 12, 2020.
12. **Submission:** students must hand in their final essays by the deadline via CuLearn dropbox. 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: July 13 and 15, 2020

Presentations of First Paper Draft: July 27 and 29 and August 5, 2020

Submission of Final Paper: August 12, 2020 (early submission on August 10, 2020 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.

### **REQUIRED MATERIALS**

Readings are available via ARES (Carleton University).

### **SCHEDULE OF TOPICS AND READINGS**

#### **July 6<sup>th</sup> - INTRODUCTION**

#### **July 8<sup>th</sup> - THEORIES OF CORPORATE LAW AND TECHNOLOGY IN THE NEW INDUSTRIAL REVOLUTION**

What are the differences and similarities between the theories of corporate law? To What Extent Does the New Technology Alter our View of the Corporation?

- Belinfanti & Stout, *Contested Visions: The Value of Systems Theory for Corporate Law*, 166 U. Pa. L. Rev. 579 (2018)
- Mark Fenwick & Erik P. M. Vermeulen, *Technology and Corporate Governance: Blockchain, Crypto, and Artificial Intelligence*, 48 Texas Journal of Business Law 1 (2019), pp. 1-16.

### **July 13 – CORPORATE GOVERNANCE AND ARTIFICIAL INTELLIGENCE**

What are the expected changes to corporate governance structures and practices that may result from the new technology?

- John Armour & Horst Eidenmüller, *Self-Driving Corporations?*, 10 Harvard Bus L Rev 88 (2020) pp. 88-114
- Gerald Spindler, *Digitalization and Corporate Law - A View from Germany*, 16:1-2 European Company and Financial Law Review (ECFR), 106 (2019) pp. 106-148

### **July 15 – CORPORATE LAW AND FINANCIAL TECHNOLOGY**

In what ways are the capital market and finances being transformed by the new technology? What are the potential risks?

- J. Allen Hilary, *Driverless Finance*, 10 Harvard Bus L Rev 158 (2020) pp 158-205

### **July 20 – SECURITIES LAW AND BITCOIN OFFERINGS**

Are BitCoins securities? Are BitCoins safe investment?

- “Initial Coin Offerings and Securities Law” in M. KIANIEFF, *BLOCKCHAIN TECHNOLOGY AND THE LAW: OPPORTUNITIES AND RISKS* (Abingdon, Oxon, U.K.: Informa Law from Routledge, 2019) pp 125 – 151
- 3iQ Corp (Re), 2019 ONSEC 37 (CanLII), <<http://canlii.ca/t/j34bz>>

### **July 22 – EMPLOYEES’ SAY ON CORPORATE GOVERNANCE AND THE NEW INDUSTRIAL REVOLUTION**

Should employees and “independent contractors” have a say on governing corporations in the new industrial revolution?

- Jeffrey M Hirsch & Joseph A. Seiner, *A Modern Union for the Modern Economy*, 86:4 Fordham Law Review 1727 (2018) pp. 1727-1784
- Alberto Salazar, *Mergers, Acquisitions, Closures and Employees’ Say on Company Restructuring: The Thyssenkrupp-Tata Merger and Profitability Without Massive Job Cuts*, 6 (December) European Company Law (2019)

**July 27 – THE VOICE OF EMPLOYEES AND CONTRACTORS IN THE GIG ECONOMY**

Are “independent contractors” dependent contractors or employees? Should they have a voice and rights like regular employees?

- *Heller v Uber*, 2020 Supreme Court of Canada
- *Canadian Union of Postal Workers v Foodora Inc. d.b.a. Foodora*, 2020 CanLII 16750 (ON LRB), <https://canlii.ca/t/j5nj1> (decision date: February 25, 2020)
- *California Assembly Bill 5 or AB 5* (2019, in effect Jan 1, 2020)  
[https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201920200AB5](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB5)  
(Codifying the following decision re “independent contractors” as employees: *Dynamex Operations West Inc. v. Superior Court of Los Angeles*, (2018) 4 Cal. 5th 903 (Cal. Sup. Ct. April 30, 2018))
- Mathieu Rosemain & Dominique Vidalon, “Top French Court Deals Blow To Uber By Giving Driver 'Employee' Status”, Reuters (March 4, 2020)  
<https://www.reuters.com/article/us-uber-court/top-french-court-deals-blow-to-uber-by-giving-driver-employee-status-idUSKBN20R23F>

**July 29 – CORPORATE SOCIAL RESPONSIBILITY AND ECONOMIC AND PUBLIC HEALTH EMERGENCIES**

Are corporations more socially responsible during economic crisis and health emergencies? Does the payment of corporate taxes suffice to meet their corporate social responsibility?

- Bronwyn McCredie, & Kerrie Sadiq, *CSR and Tax: A Study in The Transition From An 'Aggregate' To 'Real Entity' View of Corporations*, 31(4) Pacific Accounting Review 553 (2019) pp. 553-573.
- *The Impact of Mandated Corporate Social Responsibility: Evidence From India's Companies Act of 2013*, 56 International Review of Law & Economics 92 (2018) (28p)

**August 3 - HOLIDAY****August 5 – CORPORATE SOCIAL RESPONSIBILITY AND TAXATION IN CANADA**

Do powerful Canadian corporate groups pay taxes and meet their social responsibility obligations especially during economic crisis and health emergencies such as the COVID-19 pandemic?

- *Loblaw Financial Holdings Inc. v. Canada*, 2020 FCA 79 (CanLII) <<http://canlii.ca/t/j6mf5>>
- Christopher Nardi, “CRA Claiming \$4.4B From Canadian Companies And Individuals Suspected Of Tax Evasion” The \$4.4 billion is far from won for Canada’s tax agency. Tax evasion cases often lead to notoriously long and difficult court fights for the CRA, National Post (June 11, 2020), <https://nationalpost.com/news/politics/cra-claiming-4-4-billion-from-canadian-companies-and-individuals-suspected-of-offshore-tax-evasion>.

**August 10 – ANTITRUST, PLATFORMS AND BIG TECH CORPORATIONS**

Do platform corporations breach antitrust or competition law (e.g. abuse of market power) to the detriment of smaller companies, consumers and local economies? Does Amazon engage in abusive practices?

- Lina Khan, *Amazon's Antitrust Paradox*, 126 Yale Law Journal 564 (2017) pp 564-907
- James Clayton, "Amazon V EU: Has The Online Giant Met Its Match", BBC (16 June 2020), <https://www.bbc.com/news/technology-53050716>

**August 12 – REVIEW AND SUBMISSION OF FINAL PAPER**

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**ACADEMIC ACCOMMODATIONS**

You may need special arrangements to meet your academic obligations during the term. For an accommodation request the processes are as follows: <https://carleton.ca/equity/wp-content/uploads/Student-Guide-to-Academic-Accommodation.pdf>

**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 Department of Equity and Inclusive Communities Services (EIC): <https://carleton.ca/equity/>

**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 Department of Equity and Inclusive Communities (EIC): <https://carleton.ca/equity/>

**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) <https://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: <https://carleton.ca/studentssupport/svpolicy/>

**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: <https://students.carleton.ca/services/accommodation/>

**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. <https://carleton.ca/law/current-students/>