

Course Outline

COURSE:	LAWS 4202 A – Accountability of Management
TERM:	WINTER 2024
PREREQUISITES:	LAWS 2908, LAWS 3201 and 4th Year Honours standing
CLASS:	Day & Time: Fridays 8:35am – 11:25am Room: Please check with Carleton Central for current room location.
INSTRUCTOR:	Professor Alberto R. Salazar V., PhD
CONTACT:	Office Hrs: Fridays 12-1pm or by appointment Telephone: 613-520-2600 x. 3269 Email: alberto.salazar@carleton.ca

CALENDAR COURSE DESCRIPTION

Role, function, and legal regulation of persons managing business enterprises. Status, social responsibility, fiduciary obligations and rights. Control and accountability of managers, obligations owed to the enterprise unit itself, constitutional rights of members, standards imposed by statutory regulation.

COURSE DESCRIPTION

This course discusses the problem of governing corporations and corporate management in particular. It examines problematic issues in corporate governance and the reasons for controlling corporate directors, officers, or managers in Canada. It also reviews some of the legal and non-legal regulatory mechanisms that seek to govern the actions of the corporation and its management in capitalist societies. The course has three main sections. The first section offers a theoretical introduction to corporate governance. It critically reviews corporate governance theories, the merits of the shareholder primacy model, and the current debate on the convergence or divergence of corporate governance models. The second section presents the reasons for controlling corporations and management. The third section discusses some legal and non-legal mechanisms that seek to control corporate activity and corporate management. It reviews the Canadian legal framework of the duties of directors and officers, the oppression remedy, institutional shareholder activism, the role of workers, and some corporate governance challenges associated with climate crisis and the new technology. The course objectives are twofold. First, it seeks to provide students with an opportunity to undertake a critical analysis of the problems of, and regulatory solutions to, governing corporations and their management. Second, it also aims to help students develop their critical, analytical, and research skills in the field of corporate law in context.

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 critical 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.

READING MATERIALS

Readings are available via ARES (Carleton University)

EVALUATION

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.

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

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- Research Paper (12-15 pages): 60 % Deadline: April 10th, 2024
- Class Participation: 20 %
- Reading Presentation: 20 %

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 5 readings from the required material 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 whether 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. 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 10th, 2024 (early submission on April 5th is encouraged)
12. Submission: students must upload their final essays by the deadline to the appropriate folder in the Brightspace course website. 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, students will submit and present their paper plans (1-2 pages) on the day scheduled for small group presentation. 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 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 contacting 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 considered when grading the final papers and class participation. The schedule is as follows:

Presentations of Paper Plans: February 2 and 9, 2024

Presentations of First Paper Draft: March 8, 15 and 22, 2024

Submission of Final Paper: April 10th, 2024 (early submission on April 5th is encouraged)

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

Paper plans and paper drafts should be uploaded to the Brightspace course website.

READING PRESENTATIONS

Every student will give one 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 an overall assessment of the material. This response must articulate a view as to whether the respondent agrees with the authors' claims. Drawing on the readings, the strength of the summary presentation and the critique should lie in the ability to examine or challenge the authors' views. Participants 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 a brief written statement (1-2 pages) of their respective presentations before the day scheduled for presentation. Both the summary presentation and the critique 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 should 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 classes. There are approximately 11-12 sessions in the term and it is expected that every student will have the opportunity to give a presentation.

All presentation documents should be uploaded to the Brightspace course website.

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 the 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.

Weekly Reading Reflections: Students must upload to the Brightspace course website a 1-page weekly reading reflection prior to every class that shows familiarity with the reading materials in any way that the student wishes to consider. These weekly reflections will be marked as part of students' class participation grade.

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.

REQUIRED MATERIALS

Readings are available via ARES (Carleton University).

Some of the materials for Week 6 and 7 are taken from R. L. Campbell, editor, *Accountability of Corporate Management, Canadian legal studies series* (Captus Press Inc., 2013).

SCHEDULE OF TOPICS AND READINGS

I. INTRODUCTION

Week 1- Jan. 12th: Introduction

II. THEORETICAL PERSPECTIVES ON CORPORATE GOVERNANCE

Week 2- Jan. 19th: The Shareholder Primacy Model and its Problems: Explain the shareholder primacy model. Why is the shareholder primacy model problematic?

- Lynn A. Stout, "Bad and Not-So-Bad Arguments for Shareholder Primacy" (2002) 76 Southern California Law Review 1189 pp.1189-1209.
- Belinfanti & Stout, "Contested Visions: The Value of Systems Theory for Corporate Law" (2018) 166 U. Pa. L. Rev. 579
- Simon Deakin, "The corporation as commons: rethinking property rights, governance and sustainability in the business enterprise" (2011) 37 Queen's LJ 339, available online:
<https://journal.queenslaw.ca/sites/qljwww/files/Issues/Vol%2037%20i2/1.%20Deakin.pdf>

Week 3-Jan. 26th: Convergence and Divergence of Corporate Governance Systems:

Have all countries converged to the Anglo-American shareholder model of corporate governance? Why do Germany and Japan represent a distinct corporate governance model? Are the German and Japanese corporate governance systems superior to the Anglo-American shareholder model?

- Gregory Jackson, "The Origins of Non-Liberal Corporate Governance in Germany and Japan" (2001) in Wolfgang Streeck and Kozo Yamamura (eds.), *The Origins of Non-Liberal Capitalism: Germany and Japan in Comparison* (Ithaca, NY: Cornell University Press, 2001) pp 121-170.

- Mark J. Roe, "Modern Politics and Ownership Separation" (2004) in Jeffrey N. Gordon & Mark J. Roe, eds., *Convergence and Persistence in Corporate Governance* (Cambridge: Cambridge University Press, 2004) pp. 252–290.
- Alberto Salazar, "Mergers, Acquisitions, Closures and Employees' Say on Company Restructuring: The Thyssenkrupp-Tata Merger and Profitability Without Massive Job Cuts" (2019) 6 (December) *European Company Law*.

III. THE PROBLEM OF GOVERNING THE CORPORATION AND MANAGEMENT

Week 4-Feb. 2nd: Why Control of Management is Necessary: The Example of Excessive Executive Compensation in Canada. Is Executive Compensation in Canada excessive? How big is the Gap between Executive Pay and Worker Salaries in Canada? Do Mismanagement and Abuse of Power by Directors and Officers explain the Excessiveness of Executive Compensation in Canada?

- Salazar, Alberto and Raggiunti, John, "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" *American Journal of Comparative Law* (2016)
- Hugh Mackenzie, "Glory Days. CEO Pay in Canada Soaring to Pre-Recession Highs" (January 2, 2015) *Canadian Centre for Policy Alternatives*, online: <https://www.policyalternatives.ca/publications/reports/glory-days#sthash.ARIRrg43.dpuf>

IV. SOME GOVERNANCE MECHANISMS

Week 5-Feb. 9th: Duties of Directors and Officers (I): What duties do directors and officers of corporations have? Why are these duties important in governing corporations? What is fiduciary duty according to Canadian corporate law? To whom are fiduciary duties owed?

- Jeff Mackintosh, "Directors' Duties in Canada: Paintings in a Stream?" in Adolfo Paolini, editor, *Research Handbook on Directors' Duties* (Edward Elgar, 2014 hardback), pp.44-71.
- Bryan Horrigan, *Corporate Social Responsibility in the 21st Century: Debates, Models and Practices Across Government, Law and Business* (Edward Elgar, 2010), Chapter 6: "Sensitizing Boardroom Obligations to Corporate Social Responsibility", pp 197-228

Fiduciary Duties: Duty of Loyalty and Best Interest of the Corporation

- *BCE Inc v 1976 Debentureholders*, 2008 SCC 69 (CanLII), [2008] 3 SCR 560

- *Canada Business Corporations Act*, R.S.C. 1985 c. C-44, ss. 122–125

Week 6-Feb. 16th: Duties of Directors and Officers (II): What is a duty of care according to Canadian corporate law? To whom are the duties of care owed? Are the legally required duties of directors and officers effective in preventing managerial misconduct and protecting the interests of shareholders and stakeholders?

Skill, Care and Diligence

- *Re City Equitable Fire Insurance Co.* [1925] 1 Ch. 407.
- Russell Lynn Campbell, “Directors’ Diligence Under the Income Tax Act” (1990) 16 Can. Bus. L.J. 480 at pp.480-501 (total 22 pages).
- *Soper v. Canada* (1997) 149 D.L.R. (4th) 297 at 300-302, 318-325.
- *Peoples Department Stores Inc. (Trustee of) v. Wise* (Continued) 2004 SCC 68, [2004] 3 S.C.R. 461, (2004) 244 D.L.R. (4th) 564.
- Russell Lynn Campbell, “The Supreme Court’s Decision in Peoples: A New Standard of Directors’ Liability?” (2007) 55: 3 Canadian Tax Journal 465 at pp. 466-69, 475-80 (total 10 pages).
- *Canada v. Buckingham* 2011 FCA 142 paras. 4-15, 30-60.
- *Kerr v. Danier Leather Inc.* 2007 SCC 44, (2007) 87 O.R. (3d) 398, (2007) 286 D.L.R. (4th) 601.
- *Canada Business Corporations Act*, R.S.C. 1985 c. C-44, ss. 122–125

February 23rd: NO CLASS (Winter Break: Feb. 19-23rd)

Week 7-March 1st: Oppression Remedy: What is the Oppression Remedy according to Canadian corporate law? Is the Oppression Remedy effective in protecting minority shareholders and non-shareholder stakeholders?

- *Canada Business Corporations Act*, R.S.C. 1985, c. C-44 ss. 241-242
- *Dylex Ltd. (Trustee of) v. Anderson* (2003) 63 O.R. (3d) 659 (Sup. Ct.)
- *UPM-Kymmene Corp. v. UPM-Kymmene Miramichi Inc. (Trial)* (2002) 214 D.L.R. (4th) 496, (2002) 19 C.C.E.L. (3d) 203 (Ont. Sup. Ct.)
- *UPM-Kymmene Corp. v. UPM-Kymmene Miramichi Inc. (Appeal)* (2004) 250 D.L.R. (4th) 526, (2004) 32 C.C.E.L. (3d) 68 (Ont. C.A.)
- *Icahn Partners LP v. Lions Gate Entertainment Corp.* (2011) BCCA 228 paras. 1-9, 39-42, 66-90.
- *Abbasbayli v. Fiera Foods Company et al.*, 2022 ONSC 1968 (CanLII), <<https://canlii.ca/t/jnh0c>>

Week 8-March 8th: Management and Workers’ Voice

- The Aspen Institute, “Worker Voice and the New Corporate Boardroom” (2021), <https://www.aspeninstitute.org/wp-content/uploads/2021/08/Final-Worker-Voice-and-the-Corporate-Boardroom.pdf>
- UK’s 2018 Corporate Governance Code, p. 4-5 (“Board Leadership and Company Purpose”), <https://www.frc.org.uk/getattachment/88bd8c45-50ea-4841-95b0-d2f4f48069a2/2018-UK-Corporate-Governance-Code-FINAL.pdf>

Week 9-March 15th: Institutional Shareholder Activism: The Example of Pension Funds in Canada. What is Institutional Shareholder Activism? Are active institutional shareholders such as pension funds capable of controlling mismanagement or abuse of power by directors and officers?

- Edward J. Waitzer & Douglas Sarro, "The Public Fiduciary: Emerging Themes in Canadian Fiduciary Law for Pension Trustees" (2012) 91 (1) Canadian Bar Review 163 (pp. 163-209). ISSN: 0008-3003. Available at SSRN: <http://ssrn.com/abstract=2222836> or <http://dx.doi.org/10.2139/ssrn.2222836>

Week 10-March 22nd: Common Owners, Management, and the Environment: To what extent do global institutional shareholders (common owners) exert influence on directors and officers to protect the environment?

- Azar, José and Duro, Miguel and Kadach, Igor and Ormazabal, Gaizka, "The Big Three and Corporate Carbon Emissions Around the World" (November 27, 2020). Journal of Financial Economics, 2021 (JFE), Forthcoming, Proceedings of Paris December 2020 Finance Meeting EUROFIDAI - ESSEC, European Corporate Governance Institute – Finance Working Paper 715/2020, Available at SSRN: <https://ssrn.com/abstract=3553258> or <http://dx.doi.org/10.2139/ssrn.3553258>
- Fichtner, Jan, Eelke M. Heemskerk, and Javier Garcia-Bernardo. "Hidden power of the Big Three? Passive index funds, re-concentration of corporate ownership, and new financial risk." *Business and Politics* 19.2 (2017): 298-326

March 29th: NO CLASS (Statutory holiday. University closed)

Week 11-April 5th: Management and Artificial Intelligence: What challenges does the new technology bring for corporate management?

- Martin Petrin, "Corporate Management in the Age of AI" (2019) (3) Columbia Business Law Review 965

Week 12 – April 10th: COURSE REVIEW. LAST CLASS. THIS IS A WEDNESDAY CLASS THAT FOLLOWS A FRIDAY SCHEDULE

END OF THE COURSE

University and Departmental Policies

DEPARTMENT POLICIES AND REGULATIONS

Please review the following webpage to ensure that your practices meet our Department's expectations, particularly regarding standard departmental protocols and academic integrity requirements: <https://carleton.ca/law/student-experience-resources/>.

PLAGIARISM

The University Academic Integrity Policy defines plagiarism as “*presenting, whether intentionally or not, the ideas, expression of ideas or work of others as one’s own.*” This 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, artworks, laboratory reports, research results, calculations and the results of calculations, diagrams, constructions, computer reports, computer code/software, material on the internet and/or conversations.

Examples of plagiarism include, but are not limited to:

- any submission prepared in whole or in part, by someone else, including the unauthorized use of generative AI tools (e.g., ChatGPT);
- using ideas or direct, verbatim quotations, paraphrased material, algorithms, formulae, scientific or mathematical concepts, or ideas without appropriate acknowledgment in any academic assignment;
- using another’s data or research findings without appropriate acknowledgement;
- submitting a computer program developed in whole or in part by someone else, with or without modifications, as one’s own; and
- failing to acknowledge sources through the use of proper citations when using another’s work and/or failing to use quotations marks.

Plagiarism is a serious offence that cannot be resolved directly by the course’s instructor. The

Associate Dean of the Faculty conducts a rigorous investigation, including an interview with the student, when an instructor suspects a piece of work has been plagiarized. Penalties are not trivial. They can include a final grade of “F” for the course.

STATEMENT ON STUDENT MENTAL HEALTH

As a University student you may experience a range of mental health challenges that significantly impact your academic success and overall well-being. If you need help, please speak to someone. There are numerous resources available both on- and off-campus to support you.

Emergency Resources (on and off campus):

- <https://carleton.ca/health/emergencies-and-crisis/emergency-numbers/>

Carleton Resources:

- Mental Health and Wellbeing: <https://carleton.ca/wellness/>
- Health & Counselling Services: <https://carleton.ca/health/>
- Paul Menton Centre: <https://carleton.ca/pmc/>
- Academic Advising Centre (AAC): <https://carleton.ca/academicadvising/>
- Centre for Student Academic Support (CSAS): <https://carleton.ca/csas/>
- Equity & Inclusivity Communities: <https://carleton.ca/equity/>

Off Campus Resources:

- Distress Centre of Ottawa and Region: (613) 238-3311 or TEXT: 343-306-5550, <https://www.dcottawa.on.ca/>
- Mental Health Crisis Service: (613) 722-6914, 1-866-996-0991, <http://www.crisisline.ca/>
- Empower Me: 1-844-741-6389, <https://students.carleton.ca/services/empower-me-counselling-services>
- Good2Talk: 1-866-925-5454, <https://good2talk.ca/>
- The Walk-In Counselling Clinic: <https://walkincounselling.com>

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

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 about the accommodation policy, visit the [Equity and Inclusive Communities \(EIC\)](#) website.

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, please go to: <https://carleton.ca/equity/focus/discrimination-harassment/religious-spiritual-observances/>

Academic Accommodations for Students with Disabilities

The Paul Menton Centre for Students with Disabilities (PMC) provides services to students with Learning Disabilities (LD), psychiatric/mental health disabilities, Attention Deficit Hyperactivity Disorder (ADHD), Autism Spectrum Disorders (ASD), chronic medical conditions, and impairments in mobility, hearing, and vision. If you have a disability requiring academic accommodations in this course, please contact PMC at 613-520-6608 or pmc@carleton.ca for a formal evaluation. You can find the Paul Menton Centre online at: <https://carleton.ca/pmc/>

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 to ensure accommodation arrangements are made. Please consult the PMC website for the deadline to request accommodations for the formally-scheduled exam (if applicable).

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 where 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/equity/sexual-assault-support-services>

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. Read more here: <https://carleton.ca/senate/wp-content/uploads/Accommodation-for-Student-Activities-1.pdf>.

For more information on academic accommodation, please visit: <https://students.carleton.ca/services/accommodation/>