

**Carleton University****Department of Law and Legal Studies****Course Outline**

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**COURSE:** LAWS 4209 A – Topics in Business Law – Corporate Law and the New Industrial Revolution**TERM:** FALL 2023**PREREQUISITES:** LAWS 2908, 0.5 credit from LAWS 2201 or LAWS 2202 and Fourth-Year Honours Standing**CLASS:** Day & Time: Fridays 8:35 – 11:25 am

Room: Please check with Carleton Central for current room location.

**PROFESSOR:** Professor Alberto R. Salazar V., PhD**CONTACT:** Office: C470 Loeb Building

Office Hrs: Fridays 12-1:00 pm or by appointment

Telephone: 613-520-2600 x. 3269

Email: [alberto.salazar@carleton.ca](mailto:alberto.salazar@carleton.ca)

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**COURSE DESCRIPTION**

This seminar discusses issues on Canadian and comparative corporate law and governance arising from the impact of the fourth industrial revolution. The latter involves the massive deployment of blockchain technology, artificial intelligence, algorithms, automation, and e-commerce, and the rise of big tech and platform corporations in Canada and around the world, among other things. These technological developments 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; 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.

<b>COURSE WORK</b>	<b>WEIGHT</b>	<b>DEADLINE</b>
Research Paper (12-15 double-spaced pages)	50%	December 1 <sup>st</sup> , 2023 (early submission is encouraged)
Class Participation	25%	T.B.A.
Reading Presentation	25%	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 very narrow 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 aims to verify 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:** 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:** December 1<sup>st</sup>, 2023 (early submission is encouraged)
12. **Submission:** students must submit their final essays by the deadline via Brightspace 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 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, these submissions will be factored in the final grade for the papers. The schedule is as follows:

**Presentations of Paper Plans:** Oct 6 and 13, 2023.

**Presentations of First Paper Draft:** Nov 10, 17 and 24, 2023

**Submission of Final Paper:** Dec 1, 2023 (early submission is encouraged)

The schedule of presentations of paper plans and paper drafts will be posted on the Brightspace course website.

### **READING PRESENTATIONS**

Every student will give ONE reading presentation. 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 summary presentation if possible). 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 upload a brief written statement (1-2 pages) of their respective presentations to the Brightspace course website before their presentation date. Both the summary presentation and the response will be graded as part of the 25% portion of the total grade. This grade will mainly reward students' serious efforts to examine the materials. While students must take the materials seriously, there is not expectation that students will understand all the details of the readings.

The schedule of reading presentations will be drafted in the first class and will be posted later on the Brightspace course website. 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.

**Weekly Reading Reflections:** Students must upload a 1-page weekly reflection to the Brightspace course website prior to every class. A reflection should show 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.

### **First AI-Robot Student**

We will have our first artificial intelligence or robot student in this seminar. We will invite OpenAI ChatGPT to join us as the first AI guest student in our weekly corporate law discussions. The AI student will have a voice and an in-classroom guardian. We will seek to engage the AI

student after our first rounds of discussions to seek further information, opinion, and new critical questions and answers. The AI student's input will be discussed, assessed, and challenged in class. Human students are encouraged both to use their local skills, knowledge, and experiences to detect potential inaccuracies, biases, mistakes, or incompleteness in the AI student's input and to surpass it. This will be our first experiment with AI in teaching. We hope to engage another AI, namely China's robots, who can provide us with a perspective from the East. Discretion about mutual privacy protection, global data collection, and machine learning should be exercised.

### **REQUIRED MATERIALS**

All reading materials are available via ARES (Carleton University).

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

#### **Sept 8<sup>th</sup> - INTRODUCTION**

#### **Sept 15<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?

- Simon Deakin, *The corporation as commons: rethinking property rights, governance and sustainability in the business enterprise*, 37 *Queen's LJ* 339 (2011), available online: <https://journal.queenslaw.ca/sites/qljwww/files/Issues/Vol%2037%20i2/1.%20Deakin.pdf>
- 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.

#### **Sept 22<sup>nd</sup> – 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

**Sept 29<sup>th</sup> – 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

**Oct 6<sup>th</sup> - SECURITIES LAW AND CRYPTOCURRENCY**

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>>

**Oct 13<sup>th</sup> - RETAIL INVESTORS AND INVESTMENT PLATFORMS**

To what extent does the new technology foster ordinary citizens’ participation in the capital market? What are the benefits of retail investing for the economy and society? How should corporate law regulate retail investment that uses the new technology?

- Fisch, Jill E., *GameStop and the Reemergence of the Retail Investor* (February 8, 2022). U of Penn, Inst for Law & Econ Research Paper No. 22-16, Boston University Law Review, Forthcoming, European Corporate Governance Institute - Law Working Paper No. 637/2022, Available at SSRN: <https://ssrn.com/abstract=4049896>

**Oct 20<sup>th</sup> – 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)

**Oct 27<sup>th</sup> : NO CLASS (Fall Break: October 23-27<sup>th</sup>)****Nov 3<sup>rd</sup> – 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)
- *Working for Workers Act, 2022, S.O. 2022, c. 7 - Bill 88, Schedule 1 Digital Platform Workers’ Rights Act, 2022, s 7-13*, online: <https://www.ontario.ca/laws/statute/s22007#Sched114>
- *California Assembly Bill 5 or AB 5* (2019, in effect Jan 1, 2020), [https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=2019\\_20200AB5](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=2019_20200AB5) (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)
- *Proposition 22 – California* (Nov 4, 2020), [https://ballotpedia.org/California\\_Proposition\\_22,\\_App-Based\\_Drivers\\_as\\_Contractors\\_and\\_Labor\\_Policies\\_Initiative\\_\(2020\)](https://ballotpedia.org/California_Proposition_22,_App-Based_Drivers_as_Contractors_and_Labor_Policies_Initiative_(2020))

**Nov 10<sup>th</sup> – 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>

**Nov 17<sup>th</sup> – ALGORITHMIC MANAGEMENT, WORKERS, AND DIRECTORS’ DUTIES**

Is the use of algorithms to manage the workforce efficient, fair, or abusive? Should directors and officers be held liable for breaching their duties when deploying artificial intelligence to unfairly manage workers’ activities?

- Giovanni Gaudio, *Algorithmic Bosses Can’t Lie! How to Foster Transparency and Limit Abuses of the New Algorithmic Managers*, 42 Comp. Lab. L. & Pol’y J. 707 (2022)
- Bill 88, *Working for Workers Act, 2022*, 2<sup>nd</sup> Sess, 42<sup>nd</sup> Leg, Ontario, 2022,

online: Legislative Assembly of Ontario < <https://www.ola.org/en/legislative-business/bills/parliament-42/session-2/bill-88>>

### **Nov 24<sup>th</sup> - DIRECTORS' DUTIES TOWARDS CONSUMERS, DATA, AND INFORMATION FIDUCIARIES. LAST CLASS.**

- Tuch, Andrew F., A General Defense of Information Fiduciaries (September 12, 2020). Washington University in St. Louis Legal Studies Research Paper No. 20-09-01, Available at SSRN: <https://ssrn.com/abstract=3696946> or <http://dx.doi.org/10.2139/ssrn.3696946>

### **Dec 1<sup>st</sup> – LAST CLASS. COURSE REVIEW. DEADLINE FOR THE SUBMISSION OF THE FINAL PAPER**

Students must upload their papers to the Brightspace course website.

### **END OF THE FALL TERM**

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## **ACADEMIC ACCOMMODATIONS**

### **Academic Accommodation**

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 accommodation regarding a formally-scheduled final exam, you must complete the [Pregnancy Accommodation Form](#).

**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 [click here](#).

**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](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 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 will be provided to students who compete or perform at the national or international level. 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: <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/>.

### **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/>.

### **ChatGPT Plagiarism**

Students must not reproduce content produced by artificial intelligence such as ChatGPT. We will use AI-based detection systems to prevent AI-based plagiarism such as: <https://etedward-gptzero-main-zqgfwb.streamlit.app/>

### **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/student-experience-resources/>

### **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. Here is a list that may be helpful:

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>