MBA Law of Corporate Governance, MBAD 500, 207 Tate
T, Th. 9:25-10:40am
Spring 2022 Syllabus

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COURSE DESCRIPTION

A study of legal and ethical issues regarding the structure and operation of corporations. Topics include the corporation as a legal and moral “person”; legal and ethical responsibilities of directors, shareholders and officers in the U.S. and internationally; and government regulation of corporations, securities markets, and fair competition.

This course is designed to be interactive, with an emphasis on class participation, where students will have the opportunity to debate and analyze legal and ethical conundrums faced by corporations, their officers and directors and the shareholders. We will utilize case studies, readings, discussions, lecture, group work and presentations to cover the material. Group debate topics will be assigned to student teams, for debates commencing during the second week of class, as more fully described in the Grading Section below.

STUDENT LEARNING OBJECTIVES

- Students will be able to identify best practices in corporate governance based on real-world examples.
- Students will amass a real-world understanding of the legal and ethical responsibilities of shareholders, directors and managers of a corporation.
- Students will come to understand the interplay between law, ethics, business, politics and public policy within the corporate structure.
- Students will become familiar with the nature and legal status of the corporation.
- Students will become familiar with the types of corporations, how they are formed, and the regulatory environment in which they operate.
- Students will become familiar with sources of real-world, real time information on corporations, how they govern themselves and how they are owned.
- Students will become familiar with how corporations relate to business and society focusing on ethics and social responsibility.
SCHOOL OF BUSINESS LEARNING GOALS

COMMUNICATION SKILLS: Students demonstrate the ability, through both written and spoken word, to effectively present, critique, and defend ideas in a cogent, persuasive manner.

QUANTITATIVE FLUENCY: Students demonstrate competency in logical reasoning and data analysis skills.

GLOBAL AND CIVIC RESPONSIBILITY: Students identify and define social, ethical, environmental and economic challenges at local, national and international levels. Students integrate knowledge and skills in addressing these issues.

INTELLECTUAL INNOVATION AND CREATIVITY: Students demonstrate their resourcefulness and originality in addressing extemporaneous problems.

SYNTHESIS: Students demonstrate the ability to integrate knowledge from multiple disciplines, incorporating learning from both classroom and non-classroom settings in the completion of complex and comprehensive tasks.

CLASS MECHANICS

This is a graduate class and you are expected to demonstrate the professionalism of graduate students. Roll call will not be taken but you are expected to attend regularly and participate in class discussions. The class will involve a significant amount of participation and group work that if not completed will reflect in grades given.

In-Class Work & Group Debates:

In-class work will follow a team structure, based on the learning teams assigned through the Program for the semester. Each team will be assigned two group debate topics. For each debate, each team will debate for or against one of the current corporate governance topics provided by Professor Gramiccioni. These are known as “affirmative/negative debates,” during which each team will be assigned a side to argue. Each team will have exactly 15 minutes to present its case, and a five minute “rebuttal” at the conclusion of the initial arguments. Teammates may choose how to participate in their assigned group debate project (e.g., the teammates can allocate who drafts work product, engages in oral arguments, creates of outlines or handouts for the class, etc.). There is no written requirement, but visual aids and charts are permitted. There will be no winner or loser in our group debates, but grades will be dependent on effort, preparation, and creativity.

Each team will be given a group grade for their in-class debates, which will count as 35% of the final grade. Students are encouraged to bring laptops and smartphones to class for internet access. In-class work will also include roundtable discussions among the entire class, concerning various corporate governance issues in the news. The reading materials for the class will be provided by the instructor.
**Class Participation:**

An important component of the grade is class participation, often involving roundtable discussions in class. Professor Gramiccioni will take note during the semester of a student’s level of genuine and quality participation not only in their own group work, but in the work of others and in discussions. This counts for 30% of the final grade.

**IMO Papers:**

During the final weeks of the semester the student will be required to write one IMO (In My Opinion) paper. These will be based on any group topic assigned, or a topic of the student’s choosing. These papers should be no longer than six pages, double spaced and should reflect the writer’s analysis of the issue. The paper will be graded on form and substance, no bibliography is required but a works cited page for any authority the writer relies upon to support their view must be attached; it will not count towards the page total. This paper will make up 35% of the final grade.

**GRADES**

Final grades will be computed as follows:

IMO paper: 35%

Group Debates: 35%

Class participation: 30%

Grading Scale: A = 90+, B+ = 87-89, B = 80-86, C+ = 77-79, C = 70-76, F = below 70

**POLICIES AND GUIDELINES**

Cell phones and all electronics should be turned off. Students should be respectful of their colleagues and the forum, i.e. your conduct in class should not be disruptive. Students as well as the instructor have a protectable interests in the classroom, so no recording of class discussions, video or audio, will be allowed without getting all the necessary permissions. No photography will be allowed without permission. The instructor also reserves his copyright in his work product.
ACADEMIC HONESTY

Lying, cheating, attempted cheating, and plagiarism are violations of our Honor Code that, when identified, are investigated. Each incident will be examined to determine the degree of deception involved. Incidents where the instructor determines the student’s actions are related more to misunderstanding and confusion will be handled by the instructor. The instructor designs an intervention or assigns a grade reduction to help prevent the student from repeating the error. The response is recorded on a form and signed by both the instructor and the student. It is forwarded to the Office of the Dean of Students and placed in the student’s file. Cases of suspected academic dishonesty will be reported directly by the instructor and/or others having knowledge of the incident to the Dean of Students. A student found responsible by the Honor Board for academic dishonesty will receive an XXF in the course, indicating failure of the course due to academic dishonesty. This status indicator will appear on the student’s transcript for two years after which the student may petition for the XX to be expunged. The F is permanent. Students should be aware that unauthorized collaboration – working together without permission – is a form of cheating. Unless the instructor specifies that students can work together on an assignment, quiz and/or test, no collaboration during the completion of the assignment is permitted. Other forms of cheating include possessing or using an unauthorized study aid (which could include accessing information stored on a cell phone), copying from others’ exams, fabricating data, and giving unauthorized assistance. Research conducted and/or papers written for other classes cannot be used in whole or in part for any assignment in this class without obtaining prior permission from the instructor. Students can find the complete Honor Code and all related processes in the Student Handbook at http://deanofstudents.cofc.edu/honor-system/studenthandbook/index.php

DISABILITY AND ACCESS

Any student eligible for and needing accommodations because of a disability is requested to speak with the instructor during the first two weeks of class or as soon as the student has been approved for services so that reasonable accommodations can be arranged. Center for Disability Services/SNAP.

INCLEMENT WEATHER, PANDEMIC OR SUBSTANTIAL INTERRUPTION OF INSTRUCTION

If in-person classes are suspended, faculty will announce to their students a detailed plan for a change in modality to ensure the continuity of learning. All students must have access to a computer equipped with a web camera, microphone, and Internet access. Resources are available to provide students with these essential tools.
MBAD 500: CLASS SCHEDULE

THURS, JAN 13  INTRODUCTION

• Corporate Purpose
• Corporate Formation
• Laws Governing Corporations
• Assign Group Debate Topics
• Homework: ¹
  o Bank of United States v. Deveaux (US Supreme Court (“USSC”) 1809) (treating corporations as “citizens” under the Constitution)
  o Trustees of Dartmouth College v. Woodward (USSC 1819) (landmark ruling protecting contract rights of corporations)
  o Plessy v. Ferguson (USSC 1896) (historical context: compare 14th Amendment protection afforded to minorities during the same time period)
  o https://today.law.harvard.edu/plessy-v-ferguson-at-125/

TUES, JAN. 18  CONCEPT OF CORPORATE PERSONHOOD

• Historical timeline of “corporate personhood” through court cases
• Expansion of constitutional protections for corporations
• Homework:
  o Hale v. Henkel (USSC 1906) (4th Amendment rights to corporations)
  o United States v. Martin Linen Supply Co (USSC 1977)(5th Amendment Double Jeopardy Clause protects corporations)
  o Citizens United v. FEC (USSC 2010 ) (corporations’ campaign donations are constitutionally protected speech)

THURS, JAN. 20  FIRST GROUP DEBATE TOPIC (TEAM 1 vs. TEAM 2)

• 15 minutes for each team, followed by 5 minute rebuttal
• Class discussion of debate topic
• Debate topic: Did the Supreme Court get Citizens United wrong? Why/why not?

TUES, JAN. 25  CONCEPT OF CORPORATE PERSONHOOD (CONT’D)

• The continued expansion of corporate rights by the courts
• Homework:
  o Burnell v. Hobby Lobby (USSC 2014) (corporations have religious rights)
  o Masterpiece Cakeshop v. Colorado Civil Rights Commission (USSC 2018) (personal religious views of corporation’s owner deserve First Amendment protections, even if unpopular)

¹ Read the cases with the goal of understanding the basic facts, the court’s holding, and the dissent (if any). Do not get bogged down in legalese or minutiae. The parentheticals next to each case name will provide a brief takeaway of the case; focus on the takeaway and reasoning.
THURS., JAN 27  SECOND GROUP DEBATE TOPIC (TEAM 3 vs. TEAM 4)

• 15 minutes for each team, followed by 5 minute rebuttal
• Class discussion of debate topic
• Debate topic: Did the Supreme Court Justices get the *Hobby Lobby* decision wrong? Why/why not?
  o Homework:
  o *Guns, Inc.: Citizens United, McDonald, and the Future of Corporate Constitutional Rights,*
    https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=5765&context=faculty_scholarship

TUES, FEB. 1  AGENCY THEORY

• Theories of authority (actual & apparent)
• Duties of principals and agents
• Theories of Contract Liability
• Theories of Tort Liability
• Homework:
  o *Pasquarella v. 1525 William St., LLC,* 120 A.D.3d 982 (N.Y. App. Div. 2014) (example of an agent’s apparent authority through power of position)
  o *Hoover v. Sun Oil* (examining tort liability for principals based on agent’s actions)
  o *Reading v. Regem,* (Court of King’s Bench 1948) (agent’s fiduciary duty to the principal)

THURS, FEB 3  THIRD GROUP DEBATE TOPIC (TEAM 5 vs. TEAM 6)

• 15 minutes for each team, followed by 5 minute rebuttal
• Class discussion of debate topic
• Debate topic: Should corporations be forced to indemnify its officers for unlawful actions committed within the scope of the officer’s employment?

TUES, FEB 8  OVERVIEW OF THE PLAYERS

• Overview of the roles and rights of shareholders, Board of Directors, officers
• Group Roundtable discussion:
  o Should executive compensation in public companies be checked if the company is overwhelmingly successful? Why or why not?
• Homework:
  o *Schnell v. Chris-Craft Industries, Inc. (Supreme Court of Del., 1971)* (importance of shareholder voting)
  o *Cates v. Sparkman,* 73 Tex. 619, 11 S.W. 846 (1889) (shareholder right to sue and the limitations on that right)

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2 Skim for general content; no need to get mired in legal details.
THURS, FEB 10    FOURTH GROUP DEBATE TOPIC (TEAM 7 vs. TEAM 8)

- 15 minutes for each team, followed by 5 minute rebuttal
- Class discussion of debate topic
- Debate topic: Should persons convicted of a felony (wire fraud) be allowed to serve on the boards of directors of a publicly traded U.S. Company?

TUES, FEB 15    CORPORATE WRONGDOING, PART I: INDIVIDUAL LIABILITY

- Fiduciary duties of care and loyalty
- Indemnification for bad acts
- Homework:
  - Smith v. Van Gorkom (Del. 1985) (duty of care)
  - In re Walt Disney Company Derivative Litigation (Del. 2006) (duty of care after 102(b)(7) waiver)
  - Aronson v. Lewis (Del. 1984) (business judgment rule)
  - Guth v. Loft, Inc. (Delaware Supreme Court, 1939) (landmark duty of loyalty case)
  - Sinclair Oil Corp. v. Levien (Delaware Supreme Court, 1971) (self-dealing)

THURS, FEB 17    FIFTH GROUP DEBATE TOPIC (TEAM 9 v. TEAM 10)

- 15 minutes for each team, followed by 5 minute rebuttal
- Class discussion of debate topic
- Debate topic: Should the business judgment rule be abolished? Why / why not?

TUES, FEB 22    CORPORATE WRONGDOING, PART II: LIABILITY OF THE CORPORATE ENTITY

- Limited liability concepts
- Piercing the Corporate Veil
- Whistleblower Protection
- Homework:
  - Minne B Berkey v Third Avenue Railway Company (NY Ct of App, Cardozo, J. 1926) (seminal veil piercing case)

THURS, FEB 24    GROUP DEBATE ROUND TWO (TEAM 1 vs. TEAM 3)

- Same format
- Debate topic: Should whistleblower protection be expanded or are the current protections sufficient?
TUES, MARCH 1  SECURITIES LAW

- Overview
- Securities & Exchange Commission
- Business climate and case studies leading to SOX
- SOX
- Homework:
  - https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=2479&context=faculty_scholarship

THURS, MARCH 3  GROUP DEBATE (TEAM 2 vs TEAM 4)

- Same format
- Debate topic: Do the benefits of SOX to the public justify the costs of SOX compliance?

[SPRING BREAK]

TUES, MARCH 15  THE SEC & INSIDER TRADING

- Conflicts of Interest (generally)
  - Interested Director transactions
  - Corporate Opportunity cases
  - Non-compete clauses
- Rule 10b-5
- Homework:
  - Dirks v. SEC, 463 U.S. 46 (1997)

THURS, MARCH 17  GROUP DEBATE (TEAM 5 V. 7)

- Same format
- Debate topic: Should insider trading be legal?

TUES, MARCH 22  DOING BUSINESS ABROAD

- Introduction to DOJ and the “extraterritorial” jurisdiction concept
- The Foreign Corrupt Practices Act and its lessons for corporations and individuals
  - Due diligence for commercial intermediaries
  - Training
  - Case examples
- Child Labor and the Alien Tort Statute
- U.S. Sentencing Guidelines as applied to corporations: incentives to cooperate
- Homework:
THURS, MARCH 24 GROUP DEBATE (TEAM 6 v. 9)

- Same format
- Debate topic: the FCPA is one of the few domestic statutes with “extraterritorial” jurisdiction, reaching acts committed by U.S. companies and their intermediaries abroad. Should U.S. companies be held responsible in U.S. courts for the acts committed abroad by their commercial intermediaries? Why or why not?

TUES, MARCH 29 CORPORATE MANAGEMENT 101

- Guiding principles of corporate management
- Organizational structure: best practices
- Compliance departments

THURS, MARCH 31 GROUP DEBATE (TEAM 8 v. 10)

- Same format
- Debate topic: True/False: The “Bridgegate” scandal was more a product of a faulty organizational structure within the Port Authority of NY & NJ than anything else. In other words, can “good” org charts stymie criminal activity? Why and how or why not?

TUES, APRIL 5 CORPORATE REFORM

- US Sentencing Guideline proposed reforms
- Role of the Inspector General
- “Tone at the Top”
- Training, Training, Training
- Group roundtable discussion:
  o “Culture Eats Strategy Every Day.” Discuss.
  o Should the federal sentencing guidelines as concerns corporations be reformed as a critical component of criminal justice reform? Why or why not?
- Homework:

THURS, APRIL 7 CORPORATE GOVERNANCE IN THE ERA OF COVID

- Workforce issues & labor shortages: solutions?
- Vaccine mandates
- Daycare in the Covid Era
- Group roundtable discussions:
  o Corporation A, a privately-held corporation, is seeking to implement a vaccination mandate in the wake of COVID-19. Can they and should they do it?
  o The US government is seeking to implement a vaccine mandate for private industry. Can they do it and should they do it?
TUES, APRIL 12       CORPORATE SOCIAL RESPONSIBILITY

• The importance of CSR
• Group roundtable discussion:
  o Can we identify any arguments against CSR? Where should it fall on the list of corporate priorities?
• Examples of CSR
• Homework:
  o https://portfolio.panynj.gov/2019/01/14/lessons-of-the-sully-miracle-10-years-later/
  o https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=3165&context=faculty_scholarship
  o https://milnepublishing.geneseo.edu/good-corporation-bad-corporation/chapter/1-corporations-and-their-social-responsibility/

THURS, APRIL 14:  IMO PAPERS

• Group discussion; 5 minute topic brief-out per student (16 students)

TUES, APRIL 19:  IMO PAPERS

• Group discussion; 5 minute topic brief-out per student (16 students)

THURS, APRIL 21  IMO PAPERS

• Group discussion; 5 minute topic brief-out per student (16 students)