

CORPORATIONS
Larry Catá Backer
Course Information & Syllabus
Fall Semester 2024

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(August 2024; subject to revision)

**CORPORATIONS
BUSLW 963-201
COURSE INFORMATION
FALL SEMESTER 2024**

MEETING ROOM:	112 Katz
MEETING TIME:	Mondays and Wednesdays 9.55 A.M. –11.10 A.M
OFFICE:	239 Katz Building
TELEPHONE:	814.863.3640 (direct)
E-MAIL	lcb11@psu.edu
WEBSITE	http://www.personal.psu.edu/lcb11
BLOG	http://lcbackerblog.blogspot.com
CONFERENCE HOURS:	Mondays and Wednesdays 4 P.M. TO -6 P.M., AND BY APPOINTMENT
QUESTIONS:	e-mail anytime; e-conferencing encouraged
FINAL EXAM DATE:	CLASS RELATED; VIA EMAIL/ZOOM 24 HOUR TAKE HOME FINAL Study Days 6-8 December 9 December 2024 through 20 December 2024

The Law School course description provides:

This course primarily addresses organization and operation of commercial organizations in the Anglo-American community. Preliminarily, sole proprietorships and partnerships are considered, after which corporations-for-profit are emphasized with some attention to business trusts and non-profit corporations. In the corporate context, duties of promoters, directors, officers, and other insiders are considered. Availability in the U.S. of the derivative action is treated in terms of both unincorporated and corporate forms of organization. Also treated are the basics of securities regulation at the federal and state levels in the U.S. and the provincial level in Canada.

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Statement of Learning Outcomes and Assessment

Learning Outcomes:

Students are expected to acquire a working knowledge of the following. As a baseline, students will become familiar to legal approaches under both the Model Business Corporation Act and the Delaware Code and the basic principles of corporate law consisting of some combination of the following:

1. *Corporate Law in Context*: business and risk; constitutional constraints on corporate governance; corporation and societal governance; choice of organizational form (brief introduction to partnerships and LLCs).
2. *Organizing the Corporation; The Law of Corporate Organization and Internal Functioning*: corporate formation; introduction to financial accounting; corporate financing and financial structures; introduction to securities issuance; asset partitioning and veil piercing.
3. *The Law of the Relationship Among Key Corporate Actors; The Standard model of Corporate Governance*: officers and authority; directors and collective action; shareholders and voting, inspection of books and records; deviations from the standard model—the closely held corporation.
4. *Shareholder litigation*: direct action; derivative action; demand requirement.
5. *Fiduciary Duty*: monitoring duty of care; transactional duty of care; business judgment rule; duty of loyalty; duty to disclose; corporate opportunities; domination and control.
6. *Corporate Combinations and Fundamental Changes*: amendments to corporate charter (policy and mechanics); mergers; triangular mergers; sales of assets; appraisal rights.

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Learning Outcomes Assessment:

Student achievement in all learning outcomes will be measured in the final examination. Learning Outcomes will be monitored through the short answers to the problems that appear in each chapter of the text and as otherwise assigned.

COURSE MATERIALS

REQUIRED:

1. JEFFREY D. BAUMAN, RUSSELL B. STEVENSON, JR., AND ROBERT J. RHEE, BUSINESS ORGANIZATIONS: LAW AND POLICY; MATERIALS AND PROBLEMS, (10th ed. 2022) [TEXT]
Publisher: LEG, Inc., DOB West Academic (1-877-888-1330)
ISBN-13: 978-1-63659-593-1
2. DOUGLAS MOLL, CORPORATIONS AND OTHER BUSINESS ASSOCIATIONS, STATUTES, RULES, AND FORMS, 2024 Edition (Selected Statutes) Paperback – July 2024 [STATUTES]
Publisher: LEG, Inc., DOB West Academic
ISBN 979-8-8920905-9-9

RECOMMENDED (PURCHASE OPTIONAL):

1. BRYAN A. GARNER (ED.), A HANDBOOK OF BUSINESS TERMS (1999)
Publisher: West (1-800-328-9352)
ISBN-13: 9780314239358
2. KLEIN AND COFFEE, BUSINESS ORGANIZATION AND FINANCE, (11th ed. 2010).
Publisher: Thompson-West (1-800-328-9352)
ISBN: 9781599414492
3. ALAN R. PALMITER, CORPORATIONS: EXAMPLES AND EXPLANATIONS (9th ed., 2021).
Publisher: Wolters Kluwer Law & Business (1-800-638-8437)
ISBN-13: 9789781543805659

CORPORATIONS
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4. ARTHUR R. PINTO AND DOUGLAS M. BRANSON, UNDERSTANDING CORPORATE LAW (5th ed. 2018)
Publisher: LexisNexis
ISBN-13: 978-15310100-03
5. LYNN M. LOPUCKI, THE READABLE DELAWARE GENERAL CORPORATION LAW, Visilaw Publishing through CreateSpace Independent Publishing Platform; 2023 edition
EAN: 9798851668746

COURSE INFORMATION AND RULES

Course meetings time are set out above. I am generally available to talk with you during office hours on Mondays and Wednesdays, or, otherwise, by appointment. I am also available via e-conferencing (e.g., Skype and Zoom). ***Pending the end of the pandemic all meetings and other interactions outside of class will be undertaken remotely.***

Required readings will be announced in class from time to time and are available on *Canvas* in the “Readings” Modules. Substantially all such readings will be drawn from the Text, and Statute. Additionally, recommended readings from PALMITER, EXAMPLES may be announced from time to time. Further readings may be added or substituted throughout the semester. I plan to follow the Text. Review of the table of contents of those chapters of the Text will give you a good idea of the materials to be covered this semester and may serve as a useful framework for study. **Understand that there is no guarantee that we will be able to cover in class all material assigned for reading for that class session, or that we will get through all of the assignments described in the syllabus by semester’s end.** Anticipate, therefore, that there may be occasions when you will have read ahead. If there are concerns with respect to my course pacing decisions, please feel free to contact me. ***You will be tested only on the materials covered in class unless otherwise indicated.***

I expect that you know how to read and apply cases and statutes. We may spend less time in class in the traditional case analysis; I generally emphasize application and assume close reading of cases by students prior to class. Please be aware that corporate law is to a large extent a creature of statute. I will spend more time on statutory analysis and case law interpretation of statutes. More specifically, corporate law is best understood as a hybrid field of law in the United States. Legal sources are divided at a primary level between federal statutes (the securities laws) which cover transactions in securities, and state corporate law. State corporate law, in turn is a hybrid combination of state and caselaw. The statutes provide, at a minimum, a legal framework and

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legislative rules respecting much of the technical aspects of corporate law. It also sets out the basic principles of law. Courts spend much of their time applying, interpreting and fleshing out statutes. But there are significant areas of corporate law that are substantially still creatures of caselaw. Among the more important are the rules of fiduciary duty. In these areas caselaw rather than statute predominates, especially in Delaware. Note as well that in many areas the statutes provide a framework within which caselaw has been used to fill in the gaps sometimes in substantial ways. Lastly, the corporate law permits a substantial amount of private lawmaking. Corporations may be regulated either through permitted deviations from corporate statute incorporated into their own governance documents or in agreements among shareholders. This private law of corporate governance is technically treated as contract, but is binding all the same. The student should be sensitive to these framing considerations in approaching questions of corporate law.

With respect to statutory systems:

I will be emphasizing the Revised Model Business Corporation Act (“RMBCA”) and the corporation laws of Delaware. We will spend a lot of time on the interplay on statutory gap filling and interpretation by courts, and the differences in approaches between the Delaware Corporate Law and the RMBCA. ***I will also occasionally make reference to the corporation laws of other states, especially the laws of New York, Pennsylvania and California.*** Since the economic downturn of 2007, there has been greater activity at the international level as well. These efforts will be referenced from time to time, especially with respect to the problems of the multinational corporation.

Please have Text, Statutes, and any other assigned readings available to you during class meetings; I may ask you to access these then and they will prove helpful for reference in class discussion. Please note that you will be responsible for all assigned readings whether or not discussed in class. **PLEASE NOTE: This semester we will be working with the 10th edition of the TEXT. It varies substantially from previous editions. Please use this current version.**

There are many ways to approach the teaching of corporate law. **I will be emphasizing client problem solving and advice**, rather than litigation strategy or student oriented case analysis, or corporate law as a species of legal theory. The course is designed to be practical and lawyer training oriented. The pedagogy of the class is designed to orient you to ways of approaching corporate law issues from the perspective of a junior associate in a corporate practice. *As a consequence, we will be spending far more time on statutes, and reading cases with a client counseling rather than a litigator perspective.* The problems presented in the Text will provide a thematic and systematic introduction to the sorts of problems the practitioner encounters in the practice of corporate law. Those problems ordinarily will be the focus of class discussion. As such, ***I recommend that in preparing for class you focus on the problems in the Text and to be prepared to discuss them in class. Note also that my final exam is patterned on the problems we***

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discuss in class; practice with the problems in the Text will aid you immeasurably in preparing for the final exam.

Chapter Problems: Several Chapters of the TEXT includes Problems; these are identified in the Syllabus below. You will be expected to work through the problems as directed in the syllabus and to prepare a summary answer (normally about 1-2 pages but can be longer) to be submitted to me no later than the end of the class at which the problem is assigned. **Problems will be posted to the ASSIGNMENTS Section of the Course Canvas Page which may be accessed from the Canvas Course Homepage. Please submit through Canvas.**

FAILURE TO TURN IN THE PROBLEMS MAY RESULT IN LOWERING YOUR COURSE GRADE BY ONE HALF LETTER (E.G., FROM A TO A-) AT MY DISCRETION. I MAY ASSIGN ONE OR MORE STUDENTS TO LEAD CLASS DISCUSSION FOR EACH PROBLEM (WITH PRIOR NOTICE).

ATTENDANCE AND CLASS PARTICIPATION

Law School rules require me to notify students of my attendance policy. First year and gateway courses (like corporations) provide the foundation for your legal education. It is important for you to attend class. Also, *I remind you the final exam is drawn largely from the readings and discussion in class.*

Class attendance is required. Law school policy imposes on students the obligation to attend class regularly and punctually. I take attendance seriously. **Attendance will be taken on the honor system. All students will be assumed to be present unless they send me an email indicating that they are absent. Students are honor bound to report all absences, and failure to report absences will be treated as an honor code violation.**

You are responsible for marking your own attendance via email to me.

Students with more than four (4) unexcused absences can have their grade lowered one full grade (from A to A- for example) at my discretion.

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Larry Catá Backer
Course Information & Syllabus
Fall Semester 2024

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Class participation is required. All students are expected to be prepared for each class session (that is, to have carefully read the material assigned). Please note that I will try to avoid making this a lecture course. All of you will find yourselves participating in at least some of the discussion. At the end of each class I will designate one or more students as class participation leaders for the next class. I reserve the right to call on students at random. **Outstanding participation may result in an increase in your grade, again at my discretion.**

SEATING IS ASSIGNED. You will be asked to fill out a seating chart during the second day of class.

My approach to class:

While there will be a bit of lecture, my hope is to move away from a lecture course framework. The course involves a lot of give and take and some banter. It is designed to familiarize students with the range of interactions they may encounter in practice and to prepare them to overcome the personal and professional limitations and failings of others as they work to providing their best professional services for their client. The tone of class is also designed to prepare students for dealing with clients, and more senior lawyers in the firms. That means that the student will be exposed to all sorts of people with all sorts of failings and all sorts of ways of communicating, many of which may not produce a positive effect on the student (from a personal perspective). The pedagogy is meant to help students identify and overcome these challenges to deliver quality service to clients. For purposes of this course, I will consider you all to be my young associates working for a range of senior corporate lawyer and client types. You should begin think like a corporate lawyer, how to argue and defend a position before your peers, how to handle “ridiculous” claims and posturing, and how to approach the legal and business considerations underlying the typical "problems" your business clients will present you with (just like you'll have to do in court or at a meeting). To that end, I will try to emphasize interaction (with the understanding that lecture may be necessary, sometimes to a greater degree than other times in the course).
WARNINGS:

Please expect that at times I may appear to make you work for the answer yourself, especially if the answer is in a statute that was specifically assigned as part of the assigned reading, or otherwise if in the form of a challenge an obviously correct answer. Acquiring a feel for a corporate code, how it is organized, what the statutes ordinarily provide, how to work with multiple provisions simultaneously, and how courts interpret and apply them, are

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important parts of the learning experience this semester. Defending the obvious is sometimes the burden a good lawyer has to undertake for clients, senior lawyers and against adverse parties and their counsel.

To Repeat: You should anticipate being challenged on any answer you give and every question you ask. You will be expected to learn to work in an environment in which you are dealing with senior members of your firm, clients and opposing counsel on issues that can potentially expose your client or firm to significant liability. They may expect you to justify your answers, or may reject your approach, however reasonable it may seem to you. Be prepared to meet that challenge and to learn how to handle challenges in ways that provide effective representation of your client.

Remember this pedagogical goal and **don't take it personally**. As the semester progresses, ask yourself often the following two questions: (1) what substantive rules am I learning, and (2) how am I being taught to go about understanding the substantive rules and the process of applying them creatively in a business context in which a client will not accept from you any response that begins: "You cannot do that."

Class Notes and Recording of Class. Take notes as you like. Please feel free to get together with your classmates for studying and sharing notes. Please remember that the purpose of the course is NOT to provide experience in stenographic techniques. Participation rather than the taking of dictation is encouraged. To that end,

All of my classes are recorded and you are encouraged to review those recordings at your convenience.

Recordings will be available through the end of the Examination Period.

NO PERSONAL RECORDING OF CLASS.

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Course Information & Syllabus
Fall Semester 2024

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**Law School Policy Regarding Creation of, and
Access to, Recordings by the Law School of Class
Sessions**

All Law School and School of International Affairs courses occur in classrooms equipped with audiovisual telecommunications equipment that is capable of making an audiovisual recording of each class session as it occurs. In order to provide the potential educational benefits of recorded classes to our students, the schools have decided to automatically record, and to archive for a limited period of time, all class sessions occurring in our classrooms. The purpose of the recordings is to permit students enrolled in each recorded course to access the recordings outside of the regularly scheduled class period, according to rules established by the professor. Access to recorded classes is limited to students enrolled in the recorded course, the professor, and those University IIT personnel necessary to maintain the system. All recordings will be deleted following the conclusion of the semester in which the recorded course occurs (unless all identifying student images are edited out of the recording, in which case the professor and school jointly may decide to retain the edited recording for other purposes).

By registering for or attending Law School and School of International Affairs courses, you consent to the schools' making and display of class recordings within the scope of this policy.

Any recording of Penn State Law or School of International Affairs class sessions, and any form of copy, capture and/or re-use of those recordings, other than provided for herein, is prohibited. Violation of this policy may result in Honor Code sanctions.

Your professor in each Penn State Law or School of International Affairs course will explain the access rules she or he has established for each class.

PLEASE NOTE that the class recording policy is not a substitute for class attendance and preparation, which still is required for all class sessions (unless excused by the professor on an exceptional basis for good reason) and in order to remain in good academic standing. The class recording policy is intended to enhance your learning experience, not to substitute for regular class attendance and preparation.

The office of the Associate Dean for Academic Affairs has provided you with this statement; please familiarize yourself with all of its terms. In case of doubt about meaning, please contact the Office of the Associate Dean:

CORPORATIONS

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Course Information & Syllabus

Fall Semester 2024

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A. Student Access to Class Recordings; Open Access:

All Class/Open Access. All class recordings will be posted in the Module on CANVAS for access by any student enrolled in this course. Access will end the last day of the final exam period. Your Professor may not consent to or authorize access to or distribution of class recordings beyond the students enrolled in that course.

B. Student Use of Recordings and Materials:

A student may not record any part of a class by any means without prior express authorization of the faculty member. If a student receives faculty authorization to record a class, the student may not copy or download such recording to a computer or other device, distribute it to any other person, or use the recording for any purpose other than personal education and study except with the prior express authorization of the faculty member. Unauthorized recording, distribution, or use of a class recording is a violation of the Honor Code.

A student may not use course materials such as slides or other documents posted on ANGEL for any purpose other than personal education and study and may not disseminate, publish, or alter course materials without prior express authorization of the faculty member. Unauthorized use of course materials is a violation of the Honor Code.

Penn State Law Honor Code, Violation 2.1(1) covers unauthorized recording and unauthorized use of class recordings or course materials. It prohibits "Taking, using . . . or otherwise abusing the property of another, including, without limitation, books, briefs, class notes, outlines, or any other academic items, without authorization."

C. Questions, Special Requests. You should direct any questions, concerns or requests regarding classroom recordings or any classroom technology to the AV Team at av@law.psu.edu.

GRADING

The course grade will be based on a take home exam. Students who complete the extra credit assignments identified in the Syllabus below will receive credit which, in can, in my discretion, raise the course grade by up to one letter grade.

CORPORATIONS
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Fall Semester 2024

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The problems assigned throughout are not graded but are meant to serve both as a way for students to “own” the materials covered, to serve as a basis for class discussion, and to provide students with practice for the sort of questions they may find on the final exam.

THE EXAM IS OPEN BOOK. You must work alone. You may reference any materials you have prepared in groups. **CITATION TO ALL WORK QUOTED OR PARAPHRASED IS MANDATORY, INCLUDING MATERIALS SOURCED FROM CLASS NOTES, GROUP WORK, AND MORE TRADITIONAL SOURCES.** You will have 24 hours to complete the exam from the time you access it. Students will be given the option of choosing the time to start the exam. The exam may be accessed up on any day from 8 A-M. on the first day of final exams to 4:00 P.M. on the last day of the final exams period (9 December 2024 through 20 December 2024).

The Law School determines the technology used to administer its exams. That technology changes from time to time. The class will adhere to the rules developed for those technologies. That will be determined closer to exam time and you will be informed in due course by those with the power to establish these procedures and rules. **I will not police you – you are on your honor to comply with final exam rules.**

SPECIAL NOTE ON THE USE OF A.I. and OTHER GENERATIVE TOOLS

The [HONOR CODE MAY BE ACCESSED HERE](#).

ANY EXAM DELIVERED (1) AFTER 4 P.M. ON THE LAST DAY OF THE FINALS PERIOD OR (2) DELIVERY IS MADE OR ATTEMPTED MORE THAN 24 HOURS AFTER STARTING THE EXAM WILL RECEIVE A GRADE OF “F”.

The awarding of grades is based on the curve system adopted by the faculty of the Law School and is subject to the limitations of those curve rules. The Grading Norms may be accessed [HERE](#). I will adhere to this system. Students interested in discussing the curve system itself, its wisdom, or making proposals with respect to the system, are advised to consult their academic dean.

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Larry Catá Backer
Course Information & Syllabus
Fall Semester 2024

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ACADEMIC HONESTY AND INTEGRITY

Both Penn State Law (PSL) and the School of International Affairs (SIA) safeguard and promote the ideals of honor and integrity by prohibiting lying, cheating, stealing, and other dishonorable conduct. Accordingly, all students should act with personal integrity, respect other students' dignity, rights and property, and help create and maintain an environment in which all can succeed through the fruits of their efforts.

Dishonesty of any kind will not be tolerated in this course. Dishonesty includes, but is not limited to, cheating, plagiarizing, fabricating information or citations, facilitating acts of academic dishonesty by others, having unauthorized possession of examinations, submitting work of another person or work previously used without informing the instructor, or tampering with the academic work of other students. Students who are found to be dishonest will receive academic sanctions and will be reported to the relevant authorities for possible further disciplinary sanction. For an explanation of what types of conduct constitute plagiarism, see the definition of plagiarism in the Law School Honor Code section 1.2 (R) at <http://www.law.psu.edu/Honor/Contents.cfm>.

See also <http://istudy.psu.edu/FirstYearModule/CopyrightPlagiarism/StudentGuide.html> and <http://its.psu.edu/turnitin/TurnitinHandout.rtf>.

All acts of academic dishonesty will be dealt with and punished in accordance with applicable Penn State University, Penn State Law, SIA and Graduate School policies, as applicable.

SPECIAL NOTE ON THE USE OF A.I. and OTHER GENERATIVE TOOLS

Please read the following six points carefully.

We take the Honor Code very seriously at Penn State Law. Violations can result in severe sanctions, including expulsion and suspension, and will be reported to bar authorities. Perhaps the most important idea to take away from the following is that if you are not certain whether using AI technology in a particular way is permissible in a particular

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Larry Catá Backer
Course Information & Syllabus
Fall Semester 2024

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course, *ask the instructor before using it*. I am also always available to address Honor Code questions.

GENERATIVE ARTIFICIAL INTELLIGENCE AND PENN STATE LAW'S HONOR CODE: GUIDELINES

1. *It is the expectation at Penn State Law that, unless an instructor explicitly provides otherwise, graded or required work submitted by students for courses or co-curricular activities is their own work.*
2. *It is a violation of academic integrity for students to submit work that has been written or modified by other persons or by applications, including generative artificial intelligence programs.*
3. *It is a violation of academic integrity for students to submit graded or required work first written in another language and then translated into English, whether by another person or by an application. **EXCEPTION: STUDENTS SUBMIT WORK THAT IS FIRST WRITTEN IN ANOTHER LANGUAGE AND THEN TRANSLATED INTO ENGLISH WHETHER IN PERSON OR BY MACHINE OR MACHINE ASSISTED TECHNOLOGY PROVIDED THAT THE STUDENT DISCLOSES THAT THEY HAVE USED AI TOOLS AND HOW THEY'VE USED AI TOOLS TO TRANSLATE WORK FIRST WRITTEN IN ANOTHER LANGUAGE AND THEN TRANSLATED INTO ENGLISH. USE OF HUMAN TRANSLATORS REQUIRES MY PRIOR WRITTEN APPROVAL WHICH SHALL NOT BE GRANTED IN THE ABSENCE OF SUBSTANTIAL JUSTIFICATION.***
4. *It is not a violation of academic integrity for students to use applications that identify grammar, spelling, or stylistic problems and suggest corrections.*
5. *If uncertain whether the use of a particular application is permissible in a course or co-curricular activity, students should consult with the instructor before using the application.*
6. *In circumstances where instructors explicitly permit the submission of work written or modified by other persons or by applications, students must provide FULL*

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Fall Semester 2024

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*ATTRIBUTION OR NOTICE OF USE IN THE BODY OF THE WORK, AND
OTHERWISE INCLUDE INFORMATION ACCORDING TO MY DIRECTIONS.*

CONFERENCES

I try to maintain an open door policy. I encourage you to see if me should you have any questions or concerns. While face time is important, students should not consider it necessarily the best or exclusive means for communicating with me. My strong preference is for meeting via Zoom. There is little excuse for the complaint – ‘the faculty member is not available’ – when technological advances have made communication possible by telephonic and electronic means.

TECHNOLOGY HAS MADE IT EASY TO COMMUNICATE.

PLEASE TAKE ADVANTAGE OF IT.

You are encouraged to contact me by e-mail. I will respond promptly.

<lcb911@me.com>

CANVAS

This year I will be relying on PSU’s CANVAS system for most of communication with you. I will post questions to the CANVAS class site and send e-mails via that site. Please check in regularly for information about the course. It will be your responsibility to keep apprised of the information posted there.

CORPORATIONS
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Course Information & Syllabus
Fall Semester 2024

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Additional University Policies and Statements

UNIVERSITY DISABILITIES POLICY STATEMENT

To comply with University policy regarding persons with disabilities, this statement is included in this course syllabus:

Penn State welcomes students with disabilities into the University's educational programs. Every Penn State campus has an office for students with disabilities. The Student Disability Resources Web site provides [contact information for every Penn State campus: http://equity.psu.edu/sdr/disability-coordinator](http://equity.psu.edu/sdr/disability-coordinator). For further information, please visit the [Student Disability Resources Web site: http://equity.psu.edu/sdr](http://equity.psu.edu/sdr).

In order to receive consideration for reasonable accommodations, you must contact the appropriate disability services office at the campus where you are officially enrolled, [participate in an intake interview, and provide documentation: http://equity.psu.edu/sdr/applying-for-services](http://equity.psu.edu/sdr/applying-for-services). If the documentation supports your request for reasonable accommodations, your [campus's disability services office](#) will provide you with an accommodation letter. Please share this letter with your instructors and discuss the accommodations with them as early in your courses as possible. You must follow this process for every semester that you request accommodations.

Counseling & Psychological Services (CAPS)

<http://studentaffairs.psu.edu/counseling/>

CAPS staff work with thousands of Penn State students per year in group therapy, individual counseling, crisis intervention, and psychiatric services as well as providing prevention, outreach, and consultation services for the University community. Services at

CORPORATIONS
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 Fall Semester 2024

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CAPS are designed to enhance students' ability to fully benefit from the University environment and academic experience.

As specialists in working with undergraduate and graduate students, staff at CAPS can help you address your concerns in a caring and supportive environment. CAPS can help students resolve personal concerns that may interfere with their academic progress, social development, and satisfaction at Penn State. Some of the more common concerns include anxiety, depression, difficulties in relationships (friends, roommates, or family); sexual identity; lack of motivation or difficulty relaxing, concentrating or studying; eating disorders; sexual assault and sexual abuse recovery; and uncertainties about personal values and beliefs.

Protocol for Responding to Bias Motivated Incidents

Penn State University has adopted a “Protocol for Responding to Bias Motivated Incidents.” It may be accessed [HERE](#). It is grounded in the policy that the “University is committed to creating an educational environment which is free from intolerance directed toward individuals or groups and strives to create and maintain an environment that fosters respect for others.” That policy is embedded within an institution traditionally committed to academic freedom (the policy may be accessed [here](#)) and free and open discussion. Bias motivated incidents include conduct that is defined in University Policy AD 91 (accessed [here](#)). Students who experience a possible bias motivated incident, as well as students, faculty or staff who are witnesses of the same, are urged to report the incident immediately by doing one of the following:

* Contact your County Emergency Dispatch by dialing 911 in cases where physical injury has occurred or is imminent;

* File a report on the Report Bias website: <http://equity.psu.edu/reportbias/statement>;

* Contact one of the following offices:

University Police Services, University Park	814-863-1111
MRC Counselor/Diversity Advocate for Students	814-865-1773
Office of the Vice Provost for Educational Equity	814-865-5906
Office of the Vice President for Student Affairs	814-865-0909
Affirmative Action Office	814-863-0471

CORPORATIONS
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Course Information & Syllabus
Fall Semester 2024

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COVID-19 Syllabus Statement

This is taken from the Penn State Law Website.

“The fall 2022 semester will continue with in-person classes and activities to be held as scheduled with continued health and safety protocols in place (the University will continue to monitor the conditions around the campus and will alter plans if necessary). The health and safety of our community remain paramount and Penn State Law and SIA will continue to comply with all Penn State University guidance and requirements.”

“University-issued guidance, and various other relevant information, are available at Penn State’s comprehensive COVID website, which contains detailed information on topics such as masking, vaccines, testing, contact tracing, travel, gatherings/events, etc. Frequently Asked Questions regarding summer 2022, in particular, are available at Penn State virus info FAQs. Penn State also has a COVID-19 Call Center at (814)865-2121, which you can call with questions about COVID-related topics.”

“Information provided below for students, faculty, and staff will be updated as it becomes available. Information from Spring 2020 has been archived and can be found here.”

CORPORATIONS
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Course Information & Syllabus
Fall Semester 2024

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SYLLABUS:¹

A Note on Pedagogy and a summary description of the order of the syllabus. It is usually useful to provide students with a roadmap of where they will be taken during the course of the semester. It is equally important to try to explain the reasons for taking a particular path from the start to the end of the course materials.

What follows are the class assignments for the semester arranged chronologically.

Before working through them, students might want to consider the reason for this sequence: The course materials are arranged to provide students with a view of the corporation, and the laws, norms, and principles through which it is regulated, interpretations of law are justified, and clients and lawyers weigh the risks of particular actions against the probability of affirmation of their legality by a court.

***This is undertaken from the outside in.* (1) We start with a view of the corporation as a legal entity in context. (2) We then consider the internal governance of the enterprise. (3) And then we turn to key elements of its operation and management: (a) corporate combinations, (b) shareholder litigation, and (c) the overarching stewardship of fiduciary duty as the regulatory mechanism for exercises of operational discretion. The course is divided into six broad parts:**

Part 1 of the materials (Classes 1-3) introduces students to the context in which people engage in economic activity, and construct law to aid in its rationalization, and in the protection of the integrity of transactions and their enforcement. To that end, students are introduced to the lawyer as a mediating agent and the normative and behavior expectations of lawyers in the context of the regulation of economic activity (especially in corporate form). Students then consider the behavioral framework within which such activity is understood and the rationalization for its organization and valuation. That study focuses on an introduction to risk and to the principal stakeholders in organized economic activity—those who control capital, those who offer labor, and those who manage the relations between them. Risk is the way in which such interactions are valued, and value

¹ AS MENTIONED ABOVE; ALL PROBLEMS ARE TO BE WRITTEN, STUDENTS SHOULD SUBMIT PROBLEM RESPONSES THROUGH THE “ASSIGNMENTS” WHICH CAN BE ACCESSED FROM THE HOMEPAGE OF THE COURSE CANVAS SITE.

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Course Information & Syllabus

Fall Semester 2024

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maximization is the objective of actions. Risk also explains the value (to individuals and society) of permitting the aggregation of capital (we leave the value of the aggregation of other means of production, especially of labor, to other courses). But what society (and law) chooses to consider as factors in risk assessment, and what is omitted, suggests a bit about the scope and focus of the legal context in which these valuation decisions may be rationalized, and responsibility (and liability) apportioned. We return to this in its manifestations as business and legal risk, and the emerging structures of corporate social responsibility and responsible business conduct.

Part 2 of the materials (classes 3-7) then considers the legal framework built around the valuation-risk premises around which economic activity is organized. Here students are exposed to the core concepts and legal consequences of corporate ‘legal personality.’ In other words, these materials introduce students to the way in which law constructs the “outer shell” of the corporate form, and develops expectations around its operations which are then expressed and applied through legal doctrine—statutes, cases, and the private law of corporate organization. It is also the portion of the class where much of the specialized vocabulary of corporate law is introduced, along with core basic concepts. Students start with vocabulary and legal structure building—an overview of the legal attributes of corporate form, the fundamental role of agency expressed through the fiduciary duty principle, the role of equity in corporate regulation, and a very brief demarcation of the walls between what may be regulated within the enterprise so constructed (the internal affairs rule) and the regulation of the enterprise itself within the social and political collective of the nation. Students are then introduced to the structures and ideologies underlying the construction of corporate statutes—how to read them, how to understand their interconnection with caselaw, and how judges perform two quite distinct tasks in relation to both: *interpreting* (statutes) and *developing* (common law and equity). Students are then introduced to the now contentious issue of corporate personality (is a corporation property in the hands of shareholders, an instrumentality of the state, or an autonomous entity). Corporate personality informs the extent of constitutional protection afforded to corporations, and legal approaches to corporate purpose (to maximize shareholder welfare, stakeholder welfare, or the welfare of the nation). Lastly, the extent of the corporation’s social responsibility (philanthropy mainly but also human rights and sustainability) is introduced.

Part 3 of the materials (classes 8-12) corporate formation, financing, and the integrity of the enterprise. This Part 3 of the materials brings students inside the corporate form. It also introduces students to close reading of sometimes highly technical statutory

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Course Information & Syllabus

Fall Semester 2024

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provisions. First students consider the technical requirements of corporate formation and the role of the lawyer (our exposure to corporate legal ethics and the problems of privilege). They are then introduced to the language that corporations use to speak about themselves, and which serve as the basis for rationalizing systems of legal control over the scope of responsibility and the discretionary decision-making of corporate directors, officers, and shareholders. That language is the language of accounting and financial reporting. It gives form to the fundamental corporate purpose to maximize corporate value. With these tools, students are ready to consider the financing of the now formed corporate entity. To that end, students are introduced to the basics of corporate finance. Students consider the rules for the financing of enterprises. These include both an understanding of the nature of financial instruments and the differences between them (e.g., equity and its sub-forms as well as the variations of the forms of debt). Special attention is paid to the regulation of dividends and the rules of legal capital. Students are introduced to the concept of “par value” and of dividends and its legal constraints. Lastly, students also consider the circumstances under which the corporate form may be disregarded (veil piercing).

Part 4 of the materials (classes 13-18) introduce students to the legal regimes for the management of the corporate enterprise and the issues of closely held corporations.

Here students are introduced to the standard model of corporate governance: (1) shareholders bear all residual risk retain all residual reward and are limited in the exercise of their power to voting; (2) directors have no authority as individuals but act collectively as the fiduciaries of shareholders charged with the duty to manage and oversee the affairs of the corporation the board of directors has the authority to bind the enterprise; (3) managers are responsible for the day to day activities of the enterprise under the authority of the board of directors. In short, shareholders vote, directors set policy and bind the enterprise, and managers operate the enterprise. Lastly, students study the more technical aspects of the role of shareholders (the complexities of rights and forms of shareholder voting); the role of directors (requirements for meeting and valid action and their role in governance; the role of officers, and lastly the role of lawyer-advisors. Lastly, students are introduced to the fundamental principle of organized economic activity—*the principles of agency*. Corporate law presents a very specific application of rules and cultural expectations around the premise that people may be hired to undertake tasks not for themselves but for others. That applies as much to shareholders delegating managerial authority to directors, as it does to directors delegating the responsibility for the day to day operations of the enterprises on managers. Students are then exposed to the way that the law permits variation in the standard model through (a) special provision for closely held enterprises, and (b) through statutory rules that are enacted as default provisions but which

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Course Information & Syllabus
Fall Semester 2024

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permit some sometimes substantial deviation if set forth in the corporate charter or in the bylaws or sometimes in shareholder agreements. The law of oppression in the close corporation is also considered, focusing on common law and statutory approaches.

Part 5 of the materials (classes 19-21) introduce students to the basics of corporate combinations and shareholder litigation. This Part briefly introduces students to the basics of corporate combinations and shareholder litigation. With respect to corporate combinations, students are first introduced to the principles structures of such combinations—mergers, triangular mergers, statutory share exchanges. The legal structures for those combinations are introduced. Students then consider the de facto merger doctrine and the special problems of sales of assets transactions. With respect to shareholder litigation, students consider the way that the law distinguishes between direct and derivative litigation and the consequences. They consider then the general outlines of the requirements and procedural movement of derivative litigation. These include rules on capacity (who can sue), reliance, causation, and injury. Much attention is paid to the fundamental core of shareholder litigation in contemporary times—the demand requirement (the requirement that absent a waiver or excuse) shareholder litigants must make a demand on the board to correct the breaches alleged before they may file their derivative action in court. These are rules of both process and substance and provide a useful segue to the last set of materials considered in this introduction to corporate law.

Part 6 of the materials (classes 22-28) caps off the course with a more granular consideration of the meaning and application of fiduciary duty in a wide variety of contexts. The course ends with a more systematic and detailed discussion of fiduciary duty. In a sense, that discussion provides a capstone in the sense that it draws together all of the elements of corporate law that had been discussed through the first parts of the semester and puts together various elements of corporate conduct that have been discussed in the margins respecting each. The materials first start with the overall framework for fiduciary duty by distinguishing between fiduciary duty as a normative (conduct)s standard and as a standard of liability. It also distinguishes between the conduct of an individual director (which may or may not result in liability) and the actions of the board (which do). Also distinguished is the difference between fiduciary duty and the procedural requirements that must be undertaken to move from allegation to a finding of liability. This involves the introduction of the core concept of the “business judgment rule.” The BJR is, like fiduciary duty itself, both a normative rule (courts will not second guess board decisions and boards have a very wide scope of discretion in managing a corporation) and a rule of process (determining the rules under which the normative presumptions of the BJR can be

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 Fall Semester 2024

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overcome and the shifting burdens of production and proof that must be met to move to liability). Students then untangle the various forms of fiduciary duty that are been developed by the courts: (1) duty of care (monitoring); (2) duty of care (transactional); (3) duty of loyalty (conflicts of interest); (4) duty of loyalty (independence); (5) duty of loyalty (good faith); and (6) duty to disclose. All of these are then applied in varying contexts in which they tend to arise.

Class	Topic	Pages
PART I: CONTEXT		
1	Syllabus Review; “7 Essential Functions of a Corporate Lawyer” <i>Optional Readings:</i> Leo Strine, “Perfectly Frank: A Reflection on Quality Lawyering in Honor of R. Franklin Balotti,” <i>Business Lawyer</i> 72: 607-621 (2017); Curry, “Beyond the Oath: Recommendations for Improving Civility (Calif. Bar 2022). EXTRA CREDIT —Prepare a 2 page (single space) summary with your reflection on either one or for both	Read Syllabus and “7 Essential Functions” Article
2	Business and Risk --Prepare “Julia and Jonathan” Problem “Allocating Risk and Return; (TEXT 8-9)	TEXT Chapter 1

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 Fall Semester 2024

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PART 2: CORPORATION AS LEGAL PERSONS

- 3 Intro to Business Entities and Concepts:
 Overview of Legal Attributes
 Fiduciary Duty and Equitable limits
 TEXT Chapter 2
 pp. 17-24; 50-79
- 4 The Statutory Basis of Corporate Law
*--Read Table of Contents for DEL CODE & RMBCA;
 Skim through DEL CODE and RMBCA*
 STATUTES
- 5 The Business Entity and Legal Personality
--Prepare Problem: Regulating Corporate Lobbying
 TEXT Chapter 4
- 6 Corporation and Society (BUSINESS PURPOSE)
 TEXT Chapter 5;
--Prepare Exogen Inc Part I problems
 --Business Roundtable 2019 Statement Corp. Purpose
 --Benefit Corporations
 pp. 149-178
 Bus. Roundtable
- Optional Reading:** U.S. DEPARTMENT OF STATE
 Guidance on Implementing the UN Guiding Principles
 for Transactions Linked to Foreign Government
 End-Users for Products or Services with
 Surveillance
EXTRA CREDIT—Prepare a 2 page (single space)
 summary with your reflection
- 7 Corporation and Society:
 Law of Corporate Charitable Giving;
--Prepare Union Airlines Problem; Exogen Part 2
 Business Human Rights and Sustainability
 Framework Issues;
 -- US State Dept. U.S: Government's National Action Plan
 On Responsible Business Conduct (25 March 2024)
 The Role of the Lawyer
 --IBA Guidance doc (2016) PP 30-31
 TEXT Chapter 5
 pp. 179-203
 USDS-NAP-RBC

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 Fall Semester 2024

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Optional Reading: IBA Guidance doc (2016) PP 1-38
EXTRA CREDIT—Prepare a no less than 2 page (single space)
 summary with your reflection

PART 3: FORMING THE CORPORATION

- | | | |
|----|---|------------------------------------|
| 8 | Forming the Entity; Advising the Entity
--Introduction to “Precision Tools Problem Set”—
Precision Tools Problem 1 Basic Information
<i>Prepare Precision Tools Problem Parts 10-11</i>
RMBCA Amendments to Emergency Bylaws 2023 | TEXT Chapter 11
AND pp. 213-214 |
| 9 | Introduction to Financial Accounting
-- <i>Prepare Problems Precision Tools Part 7</i> | TEXT Chapter 9
pp. 379-411 |
| 10 | Financial Structure of the Corporation:
Corporate Securities,
-- <i>Prepare precision Tools Problem Part 9</i> | TEXT Chapter 10
pp. 419-431 |
| 11 | Legal Capital; Dividends
-- Prepare Problems on Legal Capital and Dividends | TEXT Chapter 10
pp. 432--448 |
| 12 | Piercing the Corporate Veil | TEXT Chapter 3 |

PART 4: THE STANDARD MODEL OF CORPORATE GOVERNANCE

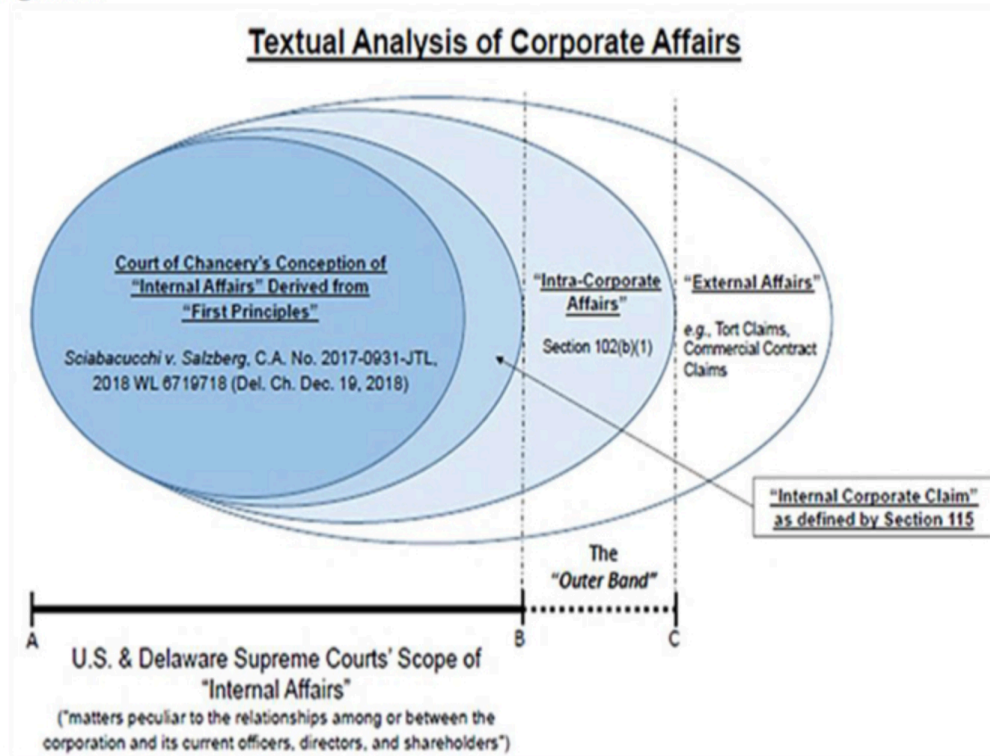
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|----|-------------------------------|---|
| 13 | Governance Public Corporation | TEXT Chp 12
FOCUS pp. 503-524
Salzberg, et al. v. Sciabacucchi , 2019
(Del. Mar. 18, 2020) |
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Optional Reading: Lowenstein, “Pushing the Envelope”
EXTRA CREDIT—Prepare a no less than 2 page
 (single space) summary with your reflection on the reading

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 Fall Semester 2024

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Figure 1:



Source: Gibson, Dunn, "[Delaware Supreme Court Unanimously Upholds Federal-Forum Provisions](#)"

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| 14 | Intro to the problem of Officers: Agency
--Prepare Problem: Agency Relations
Delaware §§ 142-143
RMBCA §§ 8.40-8.44 | TEXT Chapter 2
pp. 24-50 |
| 15 | The Role of Directors in Governance
Distinguishing between Officer and Board Action
--Prepare Problem: Widget Corporation
Attorney Client Privilege
--Summary of <i>Argos Holdings, Inc. v. Wilmington</i> | TEXT Chapter 13 |

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 Fall Semester 2024

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Tr. Nat'l Ass'n, 2019 WL 1397150 (S.D.N.Y. Mar. 28, 2019)

- | | | |
|----|--|---|
| 16 | Shareholder Role in Governance
Shareholder voting

Shareholder Proxies
State Law Disclosure Rules | TEXT chapter 14
pp. 555-570, 573-576;
614-622 |
| | <p><i>Optional Reading:</i> How Companies Should Approach Shareholder Proposals This Proxy Season
 EXTRA CREDIT—Prepare a no less than 2 page (single space) summary with your reflection on the reading</p> | |
| 17 | Planning in the Close Corporation
-- <i>Precision Tools Parts 1-3</i> | TEXT chapter 6
pp- 207-229 |
| 18 | Oppression in the Close Corp.
-- <i>Precision Tools Revisited Problem Parts 4-5</i> | TEXT chapter 6
pp. 229-257 |

PART 5: CORP. COMBINATIONS AND SHAREHOLDER LITIGATION

- | | | |
|----|--|---|
| 19 | Corporate Combinations
-- <i>Prepare Problem: LaFrance Pts 1 & 2</i> | TEXT Chapter 15 |
| 20 | Shareholder Litigation
Direct v. Derivative Action
Shareholder Inspection Rights | TEXT Chapter 16
pp. 651-659;
<i>AmerisourceBergen</i>
backgrounder reading
(“Expert Q & A on Inspection Demands”) |

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 Fall Semester 2024

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|------------------------------|---|--|
| 21 | Shareholder Litigation
Demand Requirement
Settlement
<i>--Prepare Prime Parts Problems Pts 1-2</i>
<i>--Tornetta v. Musk, MATERIALS on
 INDEPENDENCE OF BOARD
 C.A. No. 2018-0408-KSJM,
 2024 WL 343699 (Del. Ch. Jan. 30, 2024).</i> | TEXT chapter 16
pp. 659-710

Musk, pp. 123-129 |
| PART 6 FIDUCIARY DUTY | | |
| 22 | The Duty of Care: Overview
<i>--Prepare Problems FiberNet Part 4</i> | TEXT Chapter 17
711-758 |
| 23 | The Duty of Care/Duty of Loyalty
Entire Fairness
Self-Dealing
<i>--Prepare Problem Starcrest 1 & 2</i> | TEXT Chapter 18
pp. 771-805 |
| 24 | Duty of Loyalty: Good Faith | TEXT Chapter 18
805-846
In re Clovis
 Oncology, Inc.
 Derivative Litigation
 2016 WL 660133 (Oct
2019). “Quick Note
on Caremark” |
| 25 | Duty of Loyalty: Controlling shareholders
<i>--Prepare Starcrest Corp. Problem Part 3</i>
<i>--Tornetta v. Musk, on ENTIRE FAIRNESS</i> | TEXT Chapter 19
847-878
Musk Backgrounder |
| 26 | Duty of Loyalty: Controlling Shareholders
Transactions Within Corporate Groups
Cash out Transactions | TEXT Chapter 19
857-903 |

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Course Information & Syllabus
Fall Semester 2024

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Fully informed voting

“Mind Your
Disclosure”
