

LGLS ST400
Corporations: Devils or Angels
Spring 2016

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Meeting Times

Hours: 2:00 pm - 3:15 pm
Day: Tuesday, Thursday
Room: M42

Office hours

Tuesday and Thursday | 3:30 pm - 5:30 pm

Course description

"Corporations: Devils or Angels" is a special topic course designed to analyze, in an empirically informed way, the relationship between law and morality as well as law and the political, economic and cultural realms. The course focuses on corporations, which are legal entities created and regulated by state law: it traces their historical emergence, looks at the rights under the Constitution and examine impact of these legal entities on the economy, politics, and culture.

Course Objectives

Students will emerge from this course with a better understanding of the relationship between law, morality and society. They will also acquire knowledge of several areas of substantive law as well as the ability to research and integrate this knowledge into their analysis, using the materials of various nature.

Course goals, both in breadth and detail are as follows:

- 1: To define and describe key legal concepts, specific facts and critical issues in law and correctly apply this information to particular examples; and
- 2: To use conceptual legal models and theories to analyze legal events and case decisions; and
- 3: To apply law and legal theories to make convincing arguments supported by evidence and reasoning.

In particular, through their readings, discussions and class work, students will demonstrate an understanding of and ability to

- a) utilize appropriate legal terminology in the analysis of the law's impact upon current societal problems; (Goal 1)
- b) identify key concepts and assumptions of competing conceptual models and theories in sociolegal studies; (Goal 2)
- c) review and evaluate academic theories posed by social science scholars to contemporary legal/societal problems; (Goals 2, 3)
- d) appropriately use social science and legal resources in written analyses of societal issues; (Goals 2, 3)
- e) identify the relevant assumptions, evidence, methodology, and reasoning in analyzing social issues; (Goal 3)
- f) explain how assigned readings may reflect the historical context of the times, the cultures in which they were developed, or the personal ideology of the author distinguish between statutory and case law; domestic and international law; and federal and state legal systems; (Goal 3)
- g) ability to analyze a specific public policy issue (Goal 4).

Learning Goals

1. Demonstrate knowledge of the legal regulation of corporations in the context of today's world
2. Assess the merits of the anti-corporate movement
3. Develop deep reading skills
4. Ability to develop an empirically informed argument
5. Communicate knowledge effectively
6. Effectively participate in active learning

Course Structure

The class mixes lectures, discussions and active learning. Students work, independently or in groups, to generate carefully researched and creative analyses of the relationship between corporations and the law.

Lessons Plan

Lectures touch upon the following topics:

1. What are corporations? Where do they come from? When were they "invented"?
2. Varieties of corporations
3. Corporate critics
4. Corporations take control
5. Corporations and the Constitution
6. Corporate economics and power
7. Corporate Social Responsibility and human rights
8. Criminal law and corporations
9. Corporations, capitalism, and the "wealthy"

Course Materials

Topics and readings for each classes are posted on Blackboard.

Time Expectation

This is a three-hour course. The expectation is 9 hours of preparation outside class each week. The course is structured to require 9 hours of readings and project work per week

Attendance Policies

Class preparedness and participation are essential to success in this course. The Bryant University Student Handbook indicates clearly that attendance is expected. This class is no exception. Indeed part of the final grade is based on class attendance and participation (see "Student Work, Tests, and Grading Policies"). Laptop use is permitted only for note-taking purposes. Finally, According to the Bryant University Student Handbook, students must contact the Academic Records Office in the event of situations requiring prolonged absences. In addition, please provide independent notice to me in advance of the absence.

Student Work, Tests, and Grading Policies

Students are responsible for both individual and group work. Students will be divided in groups of 5 students and some homework/participation will be assigned to the group. Theses assignments are graded as group work (that is, the same grade will be given to all group participants). Other work will be graded individually. Remember that some of the theories and basic concepts will only be discussed in class. Attendance and note take are therefore important part of the learning process. The items that are calculated in the final grade are the following:

- 35% - Reading group deliverables (this grade includes class attendance and timely submission of homework)
- 30% - 4 closed-notes/book quizzes (they will be announced a week in advance)
- 35% - Take home exam/position paper

Makeup Exam Policy

Students with a legitimate excuse are allowed to take a makeup exam. If you anticipate missing a quiz, you must contact me prior to the scheduled quiz, either in person, by phone, or by e-mail. Failure to do so will result in an automatic grade of zero for that exam.

Letter grades

- 93-100%: A
- 90-92%: A-
- 87-89%: B+
- 83-86%: B
- 80-82%: B-
- 77-79%: C+
- 73-76%: C
- 70-72%: C-
- 67-69%: D+
- 60-66%: D
- 59% or below: F

Position paper

Due on May 16, 2016 by 12:30 pm

Semester schedule

01/28 – Introduction and basic concepts:

- Separate entity/legal person (ownership of shares and ownership of assets)
- Limited liability (capital contribution and equity)
- Private vs publicly traded corporations
- LLCs and corporations
- Corporate governance structure (officers and board)
- Officers as agents/employee
- Separation ownership and control (shareholders and officers)

02/02 - A brief history of the corporation

Readings:

- Osborne A brief history of the corporation
- The history of corporations - pre-US

02/04 - Corporations in other countries

Readings:

- Truitt 2006 Corporations in other countries
- Comparative corporate governance
- Perry-Kessarlis

02/09 - The anti-corporate movement (1)

Reading group assignment

Reading: Osborne A brief history of the anti corporate movement

02/11 - The anti-corporate movement (2)

Reading group assignment

Readings

- PowellMemoReproduction
- Freudenberg Corporations Take Control
- The Conservative Turn Against Science - The Chronicle Review

02/16 - No class

02/18 - Corporate strategies to hide valuable information and minimize liabilities (tobacco and climate change)

Readings:

- Bero-AnnRevPubHealth24-100901
- <http://www.scientificamerican.com/article/exxon-knew-about-climate-change-almost-40-years-ago/>

02/23 - Introduction to the First Amendment (lecture)

Readings:

- Piety 2015 (foundational concepts)
- Fein 2015 (introduction to symposium on corporate personhood)

02/25 - Should corporations have personhood and constitutional rights? In class debate.

Reading group assignment

Readings:

- Corporate Personhood Greenfield 2015
- Corporate Personhood Piety 2015

03/03 - First test

03/08 – Corporate Economics (1)

Reading group assignment

Reading: Osborne, Corporate economics.

03/10 – Corporate Economics (2): The trade offs of limited liability (internal and external risk shifting: problems and remedies)

Readings:

- Boggio 2013 Social & Legal Studies

- 60 Minutes, King of Coal (<http://www.cbsnews.com/videos/king-of-coal/>)

03/22 - Corporate Economics (3): The Principal/Agent relationship

- Directors and executives as agents/fiduciary duties and their breach (business judgment rule)
- No duty to maximize shareholders' wealth
- Discretion in considering interests of various stakeholders in addition to interest of the corporation

Readings

- https://www.washingtonpost.com/business/economy/maximizing-shareholder-value-the-goal-that-changed-corporate-america/2013/08/26/26e9ca8e-ed74-11e2-9008-61e94a7ea20d_story.html
- http://science.house.gov/sites/republicans.science.house.gov/files/documents/hearings/052208_blair.pdf

Benefit Corporations

- What Are Benefit Corporations? Articles of Incorporation/Fiduciary duties of directors and officers/Transparency and reporting requirements/Enforcement
- Why Become a Benefit Corporation? Shareholders are guaranteed legally that directors and officers will pursue intended public benefit/Reputation

Readings

- <http://ctbenefitcorp.com/>
- <http://www.forbes.com/sites/theyec/2014/05/30/why-consider-a-benefit-corporation/#35a46ce86ea3>

03/24 – Corporate Globalization

Reading group assignment

Reading: Osborne Corporate globalization

03/29 – The California Transparency in Supply Chains Act of 2010

Reading group assignment

- Statute: http://www.leginfo.ca.gov/pub/09-10/bill/sen/sb_0651-0700/sb_657_bill_20100930_chaptered.pdf
- Barber v. Nestlé USA Inc.
 - Order: <http://www.csrandthelaw.com/wp-content/uploads/sites/2/2016/01/Nestle-dismissal.pdf>
 - Complaint: [https://www.hbsslaw.com/uploads/case_downloads/files/case_pdfs/Chocolate%20Slave%20Labor/09-28-15%20\(Dkt%201\)%20Nestle%20Complaint%20\(2\).PDF](https://www.hbsslaw.com/uploads/case_downloads/files/case_pdfs/Chocolate%20Slave%20Labor/09-28-15%20(Dkt%201)%20Nestle%20Complaint%20(2).PDF)
- Wirth v. Mars Inc.
 - Order: <http://cases.justia.com/federal/district-courts/california/cacdce/8:2015cv01470/627901/37/0.pdf>
 - Complaint: https://www.hbsslaw.com/uploads/case_downloads/slave_labor/iams_complaint.pdf
- Hodsdon v. Mars Inc.
 - Order: <https://www.consumerproductmatters.com/wp-content/uploads/sites/13/2016/03/Hodsdon-v.-Mars.pdf>
 - Complaint: [https://www.hbsslaw.com/uploads/case_downloads/files/case_pdfs/Chocolate%20Slave%20Labor/09-28-15%20\(Dkt%201\)%20Mars%20Complaint%20\(2\).PDF](https://www.hbsslaw.com/uploads/case_downloads/files/case_pdfs/Chocolate%20Slave%20Labor/09-28-15%20(Dkt%201)%20Mars%20Complaint%20(2).PDF)

Additional Materials:

- Mineral conflict rule
 - <https://www.sec.gov/News/Article/Detail/Article/1365171562058> (legal duties)
 - <http://www.law360.com/articles/692445/sec-s-conflict-minerals-rule-sets-up-1st-amendment-clash> (compelled speech)
- Apple vs. FBI: <http://www.forbes.com/sites/abigailtracy/2016/02/26/apple-fbi-backdoor-tim-cook-san-bernadino-first-amendment-iphone-case/>

03/31 - Test #2

04/05 - Taxes and offshoring

Readings:

- Mitt Romney 2011 Tax Return
- [The Panama Papers: Victims of Offshore](#) (video)
- "Stairway to heaven" (https://panamapapers.icij.org/stairway_tax_heaven_game/) (game)
- 60 Minutes, The new tax havens (<https://www.youtube.com/watch?v=MxgezC4KhXQ>)

04/07 - White Collar and Corporate Crimes (1)

Readings:

- Steinzor 2015 Ch 2
- Yates Memo
- McClendon-Indictment-Filed
- Blankenship Federal Indictment (<http://www.wvgazette.com/assets/PDF/CH62291113.pdf>)
- Blankenship Jury Verdict (<https://assets.documentcloud.org/documents/2638519/Jury-Verdict.pdf>)

04/12- White Collar and Corporate Crimes (2)

Reading group assignment

Readings:

- Garrett 2014 ch 4
- Garrett 2014 ch 6
- Steinzor 2015 Ch 3

04/14 - - White Collar and Corporate Crimes (3)

Reading group assignment

Readings:

- Steinzor 2015 Ch 7
- Steinzor 2015 Ch 8
- Garrett 2014 Ch 10

04/19 - Business and Human Rights

Readings:

- <https://www.unglobalcompact.org/what-is-gc/mission/principles>
- http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf
- <http://business-humanrights.org/en/company-action-platform>
- <http://www.shell.com/sustainability/transparency/human-rights.html>

04/21 – Test #3

04/26 – Shareholders’ influence on corporate policy and Socially Responsible Investing (SRI)

Shareholder Activism

- Barton, How Your Vote Can Change Corporate Policy, <http://www.investopedia.com/articles/stocks/08/voting.asp>
- PWC, Shareholder Activism, <https://www.pwc.com/us/en/corporate-governance/publications/assets/pwc-shareholder-activism-full-report.pdf> (2015)
- Smith, Green Investors Get Heard, <http://www.investopedia.com/articles/basics/07/green-investor.asp>

SRI organizations

- <http://www.ussif.org/>
- <http://www.iccr.org/>
- <http://www.cii.org/>

Fossil divestment

- Against: <http://chicagomaroon.com/2015/11/05/letter-law-school-professor-makes-the-case-against-divestment/>
- In favor: http://www.huffingtonpost.com/timothy-wirth/the-case-for-divestment_b_7842740.html

04/28 - Regulation through litigation

Regulation through litigation refers to changes in society brought about by litigation, rather than legislation or regulation.

- List of significant cases: <http://business-humanrights.org/en/corporate-legal-accountability/case-profiles/complete-list-of-cases-profiled>

Litigation against the gun industry:

- Sandy Hook Families' Lawsuit
- Sandy Hook Shooting Complaint: <http://www.koskoff.com/In-the-News/Sandy-Hook-Families-Complaint.pdf>
- AR-15 Ad: <https://www.thetrace.org/wp-content/uploads/2016/02/Bushmaster.jpg>
- Immunity under federal law: <https://www.law.cornell.edu/uscode/text/15/7903>
- CT Wrongful death jury instructions: <http://www.jud.ct.gov/ji/Civil/part3/3.4-7.htm>
- Sandy Hook Shooting CT Court decision (April 14, 2016): <http://civilinquiry.jud.ct.gov/DocumentInquiry/DocumentInquiry.aspx?DocumentNo=10333999>

05/03 – Corporate Conclusions

Reading: Osborne Corporate Conclusions.pdf

Prepare a written document in which you (1) identify one issue raised in Osborne's chapter that you find interesting and connected to something we have discussed earlier in the semester and (2) identify one piece of information that you have learned throughout the semester and that you find particularly interesting

05/05 – Shareholder Proposal

Draft a shareholder proposal that comply with the legal requirements set by federal law and that you could potentially submit to a publicly traded company advocating the company take a specific course of action. In other words, the proposal must be intended for a real company dealing with a real issue. Bring the Proposal to class on Thursday as it will be the basis for discussion.