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## LEGAL ENVIRONMENT OF BUSINESS in Fall 2018 (LW3075)

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|-----------------------|------------------------|-------------------------|----------------------------------------------|
| <b>Course Code</b>    | LW3075                 | <b>Professor(s)</b>     | Fred Einbinder                               |
| <b>Prerequisites</b>  | None                   | <b>Office Number</b>    | G-3A04                                       |
| <b>Class Schedule</b> | W: 13:45-16:40 in PL-1 | <b>Office Hours</b>     | Wednesdays 11:00 - 12:00, and by appointment |
| <b>Credits</b>        | 4                      | <b>Email</b>            | feinbinder@aup.edu                           |
| <b>Semester</b>       | Fall 2018              | <b>Office Tel. Ext.</b> | 640, - 0608908466                            |

## Course Description

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An appreciation of the particularities of the American legal system given its central role in the conduct of business being vital to anyone wishing to understand the nature of American business, or for that matter American society, the first quarter of the course is devoted to providing the student with a general introduction to the nature of US law.

### **Opportunities for Teamwork aimed at keeping abreast of how legal issues affect business**

The format for this course affords us the opportunity to explore how pervasive law is on the conduct of business in the United States. Each class will begin with a look at media accounts (eg; Wall Street Journal, Intl New York Times) of recent legal developments in business providing students with an opportunity for individual class.

In addition, **the class will be divided into teams**. While individual students remain entirely responsible for reading and preparing each class assignment each team will be allotted cases from the text or professor "handouts" for which individual members of the team will discuss to ensure fluid class discussion

To stimulate learning and reflection on important issues of law and business we will apply the principles of law studied in the text, lecture, discussion and topics similar to those debated in previous years, such as the following:

1° To Whom is a duty of care owed? Equifax, data breaches, Distracted and machine driving injuries,

Addictions-Gaming, Social media, Cigarettes (vaping), Opiates

2° Intellectual Property (Copyright-have we gone too far?-eg. Disney)

3° Dispute Resolution-Trends; business and more harmonious methods. Arbitration, Mediation-

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The issue of “consent” and the deprivation of previously available remedies (Litigation).

4° Disasters and Product Liability –BP Oil Spill, Ford Explorer turnovers, Volkswagen “dieselgate Buffalo Creek Flood)

5° Torts and Trials in Real Life – Volkswagen

6° Misrepresentation-Suing law schools?, Dancing in the Dark and “sales puffing”

7° Business persons and lawyers gone crazy with greed, Ethics (Circle of Greed), Thermonos “bad blood”, Volkswagen

8° Tensions between Liberty (Constitutional protections on Privacy) and Big Data

9° Contract Law-Goodbye freedom to contract? –The threat of Boilerplate; The origins of Fashion management- **Wood v. Lucy, Lady Duff Gordon**., What is Chicken? –the **Frigaliment** case, Marketing and misrepresentation-Dancing in the dark-How far is too far?

10° Criminal Law and Business-The growing trend, International Corruption

We will focus on cases and developments involving well-known American business icons, McDonalds, Wal-Mart, Ford Motor and non-US companies faced with substantial American legal risk-foreign banks, Volkswagen.... to provide a coherent framework illustrating the key role of law in business strategy.

All students will fully participate in major team presentations to the class at the end of the semester. In addition, students, will be called on to present short synopsis, analysis and research into the story behind the cases throughout the semester.

In this manner the student, in both group and individual settings, will obtain a fuller appreciation than under of how the US legal system works in practice. Instead of limiting ourselves to the classic “tip of the iceberg” study of cases decided by the courts extra readings beyond the standard text , team work (including insights obtained from reading books on real cases and viewing famous movies on the law), class presentations and debate will enable us to better see the law in practice in particularly interesting fields.

## Course Learning Outcomes

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## General Education

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[PLEASE EDIT OR REMOVE THE FOLLOWING TEXT AS APPLICABLE]

The general education program at AUP consists of four requirements: Speaking the World, Modeling the World, Mapping the World, and Comparing Worlds Past and Present.

This course can be used to fulfill the [INDICATE THE REQUIREMENT(S) FULFILLED BY THE COURSE] requirement and as such has the following learning outcomes:

[INDICATE THE GENERAL EDUCATION LEARNING OUTCOMES]

## Course Outline

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**MAKE-UP CLASS =OCT. 3rd – As the Professor will not be available for class on OCTOBER 3rd- A MAKE-UP Session will be scheduled after determining a time slot permitting all (or almost) all students to attend.**

**OUTLINE AND REQUIRED READINGS: (page numbers refer to text BUSINESS LAW or Buffalo Creek**

**SUBJECT TO MODIFICATION CONSISTENT WITH CLASS PROGRESS OR LEGAL DEVELOPMENTS DISCUSSIONS**

1. Wednesday , September 12thth, 2018

Introduction – review of the course and syllabus What is Law? Jurisprudential theories (Thomas Aquinas and Thomas Jefferson ) –Natural Law Positivism (Jeremy Bentham, Austin); Legal Realism, Sociological School; The Essential Role of History -Oliver Wendell Holmes Jr.

The Common Law, Precedent, Great Judges (Cardozo) - Sources of Law; Law and Ethics

The Limits of the Law

**If possible (try to obtain the textbook Prior to our first class)**

**Read: BUSINESS LAW Mallor, Barnes ('text") Chapter 1 –pp.2-8 (Price case);9-18 (Hagan**

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**v. Coca-Cola) 21-23 READ APPENDIX ON HOW TO READ AND BRIEF CASES CAREFULLY**

**2. WEDNESDAY, September 19 th**

Law and Society. How law changes to meet changes in society, economics and technology

**To whom does one a duty? The Good Samaritan, Religious underpinnings; Altruism or the “bad” man perspective of legal constraint –economics and law**

**Differences with continental legal systems (“non-assistance à une personne en danger”)**

**The particular nature of the US Legal System:, Precedents , Federalism the role of the Judge and the Constitution: First and Fourteenth Amendments-Free Speech & Equal Protection; Commercial Speech,**

RE-READ –see above from Chapter 1 (pp. 2-8, 9-18,22-23) Price and Coca Cola cases and Chapter 3 , CONSTITUTIONAL LAW (pp.55-62;65-84, 85-92 ) Sebelius, United Citizens and Liquormart case

**3. WEDNESDAY, September 26th** The US Court System, Dispute Resolution, Jurisdiction,

READ: Chapter 2 (pp. 28-51,54) Lopez, Daimler, Hertz, Wal-Mart cases

READ: BUFFALO CREEK DISASTER-pp. 3-82

**The law and the Civil Rights Movement (BROWN\_v. Board of Education)**

Professor Einbinder will further summarize in class session 3 Brown case-historical setting and progeny

Research Possibilities –Alcohol, Distracted Driving and the Law of Liability-Social

**JURISDICTION-** The key concept of all law and its use to illustrate the peculiarities of American Law:

Dynamic Interplay of the CONSTITUTION, FEDERALISM AND PRECEDENTS

Benefits and Issues with “alternative” dispute resolution –arbitration and mediation –recent court cases-

Debate on “voluntary” arbitration of employment and consumer disputes-Boilerplate threat

**4. WEDNESDAY, October 3rd GUEST LECTURER-Doris Speer**

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**TORT LAW** -, Intentional torts and Negligence,

READ: Chapters 6 and 7 pp. 181-199;203-216; 225-237; 247-257 Accor Economy,  
McDonald's, Rostraver Shop and Save, Jewel v. Jordan (yes, famous Number 23), TNT Well Services, Chevron USA, Dick's Sporting Goods, Atlantic Coast airlines, Stahlecker v. Ford (Ford Explorer ) cases

READ: BUFFALO CREEK DISASTER-pp. 82-137

“Assault and Battery –why terminology is important; why lawyers choose different theories of tort liability-the role of insurance

Revisit-The Importance of Duty in American law

Causation

**5. WEDNESDAY , October 10th PRODUCTS LIABILITY, Punitive Damages (The Constitutional, Social, Economic and Comparative Law Debate) CRIMINAL LAW AND BUSINESS, Ethics in Action**

READ (Chapter 20 a-pp. 549-557;559-60;564-573;580-589 Chapter 5 pp.161-170

Carrabba's Italian Grill, Branham v. Ford, Woodhouse Ford Inc., Green v. Ford and US v Anderson (ch 5 at 166-168) cases READ: BUFFALO CREEK DISASTER (pp 137-199)

**Research possibilities: Tobacco Litigation – developments over time**

**Punitive Damages- Supreme Court developments, Pinto and Ford Explorer cases**

**E discovery issues –cost and harmony versus “justice” and the “truth”**

**Tort Liability of Accountants; the Criminal law and Auditors (Arthur Anderson)**

**Attorney-Client Privilege The role of In-House Counsel**

**6. October 17th INTELLECTUAL PROPERTY- of Patents, Trade Secrets, TradeMarks, Copyright and Unfair Competition**

**READ:Chapter 8 pp. 264-267;269-272, 276-78;281-309** Alice Corporation, John Wiley,  
Baltimore Ravens, Starbucks, Retina Consultants cases & BUFFALO CREEK DISASTER (pp.

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200-280) -Class Discussion on what was learnt

**Research possibilities –Trade Secrets and Entrepreneurship –family or small business  
Luxury goods management, fashion and Entertainment industries,**

“A rose by any other name would still smell as sweet” but would it were Shakespeare a lawyer?

**7.WEDNESDAY , OCTOBER 24th** - MIDTERM EXAMINATION

BREAK-no class October 31st

**8- November 7th**

REVIEW OF MID-TERM EXAM

Introduction to Contract Law-Framework “REASONABLE EXPECTATIONS INDUCED BY  
PROMISES Offer and Acceptance,

**READ : Chapter 9 ,10 (pp. 320-323;324-326;329-31;333-334;339-342;345-349 Meram v.  
MacDonald, Kolodziej,**

Research possibilities- What has happened to Chicago Medical School in **Steinberg v.  
Chicago** medical School ? Can anyone track down Steinberg?

Law Students suing law schools!

Promises, promises

Moral? Legally Binding? Back to Legal philosophies

**November 14th** Acceptance and Consideration

**READ : Chapters 11 and 12 (pp. 360-362, 364-367,370-371;373-376;381-383;384-393 )**

The CHICKEN CASE –UTUBE FRIGALIMENT

A&E Television Networks, Sunbelt Corporation, Cabot Oil and Gas cases

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HANDOUTS or WEBMAIL/Blackboard Wood v. Lucy, Lady Duff-Gordon (U tube)

**Research possibilities-more about Lady Duff Gordon; Exclusivity clauses in business (entrepreneurship; fashion industry dawn)**

**10- November 21st**

The Reality of Consent-Void, Voidable,

**READ : Ch. 13 14, pp. 403-404; 407, 409-413, 415-418; 421-429;;434-5;437-443,445-6,448-453;456-458, 460-462,463-468; 469-474 Hicks v. Sparks. Galloway,Zelnick.**

Handout/Email Webster “cow case” (U-Tube) &

**Research possibilities - Ambiguity, the Law and lawyers**

**Law and marketing/advertising**

Unenforceable and Valid Contracts, Contracts in Writing, Illegality

**Read: Ch; 15 & 16 Clarks’s Sales and Services,Gamboa; Jacco v HVAC**

**“Dancing in the Dark” Vokes v. Arthur Murray, Sports clubs**

**Statute of Frauds-U tube memory aide**

**11. NOVEMBER 28th**

Agency Law, Types of Business Organizations

**READ : Chapters 35,36,37,40 (pp. (952-967; 970-74;975-976;979-984, 991- 999, 1000-1002, 1047-53,1054-57;focus on Chart on 995);**

MDM Group Associates; Harrisongs Music Ltd., Sanders v Madison Garden, Camp Sunshine at Sebago lake, Dean Witter Reynolds,andover Assoc. Mgnt Co.

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## 12. DECEMBER 6th

**CORPORATIONS, CORPORATENESS, PIERCING THE CORPORATE VEIL, FIDUCIARY DUTY**

**ETHICS, TORTS, REGULATORY AND CRIMINAL LAW REVISITED**

**DISNEY case**

**Read: Chapters 41, 43, (pp. 1070-78;79-86;1111-1118;1120-11321135-1138,1140-1146**

**Supply Chain Asocs.,**

**Read ch. 43 Brehm v. Eisner (Disney case), US v. Jensen**

## 13. December 13th

**TEAM PRESENTATIONS –**

**FINAL EXAMINATION DECEMBER 19TH AT 15:30**

## Textbooks

| Title        | Author       | Publisher   | ISBN          | Required |
|--------------|--------------|-------------|---------------|----------|
| Business Law | Mallor et al | McGraw Hill | 9781259252655 | Yes      |



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# Attendance Policy

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## ATTENDANCE:

Class participation is an important aspect of the course evaluation. **Regular attendance at lectures is critical.** Excessive absences will be taken into account when determining the course grade.

Law study is difficult and at times quite confusing. Nothing can add more to the confusion than to miss class. Moreover, class participation constitutes an integral part of the course evaluation.

Assignments for each class are specified BELOW. In recent years, the professor has noted a tendency of a few students, particularly those who have a habit of missing classes to send Emails to the professor to find out "What is the assignment"?

Faced with these increasing (and **annoying**) requests the professor has responded with the information and gentle suggestion that it would be preferable for the enquiring students to ask one of his fellow students rather than the professor in the future.

The surprise having worn off as of this semester such requests will simply not be responded to as it the professor's firm belief and experience as a senior executive that the failure of students all of whom are prospective candidates for gainful employment to interact with fellow students or take the time to read instructions (assignments listed on syllabus) ought not to be encouraged.

Asking one's boss to repeat their clear instructions, especially by impersonal email is not conducive to promotion and although I am not in a position of a "boss" university class behaviour should be in part a learning experience for life work. Moreover, interacting with fellow students (and colleagues later in work situations) is almost always a lot more fun and rewarding as it builds co-operative team skills.

The above should not be interpreted as discouraging in any way requests for help or guidance from the professor in studying the materials or understanding law and business in general which students are encouraged to seek during office hours, class breaks or appointment;

Students studying at The American University of Paris are expected to attend ALL scheduled classes, and in case of absence, should contact their professors to explain the situation. It is the student's responsibility to be aware of any specific attendance policy that a faculty member might have set in the course syllabus. The French Department, for example, has its own attendance policy, and students are responsible for compliance. Academic Affairs will excuse an absence for students' participation in study trips related to their courses.

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Attendance at all exams is mandatory.

IN ALL CASES OF MISSED COURSE MEETINGS, THE RESPONSIBILITY FOR COMMUNICATION WITH THE PROFESSOR, AND FOR ARRANGING TO MAKE UP MISSED WORK, RESTS SOLELY WITH THE STUDENT.

Whether an absence is excused or not is ALWAYS up to the discretion of the professor or the department. Unexcused absences can result in a low or failing participation grade. In the case of excessive absences, it is up to the professor or the department to decide if the student will receive an "F" for the course. An instructor may recommend that a student withdraw, if absences have made it impossible to continue in the course at a satisfactory level.

Students must be mindful of this policy when making their travel arrangements, and especially during the Drop/Add and Exam Periods.

## Grading Policy

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### GRADING:

Evaluation of the student will be determined on the following:

|                                                                                                                     |      |                                     |
|---------------------------------------------------------------------------------------------------------------------|------|-------------------------------------|
| Individual class participation (summary of cases, discussion points or short resumes of recent developments in law) | 15%  | Over entire semester                |
| TEAM PRESENTATIONS                                                                                                  | 25%  | DECEMBER 13th                       |
| <b><u>MID-TERM EXAM</u></b>                                                                                         | 30%  | OCTOBER 24th, 2018                  |
| <b><u>FINAL EXAM</u></b><br><br>(non-cumulative-Materials from Midterm to last day only)                            | 30%  | DECEMBER 19th, 2018<br><br>at 15:30 |
| TOTAL                                                                                                               | 100% |                                     |
|                                                                                                                     |      |                                     |

**Make-up for the Exams will only be given unless the student is officially excused for a**

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**most serious reason which does not include travel plans or the hardship of the exam schedule. See penalty below midterm**

**AUP ATTENDANCE POLICY:**

Students studying at The American University of Paris are expected to attend ALL scheduled classes.

A maximum of four (4) *excused* absences per semester may be requested for all 4-credit courses.

**Attendance at all exams is mandatory.**

Student Affairs will *recommend* that a professor excuse an absence for the following reason only:

Involuntary absences due to illness or personal emergencies, upon presentation of documentary proof of

**Religious and National Holidays:**

Due to the large number of nationalities and faiths represented at the University, religious and national holidays (on the academic schedule) will not be excused by Student Affairs.

Academic Affairs will excuse an absence for students' participation in study trips related to their courses

**Lateness to course meetings:**

If a student arrives at course meetings more than 10 minutes late without documentation for one of the above reasons, it is considered an *unexcused* absence.

All documentation must be submitted to the Office of Student Affairs within ONE WEEK following the first

IN ALL CASES OF MISSED COURSE MEETINGS, THE RESPONSIBILITY FOR FOR ARRANGING TO MAKE UP THE WORK RESTS SOLELY WITH THE STUDENT.

Whether an absence (excused or unexcused) is accepted or not is ALWAYS up to the discretion of the professor or department. Unexcused absences can result in a low or failing participation grade. In the case of excessive unexcused absences, it is up to the professor or the department to decide if the student will receive an "F". The instructor may recommend the withdrawal of a student whose absences from any course, ***excused or not***, make it impossible to continue in the course at a satisfactory level. The professor may consult with Student Affairs for more information.

MIDTERMS: to stem the trend of students missing MIDTERM exams, in particular and to ensure fairness, a 3% penalty (3%) will be deducted in all cases (whatever the nature of the excused absence)

Students must be mindful of this policy when making their travel arrangements, and **especially during the Midterm Periods.**

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# Other

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## A - SCOPE

1. The course does not pretend to provide an in-depth study of any one area of business law. Nor, on other hand, can it be considered a survey of all important areas of American business law. Instead, the course focuses on the essential business law subjects –dispute resolution, torts, contracts, intellectual property, agency and corporate governance and ethics.
2. The study of law cuts across disciplinary lines within and beyond business disciplines. Within the business discipline we will therefore integrate Accounting and Financial concerns ( Auditor liability), Marketing issues (frontier between sales “puffing” and misrepresentation; fraud-eg. VW dieselgate) Information technology (E-discovery) Privacy/Big data tensions,, Organizational Behaviour-corporate social responsibility and ethics-eg. Disasters-Buffalo Creek Disaster, BP Deepwater Horizon & Products Liability-Circle of Greed, Entrepreneurship-(types of business organizations, Business Judgment Rule-eg. Disney case and the proper role of lawyers in business) .

In addition, the interplay between law and disciplines such as Economics (Economic perspectives on Contract Law), Politics-the proper role of judges (Philosophies of law-“natural law”), History- law and the Civil Rights movement, Philosophy (discussions on what is law? ) Science and Technology (Intellectual Property- and the debates about Privacy and Big Data and the proper balance between protecting business investment and promoting innovation, International Relations (the prominence of US law “legal imperialism”) and Literature Theater and film (rich tradition of US trials -12 Angry men, Race, A Civil Action, Anatomy of a Murder....)will be topics for student presentations.

## B - METHOD

1. The course will consist of lectures and class discussion. The professor uses a limited case method approach whereby students learn the law by reading actual cases decided by American appellate judges. Most of these cases are reproduced, in edited form, in the text book. A few classic cases not found in the required text (the “chicken” case –Frigaliment, Wood v. Lucy, Lady Duff-Gordon, Arthur Murray v. Vokes and others will be distributed (webmail, Blackboard or physical handout) by the professor.
1. Students will be required to read shared books and study films, research the web or publications with their team as part of their preparation for presentations.

The topics to be presented for team presentations to be held on, team membership and precise format for presentations will be provided after the first week of October at the latest these details being dependent on class size and research availability developments not fully known until our

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third class.

2. Students will be required to research the law and developments in corporate governance, Ethics and regulatory methods by reading additional materials books such as Circle of Greed, newspaper articles and law review and business literature
3. Articles on subjects being studied may be distributed by the professor to aid the student in understanding the material in the text as well as introducing him to a number of interesting legal developments.
4. Fuller use of Technology (U tube snippets) will be introduced this semester to lighten up a bit some contract cases-recnt music copyright cases-Marvin Gaye estate suits;The Chicken-Frigaliment case, Rose 2nd of Aberlone Mistake case and country music, Wood v. Lucy-Duff Gordon, as well as aid in memorizing some rules formerly left to text only (ex.. Exceptions to the Statute of Frauds)
5. **Lectures will proceed on the assumption that all the assigned materials have been read before class.**

The nature of law study precludes the acquisition of the necessary analytical skills through cramming. It is imperative that the student keep up with the assignments and team presentations if you wish to succeed in this course.