
LEGAL ENVIRONMENT OF BUSINESS in Fall 2020 (LW3075)

Course Code	LW3075	Professor(s)	Fred Einbinder
Prerequisites	None	Office Number	G-3A03
Class Schedule	M: 16:20-17:55 in Q-A101 R: 10:50-12:25 in Q-A101	Office Hours	Mondays 3:30pm-4:00pm, Thursdays 2:15pm-3:15pm, and by appointment via Teams, Phone, Email.
Credits	4	Email	feinbinder@aup.edu
Semester	Fall 2020	Office Tel. Ext.	640 Cell 0608908466

Course Description

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.

1. 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-Virus Pandemic, Buffalo Creek Disaster, BP Deepwater Horizon, Products Liability- Driverless cars, Secondary effects of drugs, Corporate Governance -Circle of Greed, Entrepreneurship-(types of business organizations, Business Judgment Rule-eg. Disney case, Fiduciary Rule for Goldman-Sachs 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....)may be topics for student presentations.

COURSE DESCRIPTION:

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.

Keeping abreast of how legal issues affect business-weaving law into current business developments

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 seeing how the basic framework of business law studied in class is woven into past and current business developments.

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-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, Secondary Effects of drugs placed on the market, Opioids addiction scandal (Sackler in W Virginia)

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

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

8° Tensions between Liberty (Constitutional protections on Privacy) and Big Data and other challenges to law and society coming from Tech in the broad sense (UBER and California law on independent contractor/employee designation

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 **Frigalment** 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, in particular **McDonalds, (group presentations)**, 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

Opportunities for Teamwork.

In addition, **the class will be divided into teams** for the purposes of 2 group presentations. The challenges presented by the Covid virus and partial remote learning will require adjustments in the way the teams are constituted. In the past, teams simply followed the alphabet allowing the professor to joke that if a student did not like the team he was the solution was to blame her ancestors, not the professors. The necessity of taking into account different time will require some modification of the simple alphabethical method.

All students will fully participate in major team presentations to the class. It is anticipated that there will be 2 group presentations but this is subject to modification to adapt to possible constraints caused by Covid 19. 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.

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 –Frugaliment, Wood v. Lucy, Lady Duff-Gordon, Arthur Murray v. Vokes and others will be distributed (webmail, Utube videos,Blackboard or other transmission 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 and Covid 19 developments not fully known until our third class.

1. 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
1. 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.

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1. 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)

1. **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. Individual students remain entirely responsible for reading and preparing each class assignment and **“briefing” the cases in the text or transmitted by the professor prior to each class session.** Case briefing ensures that all students are prepared, promotes fluid class discussion and provides the student with an entry to how American law is made and legal analysis developed by legal professionals.

Course Learning Outcomes

Understand the rudiments of business law necessary for a career in business.

Be able to make sense out of the confusing world of legal terminology in order to better understand legal documents and lawyers.

Be familiar with essential characteristics of American Law and the legal issues facing American businesses.

Understand the essentials of tort law and the debate on its reform.

Gain an understanding of how contract creation and negotiation is framed by law and how the law enforces contracts

Understand the role of agents and the various forms of business organizations – especially corporations – and key issues of corporate governance

Understand how the law adapts to social, economic and technological changes

Obtain an understanding of what responsibility business persons have to other business persons and to society in general. “White Collar” crimes will be covered, and ethical issues in business will be raised and discussed throughout the course

Obtain an appreciation for the growing importance of intellectual property law (patent, trademark, trade secrets and copyright) and the balance between conflicting objectives: protection of individual and corporate investment vs. public dissemination and innovation.

General Education

[PLEASE REMOVE THIS SECTION IF THE COURSE DOES NOT FULFILL ANY GLACC REQUIREMENT]

GLACC

The Global Liberal Arts Core Curriculum (GLACC) degree requirements include the following categories of courses:

- Integrative Inquiry (coded CCI)
- Experiential learning (coded CCX)
- Research, Interpretation, and Writing (coded CCE)
- Digital Literacy and Communication (coded CCD)
- Disciplinary Research Methods and Writing (coded CCR)
- Quantitative Reasoning (coded CCM)
- Experimental Reasoning Course with Lab (coded CCS)
- Expression Française (coded FR)
- AUP Capstone (coded CCC)

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

SCHEDULE AND REQUIRED READINGS:

OUTLINE AND REQUIRED READINGS: (page numbers refer to text BUSINESS LAW0

SUBJECT TO MODIFICATION CONSISTENT WITH CLASS PROGRESS AND DISCUSSIONS an ,COVID 19 Constraints and LEGAL DEVELOPMENTS DISCUSSIONS.

1.

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

Law's purposes? The individual and society-differences between US and European legal systems-THE KINDNESS OF STRANGERS. Religious origins of law

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

Read: NYT article, THE KINDNESS OF STRANGERS by Ronald Sokol (Distr. By Professor-intranet) READ APPENDIX ON HOW TO READ AND BRIEF CASES in BUSINESS LAW TEXT , pp. 29-30 –go back and read PRICE case afterwards CAREFULLY

1. Monday, September 28th

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

What is a TORT ?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”)-KINDNESS OF STRANGERS review

The particular nature of the US Legal System: The dynamic interplay between The Constitution,, Federalism and Precedents,

READ: Ch. 1 pp 3-18, 22-23 and BRIEF case COOMER v. KC Royals Baseball pp.15-18

1. Thursday, October 1st The US COURT SYSTEM, DISPUTE RESOLUTION, JURISDICTION READ: Chapter 2. BRIEF CASES: ABDOUCH v. LOPEZ v. DAIMLER

v. BAUMANN, HERTZ, 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

1. Monday, October 5th THE CONSTITUTION AND BUSINESS LAW

Focus on the First Amendment (differences between political and commercial speech), and the 14th Amendment (DUE PROCESS AND EQUAL PROTECTION)

READ; Ch 3- BRIEF-MATAL v TAM

1. Thursday, October 8th CRIMINAL PROCEDURE

READ: Chapter 5, pp. 161-192

BRIEF: US v. SDI Future (166-168) RJR Nabisco v European Community (187-191)

“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

1. Mon., Oct. 12th INTENTIONAL TORTS

READ: Ch. 6

BRIEF: Mathias v. Accor Economy, Durham v McDonalds, Neuman v. Liles, , Farell v. Macy's, Jewel v. Jordan (yes, famous Number 23)

1. Thurs. Oct 15th- NEGLIGENCE AND STRICT LIABILITY

READ: Ch. 7

BRIEF: Philibert v. Kluser, Stahlecker v. Ford (Ford Explorer),

1. Mon. Oct.19-PRODUCTS LIABILITY

READ: Ch. 20

BRIEF: Bissinger (585-7), Branham v. Ford, Woodhouse Ford Inc., Green v. Ford

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

1. Thursday October 22 TEAM PRESENTATIONS- McTORTS CASES:

“Hot Coffee”, McLibel, Obesity, New Developments

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- A. Mon, Oct. 26th INTELLECTUAL PROPERTY- of Patents, , Copyright
B. :Chapter 8 to 312 BRIEF; Alice Corporation, Kirtseng v. John Wiley, Bouchat v. Baltimore Ravens.

1. Th. Oct 29th INTELLECTUAL PROPERTY_**of Trademarks Trade Secrets, and Unfair Competition**

READ: ch. 8 -313-335 BRIEF: Kibler, Coleman v Retina, Lewis-Gale

Research: 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?

1. **Monday, Nov. 2**

MIDTERM EXAMINATION

12. Thurs. Nov. 5 - REVIEW OF MID-TERM EXAM AND INTRODUCTION TO CONTRACTS & THE OFFER

Introduction to Contract Law-Framework:

“REASONABLE EXPECTATIONS INDUCED BY PROMISES

The OFFER

READ : Chapter 9 &10 BRIEF: 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

Good faith? New York and Texas handshakes

1. November 9 th OFFER (cont'd) and Acceptance

READ : Excerpts from the TEXACO-PENNZOIL (professor handout)

Chapters 11 BRIEF: Duro Textiles v. Sunbelt Corporation, Cabot Oil and Gas cases

FALL BREAK –NO CLASS

1. **Mon.** Nov. 16-CONSIDERATION

READ: Ch. 12, BRIEF: HANDOUTS or WEBMAIL/Blackboard Wood v. Lucy, Lady Duff-Gordon (U tube), STEINBERG v.US, Welsh v. Lithia

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

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

1. Th Nov.20 The Reality of Consent-Void, Voidable, CAPACITY

READ : Ch. 13 & 14 BRIEF; Hicks v. Sparks.(434-5) Olmstead , ,Zelnick.

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

Research possibilities - Ambiguity, the Law and lawyers

Law and marketing/advertising

1. Mon. Nov. 23- Unenforceable and Valid Contracts, Contracts in Writing, Illegality

Read: Ch; 15 & 16

Brief; Clarks's Sales and Services,Gamboa; Uber technologies, Yung-kai v. Utah

Dynergy,

1. Th. NOVEMBER 27th

Contract Breach, Performance, Excuses for Non-Performance

READ: Ch. 18 BRIEF: Excerpts from Professor-COVID "force majeure".

World of Boxing.

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1. Mon Nov 30th Agency Law : categories & terminology, Of principals and agents, Masters/Servants, Employers/employees and Independent Contractors Fiduciaires, Respondeat Superior

READ : Chapters 35&36 BRIEF; MDM Group Associates; Sanders v Madison Garden, Camp Sunshine at Sebago lake, Green v. Cosby

1. TH. Dec 3rd – TYPES OF BUSINESS ORGANIZATIONS; Partnerships, LLC, CORPORATIONS

READ: Ch. 37& 40 BRIEF: Hecht v Andover,

1. Mon. Dec. 7th

CORPORATIONS, CORPORATENESS, PIERCING THE CORPORATE VEIL, FIDUCIARY DUTY

ETHICS, TORTS, REGULATORY AND CRIMINAL LAW REVISITED

Brehm v. Eisner_(DISNE)

Read: Chapters 41, 43,

BRIEF: Brehm v. Eisner (Disney case)

1. TEAM PRESENTATIONS

FINAL EXAMINATION DECEMBER 17TH AT 15:00 (probable take home)

Textbooks

This course doesn't have any textbook.

Attendance Policy

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 STILL EXPECTED TO ATTEND ALL scheduled classes. Due to the Covid-19 pandemic, students will have the option of attending classes remotely when special circumstances apply. For example when students are placed under quarantine by the French authorities or by their doctor, or when students present symptoms of Covid-19 and are directed, by their doctor or the AUP Health Office, to remain home. It is still the student’s responsibility to be aware of any specific attendance policy that their professor might have set in the course syllabus. In particular, Students attending remotely from distant Time Zones should check with their professors about the specific attendance policy for remote learners.

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.

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

GRADING:

Evaluation of the student will be determined on the following:

Individual class participation and summary "briefing" of cases, discussion points or short resumes of recent developments in law)	20%	Over entire semester
TEAM PRESENTATIONS Oct. 22nd & Dec 10th	30% 2- (15% each)	
<u>MIDTERM EXAM</u>	25%	Nov. 2nd , (probably Home)
<u>FINAL EXAM</u>	25%	DECEMBER 17th

(non-cumulative-Materials from Midterm to last day only)

at 15:00 (probably)

TOTAL

100%

Make-up for the Exams will only be given unless the student is officially excused for a most serious reason which does not the hardship of the exam schedule. See penalty below midterm

Other
