
LEGAL ENVIRONMENT OF BUSINESS in Spring 2019 (BA3075)

Course Code	BA3075	Professor(s)	Fred Einbinder
Prerequisites	None	Office Number	G-3A04
Class Schedule	MR: 16:55-18:15 in PL-3	Office Hours	Monday and Thursdays, 11:30-12:30 and by appointment
Credits	4	Email	feinbinder@aup.edu
Semester	Spring 2019	Office Tel. Ext.	640, Cell 0608908466

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.

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-

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

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

Course Outline

OUTLINE AND REQUIRED READINGS: (page numbers refer to text Mallor, BUSINESS LAW 16th edition . The CASES noted must be read in a manner sufficient for the student to 'present' the case in class. Cases in the text not noted in the assignments below need not be read)

The text should be obtained by the 2nd class at the latest and brought to each class.

SUBJECT TO MODIFICATION CONSISTENT WITH CLASS PROGRESS

1. Monday, January 21st, 2019

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

The Common Law, Precedent, Great Judges (Marshall, Brandeis, Cardozo...) - Sources of Law; Law and Ethics The Limits of the Law

2. Thursday, January 24th, 2019

Introduction (cont'd) -The Common law (English origin), Great Judges and Precedent (rule

of stare decisis) Sources of Law; law and Ethics; Law and Society. How law changes to meet changes in society, economics and technology. Example- 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") See NYT article by Sokol

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

READ –in Chapter 1 pp. 2-8, 9-18 , 22-23 CASE; Hagen v. Coca-Cola , Read with particular care "HOW TO -READ AND BRIEF CASES" at APPENDIX pp.22-23; Sokol article- Email or handed out.

3. Monday , January 28th The US Court System, Dispute Resolution, Jurisdiction,

READ: Chapter 2 pp. 28-39 CASES- Lopez, Daimler, Hertz.

JURISDICTION-the key concept of all law and its use to illustrate the peculiarities of American law

Examples of the Dynamic Interplay of the Constitution, Federalism and Precedents

4. Thursday, January 31st - Dispute Resolution (cont'd), Business and the Constitution

The litigation process, "discovery"; the benefits and issues with "alternative" dispute remedies (ADR)-Arbitration (compulsion/waiver issue), class actions, the attorney-client privilege

READ: Ch.2 - pp. 39-51,54 CASE-Wal-Mart.

ch. 3 pp.58-62, 65-66 (Fig.1-affordable 'Obamacare' case),71-73,

5. Monday, February 4th Business and the Constitution (cont'd) , Criminal law and Procedure with a focus on "white collar" crime

"Commercial speech" and the 1st Amendment; The 14th Amendment -Due Process and Equal Protection; Commerce, Tax and 'takings' clauses; Criminal law and procedure-The 4th (search

and seizure) and 5th (self-incrimination) Amendments, 'white collar' crime and legislation-Sarbanes-Oxley,

Read: Ch.3-pp.79-92, CASE-Liquormart; Ch. 5 - 132-135,140-146,151-156,161-170,173-4
CASES -Skilling & Anderson

6.Thursday February 7th -TORT LAW -, Categories, Intentional Torts; Why terminology is important, eg. 'assault' or 'battery', slander or libel, Punitive Damages

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

7. Monday, Feb.11 TORT LAW Negligence -The importance of DUTY, Standard of care

READ (Chapter 7 pp. 225-37, 245-254 CASES Dick's Sporting Goods, Atlantic Coast Airlines, Stahlecker v. Ford (Ford Explorer) 20 a-pp. 549-557;559-60;564-573;580-589 Chapter 5 pp.161-170

8. Thursday, Feb.14 TORT LAW -Strict Liability, Products Liability (warranties) Tort reform debate

READ: Ch.7pp. 254-5,525, 527-258; ch. 20 pp. 549-557 CASES Oakes v. Carraba's Italian Grill

9. Monday, February 18 TORT LAW -Products Liability (cont'd)

Types of Damages, Exclusion and limitations of damages

READ: ch. 20 pp. 559-60, 564-73, 580-89 CASES Brandham v. Ford, Green v. Ford, Wilke v.Woodhouse Ford

10. Thursday, Feb. 21st INTELLECTUAL PROPERTY- Introduction- Patents

"Invention" , Innovation, Balancing development incentives and competition,

READ: Ch. 8 pp. 264-267, 269-272, 276 CASE: Myriad Genetics Alice Corporation Ltd.

11. Monday, Feb. 25th -INTELLECTUAL PROPERTY-Copyrights and trademarks

"A rose by any other name would still smell as sweet" but would if Shakespeare had been a lawyer? Sports, Entertainment (Music) industries, Entrepreneurs and Intellectual Property

READ: Ch. 8 276-301 CASES Kirseng v. John Wiley, Bouchat v. Baltimore Ravens, Starbucks

12. Thursday, Feb. 28 INTELLECTUAL PROPERTY-Trade Secrets & Commercial Torts +

REVIEW FOR MIDTERM EXAMINATION

READ: Ch.8 pp; 301-310 CASES Coleman,

SPRING BREAK - March 4 - 15

13. Monday, March 18th MIDTERM EXAMINATION

14. March 21st REVIEW OF MIDTERM EXAMINATION & INTRODUCTION TO CONTRACTS.

"Reasonable Expectations Induced by Promises"; UCC ARTICLE 2 or Common Law.

READ Ch. 9

15. March 25-CONTRACTS-THE OFFER. NEGOTIATIONS . When is an 'offer', a legally binding offer?

READ Ch. 10 CASES-Meram v. MacDonald, Kolodziej

16. March 28-CONTRACTS-ACCEPTANCE - "Mirror" Image, "Battle of the Forms"

Do Sellers and Buyers know what they are selling and buying. Defining terms. The 'Chicken' case

READ Ch. 11 CASES Trademark Properties v. A&E Television, Dura v. Sunbelt, Cabot Oil and Gas, Frigalment v. BNS International 'Chicken' case (professor 'handout' and UTUBE-country and western songs/"The Bunker" parody)

17. April 1st, CONTRACTS-Consideration

READ: Ch. 12 Wood v. Lucy, Lady DUFF-Gordon (who was Lucy?). Importance of the case-protection of agents in sports, entertainment, fashion....Doe v. Archdiocese of Indianapolis, Prof. handout +Utube song ('rag')

18. April 4th-CONTRACTS. REALITY OF CONSENT - Valid, Voidable and Void contracts, Misrepresentation and Fraud, Duress, Mistake, Undue Influence "I made him an offer he couldn't refuse" (the Godfather and contracts)

READ: Ch. 13 CASES: Hicks v. Sparks, Sherwood v. Walker 'Cow' case (Professor handout-UTUBE) another country and western song

19. April 8th-CONTRACTS-CAPACITY Minors

READ: Ch. 14 CASES Galloway, Zelnick

20. April 11th ILLEGALITY. Is a 'hit' contract enforceable? Public Policy, Non-competes, Unconscionability

Ch. 15 CASES Clark's Sales and Service, Gamboa v Alvarado.

21. April 15th - WRITING-Are 'oral' contracts binding? (YES) When is a writing required. The Statute of Frauds.

READ: Ch. 16 CASES Dynergy, Green Garden, Jacco

22. April 18th AGENCY - Categories & terminology; Of Principals and agents, Masters and Servants,

Employers, Independent Contractors Fiduciary Duty

READ: Ch. 35 CASES MDM v. CX Reinsurance, ABKCO v. Harrisongs Music, Sanders v. Madison Garden, Camp Sunshine.

April 22 Easter Monday-No Class-

23. April 25, AGENCY and Third Parties - Types of authority, key concept of "Control", Vicarious Liability

READ: Ch. 36 CASES-Dean Witter Reynolds,

24. April 29 BUSINESS ORGANIZATION-Types, Considerations in the Choice

READ: Ch. 37 (esp. Fig. 1-pg. 995) UP TO pg. 999, Ch. 40 CASE Hecht v. Andover Associates, Ch. 41 (esp. Fig. 2? pg. 1085 CASE-Supply Chain LLC

25. May 2 - CORPORATIONS - History, Piercing the Corporate Veil, Business Judgment Rule, Corporate Governance, Ethical considerations,

READ: Ch.43 CASE Brehm v. Eisner ("Disney" case) & TEAM PRESENTATIONS

26. May 6 TEAM PRESENTATIONS (2nd set)

27. FINAL EXAMINATION

Textbooks

Title	Author	Publisher	ISBN	Required
BUSINESS LAW	MALLOR, BARNES, LANGVARDT	McGraw Hill	9781259252655	Yes

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 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 (summary of cases, discussion points or short resumes of recent developments in law)	20%	Over entire semester
TEAM PRESENTATIONS	25 %	May 2nd and May 6th
<u>MID-TERM EXAM</u>	25 %	March 18th
<u>FINAL EXAM</u> (non-cumulative-Materials from Midterm to last day only)	30%	May 13 at 330
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 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 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 the 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". An 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, 3% (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 travel periods**.

Other

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 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.