

CONTROVERSIES IN CORPORATE LAW– LAW 2959 A
Professor Ronald J. Colombo – Fall 2020

SYLLABUS

I. Course Description:

This seminar shall explore four broad (often overlapping) areas of controversy in corporate law today: (1) the nature of the corporation (e.g., is the corporation a nexus of contracts, or an entity owned by its shareholders?); (2) corporate governance (e.g., should the board of directors follow the shareholder primacy norm, or a multi-fiduciary stakeholder model instead?); (3) corporate social responsibility (e.g., can and should a corporation adopt more environmentally sound practices if that would come at the expense of corporate profitability and shareholder returns?); and (4) First Amendment rights and the corporation – namely, free speech and free exercise rights (e.g., may the state restrict corporate campaign contributions? may the state require that a religiously affiliated corporation – such as a hospital – provide products and services that violate the corporation’s religious principles?). Each student in the seminar shall draft and present a paper within one of these general areas (of his or her choosing), and finalize the paper in response to the feedback received.

II. Learning Objectives:

By the end of this course, each student should have:

- broadened his or her understanding of the corporation, at levels both theoretical and practical;
- increased his or her knowledge of laws and regulation affecting business;
- acquired a general awareness of current events and developments affecting business corporations in the United States and around the world;
- further developed his or her ability to write analytically and persuasively
- improved upon his or her oral communications skills, including the ability to conduct one’s self in professional settings in a manner that meets the standards of the legal profession;

III. Administrative / Curricular Information

Credits: 2

Can be taken to satisfy Writing Requirement 1

Prerequisite course: Business Associations

Prerequisite / co-requisite course: Securities Regulation

Class times & location:

Mondays, 4:10 pm-6:10 pm

Room: 243

Professor Colombo contact information:

Office: 118

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Office hours: Mondays, 3pm – 4pm (*online* – see below) or via appointment

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IV. Course Materials:

Required Materials:

- A digital subscription to the *Wall Street Journal* [a discounted student subscription is available; please sign up via <http://wsj.com/studentoffer>].
- COURSE SUPPLEMENT [available online via TWEN]

Recommended Materials:

- DAVID A. WESTBROOK, *BETWEEN CITIZEN AND STATE* (2007)
- STEPHEN J. CHOI, A.C. PRITCHARD, *SECURITIES REGULATIONS: THE ESSENTIALS* (2008)

A substantial portion of class time will be devoted to analyzing corporate and securities law issues as they arise in real time, and for that reason the *Wall Street Journal* is essential (and thus required) reading.

Additionally, you will be responsible for the readings contained in the electronic “Course Supplement.” In order to save you the expense of a hard-copy supplement for purchase, these readings are being made available to you via TWEN. Simply go to the “Course Supplement” link on TWEN and you will be able to access every reading referred to therein. Some of the items will be available as PDF; others will be readily downloaded by clicking on their citations (which will pull them up for you via Westlaw).

I have listed Professor David Westbrook’s *BETWEEN CITIZEN AND STATE* book as a recommended resource – and have gone so far as to recommend particular chapters from *BETWEEN CITIZEN AND STATE* for particular classes. *BETWEEN CITIZEN AND STATE* provides an excellent review of the basics of corporate law in a way that is scholarly, readable, and even a bit entertaining. It is not an essential component of the course, and those of you who are very comfortable with your understanding of corporate law may wish (with my complete blessing) to omit these recommended readings. But for those of you who wish to brush up on what you learned in Business Organizations, I think the recommended selections from *BETWEEN CITIZEN AND STATE* will be quite helpful.

BETWEEN CITIZEN AND STATE is no longer in print, but you may be able to find a used copy. For your convenience, I have put one copy on Course Reserve in the Library.

Similarly, I have listed STEPHEN J. CHOI, A.C. PRITCHARD, *SECURITIES REGULATIONS: THE ESSENTIALS* (2008) as a recommended source. This source provides an excellent review of basic concepts of securities law. As with the Westbrook text, I have also recommended particular chapters of *SECURITIES REGULATION* for you to reach for particular classes.

V. Course Policies

Attendance & Lateness:

You are expected to arrive on time and prepared for each class.

Moreover, the rules of the New York State Court of Appeals and the American Bar Association require law students to be in good and punctual attendance in the courses for which they are registered. To comply with these rules, you must attend at least 85% of the regularly-scheduled classes in this course. **Thus, you may miss no more than four class hours (or two classes) in this two-credit class.**

If you exceed the permitted absences you will be administratively withdrawn from the course. Any such withdrawal may have serious ramifications for your financial aid, academic standing, and date of graduation. If you are excessively absent from classes in several courses, you may face additional sanctions, including but not limited to denial of certification of good attendance to the New York State Board of Law Examiners, or other state bar examiners.

The Office of Student Affairs has authority to excuse class absences for religious reasons and in cases of truly compelling hardship. If you wish to claim a particular absence as excused, and thus not counted against your maximum number of allowable absences, you must take that issue up with the Office of Student Affairs – NOT with me or my secretary. **I shall mark an absence as excused if and only if I receive a note or email from the Office of Student Affairs to that effect.**

Lastly, late arrivals are disruptive to the class. For this and other reasons, please make every effort to arrive on time to class.

Note: attending the class remotely, via a microphone-enabled webcam, will NOT constitute an absence.

TWEN:

This course shall use “TWEN” (The West Education Network), “an online extension of the law school classroom.” Important course information, materials, and announcements will be made available / communicated via TWEN. **Please sign up for TWEN as soon as possible.** This course can be accessed as “Controversies in Corporate Law (Fall 2020) –COLOMBO.” If you have TWEN-related questions, please ask one of our librarians at the reference desk for assistance.

Email and Office Hours:

My email and office hours are set forth above. For general administrative questions or concerns, please contact my assistant for assistance. For substantive questions or concerns, please *do not* email me, but rather meet with me during office hours, as such questions are much better addressed in person.

If you email me, unless it is a holiday or weekend, you should expect to hear back from me expeditiously – ordinarily within an hour or so, and almost certainly within a day. If you don’t, please send me a follow-up email.

In light of the social distancing requirements adopted by the University this semester, all office hours will be conducted online, via zoom.

If you wish to make an office hours appointment with me, please do so via TWEN. Please make every effort to be punctual to your appointment. If you know ahead of time that you cannot make a scheduled office hours appointment, please cancel your appointment so that another student can make an appointment for the time in question.

The Zoom videochat link for our office hours appointments will be available to you on TWEN, under the instructions for office hours.

In the interest of maintaining student privacy, the TWEN sign-up sheet has been configured so as not to reveal to other classmates the names of those students who have

signed up for an appointment. Additionally, TWEN has been configured to allow you to add a brief note next to your name, which allows me to know what our meeting will be about in advance. Feel free to use (or ignore) this particular feature as you wish.

I encourage you to take full advantage of my office hours. And please do not feel as though you need to limit the subject of our meetings to class matters *per se* -- I would be happy to discuss with you more general law school concerns, career questions, or anything else that would be appropriate.

VI. Grading

Your final grade shall be based upon three components: your class participation (20%), your class presentation (30%), and your final paper (50%).

Your final paper is to be a well-written and researched analytical work of approximately 20-25 pages (not to exceed 25 pages) on a pre-approved topic related to this course. The paper is to be double-spaced, with 1" margins, and composed of any professional / normal-looking 12-point font (such as Times New Roman).

Please use footnotes instead of endnotes, and conform to Bluebook form.

Your final paper shall be due on our last day of classes (Wednesday, November 11). The paper is to be emailed me by noon (12:00 pm) of that day. Any paper emailed in to me after that time will be marked late.

Papers turned into me on Wednesday, November 11 after the deadline will be marked 1-day late. Any paper turned in to me on Thursday November 12 will be marked 2-days late, and so forth. To the extent that you turn the paper in late, you will be penalized one grade increment (e.g., i.e., from an "A-" to a "B+", or from a "B+" to a "B") per day that it is late (calculated as set forth above).

You shall "workshop" your final paper prior to submitting it via a class presentation. The class presentation shall consist of a 15-25 minute talk, followed by 15-25 minutes of questions and feedback. As indicated, the presentation will account for 30% of your final grade.

Your class participation score (20% of your final grade) shall reflect your contributions to class discussion – especially the feedback you provide to, and questions you ask of, your classmates during their class presentations.

A detailed grading rubric for the final paper grading immediately follows:

Performance Indicators

Content (primary component of grade)

The content element will be judged on:

- How effectively the answer is organized
- How clearly the answer is written
- How accurate the answer's writing is
- The preponderance of reasoned conclusions
- How well the answer reflects the student's ability to interpret the given information
- How directly the answer respond to given questions
- How well the answer identifies and addresses the issues presented

Grammar (secondary component of grade)

The grammar element will be judged on a few key elements:

- Correct punctuation and spelling
- Subject/verb agreement
- Sentence construction
- Use of complete sentences / articulation of complete thoughts

VII. Assignments

Planned assignments, including the estimated class date for which each is due, are set forth below. Unless otherwise notified, you should come to class prepared to discuss a given assignment on the estimated date specified.

Class No.	Topic	Reading from Supplement*	Reading from Texts†	Estimated Date
1	Introduction		Westbrook 1; Choi 1-2	8/17
2	Nature of the Corporation	1-2	Westbrook 2, 11; Choi 4	8/24
3	Corporate Governance	3-6, 14	Westbrook 5-6; Choi 5	8/31
	[class cancelled]			9/8
4	First Amendment Concerns	8-11, 19-20	Westbrook 12	9/14
5	Corporate Social Responsibility	7, 15-18	Westbrook 10, 14; Choi 6	9/21
6	<i>student presentations</i>			10/5
7	<i>student presentations</i>			10/12
8	<i>student presentations</i>			10/19
9	<i>student presentations</i>			10/26
10	<i>student presentations</i>			11/2
11	Bailouts & Economic Regulation; Control & Hostile Takeovers	12, 13	Westbrook 9	11/9*
12	Papers Due			11/11
13	[makeup]*			

* These readings are required. References are to article numbers as set forth on TWEN. Please note that due to copyright laws, I could not provide you with a PDF for many of the items. A document of the restricted items is set forth on TWEN; use the citations therein to locate the documents on Westlaw or, if provided, via the links supplied.

† References are to chapters. These readings are optional but recommended.

*In advance of our 11/9 class, I am asking you to watch the following two videos and one film. This will constitute our “make up” class for the Labor Day week class cancellation (September 8, 2020).

The videos (youtube links provided) are:

Fear the Boom and Bust

<https://youtu.be/d0nERTFo-Sk>

Fear the Boom and Bust – Round Two

<https://youtu.be/GTQnarzmTOc>

I am also asking you to watch the film “Barbarians at the Gate.” I assign the film not for its artistic value. I also forewarn you that you may, find the film somewhat offensive on a number of levels (as I do) - including its employment of not-so-subtle stereotypes, political biases, particularly awful language and profanity, and a quick scene including some completely gratuitous toplessness (in other words, it’s pretty typical HBO/Hollywood fare). Nevertheless, I ask you to watch the film because it somewhat accurately captures the process and feel of a hostile takeover.

The film is available on YouTube here: https://youtu.be/iPhF_YwWvoM

KEY:

Westbrook: DAVID A. WESTBROOK, BETWEEN CITIZEN AND STATE (2007)

Choi: STEPHEN J. CHOI, A.C. PRITCHARD, SECURITIES REGULATIONS: THE ESSENTIALS (2008)