

# LGST 921: FOUNDATIONS OF BUSINESS LAW — PRIVATE LAW THEORY

THE WHARTON SCHOOL, UNIVERSITY OF PENNSYLVANIA  
FALL SEMESTER 2015, THURSDAYS 3:00-5:00

Professor Nico Cornell

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Office Hours: Tuesdays, 1:30-3pm & by appointment

## COURSE DESCRIPTION

This course aims to examine the theoretical foundations of private law. In contrast with public law—which concerns the relationship between citizen and state—private law defines rights and duties between private actors. As such, private law structures and mediates the interaction of private citizens and enterprises. It is therefore the foundation of business law. Private law includes major traditional common law subjects, such as contracts, torts, and property, but it not limited to those fields. The aim of this course is to examine the basis for private law as an institution, as well as the particular legal doctrines that instantiate it. As such, we will be reading foundational legal scholarship across a range of private law fields.

## COURSE REQUIREMENTS

*Class Participation (15%)* – The success of this course depends on active classroom discussion. Attendance and engagement are expected.

*In-Class Presentations (25%)* – Students will be assigned readings to present on a regular basis throughout the semester.

*Final Paper (60%)* – 8,000 to 15,000 words. Due by December 17.

## READINGS

Readings will posted online.

Date	Topic	Readings
Aug. 27	Introduction	<ul style="list-style-type: none"><li>• John Goldberg, “Pragmatism &amp; Private Law”</li><li>• Randy Barnett, “Four Senses of the Public Law/Private Law Distinction”</li><li>• Duncan Kennedy, “Form and Substance in Private Law Adjudication”</li></ul>
Sept. 3	Torts	<ul style="list-style-type: none"><li>• Steven Shavell, “Strict Liability versus Negligence”</li><li>• Ernest Weinrib, <i>Corrective Justice</i>, ch. 1 &amp; 2</li><li>• Goldberg &amp; Zipursky, “Torts as Wrongs”</li></ul>
Sept. 10	Property I	<ul style="list-style-type: none"><li>• A.M. Honore, “Ownership”</li><li>• T.C. Grey, “The Disintegration of Property”</li><li>• Henry Smith, “Property as the Law of Things”</li><li>• Christopher Essert, “The Office of Ownership”</li></ul>
Sept. 17	Property II	<ul style="list-style-type: none"><li>• Ronald Coase, “The Problem of Social Cost”</li><li>• Calabresi &amp; Melamed, “Property Rules, Liability Rules, and Inalienability: One View of the Cathedral”</li></ul>

		<ul style="list-style-type: none"> <li>• Charles Reich, “The New Property”</li> </ul>
Sept. 24	Intellectual Property	<ul style="list-style-type: none"> <li>• Justin Hughes, “The Philosophy of Intellectual Property”</li> <li>• Mark Lemley, “Property, Intellectual Property, and Free Riding”</li> <li>• Henry Smith, “Intellectual Property as Property: Delineating Entitlements in Information”</li> <li>• Shyam Balganesh, “The Obligatory Structure of Copyright Law”</li> </ul>
Oct. 1	Contracts I	<ul style="list-style-type: none"> <li>• Charles Fried, <i>Contract as Promise</i>, ch. 1-3, 7</li> <li>• Seana Shiffrin, “The Divergence of Contract &amp; Promise”</li> <li>• Daniel Markovitz, “Contract &amp; Collaboration”</li> </ul>
Oct. 8		FALL BREAK
Oct. 15	Contracts II	<ul style="list-style-type: none"> <li>• Schwartz &amp; Scott, “Contract Theory and the Limits of Contract Law”</li> <li>• Ayers &amp; Gertner, “Filling Gaps in Incomplete Contracts”</li> <li>• Anthony Kronman, “Contract Law and Distributive Justice”</li> <li>• Fuller &amp; Purdue, “The Reliance Interest in Contract Damages”</li> </ul>
Oct. 22	Fraud	<ul style="list-style-type: none"> <li>• Alan Strudler, “Incommensurable Goods, Rightful Lies, and the Wrongness of Fraud”</li> <li>• Darby &amp; Karni, “Free Competition and the Optimal Amount of Fraud”</li> <li>• James Child, “Can Libertarianism Sustain a Fraud Standard?”</li> </ul>
Oct. 29	Fiduciary Duties	<ul style="list-style-type: none"> <li>• <i>Meinhard v. Salmon</i></li> <li>• Tamar Frankel, “Fiduciary Law”</li> <li>• Deborah DeMott, “Beyond Metaphor: An Analysis of Fiduciary Obligation”</li> <li>• Paul Miller, “Justifying Fiduciary Remedies”</li> </ul>
Nov. 5	Corporations I	<ul style="list-style-type: none"> <li>• Ronald Coase, “The Nature of the Firm”</li> <li>• Jensen &amp; Meckling, “Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure”</li> <li>• Easterbrook &amp; Fischel, “The Corporate Contract”</li> <li>• Hansmann &amp; Kraakman, “The End of History for Corporate Law”</li> </ul>
Nov. 12	Corporations II	<ul style="list-style-type: none"> <li>• Blair &amp; Stout, “A Team Production Theory of Corporate Law”</li> <li>• Hansmann &amp; Kraakman, “Toward Unlimited Shareholder Liability for Corporate Torts”</li> <li>• Margaret Gilbert, “Corporate Misbehavior and Collective Values”</li> </ul>
Nov 19	Antitrust	<ul style="list-style-type: none"> <li>• Eleanor Fox, “Modernization of Antitrust: A New Equilibrium”</li> <li>• Eleanor Fox, “What Is Harm to Competition? Exclusionary Practices And Anticompetitive Effect”</li> <li>• Michael Jacobs, “An Essay on the Normative Foundations of Antitrust Economics”</li> <li>• Donald Dewey, “The Common-Law Background of Antitrust Policy”</li> </ul>
Nov. 26		THANKSGIVING BREAK
Dec. 3	Corporate Bankruptcy	<ul style="list-style-type: none"> <li>• Thomas Jackson, “Bankruptcy, Non-Bankruptcy Entitlements, and the Creditors’ Bargain”</li> <li>• Baird &amp; Rasmussen, “Control Rights, Priority Rights, and the Conceptual Foundations of Corporate Reorganizations”</li> <li>• Elizabeth Warren, “Bankruptcy Policy”</li> </ul>