



AS OF: JAN. 4, 2023

FOUNDATIONS OF BUSINESS LAW
LGST 9210
Spring 2023

Prof. Vince Buccola
Legal Studies & Business Ethics Department
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Class Meetings Tuesdays, 1 – 4p
 Huntsman 646

Office Hours Tuesdays, 10 – noon (or by appointment)
 Huntsman 649

Course Description

This course introduces key ideas concerning the place of business in society that have defined and occupied the legal academy. Topics will include a general overview of the genealogy of American legal scholarship; approaches to studying the law of contract, torts, and property; and nature and regulation of business firms, including corporate law, antitrust, crime, and bankruptcy.

Assessment

Participation (50%)—leading discussion of one assigned piece each week, being an active reader and discussant for the rest.

Final Paper (50%)—8000 to 15,000 words, notionally due May 1.

// tentative agenda on next page

1. **JAN. 17: History of Legal Scholarship 1: Is Law an Autonomous Discipline?**
 Readings Schofield, *Christopher Columbus Langdell*, 55 American Law Register 273 (1907)
 Holmes, *The Path of the Law*, 10 Harvard Law Review 457 (1897)
 Pound, *Mechanical Jurisprudence*, 8 Columbia Law Review 605 (1908)
 Cohen, *Transcendental Nonsense and the Functional Approach*, 35 Columbia Law
 Review 809 (1935)
 * Llewellyn, *Some Realism about Realism—Responding to Dean Pound*, 44 Harvard
 Law Review 1222 (1931)
 * Fuller, *American Legal Realism*, 82 University of Pennsylvania Law Review 429
 (1934)
 * Eskridge & Frickey, *The Making of Legal Process*, 107 Harvard Law Review 2031
 (1993)

2. **JAN. 24: History of Legal Scholarship 2: Law and Economics**
 Readings Coase, *The Problem of Social Cost*, 3 Journal of Law and Economics 1 (1960)
 Posner, *The Economic Approach to Law*, 53 Texas Law Review 757 (1975)
 Dworkin, *Is Wealth a Value?*, 9 Journal of Legal Studies 191 (1980)
 Ellickson, *Of Coase and Cattle: Dispute Resolution among Neighbors in Shasta County*,
 38 Stanford Law Review 623 (1986)
 * Jolls, Sunstein & Thaler, *A Behavioral Approach to Law and Economics*, 50 Stanford
 Law Review 1471 (1998)
 * Calabresi & Melamed, *Property Rules, Liability Rules, and Inalienability: One View
 of the Cathedral* 85 Harvard Law Review 1089 (1972)
 * Kaplow & Shavell, *Why the Legal System Is Less Efficient than the Income Tax in
 Redistributing Income*, 23 Journal of Legal Studies 667 (1994)
 * McCloskey, *The Good Old Coase Theorem and the Good Old Chicago School* (1997)
 * Posner, *The Decline of Law As an Autonomous Discipline: 1962–1987*, 100 Harvard
 Law Review 761 (1987)
 * Leff, *Economic Analysis of Law: Some Realism about Nominalism*, 60 Virginia Law
 Review 451 (1974)

3. **JAN. 31:** **History of Legal Scholarship 3: Critical Approaches, Neo-Formalism**
 Readings Kennedy, *Form and Substance in Private Law Adjudication*, 89 Harvard Law Review 1685 (1976)
 MacKinnon, *Feminism, Marxism, Method, and the State: Toward Feminist Jurisprudence*, 8 Signs 635 (1983)
 Tushnet, *Critical Legal Studies and Constitutional Law*, 36 Stanford Law Review 623 (1984)
 Carrington, *Of Law and the River*, 34 Journal of Legal Education 222 (1984)
 * Fiss, *The Death of the Law*, 72 Cornell Law Review 1 (1986)
 * Harris, *Race and Essentialism in Feminist Legal Theory*, 42 Stanford Law Review 581 (1990)

4. **FEB. 7:** **Three (or Four) Ages in Property Law Scholarship**
 Readings Ames, *Purchase for Value Without Notice*, 1 Harvard Law Review 1 (1887)
 Reich, *The New Property*, 73 Yale Law Journal 733 (1964)
 Heller, *The Tragedy of the Anticommons*, 111 Harvard Law Review 621 (1998)
 Merrill & Smith, *What Happened to Property in Law and Economics?*, 111 Yale Law Journal 357 (2000)
 * Smith, *Optimal Standardization in the Law of Property*, 110 Yale Law Journal 1 (2000)

5. **FEB. 14:** **Law-and-Etc. Methods in Contract Law Scholarship**
 Readings Macaulay, *Non-Contractual Relations in Business: A Preliminary Study*, 28 American Sociological Review 55 (1963)
 Ayres & Gertner, *Filling Gaps in Incomplete Contracts: An Economic Theory of Default Rules*, 99 Yale Law Journal 87 (1989)
 Bernstein, *Opting Out of the Legal System: Extralegal Contractual Relations in the Diamond Industry*, 21 Journal of Legal Studies 115 (1992)
 Shiffrin, *The Divergence of Contract and Promise*, 120 Harvard Law Review 708 (2007)
 * Wilkinson-Ryan, *Do Liquidated Damages Encourage Breach? A Psychological Experiment*, 108 Michigan Law Review 633 (2010)

6. **FEB. 21: The Nature of Firms (and of Corporations 1)**
Readings Coase, *The Nature of the Firm*, 4 *Economica* 386 (1937)
 March, *The Business Firm as a Political Coalition*, 24 *Journal of Politics* 662 (1962)
 Jensen & Meckling, *Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure*, 3 *Journal of Financial Economics* 305 (1976)
 Hansmann & Kraakman, *The Essential Role of Organizational Law*, 110 *Yale Law Journal* 387 (2000)
 * Hansmann, *The Role of Nonprofit Enterprise*, 89 *Yale Law Journal* 835 (1980)
7. **FEB. 28: The Nature of Corporations 2**
Readings *Louis K. Liggett Co. v. Lee* (Brandeis dissent)
 Laufer, *Corporate Bodies and Guilty Minds*, 43 *Emory Law Journal* 647 (1994)
 Dewey, *The Historic Background of Corporate Legal Personality*, 35 *Yale Law Journal* 655 (1926)
 Greenfield, *In Defense of Corporate Persons*, 30 *Constitutional Commentary* 309 (2015)
 Priest, *The Invention of Enterprise Liability*, 14 *Journal of Legal Studies* 461 (1985)
 * Khanna, *Corporate Criminal Liability: What Purpose Does It Serve?*, 109 *Harvard Law Review* 1477 (1996)
 * Orts, *Business Persons* (2013)
 * Sepinwall, *Review*, 29 *Business Ethics Quarterly* 550 (2019)
8. **MAR. 14: Corporate Management: To What End?**
Readings Berle, *Corporate Powers as Powers in Trust*, 44 *Harvard Law Review* 1049 (1931)
 Dodd, *For Whom Are Corporate Managers Trustees?*, 45 *Harvard Law Review* 1145 (1932)
 Berle, *For Whom Corporate Managers Are Trustees: A Note*, 45 *Harvard Law Review* 1365 (1932)
 Lipton, *Takeover Bids in the Target's Boardroom*, 35 *Business Lawyer* 101 (1979)
 Easterbrook & Fischel, *The Proper Role of a Target's Management in Responding to a Tender Offer*, 94 *Harvard Law Review* 1161 (1981)
 Blair & Stout, *A Team Production Theory of Corporate Law*, 85 *Virginia Law Review* 247 (1999)
 * Berle & Means, *The Modern Corporation and Private Property* (1932)
 * Easterbrook & Fischel, *The Corporate Contract*, 89 *Columbia Law Review* 1416 (1989)

9. **MAR. 21:** **What to Expect from Corporate Law**
- Readings*
- Cary, *Federalism and Corporate Law: Reflections upon Delaware*, 83 Yale Law Journal 663 (1974)
- Winter, *State Law, Shareholder Protection, and the Theory of the Corporation*, 6 Journal of Legal Studies 251 (1977)
- Macey & Miller, *Toward an Interest-Group Theory of Delaware Corporate Law*, 65 Texas Law Review 469 (1987)
- Roe, *Delaware's Competition*, 117 Harvard Law Review 588 (2003)
- * Romano, *The Genius of American Corporate Law* (1993)
- * Hansmann & Kraakman, *The End of History in Corporate Law*, 89 Georgetown Law Journal 439 (2000)
- * Romano, *The Sarbanes-Oxley Act and the Making of Quack Corporate Governance*, 114 Yale Law Journal 1521 (2005)
- * Gilson, *From Corporate Law to Corporate Governance* (2016) [book chapter, available on ssrn]
10. **MAR. 28:** **TBD**
- Readings* TBD
11. **APR. 4:** **Antitrust**
- Readings*
- Dewey, *The Common-Law Background of Antitrust Policy*, 41 Virginia Law Review 759 (1955)
- Areeda & Turner, *Predatory Pricing and Related Practices under Section 2 of the Sherman Act*, 88 Harvard Law Review 697 (1975)
- Easterbrook, *Limits of Antitrust*, 63 Texas Law Review 1 (1984)
- Khan, *Amazon's Antitrust Paradox*, 126 Yale Law Journal 710 (2017)
- * Hovenkamp, *Antitrust Policy after Chicago*, 84 Michigan Law Review 213 (1985)
12. **APR. 11:** **Labor**
- Readings*
- Blades, *Employment at Will vs. Individual Freedom*, 67 Colum. L. Rev. 1404 (1967)
- Hansmann, *Cooperative Firms in Theory and Practice*, 4 LTA 387 (1999)
- Gilson, *The Legal Infrastructure of High-Technology Industrial Districts*, 74 NYU Law Review 575 (1999)
- Paul, *Fissuring and the Firm Exemption*, 82 Law & Contemp. Problems 65 (2019)
- * Callaci, "Control Without Responsibility" [to be circulated]

13. **APR. 18:** **Reorganization and Bankruptcy**
- Readings* Jackson, *Bankruptcy, Non-Bankruptcy Entitlements, and the Creditors' Bargain*, 91
 Yale Law Journal 857 (1982)
- Warren, *Bankruptcy Policy*, 54 University of Chicago Law Review 775 (1987)
- Baird, *Bankruptcy's Uncontested Axioms*, 108 Yale Law Journal 573 (1998)
- Ayotte & Skeel, *An Efficiency-Based Explanation for the Current Corporate
Reorganization Practice*, 73 University of Chicago Law Review 425 (2006)
- * Baird, *The Uneasy Case for Corporate Reorganizations*, 15 Journal of Legal Studies
 127 (1986)
- * Buccola, *Sponsor Control*, 90 University of Chicago Law Review 1 (2023)
-
14. **APR. 25:** **The Firm (and Corporation) in the Future**
- Readings* Baird & Rasmussen, *The End of Bankruptcy*, 55 Stanford Law Review 751 (2002)
- Benkler, *Coase's Penguin*, 112 Yale Law Journal 369 (2002)
- Gilson & Gordon, *The Agency Costs of Agency Capitalism*, 113 Columbia Law
 Review 863 (2011)
- Elhauge, *Horizontal Shareholding*, 129 Harvard Law Review 1267 (2016)
- TBD on the DAO