

LGST 9210
FOUNDATIONS OF BUSINESS LAW

THE WHARTON SCHOOL
SPRING 2024

[Professor Brian Feinstein](#)
Legal Studies & Business Ethics Dept.
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Class Sessions: Tuesdays 1 – 4 p.m.
Huntsman 657

Office Hours: Tuesdays 11 a.m. – 12 p.m. and by appointment
Huntsman 660

Course Description:

This course introduces students to key ideas from the American legal academy concerning the role of business in society. Topics include important jurisprudential movements in legal scholarship; the relationship between firms and government in a capitalist democracy; corporate law and governance; and discrete legal subjects of special relevance to businesses, e.g., employment law and antitrust. The course is geared towards aspiring academics and others interested in scholarship pertaining to business law.

Assessment:

Final grades will be based upon class participation (50%) and a final paper (50%). Participation entails leading the discussion of one assigned article for each class session and thoughtfully engaging in our discussion of the other articles. The final paper, topic to be announced, is due on May 1.

Course Materials:

All materials are available at no cost online; see [Franklin](#) and Google. I will provide excerpts of judicial opinions.

CLASS SCHEDULE

subject to revision

** denotes that readers are encouraged to skim the reading*

UNIT I – THE BUSINESS LAW SCHOLAR’S TOOLKIT

1. Foundations, January 23

* Oliver Wendell Holmes, *The Path of the Law*, 10 Harvard Law Review 457 (1897)

Lon Fuller, *American Legal Realism*, 82 University of Pennsylvania Law Review 429 (1934)

William Eskridge & Philip Frickey, *The Making of “The Legal Process”*, 107 Harvard Law Review 2031

2. Law & Economics I, January 30

Ronald Coase, *The Problem of Social Cost*, 3 Journal of Law & Economics 1 (1960)

* Robert Ellickson, *Of Coase and Cattle: Dispute Resolution Among Neighbors in Shasta County*, 38 Stanford Law Review 623 (1986)

Richard Posner, *The Economic Approach to Law*, 53 Texas Law Review 757 (1975)

Ronald Dworkin, *Is Wealth a Value?*, 9 Journal of Legal Studies 191 (1980)

3. Law & Economics II, February 6

Guido Calabresi & Douglas Melamed, *Property Rules, Liability Rules, and Inalienability: One View of the Cathedral*, 85 Harvard Law Review 1089 (1972)

Cass Sunstein, Christine Jolls, & Richard Thaler, *A Behavioral Approach to Law & Economics*, 50 Stanford Law Review 1471 (1998)

Jedediah Britton-Prudy, David Singh Grewal, Amy Kapczynski, and Sabeel Rahman, *Building a Law-and-Political Economy Framework: Beyond the Twentieth-Century Synthesis*, 129 Yale Law Journal 1784 (2020).

4. Critical Approaches, February 13

Duncan Kennedy, *Form and Substance in Private Law Adjudication*, 89 Harvard Law Review (1976)

Catharine MacKinnon, *Feminism, Marxism, Method, and the State: Toward Feminist Jurisprudence*, 8 Signs 635 (1983)

Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 Harvard Law Review 1331 (1988)

* Paul Carrington, *Of Law and the River*, 34 Journal of Legal Education 222 (1984)

UNIT II – THE REGULATION OF BUSINESS

5. *Why Regulate Business?*, February 20

Lochner v. New York (1905)

Stephen Breyer, *Regulation and Its Reform*, chapter 1 (1982)

Margaret Jane Radin, *Market Inalienability*, 100 Harvard Law Review 1849 (1987)

* Steven Schwarcz, *Systemic Risk*, 97 Georgetown Law Journal 193 (2008)

6. *Who Should Regulate Business?*, February 27

Richard Posner, *Regulation vs. Litigation: An Analytical Framework*, in Daniel Kessler, ed., *Regulation vs. Litigation* (2010)

Chevron v. Natural Resources Defense Council (1984) (excerpt to be circulated)

Food & Drug Administration v. Brown & Williamson Tobacco Co. (1999) (excerpt)

Phillip Wallach, *The Administrative State's Legitimacy Crisis*, Brookings Inst., Apr. 2016

Adrian Vermeule, *What Legitimacy Crisis?*, Cato Unbound, May 2016

7. *Business-Government Collaboration*, March 12

Jody Freeman, *The Private Role in Public Governance*, 75 NYU Law Review 543 (2000)

Orly Lobel, *The Renew Deal: The Fall of Regulation and the Rise of Governance in Contemporary Legal Thought*, 89 Minnesota Law Review 342 (2004)

William Laufer, *A Very Special Regulatory Milestone*, 20 University of Pennsylvania Journal of Business Law, 393 (2018)

David Zaring, *The Corporatist Foundations of Financial Regulation*, 108 Iowa Law Review 1303 (2023)

8. ***Setting the Rules*, March 19**

George Stigler, *The Theory of Economic Regulation*, 2 Bell Journal of Economics and Management Science 3 (1971)

William Novak, *A Revisionist History of Regulatory Capture*, in Dan Carpenter & David Moss, eds., *Preventing Regulatory Capture* (2013)

David Zaring, *Against Being Against the Revolving Door*, 2 University of Illinois Law Review 507 (2013)

9. ***Playing to Win*, March 26**

Elizabeth Pollman & Jordan Barry, *Regulatory Entrepreneurship*, 90 Southern California Law Review 383 (2017)

Victor Fleischer, *Regulatory Arbitrage*, 89 Texas Law Review 227 (2011)

* Brian Feinstein, Will Heaston, & Gui Siqueira, *In-Group Favoritism as Legal Strategy*, 60 American Business Law Journal 5 (2023)

UNIT III – CORPORATE LAW & GOVERNANCE

10. ***The Nature of the Firm*, April 2**

Ronald Coase, *The Nature of the Firm*, 4 Economica 386 (1937)

Michael Jensen & William Meckling, *Theory of the Firm: Managerial Behavior, Agency Costs, and Ownership Structure*, 3 Journal of Financial Economics 305 (1976)

Citizens United v. Federal Election Commission (2010) (excerpt)

Amy Sepinwall, *Book Review: “Corporations and People Too” and “We the Corporations”*, 29 Business Ethics Quarterly 550 (2019)

11. ***The Purpose of the Firm*, April 9**

* Frank Easterbrook & Daniel Fischel, *The Corporate Contract*, 89 Columbia Law Review 1416 (1989)

Margaret Blair & Lynn Stout, *A Team Production Theory of Corporate Law*, 85 Virginia Law Review 247 (1999)

Henry Hansmann & Reinier Kraakman, *The End of History for Corporate Law*, 89 Georgetown Law Journal 39 (2000)

Dorothy Lund & Elizabeth Pollman, *The Corporate Governance Machine*, 121 Columbia Law Review 2563 (2021)

UNIT IV – SELECT SUBJECTS IN BUSINESS LAW

12. *Antitrust*, April 16

Frank Easterbrook, *The Limits of Antitrust*, 63 Texas Law Review 1 (1984)

Tim Wu, *The Curse of Bigness* (2018)

13. *Employment*, April 13

Richard Epstein, *In Defense of the Contract at Will*, 51 University of Chicago Law Review 947 (1984)

Susan Sturm, *Second Generation Employment Discrimination: A Structural Approach*, 101 Columbia Law Review 458 (2001).

Ronald Gilson, *The Legal Infrastructure of High Technology Industrial Districts*, 74 NYU Law Review 575 (1999)

14. TBD, April 30