

LAWS 2002 - BUSINESS ASSOCIATIONS

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SYLLABUS - WINTER TERM, 2019

1. COURSE DESCRIPTION AND PURPOSE

From the corner variety store sole proprietorship to small and large forms of partnership, the professional firm LLP, and domestic and international corporations, various forms of business enterprise exist all around us. While we all frequent various business organizations in our daily lives and make use of their products or services, what do we know about their legal nature and the regimes that govern their everyday existence? How do we explain their legal structures? How do they function? What rules/practices govern their behaviour? Finally, do these working organizations actually “work” in contemporary society or do they raise problems of their own that need to be addressed?

The industrial revolution led to the need to create new forms of business enterprise and, resultantly, new legal structures for their regulation. We will look to the underlying purposes of these business enterprises and critically examine various elements of the legal regimes that govern them. For-profit business entities are structured to earn profit, but they are far more Corporations and other business organizations are actors in contemporary society and derive benefit from social structures and institutions. Should they also be expected to contribute to the welfare of the societies in which they derive their profits?

This course is designed as an introduction to the laws pertaining to the most common forms of business organizations in Canada – sole proprietorships, partnerships, limited partnerships, limited liability partnerships, and corporations. The purpose of the course is to provide students with exposure to and an understanding of many of the basic principles of the predominant forms of business associations and their regulation. Specific issues to be examined will be uncovered through a critical examination of relevant statutes, case law and class discussion.

I do not presume any previous background in business or business studies from students enrolled in the course. The emphasis in the course is on the *legal* aspects of business associations, in particular the duties and responsibilities that are associated with them and how these are addressed in statutes and in the jurisprudence. We will also examine larger questions relating to the nature of the interaction of business organizations within the societies in which they operate. The more complex and specific financial aspects of business associations are not addressed in this course; rather, they fall under the rubric of courses in corporate finance.

2. **LEARNING OUTCOMES**

After taking this course, students will be able to appreciate the structure and implications of the legal status of sole proprietorships, partnerships, limited partnerships, limited liability partnerships, and corporations. Students will learn about the purpose and function of these various business entities, why they exist, and how they differ from one another. In particular, they will be able to distinguish the forms of liability associated with these structures, discuss the duties and responsibilities of sole proprietors, partners, and corporate directors and officers, and ascertain the pros and cons of each of these business forms. They will be able to critically address the role of various business associations (though particularly the corporation) in contemporary society, their rights and responsibilities, understand basic corporate management duties and explain how Canadian law uniquely balances majority and minority shareholder interests. Students will also be introduced to some comparative aspects of corporate theory to provide a context for understanding corporate rights and responsibilities.

3. **REQUIRED READINGS**

- W/S/R** Bruce Welling, Lionel Smith, and Leonard I. Rotman, eds., *Canadian Corporate Law: Cases, Notes & Materials*, 4th ed., (Toronto: LexisNexis, 2010).
Available in the bookstore.
- NSPA** *Nova Scotia Partnership Act*, R.S.N.S., 1989, c. 334.
<http://nslegislature.ca/sites/default/files/legc/statutes/partner.htm>
- NSLPA** *Nova Scotia Limited Partnerships Act*, R.S.N.S., 1989, c. 259.
<https://nslegislature.ca/sites/default/files/legc/statutes/limitedp.htm>
- CBCA** *Canada Business Corporations Act*, R.S.C., 1985, c. C-44.
<http://laws-lois.justice.gc.ca/eng/acts/C-44/index.html>
- Allen** William T. Allen, "Our Schizophrenic Conception of the Business Corporation" (1992) 14 *Cardozo L. Rev.* 261.
http://heinonline.org/HOL/Page?handle=hein.journals/cdozo14&div=25&g_sen t=1&casa_token=&collection=iournals#
- Friedman** Milton Friedman, "The Social Responsibility of Business is to Increase its Profits," *N.Y. Times*, 13 Sept. 1970.
<http://www.colorado.edu/studentgroups/libertarians/issues/friedman-soc-resp-business.html> **cb**

- Mitchell** Lawrence E. Mitchell, "Groundwork of the Metaphysics of Corporate Law," (1993) 50 Wash. & Lee L. Rev. 1477-88.
http://heinonline.org/HOL/Page?handle=hein.journals/waslee50&div=76&start_page=1477&collection=journals&set as cursor=0&men tab=srchresults
- Rotman** Leonard I. Rotman, "Debunking the 'End of History' Thesis for Corporate Law," (2010) 33 B.C. Int'l & Comp. L. Rev. 219-72.
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1517846

***** Please note that other readings and handouts may be assigned as needed *****

4. METHOD OF INSTRUCTION

Lecture/discussion. Students are expected to complete assigned readings before class and be prepared to discuss them with the instructor and other students in fleshing out the lessons to be derived from those readings. Students should, therefore, be sufficiently knowledgeable about the day's readings to follow, initiate, and participate in class discussion. Although I generally do not direct specific questions at individuals, students should be sufficiently knowledgeable about the day's readings to follow, initiate, and participate in class discussion.

In making use of assigned readings and observing other materials presented in class, students should look beyond the facts/issues raised and seek to draw links or analogies between cases/issues to provide a greater context for understanding the development of applicable laws and policies.

5. METHOD OF EVALUATION

The evaluation for this course consists of an open-book, 2 hour examination that is worth 100% of the grade in the course. You may bring in copies of all assigned readings, as well as your own notes and summaries, but not library materials.

In my experience, old exams and sample questions create false expectations, detrimentally affect study habits, and invariably result in lower overall grades. Reading and comprehending the assigned materials, regularly attending classes, studying your notes, and preparing good notes/summaries will provide you with a strong working knowledge of the material and relevant statutory sections that will have you well-prepared for the examination.

Regardless of its specific format, the examination will test your ability to understand, work with, and extrapolate from the course materials in the manner that will be expected of you in practice. What it will NOT do is test your ability to simply regurgitate. When you prepare for the exam, look to be able to intelligently discuss issues and draw parallels and contrasts between them where appropriate.

Consequently, in answering questions in class or on the exam, I do not want you to stop at what the law is, but also address why it is that way and whether that creates particular problems, difficulties, or inconsistencies with other aspects of the law. By doing assigned readings, attending class lectures, and participating in class discussion, you will gain a better understanding of the law and be able to apply it to specific circumstances.

Students Requests for Accommodation:

Requests for special accommodation for reasons such as illness, injury or family emergency will require an application to the Law School Studies Committee. Such requests (for example, for assignment extensions) must be made to Associate Dean Michael Deturbide or the Director of Student Services as soon as possible, before a scheduled exam or a deadline for an assignment, and will generally require medical documentation. Retroactive accommodation will not be provided. Please note that individual professors cannot entertain accommodation requests.

Students may request accommodation for either classroom participation or the writing of tests and exams due to barriers related to disability, religious obligation, or any characteristic under the Nova Scotia *Human Rights Act*. Students who require such accommodation must make their request to the Advising and Access Services Center (AASC) at the outset of the regular academic year. Please visit www.dal.ca/access for more information and to obtain the Request for Accommodation – Form A. Students may also contact the Advising and Access Services Centre directly at 494-2836.

Plagiarism:

All students must read the University policies on plagiarism and academic honesty <http://academicintegrity.dal.ca/> and the Law School policy on plagiarism <http://www.dal.ca/faculty/law/current-students/id-students/academic-regulations.html>. Any paper or assignment submitted by a student at the Schulich School of Law may be checked for originality to confirm that the student has not plagiarized from other sources. Plagiarism is considered a serious academic offence which may lead to loss of credit, suspension or expulsion from the law school, or even revocation of a degree. It is essential that there be correct attribution of authorities from which facts and opinions have been derived. Prior to submitting any paper or other assignment, students should read and familiarize themselves with the policies referred to above and should consult with the instructor if they have any questions. **Ignorance of the policies on plagiarism will not excuse any violation of those policies.**

6. OFFICE HOURS

My office is located in Room W425 of the law school (overlooking the front of the building). My office phone number is (902) 494-4293.

I will maintain regular office hours this term on Tuesdays from 11:00 a.m. – noon. I am also available to meet you at other times, either by appointment or by chance. Please feel free to drop by my office, discuss matters after class, or arrange for us to meet at a mutually convenient time. You may also feel free to send me questions by e-mail at lrotman@dal.ca.

If you have specific questions that you would like answered in person, please email me the question ahead of time, if possible, so that I may provide a more fulsome answer that we may discuss when we meet. Alternatively, I can send you my response by email and, once you look it over, decide whether you wish to schedule an in-person follow-up meeting.

7. E-MAIL COMMUNICATION

Please ensure that all e-mail communication to me emanates from your Dalhousie e-mail address. This will reduce the chance of transmitting computer viruses or malware and avoid either the university's Clutter program or myself mistakingly identifying your message as spam and deleting it. **To assist with the latter, please indicate on the "RE: " line of your message that you are in my Business Associations class to avoid having me accidentally delete your message, such as "Re: Question from Business Associations Student S. Chulich."**