

# BUSINESS ORGANIZATIONS

FALL 2021

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## CONTACT INFORMATION

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## SUBJECT INTRODUCTION / COURSE OVERVIEW

The subject of many law school courses is self-evident. Criminal law is obviously needed to impose some sort of order on society. Similarly, tax laws exist to raise revenue for the government. One might observe that business law regulates business, but that only leads one to ask, “Why do we have businesses?” The answer to that question is not as obvious as it might first appear.

A century ago, Nobel laureate Ronald Coase asked the same question. Almost any economic activity organized within a firm alternatively could occur through market transactions. Given that markets efficiently allocate scarce resources, why is some economic activity instead directed by managerial discretion?

At the time Coase posed this question, it was a stark one. The Russian Revolution was not yet twenty years into the past, and communism presented itself as an alternative to the capitalist systems of the western countries. One of communism’s most distinguishing characteristics remains the government’s central planning of economic activity. Paradoxically, much central planning happens within a capitalist system. Managers dictate which projects within a firm get funded, which products to make, how much to pay workers, and so forth. If markets are so superior, why does so much central planning happen within a capitalist system?

Coase hypothesized that, although managerial discretion can be inefficient and costly, the transaction costs of the marketplace often are even costlier. This fundamental insight changed the way we think about the role of business firms within an economic system. The Business Organizations course examines the organization of economic activity within a business firm, and Coase teaches us that the whole point of business firms is to economize on the transaction (and other) costs that otherwise would accompany economic activity. To borrow Professor Ronald Gilson’s phrase, the role of the attorney is to be a “transaction cost engineer,” structuring economic activity to minimize the transaction costs to the parties.

***Yeah, But What Exactly Do We Study?*** Doctrinally, the Business Organizations course covers the basic principles of law applicable to agency relationships, partnerships, corporations, and limited liability companies. The bulk of the semester is spent on the law governing relationships among the various constituents of corporations (directors,

shareholders, management, labor, lenders, etc.). Business Organizations serves as the law school's introduction not only to business law but also to business generally. Some attention will be given to introducing basic business concepts and financial theory.

## **ASSIGNMENTS & TEXTS**

I will give specific reading assignments every day. For the most part, they will come from the following *required* texts:

**Casebook:** WILLIAM A. KLEIN, J. MARK RAMSEYER, & STEPHEN M. BAINBRIDGE, BUSINESS ASSOCIATIONS: AGENCY, PARTNERSHIPS, AND CORPORATIONS (10<sup>th</sup> ed. 2018).

**Statute Book:** BUSINESS ASSOCIATIONS: AGENCY, PARTNERSHIPS, AND CORPORATIONS—STATUTES AND RULES (2021 ed.)

In addition to the assigned reading, which I expect everyone to read prior to class, I recommend that you consult the following *supplemental* sources:

For agency and partnership topics:

DANIEL S. KLEINBERGER, AGENCY, PARTNERSHIP, AND LLCs: EXAMPLES AND EXPLANATIONS (5<sup>th</sup> ed. 2017).

For corporations topics:

STEPHEN M. BAINBRIDGE, CORPORATE LAW (4th ed. 2020).

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We will endeavor to cover the following (ambitious!) list of topics:<sup>1</sup>

- I. **Introduction – The Nature of the Firm; the Corporate Lawyer as “Transaction Cost Engineer”** (Handout – excerpts from F.A. Hayek and R.H. Coase)
- II. **Agency**
  - A. **Who is an agent?:** pp. 1-13

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<sup>1</sup> Note that, with the exception of provisions of the Uniform Partnership Acts, I have not included specific provisions from the Statutory Supplement (i.e., Restatement sections, provisions from corporate codes and the securities laws). I will assign those provisions in class

- B. **Principal liability for agent's torts (*respondeat superior*):** pp. 35-42, 53-59, 68-72
- C. **Principal liability on contracts executed by agent:** pp. 13-16, 20-24, 25-32
- D. **Agent's liability on principal's contracts:** pp. 32-35
- E. **Fiduciary obligations of agents:** pp. 72-75; *Automotive v. Singer*

### III. Partnerships and similar unincorporated entities

- A. **Fundamentals of partnership:** handout; UPA (1914) §§ 6, 7, 9, 13, 14, 15, 18
  - 1. **Who is a partner?**
  - 2. **Partners' rights and duties vis-à-vis each other**
  - 3. **Partners' rights and duties vis-à-vis third parties**
- B. **Partnership by estoppel:** pp. 98-101, UPA § 16
- C. **Fiduciary duties of partners:** pp. 101-08, 114-28
- D. **Partnership property:** UPA §§ 8, 24-28
- E. **Management rights of partners:** UPA §§ 9, 18; handout; pp. 134-39
- F. **Partnership dissolution:** UPA §§ 29, 30-42; handout; pp. 169-74
- G. **Limited partnerships, LLPs, LLLPs:** *Holzman v. De Escamilla*

### IV. Corporations

- A. **Corporate formation:** 189-91; MO statutory provisions (TBA)
- B. **Defective incorporation:** handout
- C. **The corporate entity and limited liability:** pp. 198-210
- D. **The role and purpose of corporations:** pp. 214-25, 231-32
- E. **Corporate governance**

1. **Fiduciary duty of care / business judgment rule**
    - a. **Affirmative decision-making:** pp. 225-30, 277-96
    - b. **Oversight:** pp. 296-301
  2. **Fiduciary duty of loyalty**
    - a. **Affirmative decision-making:**
      - (i) **Basic principle:** pp. 303-08
      - (ii) **Procedural sanitation:** pp. 336-39
      - (iii) **Corporate opportunities:** pp. 315-20; handout on ALI Principals of Corporate Governance
      - (iv) **Loyalty duties of controlling shareholders:** pp. 325-36
    - b. **Oversight & “Good Faith”:** pp. 339-58
- F. Shareholder lawsuits (derivative and direct):**
1. **Derivative suits and the demand requirement:** pp. 365-73
  2. **Board control over lawsuits when demand is excused (special litigation committees):** pp. 385-93
  3. **Director and officer indemnification and insurance:** pp. 512-26
- G. Problems of control:**
1. **Proxy fights and shareholder voting:** pp. 527-37
  2. **Control in closely held corporations:** pp. 613-43

**V. Limited Liability Companies:** pages TBA

## **ATTENDANCE AND CLASSROOM PARTICIPATION**

**Attendance** – Regular attendance is expected. I reserve the right to adjust a student’s grade downward a point if he or she misses *four or more* classes during the semester without an adequate justification. More importantly, you will not master the material—and will not perform well on the examination—if you miss class excessively.

**Class participation** – I expect that you will do the reading assignment each day and will be prepared to discuss it in class. I will “cold call” on students to discuss the reading. When a student is called on and is unprepared, the entire class suffers. Accordingly, if you have not done the reading, you may notify me via email in advance of class and take a “pass” for the day. You may do this *twice* without it affecting your grade. Thereafter, you risk being penalized for deficient classroom performance. In general, I reserve the right to reward exceptional class participation or penalize poor or inappropriate class participation<sup>2</sup> in determining the final grade. I may adjust grades one or two points.

## **OFFICE HOURS**

I maintain an “open door” policy, which means that I’m happy for you to visit anytime I’m in the office. On occasion, I may be in the office but tied up with something else. I trust you’ll be understanding if I’m busy at the moment and suggest that we get together later.

If you want to schedule a more formal meeting, either in person or via Zoom, please either email me or call or text my mobile phone (773-580-7123). I’m happy to take calls and texts on that number.

## **GRADING**

The grade for this class will be based on a student’s examination grade, potentially adjusted for attendance and class participation, as noted. The examination will be a mix of multiple choice questions and “issue spotter” essay questions. It will be administered on a “limited open book” basis, meaning that you may bring with you your casebook and statute book, your class notes, any handouts I have given you, and any outline that you have prepared in whole or in part. You may not bring with you commercial materials or an outline prepared entirely by someone else.

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<sup>2</sup> Please note that I will not penalize you for getting an answer wrong, provided that you made a mistake *despite* having done the reading. All of us make occasional mistakes when asked to think on our feet. I have found that one of the toughest parts of being a lawyer is learning to give an answer (oral or written) in the face of uncertainty. One of the goals of the Socratic method is to help you overcome the fear of speaking when you’re uncertain, so I will not penalize good faith efforts that prove unsuccessful. That said, you may be penalized if it is apparent that your wrong answer is the result of poor preparation.

## **LEARNING OUTCOMES**

In this course, you will:

- Learn the substantive law of agency, partnership, and corporations.
- Consider how transactional lawyers create value for their clients and society.
- Learn to plan transactions so as to maximize value.
- Learn basic principles of finance.
- Practice the art of policy analysis.
- Explore the economics of firms and organizations.
- Learn about agency costs and the options for addressing them.
- Practice oral communication.
- Practice arguing both sides of an issue.

As stated above, assessment in this course will be summative (a final examination). The course is not Standard 303 compliant (field placement/law clinic/simulation).

## **INFORMATION REGARDING DISABILITIES**

If you anticipate barriers related to the format or requirements of this course, if you have emergency medical information to share, or if you need to make arrangements in case the building must be evacuated, please contact Associate Dean Ben Trachtenberg as soon as possible.

If disability related accommodations are necessary (for example, a note taker, captioning), please register with the Disability Center (<http://disabilitycenter.missouri.edu>), S5 Memorial Union, 573-882-4696, and then notify Dean Trachtenberg or Law School Registrar Denise Boessen of your eligibility for reasonable accommodations. (Please do not discuss examination accommodations with me. Notice of special accommodations may impair the “blind grading” policy we use at the law school.) For other MU resources for persons with disabilities, click on “Disability Resources” on the MU homepage.

## **INTELLECTUAL PLURALISM**

The School of Law community welcomes intellectual diversity and respects students’ rights. Students who have questions concerning the quality of instruction in this class may address concerns to either the Dean or the Director of the Office of Students’ Rights and Responsibilities. All students will have the opportunity to submit an anonymous evaluation of the instructor at the end of the semester.

You are encouraged to think for yourself in this course. You need not agree with me, and you are most welcome—encouraged, even—to argue different sides on the issues we will confront. I will endeavor to treat you with respect, even when I disagree with your arguments, and I will expect you to afford similar treatment to me and your classmates. Participants in this course—including me—should endeavor to *understand* each other, not

necessarily to *agree* with one another. If you believe at any point that your point of view (or that of another student) is being stifled or is not being given a fair hearing, please let me know. But please do not expect to avoid all offense; lawyers (and all adults, really) must learn to deal with offensive ideas.

### **ACADEMIC INTEGRITY**

Academic integrity is fundamental to the activities and principles of the School of Law. All members of the Law School community must be confident that each person's work has been responsibly and honorably acquired, developed and presented. Any effort to gain an advantage not given to all students is dishonest whether or not the effort is successful. The Law School Community regards breaches of the Law School's Honor Code as extremely serious matters. In the event that you violate our Academic Integrity Rules on any portion of the work required for this class, you may expect a failing grade, as well as possible disciplinary sanctions ranging from probation to expulsion.

### **RECORDINGS OF COURSE ACTIVITIES**

University of Missouri System Executive Order No. 38 lays out principles regarding the sanctity of classroom discussions at the university. The policy is described fully in Section 200.015 of the Collected Rules and Regulations. In this class, students may make audio or video recordings of course activity unless specifically prohibited by the faculty member. However, the redistribution of audio or video recordings of statements or comments from the course to individuals who are not students in the course is prohibited without the express permission of the faculty member and of any students who are recorded. Students found to have violated this policy are subject to discipline in accordance with provisions of Section 200.020 of the Collected Rules and Regulations of the University of Missouri pertaining to student conduct matters.

### **DECREASING THE RISK OF COVID-19 IN THE CLASSROOM**

MU cares about the health and safety of its students, faculty, and staff. To provide safe, high-quality education amid COVID-19, we will follow several specific campus policies in accordance with the advice of the Center for Disease Control and Boone County health authorities. These policies will be updated as information changes.

- **If you are experiencing any COVID-related symptoms**, or are otherwise feeling unwell, do not attend in-person classes and contact your health care provider and/or student health immediately. COVID symptoms include: fever greater than 100.4 or chills; cough, shortness of breath or difficulty breathing; fatigue; unexplained muscle or body aches; headache; new loss of taste or smell; sore throat; congestion or runny nose; nausea or vomiting; diarrhea.

- We will all wear **face coverings while in the classroom**, unless you have a documented exemption due to a disability or medical condition.
- Online office hours will be available for all students.
- This course may be recorded for the sole purpose of sharing the recording with students who can't attend class. The instructor will take care not to disclose personally identifiable information from the student education records during the recorded lesson.

Compliance with these guidelines is required for all; anyone who fails to comply will be subject to the accountability process, as stated in the University's Collected Rules and Regulations, Chapter 200 Student Code of Conduct.

### **PIVOT PLAN**

In the event that law school classes may not continue in person due to Covid-19 (or for any other reason), we will continue our course via Zoom. The course will be taught synchronously (i.e., at the regularly scheduled time), and sessions will be recorded and posted to Canvas for those who are unable to participate synchronously.