

BUSINESS ASSOCIATIONS

BUS2-365
Prof. Lionel Smith
Fall 2009
Course Outline

1. Technical Specifications

Meetings: Wednesdays and Fridays, 10:30-12:30, Room 101. There will be no classes on 11 September 2009 or 9 October 2009. The class on 11 November runs from 11:30-12:30.

In the event of extraordinary circumstances beyond the University's control, the content and/or evaluation scheme in this course is subject to change.

Method of Instruction: Reading, lectures and discussion.

Method of Evaluation:

25% group presentations.

75% open book examination, 21 December 2009, 09:30-11:30.

There is more detail about evaluation in Section 6, below.

You are reminded that by art. 15 of the McGill Charter of Student Rights (found in the Handbook of Student Rights and Responsibilities), you have the right to write your assignment and exam answers in either English or French.

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2. General Description and Objectives

This course examines the law relating to federal and Quebec business organizations, focusing on partnerships and especially business corporations. By 21 December you should be able to do the following:

A. Outline the different kinds of partnerships, with particular focus on their conceptual structures and their liability structures.

B. Analyze legal problems arising out of the interactions between a corporation and outsiders. The fundamental axiom is that a corporation is a person for the purposes of legal analysis. This axiom creates challenging issues when it meets the factual realities of actual cases. You will need to be able to analyze the ways in which a corporation can assume legal liabilities, be they tortious, criminal or contractual.

You will also need to be able to understand and describe different views about the situations in which the individuals who are involved with corporations (such as shareholders and managers) can become personally liable in relation to corporate activities.

C. Analyze legal problems arising out of the interactions between a corporation and its management. The directors, officers and employees of a corporation owe various duties to the corporation, which can give rise to a range of liabilities on the part of managers.

The most important of these duties are (i) duties of care, skill, and diligence, which require managers to reach a certain standard in the exercise of their functions, and (ii) duties of loyalty, which require managers to put the interests of the corporation before their own interests. These duties of loyalty arise in many situations, especially where the manager contracts with the corporation, or is in competition with it for some opportunity, or is defending it against an attempt to take control of the corporation.

D. Analyze legal problems arising out of the interactions between the management of a corporation and its shareholders and other stakeholders. This includes the protection of minority shareholders, which is one of the most important and fast-developing areas of corporate law.

3. Book Requirements

A course pack is available on the course web site and most of the reading is assigned from that. Students will need access to up-to-date copies of the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, and the Quebec *Companies Act*, R.S.Q. c. C-38, as well as the Civil Code of Quebec. You can buy these statutes at the university bookstore in the form of a consolidation that includes other relevant statutes: Baudouin, ed., *Compagnies, corporations et sociétés par actions*, 2009-10 ed. (Judico/Wilson & Lafleur) (bilingual). You can also get the statutes for free on the internet, either on the legislative sites or via one of the commercial legal databases. *Note that you will want to be able to bring the full text of the two corporate law statutes, and of the relevant parts of the Civil Code, into the examination room.*

Students who wish to explore points in further detail may wish to consult a textbook. I have asked that the books listed here be placed in the reserve collection of the library. None is required reading, and none has been ordered for the bookstore, but a student who wished to purchase one could order from the publisher or any online or bricks-and-mortar bookstore.

Crête & Rousseau, *Droit des sociétés par actions*, 2^e éd. (Éditions Thémis, 2008). Well-conceived and well-written, this book covers Quebec and federal corporations. It is written for a student audience.

Martel, *Précis de droit sur les compagnies au Québec* (Wilson & Lafleur, 2000). This book presents the material from a practitioner's perspective. It covers federal and Quebec corporations. Although called a 'précis,' it is over 1000 pages long.

Martel & Martel, *La compagnie au Québec: Les aspects juridiques*, special ed. (Wilson & Lafleur, 2009). These authors produce a three-volume looseleaf for practitioners: vol. 1 covers 'les aspects juridiques,' vol. 2 provides the legislation, and vol. 3 provides precedents. The publishers also produce vol. 1 as a freestanding softcover book. It is very thorough and up-to-date (even longer than the *Précis de droit sur les compagnies au Québec*).

McGuinness, *Canadian Business Corporations Law*, 2 ed. (LexisNexis, 2007). This is a very thorough and very large reference book, aimed at a practitioner audience.

Nicholls, *Corporate Law* (Emond Montgomery, 2005). Clearly written and aimed at students, this is a fine book by an expert on Canadian corporate law. It is unlikely to illuminate, however, on issues of Quebec civil law.

VanDuzer, *The Law of Partnerships and Corporations*, 2 ed. (Irwin Law, 2003). This book is a bit less expensive than some others, and accessible. It is written for students. This second edition is a great improvement from the first in terms of detail, which was previously lacking. Again it is written mainly from a common law perspective.

4. Reading

This outline is accompanied by a Reading Guide. Readings will be assigned from the course pack and the legislation. Some supplementary material may also be posted on the course web site. Please do the assigned reading *before class*. I will always proceed on the basis that everyone has done the reading. Do not expect me to review the facts of cases in class.

The course will be conducted in conjunction with a *myCourses* web site. You must make yourself familiar with this system, if you are not already. Some additional material will be distributed in this way, and I will use this system to communicate with the class.

5. Evaluation

The Learning Objectives for the course are stated above, in Section 2. The examination questions will be set with the goal of determining the extent to which these objectives have been achieved.

At the end of the course, every student will be given a letter grade from the McGill scale. The Faculty's standards are these:

Grade	Grade point	Faculty descriptor
A	4	Real excellence
A-	3.7	Excellence
B+	3.3	Very good
B	3	Good
B-	2.7	Reasonably good
C+	2.3	Competence plus
C	2	Competence
D	1	Marginal pass
F	0	Failure

More detail as to what kinds of work correspond to these letter grades:

A: This work shows full comprehension of the readings and discussions in the course (as in B,

below) but also shows one or more of the following: an ability to push an argument or line of thought further than the course readings or discussions; an ability to see connections or inconsistencies between different parts of the materials that were covered; insights into the material covered, derived from outside (other legal traditions, other courses, other studies, further readings); original (and coherent) arguments or analysis.

In the context of a hypothetical fact pattern question, this work shows an ability to find all of the relevant issues that the fact pattern contains, and to deploy the relevant legal tests and applicable arguments to those facts. It reveals good judgment in identifying which are the strongest arguments, and it reveals originality in applying the arguments to the actual facts given.

In short, this work goes beyond comprehension and reproduction of the material covered, and reveals independent and/or creative analysis and evaluation of it.

B: This work shows full comprehension of the readings and discussions in the course. In the context of a hypothetical fact pattern question, this work shows an ability to find the main issues and to apply the principal tests and arguments to those issues.

There may be minor omissions or lapses, but nothing serious.

C: This work shows adequate comprehension of the readings and discussions in the course. There are, however, serious gaps, errors or misunderstandings. In the context of a hypothetical fact pattern question, this work fails to identify important issues, and/or recites legal tests but does not apply them to the facts in order to determine an outcome.

D: This work reveals some comprehension of some part of the course but also reveals that important parts of the course have not been understood at all.

F: This work does not reveal even the level of comprehension required for the grade of D.

The availability of + and – grades allows interpolation between the letters.

The Faculty of Law does not have grading curves but it has norms to which instructors are expected to comply. In courses where there are multiple forms of assessment, as in this course, the arithmetical mean of the grade points awarded is expected to be between 2.7 and 3.2. Where grades do not meet this norm, substantial justification must be provided to the Examination and Evaluation Committee of Faculty Council. The final approval of every grade rests with the Faculty Council.

6. Evaluation Details

Group Presentations 25%

After the add/drop period, the members of the class will be organized into groups. Each group will be assigned to present to the class a case or cases in the assigned reading. The group presentation will be marked out of 25, and the members of the group will all receive the same mark. Groups should aim for a presentation that lasts about 20-25 minutes before taking questions from the class.

The evaluation criteria are as follows. Students should strive to provide clear explanations of: (i) the Course outline – Business Associations – Fall 2009

factual context, but on the assumption that everyone has done the assigned reading; (ii) the legal issues raised by the case, and the case's relevance to the course; (iii) the solution adopted by the court, and its implications; (iv) alternative solutions that might have been adopted, and their implications. Students should also (v) be prepared to answer questions from other members of the class, or the instructor. One to three marks will be deducted if the participation of one or more group members is substantially less than that of other group members. Four marks will be deducted if any group member does not participate in the presentation.

I will be available to meet with students in advance of their presentations.

Final Examination 75%

The final examination will take place on 21 December 2009, 09:30-11:30. It will count for 75% of the final grade. It will be an open book examination.

7. Academic Integrity

The University requires that the following text be included in all course outlines:

“MCGILL UNIVERSITY VALUES ACADEMIC INTEGRITY. THEREFORE ALL STUDENTS MUST UNDERSTAND THE MEANING AND CONSEQUENCES OF CHEATING, PLAGIARISM AND OTHER ACADEMIC OFFENCES UNDER THE CODE OF STUDENT CONDUCT AND DISCIPLINARY PROCEDURES (see www.mcgill.ca/integrity for more information).”

8. Discussion Outside Class

I am usually available immediately after class for brief discussion. If you wish to meet with me in my office, you can make an appointment by contacting me by phone or by email. Asking for an appointment in class does not usually work because I need to check my agenda.

You can also feel free to ask questions by email or to initiate discussions on the course web site.