New York University - Stern School of Business

Law, Business and Society, Fall 2015
SOIM-SHU 9006 - 001

PROFESSOR
Stephen Harder

Office Hours: Mon 5:30-6:30 pm and Wed 3:00-4:00 pm
Office Location: [to follow]
Contact Details: [to follow]

COURSE MEETINGS

Meeting Time: Mon 4:15-5:30 pm
Wed 4:15-5:30 pm
Location [to follow]

COURSE DESCRIPTION

In this course on Law, Business and Society students will gain a better understanding of how the American legal system works. They will explore areas where law influences the structure of business and society, and where society and business shape the law. In the process, students should become sensitive to ambiguities and tensions inherent in any legal system, and more aware of legal risk in the business environment.

The course involves close reading of decisions by the US Supreme Court and other courts, in significant cases relating to the common law, statutory law and certain constitutional rights and powers. We will also consider news reports, examples of international business law in practice, and video and audio materials (including excerpts of oral arguments before the US Supreme Court), as well as materials specially prepared for this course by NYU Stern faculty.

Written assignments will build upon the classroom discussions. Each assignment requires students to assume a hypothetical role, such as a legislative assistant, editorial writer, advocate or judicial clerk, and to present persuasive arguments on a particular issue. In some assignments students will argue opposing positions to encourage debate.

At NYU Shanghai during Fall 2015, the course will take note of selected areas of comparison with the Chinese law and business practice.

THE SOCIAL IMPACT CORE CURRICULUM

Law, Business and Society is the third course in Stern’s four-year Social Impact Core Curriculum.
As freshmen, Stern students will have taken Business and its Publics, in which they examined the relationships between corporations and society, in particular the social impact of business.

As sophomores, they will have taken Organizational Communication and its Social Context, which explores theoretical fundamentals in communication, oral and written communication strategy in business situations, and how organizations communicate to their various internal and external stakeholders in various media.

And as seniors, they will study Professional Responsibility and Leadership, to become more familiar with ethical dilemmas that can arise in the course of business practice, to consider the different values and principles that can guide decisions in ambiguous situations, and to practice articulating and defending courses of action that are coherent with their own values.

**COURSE OBJECTIVES**

The learning objectives of Law, Business & Society are:

1) To familiarize students with the American legal system, and legal dilemmas that can arise in business;

2) To introduce students to how professionals effectively navigate complex problems that may lack a clear right answer; and

3) To provide students with the opportunity to articulate and defend courses of action coherent with their own values.

Class activities will include participatory exercises to help students engage in reflective dialogue with each other with respect to the social, political, ethical, economic, technical and practical aspects of legal issues and judicial decisions. The overarching themes of this dialogue include: the relationships between law and business and society; the foundations of individual rights; and the role different stakeholders in society play in challenging, defending or defining those rights.

**INSTRUCTOR BIO**

Stephen Harder is a partner of the international law firm Clifford Chance LLP and manages the firm's practice in China. In Fall 2015, he will teach Law, Business and Society as an Adjunct Professor at NYU Shanghai.

He has been based as a lawyer in New York, Brussels, Warsaw, Moscow, Hong Kong, Shanghai and Beijing. In recent years, his practice has focused on cross border transactions relating to China, including financings by Chinese institutions of projects in Africa and South America and Europe. Previously, when based in Europe in the early
1990's, he was legal counsel to the Russian and Polish mass privatization programs and
the Polish sovereign debt restructuring.

He has written in the International Financial Law Review on *China's Sovereign Wealth
Fund: The Need for Caution*, and spoken recently at several US law schools on *China in
the Balance: Needed Reforms, Vested Interests and the Choices Facing China's New
Leaders*. He has also published in the Annals of the American Academy of Political and
Social Sciences on *Political Finance in the Liberal Republic*.

He holds an undergraduate degree in Chinese studies from Princeton University, a JD
from Columbia Law School, where he was a Harlan Fiske Stone scholar, and an MBA
from Columbia Graduate School of Business, where he was a Samuel Bronfman Fellow.
He is a native of Boston, a resident of Rockport, Maine, and is based currently in
Shanghai.

**COURSE REQUIREMENTS**

**Individual Legal Assignments**
Students will complete three written assignments, approximately 5 pages in length, which
analyze specific issues introduced in the course, synthesize these issues in reference to
the cases and the readings, and present reflective arguments about legal issues within the
context of business and society. Each of these assignments will be completed
individually.

**Group Work Assignment: U.S. Supreme Court Debate**
In addition to the Individual Legal Assignments, students will work together in groups to
debate pending U.S. Supreme Court cases. Students will present their team’s legal
position to the class, as either appellee or appellant. Debate preparation will take place
throughout the second half of the semester. The debates will take place during the last
week of class.

**Final Exam**
The Final Exam will be a cumulative multiple choice exam based upon the legal cases
and concepts covered by the course readings.

**Class Participation**
Class participation will be an important part (20%) of a student’s overall grade.

**Attendance & Homework Assignments**
Attendance will be taken. A significant number of unexcused absences may result in a
student’s overall grade for the course being lowered. A perfect attendance record may
also be taken into consideration to raise the grade of a student whose grade point average
falls between two possible grades, i.e. B+/A-. Written homework assignments will be
assigned and collected for most class sessions. If a significant number of homework
assignments are not turned in then a student’s overall grade for the course may be
lowered.
Turnitin
All students are required to submit their papers using the Assignments tab on NYU Classes. Integrated within NYU Classes is Turnitin, a plagiarism detection software program that enables faculty to compare the content of submitted assignments to data on the Internet, commercial databases, and previous student papers submitted to the system—INCLUDING papers submitted by your peers!! Additional information about expectations regarding academic integrity appears below.

ACADEMIC INTEGRITY

All students in Stern are expected to adhere to the Code of Conduct and uphold its values. New students must sign the Code, whereby they pledge to abide by the Stern Code of Conduct and acknowledge its imperative. Upon signing the Code, students not only recognize their personal responsibility in maintaining the Code of Conduct, but also acknowledge the consequences of violating the University’s trust.

Integrity is critical to the learning process and to all that we do here at NYU Stern. As members of our community, all students agree to abide by the NYU Stern Code of Conduct, which includes a commitment to:

- Exercise integrity in all aspects of one's academic work including, but not limited to, the preparation and completion of exams, papers and all other course requirements by not engaging in any method or means that provides an unfair advantage.
- Clearly acknowledge the work and efforts of others when submitting written work as one’s own. Ideas, data, direct quotations (which should be designated with quotation marks), paraphrasing, creative expression, or any other incorporation of the work of others should be fully referenced.

The full NYU Stern Code of Conduct can be found here: http://www.stern.nyu.edu/cons/groups/content/documents/webasset/con_039512.pdf

NYU STERN GRADING POLICIES

Grading Information for Stern Core Courses: At NYU Stern, we strive to create courses that challenge students intellectually and that meet the Stern standards of academic excellence.

To ensure fairness and clarity of grading the Stern faculty have adopted a grading guideline for core courses with enrollments of more than 25 students in which approximately 35% of students will receive an “A” or “A-” grade. In core classes of less than 25 students, the instructor is at liberty to give whatever grades they think the students deserve, while maintaining rigorous academic standards. http://www.stern.nyu.edu/portal-partners/current-students/undergraduate/resources-policies/academic-policies/index.htm
LBS GRADING and EVALUATION CRITERIA

Grade Breakdown

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Class Participation</td>
<td>20%</td>
</tr>
<tr>
<td>3 Written Legal Assignments</td>
<td>45% (15% each)</td>
</tr>
<tr>
<td>US Supreme Court Debate</td>
<td>15%</td>
</tr>
<tr>
<td>Final Exam</td>
<td>20%</td>
</tr>
</tbody>
</table>

Classroom Participation Criteria

<table>
<thead>
<tr>
<th>Grade</th>
<th>Criteria</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>A/A-</strong></td>
<td>A student receiving an A/A- comes to class prepared; contributes readily to the conversation but does not dominate it; makes thoughtful contributions based on the assigned readings that advance the conversation; and demonstrates an excellent understanding of the course readings.</td>
</tr>
<tr>
<td><strong>B+</strong></td>
<td>A student receiving a B+ comes to class prepared; makes thoughtful comments when called; contributes occasionally without prompting; and demonstrates a very good understanding of the course readings.</td>
</tr>
<tr>
<td><strong>B</strong></td>
<td>A student receiving a B comes to class prepared, but does not voluntarily contribute to discussions and gives only minimal answers when called upon. Such student shows interest in the discussion, listening attentively and taking notes.</td>
</tr>
<tr>
<td><strong>B- &amp; below</strong></td>
<td>A student that fails to satisfy the requirements outlined above will receive a B- &amp; below in class participation. The most likely way to receive this grade is by failing to be prepared, frequent class absences (unless excused by professor), and demonstrating a lack of knowledge of the course readings when called upon in class.</td>
</tr>
</tbody>
</table>

Criteria for Written Legal Assignments

The Professor will read and evaluate your papers according to these criteria:

- **Structure/Format:** Did the student follow the instructions, and proof read the paper for spelling and grammatical errors?
- **Clarity:** Did the student clearly state what the student was trying to prove and support the argument with relevant case law, statutes, regulations, articles, etc?
- **Legal Reasoning:** Did the student use legal reasoning in an accurate manner and does the student show an understanding of the relevant judicial precedents and statutes?
- **Argument:** Has the student shown an ability to recognize ambiguity, and analyze both sides of a legal controversy from the perspective of the various participants, i.e. judge, jury, plaintiff and/or defendant.
NYU STERN POLICY: IN-CLASS BEHAVIOR & EXPECTATIONS

Students are also expected to maintain and abide by the highest standards of professional conduct and behavior.

Please familiarize yourself with Stern's Policy in Regard to In-Class Behavior & Expectations http://www.stern.nyu.edu/portal-partners/current-students/undergraduate/resources-policies/academic-policies/index.htm

And NYU’s policy on Bullying, Threatening and Other Disruptive Behavior Guidelines http://www.nyu.edu/about/policies-guidelines-compliance/policies-and-guidelines/bullying--threatening--and-other-disruptive-behavior-guidelines.html

STUDENTS WITH DISABILITIES

Students whose class performance may be affected due to a disability should notify me immediately so that arrangements can be made in consultation with the Henry and Lucy Moses Center for Students with Disabilities.
For more information please visit http://www.nyu.edu/csd/

COURSE POLICIES

Cell phones, smart phones, recorders, and other electronic devices may not be used in class. To encourage close analysis and wide discussion, generally this will be a "laptops closed" class.

Attendance is required and will be a factor in your final grade for the course. Absences will be excused only in the case of documented serious illness, family emergency, religious observance, or civic obligation. If you will miss class for religious observance or civic obligation, you must inform your professor no later than the first week of class. Recruiting activities are not acceptable reasons for absence from class.

Students are expected to arrive to class on time and stay to the end of the class period. Students may enter class late or leave class early only if given permission by the professor and if it can be done without disrupting the class. (Note that professors are not obliged to admit late students or readmit students who leave class or may choose to admit them only at specific times.)

Late assignments will either not be accepted or will incur a grade penalty unless due to documented serious illness or family emergency. Professors will make exceptions to this policy for reasons of religious observance or civic obligation only when the assignment cannot reasonably be completed prior to the due date and the student makes arrangements for late submission with the professor in advance.
COURSE MATERIALS

All course materials are located on the NYU Classes page for this course under the Resources Tab in alphabetical order.


COURSE SCHEDULE

For every class session, students are expected to read the assignments and be prepared to discuss them in class. Being unprepared does not excuse an absence, and students are expected to be present even if unprepared. If a student is unable to prepare for a class, they should notify the professor via email or in person prior to that class.

The schedule set forth below may change as the need arises. Any changes will be posted on NYU Classes.

<table>
<thead>
<tr>
<th>Dates (2015)</th>
<th>Resources</th>
<th>Written Assignments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aug 31</td>
<td>Courts and Precedent</td>
<td></td>
</tr>
<tr>
<td>Sep 2</td>
<td>Jurisdiction, Litigation, and Alternative Dispute Resolution</td>
<td></td>
</tr>
<tr>
<td>Sep 7</td>
<td>Federal and State Powers/Individual Rights</td>
<td>Assignment #1 - Handed Out</td>
</tr>
<tr>
<td>Sep 9</td>
<td>Federal and State Powers/Individual Rights</td>
<td></td>
</tr>
<tr>
<td>Sep 14</td>
<td>Criminal Law</td>
<td></td>
</tr>
<tr>
<td>Sep 16</td>
<td>Criminal Law</td>
<td></td>
</tr>
<tr>
<td>Sep 21</td>
<td>Property Rights</td>
<td>Assignment #1 – Due</td>
</tr>
<tr>
<td><strong>Sep 23</strong></td>
<td>Property Rights</td>
<td></td>
</tr>
<tr>
<td>Sep 26 – Oct 3</td>
<td>FALL BREAK</td>
<td></td>
</tr>
<tr>
<td>Oct 5</td>
<td>Contracts – Introduction</td>
<td></td>
</tr>
<tr>
<td>Oct 7</td>
<td>Agreement and Consideration</td>
<td>Assignment #2 - Handed Out</td>
</tr>
<tr>
<td>Oct 12</td>
<td>Legality, Capacity, Statute of Frauds, Parol Evidence Rule</td>
<td></td>
</tr>
<tr>
<td>Oct 19</td>
<td>Defenses to Enforcement (Contracts Debate)</td>
<td>Assignment #2 - Due</td>
</tr>
<tr>
<td>Oct 21</td>
<td>Performance and Conditions,</td>
<td></td>
</tr>
</tbody>
</table>
COURSES:

<table>
<thead>
<tr>
<th>Date</th>
<th>Topic</th>
</tr>
</thead>
<tbody>
<tr>
<td>Oct 26</td>
<td>Remedies</td>
</tr>
<tr>
<td>Oct 26</td>
<td>Torts – Introduction</td>
</tr>
<tr>
<td>Oct 28</td>
<td>Intentional Torts</td>
</tr>
<tr>
<td>Oct 28</td>
<td>Negligence and Strict Liability</td>
</tr>
<tr>
<td>Nov 2</td>
<td>Product Liability (Tort Debate)</td>
</tr>
<tr>
<td>Nov 4</td>
<td>Product Liability</td>
</tr>
<tr>
<td>Nov 9</td>
<td>Agency Law &amp; Fiduciary Duty</td>
</tr>
<tr>
<td>Nov 11</td>
<td>Employment Law</td>
</tr>
<tr>
<td>Nov 16</td>
<td>Employment Law</td>
</tr>
<tr>
<td>Nov 18</td>
<td>Assignment #3 – Handed Out</td>
</tr>
<tr>
<td>Nov 23</td>
<td>Assignment #3 – Due</td>
</tr>
<tr>
<td>Nov 25</td>
<td>Intellectual Property</td>
</tr>
<tr>
<td>Nov 25</td>
<td>Intellectual Property</td>
</tr>
<tr>
<td>Nov 30</td>
<td>Business Organizations</td>
</tr>
<tr>
<td>Dec 2</td>
<td>Business Organizations</td>
</tr>
<tr>
<td>Dec 2</td>
<td>Securities Law</td>
</tr>
<tr>
<td>Dec 7</td>
<td>US Supreme Court Debates</td>
</tr>
<tr>
<td>Dec 9</td>
<td>US Supreme Court Debates</td>
</tr>
<tr>
<td>Dec 14-18</td>
<td>Final Exams</td>
</tr>
</tbody>
</table>

COURSE READINGS: all readings are on NYU CLASSES under the RESOURCES TAB IN ALPHABETICAL ORDER unless otherwise noted

*********************************************************************

COURTS AND PRECEDENT

Section Outlines: Introduction to Law; Sources of Law

Relationship between Federal and State Courts

Stare Decisis and Precedent: Justice Cardozo on Stare Decisis, Precedent & Judicial Process


*********************************************************************

JURISDICTION, LITIGATION & ALTERNATIVE DISPUTE RESOLUTION

Section Outlines: Jurisdiction
Chart of General Litigation Process

Civil vs. Criminal Litigation

Mediation and Arbitration

**Case:** *International Shoe v. Washington* 326 U.S. 310 (1945)


“How Loser Pays” Doesn’t, Legal Affairs Magazine

******************************************************************************

**FEDERAL, STATE & INDIVIDUAL RIGHTS**

**Section Outlines:** US Constitution Federal, State & Individual Rights; The Commerce Clause

The Constitution of the United States & Amendments


******************************************************************************

**CRIMINAL LAW**

**Section Outline:** Criminal Law

Criminal Procedure Overview


“How Do They Figure the Payouts for People Who Were Wrongly Convicted?” Slate, May 18, 2007
PROPERTY RIGHTS

Section Outlines: Real Property; Landlord Tenant; Personal Property

Jeremy Bentham, Principles of the Civil Code (1854), excerpts from Part I: Objects of the Civil Law

David Hume, A Treatise of Nature (1739), excerpts from Book III: Of Morals

Standard Form of Apartment Lease New York City


CONTRACTS

Introduction to Contracts

Section Outline: Contracts

Commentaries on the Laws of England (1765-1769), Sir William Blackstone, Of Title by Gift, Grant & Contract, Book 2, Chapter 30
http://www.lonang.com/exlibris/blackstone/bla-230.htm

Cases: Marvin v. Marvin, 557 P.2d 106 (1976); Hoffman v. Red Owl Stores, Inc., 26 Wis.2d 683 (1965); Lucy v. Zehmer, 84 S.E.2d 516 (1954); Beer Capital Distributing v. Guinness Bass Import Company, 290 F. 3d 877 (7th Circ. 2002); Fletcher v. Peck, 10 U.S. 87 (Cranch) (1810)

Agreement and Consideration

Section Outline: “Agreement & Consideration”

YouTube: Pepsi Commercial http://www.youtube.com/watch?v=ZdackF2H7Qc


Legality, Capacity, Statute of Frauds & Parol Evidence Rule
Section Outlines; Capacity; Illegal Contracts; Statute of Frauds & Parol Evidence Rule

You Tube: TN Firefighters Watch Home Burn To the Ground Because Homeowner Forgot To Pay Fee http://www.youtube.com/watch?v=PwJrPa8Ps7A


Defenses to Contract Enforcement

Section Outline: Defenses to Contract Enforcement


Performance, Conditions and Remedies

Section Outlines: Performance & Conditions; Remedies

Cases: Jacob and Youngs v. Kent, 129 N.E. 889 (Court of Appeals, NY 1921); Parker v. Twentieth Century Fox, 474 P.2d 689 (1970); Hadley v. Baxendale, Court of Exchequer, All ER Rep 461 (1854); 135 East 57th Street v. Daffy's, Inc., 2011 Slip Op. 08497 (1st Dep't Nov. 22, 2011)

******************************************************************************

TORTS

Introduction and Intentional Torts

Section Outline: Intentional Torts


“Hazing Confessions of a Dartmouth Alum”, Huffington Post, April 9, 2012

The Right to Privacy, Justice Brandeis

Negligence, Strict Liability and Defenses

Section Outline: Negligence


Cases for Tort Liability Debate: Brueckner v. Norwich University, 730 A.2d 1086 (1999); Walker v. Phi Beta Sigma Fraternity, 706 So. 2d 525 (1997)

*******************************************************************************

PRODUCT LIABILITY

Section Outline: Product Liability


Express & Implied Warranties under the Uniform Commercial Code

YouTube: Wendy's Finger In Chili April 2008; Tylenol Cyanide Deaths 1982

*******************************************************************************

AGENCY LAW & FIDUCIARY DUTY

Section Outline: Agency & Fiduciary Duty

Fiduciary Duties of Directors & Conflicts of Interest


*******************************************************************************

EMPLOYMENT LAW

Section Outline: Employment Law; Key Federal Employment Discrimination Statutes
Federal Discrimination Laws Enforced by the Equal Employment Opportunity Commission (EEOC)

**Cases:** Sutton v. United Airlines, 527 U.S. 471 (1999); Harris v. Forklift, 510 U.S. 17 (1993); Chadwick v. Wellpoint, 561 F.3d 38 (2009)

YouTube: American Apparel Harassment Lawsuit March 2011


*************************************************

**INTELLECTUAL PROPERTY**

Section Outlines: Intellectual Property Outline; Intellectual Property Comparison Chart

America Invents Act of 2011

Patents, Cornell Law School Legal Information Institute

**Cases:** Mattel v. MCA Records, 296 F.3d 894 (2002); MGM Studios v. Grokster, 545 U.S. 913 (2005); Suntrust Bank v. Houghton Mifflin Co., 268 F.3d 1257 (11 Cir. 2001); Author’s Guild v. Google, District Court, SDNY, Civ. #8136 (2013)


“Don't Stop Believing in Risk of Song Sharing”, Wall Street Journal, November 5, 2010


“Disrupting Television, Signaled Out”, Economist, April 17, 2013

“In Case of Big Yale v. Tiny Yale, the Victor Kept the Name”, New York Times, July 2, 2013

BUSINESS ORGANIZATIONS

Introduction & Partnerships

Section Outlines: Partnership; Limited Partnership

Cases: Holmes v. Lerner, 88 Cal.Rptr.2d 130 (1999); Meinhard v. Salmon, 249 NY 458 (1928)


Corporations & Limited Liability Companies

Section Outline: Corporations; Limited Liability Companies

YouTube: The Corporation: What Is A Corporation?


Hillary: The Movie trailer http://www.youtube.com/watch?v=BOYcM1z5fTs

Corporate Entities, Fred Wilson, Venture Capitalist

Pros and Cons of the LLC Model


SECURITIES LAW

Section Outline: Securities Fraud


Insider Trading http://www.sec.gov


“How Wall Street Lawyer Turned Insider Trader Eluded the FBI”, Bloomberg, July 31, 2012

============================