

SYLLABUS

Advanced Topics in Corporate Finance and Reorganization (Fall 2004)

Seton Hall University School of Law

Professor Lubben

lubbenst@shu.edu

1. Introduction

This seminar will address a series of topics that are typically not covered (or only covered briefly) in the Business Associations and Corporate Finance classes. Our readings will consist of law reviews and other similar sources, and our discussions will take place primarily on the level of legal policy rather than the case-by-case focus that is more often the bread and butter of law school classes.

2. Materials; Reading Assignments

There are three required books for this class: *The Anatomy of Corporate Law - A Comparative and Functional Approach* (2004); *Corporate Bankruptcy : Economic and Legal Perspectives* (1996); and *Foundations of Corporate Law* (1993). On a few occasions, I have assigned outside readings to update or otherwise supplement the readings in the books. I will provide these readings one class before we discuss them. The reading assignments are set forth at the end of this syllabus.

3. Class Participation

Students are expected to come to class prepared to engage with their colleagues in discussing assigned readings. Discussion in a seminar should be generated from the students, not from the professor. Consequently, it is each student's responsibility to be prepared, to volunteer to speak, and to engage in dialog. It is unacceptable for students to come to this seminar unprepared.

4. Grading

Class participation will count for 10% of your grade. High grades for class participation will go to students whose comments demonstrate that they have thought carefully and critically about the assigned readings.

15% of your grade will be based on short papers (no more than 2 pages each) due by 5pm by email attachment the day before each class. In these papers you should address at least two of the readings assigned for the week and offer your critique or evaluation of authors' arguments. These papers should not merely restate the authors' arguments or otherwise summarize the readings. No short paper is due for the first class.

The remainder of your grade will be determined by the grade you receive on your AWR paper (see section 5 below).

While I reserve the right to exercise negative discretion, you will not be penalized for good faith participation – even if you don't come up with the "right answer."

This class is *not* subject to the School's mandatory attendance policy *but* your attendance inevitably will be reflected in your class participation grade. Also, I will not grade short papers from people who were not in class.

5. Office Hours; Contact Information

I am in my office most days of the week. Feel free to come by to discuss anything related to the class. Questions or requests to schedule a meeting at a specific time can be sent to my Seton Hall e-mail account shown at the top of the page (my preferred means of communication). I will also schedule appointments throughout the semester to discuss your paper.

5. Paper Requirements

75% of your grade in this class will be based on a research paper. This paper will meet the advanced writing requirement for graduation.

As part of the paper-writing process, you must also prepare and turn in (a) a memorandum explaining their chosen topic and providing all other information required under school policy, (b) an outline of your paper, and (c) a first draft of your paper. The deadlines for each of these items are indicated on the reading list. Absent my express, written, prior consent, you should not expect to "skip" any of the foregoing steps and successfully complete the seminar. I will schedule appointments to discuss each of the steps in the paper-writing process. I urge you to attend these one-on-one sessions.

Your final paper must conform to the 17th edition of the Bluebook. You must also proofread your paper for grammatical and typographical errors. If your paper clearly does not meet these requirements I will notify you via email and reduce your final paper grade by 1/3 grade (e.g., from B+ to B). You will then have 24 hours to submit a revised paper to me.

My determination of your grade and my certification that the paper fulfills the AWR requirements are separate and independent decisions. Thus, hypothetically, you could receive a passing grade for your seminar paper but not receive certification of having fulfilled the AWR requirements.

Further information about the paper requirement can be found on the school's internet site:

law.shu.edu/administration/registrar_bursar/jd_curriculum/AWR/paper_requirements.htm

6. Possible Paper Topics

Set forth below are some ideas I had for possible paper topics. Please feel free to use one of these or suggest your own topic.

- California's ban on freezeout mergers – should other states adopt it?
- Fee auditors in large chapter 11 cases – a good idea or just second-guessing the market?
- Why the Delaware Business Trust is a bust
- The necessity of payment doctrine after *Kmart* – should Congress codify it in the Bankruptcy Code?
- State-based or federal corporate law?

Reading Assignments

- Class 1: Introduction, Overview, etc.**
Anatomy Chapter 1
- Class 2: The Theory of the Firm**
Foundations part I.A
Anatomy Chapters 2 and 3
- Class 3: The Corporate Form: Limited Liability & Creditor Protection**
Foundations part II
Anatomy Chapter 4
- Class 4: The Race to the Bottom?**
Foundations part III
Mark Roe, *Delaware's Competition*

PROPOSED PAPER TOPIC DUE IN CLASS. In addition to the general school requirements for any AWR proposal, please be sure to include a description of your paper topic, the areas you have already researched, what additional research you plan to do, what you think your thesis might be, and how your topic fits within the scope of the course. **Please also include a brief description of any related papers you have previously written.**

- Class 5: The Efficacy and Efficiency of Shareholder Oversight**
{Paper topic meetings throughout this week}
Anatomy Chapter 6
Foundations part V.B
- Class 6: The Market For Corporate Control**
Anatomy Chapter 7
Foundations part VI
- Class 7: Securities Regulation: Is it needed?**
Anatomy Chapter 8
Foundations part VII

OUTLINE DUE IN CLASS. This should clearly describe the topic, your research findings to date, your argument, and your conclusions. The more detail you provide, the more help I can offer.

- Class 8: Chapter 11 as the "Creditors' Bargain"**
{Outline meetings throughout this week}
Corporate Bankruptcy part II

Class 9: The Costs of Chapter 11
Corporate Bankruptcy articles nos. 16, 17, 18
Lynn M. Lopucki and Joseph W. Doherty, *The Determinants of Professional Fees in Large Bankruptcy Reorganization Cases*
Arturo Bris et al., *The Costs of Bankruptcy: Chapter 7 Cash Auctions vs. Chapter 11 Bargaining* (Draft of March 15, 2004).

Class 10: Alternatives to Chapter 11
Corporate Bankruptcy part V

Class 11: Secured Lending and Securitization – Contracting out of Chapter 11?
Corporate Bankruptcy No. 3
Lynn M. LoPucki, *The Unsecured Creditor's Bargain*
Steven L. Schwarcz, *Securitization Post-Enron*

DRAFT DUE BY 5:00 P.M. MONDAY OF THIS WEEK. You should make this version of your paper as complete and polished as possible. "Bluebooking" should be close to perfect, typos should be minimal, etc. Papers should be in hard copy and left in my faculty mailbox on the 5th floor.

Class 12: The Race Redux – Chapter 11 and Venue
{Paper draft meetings throughout this week}
Lynn M. LoPucki and Sara D. Kalin, *The Failure of Public Company Bankruptcies in Delaware and New York: Empirical Evidence of a "Race to the Bottom"*
Robert K. Rasmussen and Randall S. Thomas, *Timing Matters: Promoting Forum Shopping by Insolvent Corporations*

Class 13: Lessons from History
Douglas G. Baird & Robert K. Rasmussen, *Control Rights, Priority Rights, and the Conceptual Foundations of Corporate Reorganizations*
Stephen J. Lubben, *Railroad Receiverships and Modern Bankruptcy Theory*

Class 14: Did Chapter 11 Heal Itself?
Baird & Rasmussen, *The End of Bankruptcy*
Jay Lawrence Westbrook, *The Control of Wealth in Bankruptcy*

FINAL DRAFT DUE. You may turn in your paper any time before 5 p.m. on December 15, 2004. Please give me both a hard copy (in my faculty mailbox on the 5th floor) and an electronic (email) copy.