PEPPERDINE UNIVERSITY
THE GEORGE L. GRAZIADIO
SCHOOL OF BUSINESS AND MANAGEMENT

DR. McCORD, J.D. M.B.A.

MBFE 653.32

LEGAL, POLITICAL, ETHICAL AND REGULATORY ISSUES OF MANAGEMENT

SUMMER 2004

TUESDAYS

6:00-10:00 pm

ENCINO CAMPUS

SYLLABUS

**PLEASE SEE: READING ASSIGNMENTS DUE ON FIRST CLASS!**
MBFE 653.32
McCord

SYLLABUS/CLASS “RULES”

PROFESSOR: Dr. Linnea B. McCord, Attorney at Law, J.D., M.B.A.
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CLASS: Tuesdays: 6:00 - 10:00 PM
Encino Campus.


COURSE DESCRIPTION: This course develops and uses critical thinking skills to examine the environment of legal, political, ethical and regulatory processes as they pertain to profit and nonprofit organizations, and their impact on management decisions in relation to the general public, employees, customers, competitors, suppliers, and the wider national and international communities. Broad emphasis is placed on the 3-part model of: issue spotting, risk assessment and risk management. Emphasis also is given to specifics of: formulating, negotiating and enforcing contracts; anticipating, neutralizing and defending against liabilities; evaluating the various forms of business ownership and investment modes; complying with government regulations and decisions; and working with attorneys and the legal/regulatory system. Emphasis is placed throughout the course on the ethical underpinnings of American business law.
**COURSE OBJECTIVES:**

1. Demonstrate a fundamental understanding of the legal, political, ethical and regulatory issues that impact business.
2. Develop critical thinking and analytical skills.
3. Improve oral and written communication skills.
4. Develop an ability to spot business trends.
5. Learn “how to learn” (outlining) - an essential skill for 21st century knowledge workers whose skills may have a shelf-life of only 18 months. Outlining is a skill that can be used in any class; students using outlining generally significantly improve their grades in all classes.
6. Understand the importance of ethical business practices and the legal and economic consequences of failing to be ethical.

**CLASS PREPARATION & PARTICIPATION:**

ASSIGNED READING MUST BE COMPLETED BEFORE THE CLASS FOR WHICH IT IS ASSIGNED.

STUDENTS WHO HAVE NOT DONE THE ASSIGNED READING PRIOR TO THE FIRST CLASS MEETING WILL BE STRONGLY ENCOURAGED TO DROP THE CLASS.

This class is a discussion class. Students are expected to come to class prepared so that they can fully participate in class discussions. This course requires extensive preparation which must be completed in advance of the class. Students must stay current in all assignments. This class requires that a student have both knowledge and skill, which can only be achieved over time. Students planning to “cram” at the last minute will be unpleasantly surprised.

**CONDUCT:**

Students are expected at all times to conduct themselves in class as business professionals; that is, conduct yourself using the same tone and manner you would use addressing the CEO and/or Board of Directors of a company. Taping or recording of lectures is not permitted for any reason. All cell phones must be turned off and all internet cards must be disabled throughout each class. Any pagers must be turned to the “vibrate” setting or turned off during class. Failure to comply with these rules may result in a student’s grade being lowered a full letter grade. For a
discussion of this topic, students should review the current student Academic Catalogue.

**POLICY ON DISABILITIES:** Students should refer to their current student Academic Catalogue for a discussion of this topic.

**ABSENCES:** If you are absent from a class, you are responsible for obtaining the notes/instructions for that class from one of your classmates and for being prepared for the next class meeting you attend. On the first day of class, you should obtain the telephone numbers & email addresses of two fellow students to enable you to obtain any assignments you miss.

**EXAMINATIONS:** There are 12 quizzes, beginning in week 3. These quizzes begin promptly at 6:00 pm (no time extensions for traffic snafus so leave for class early!). The student’s two lowest scores on these quizzes will not be counted in the final grade. There are no make-up quizzes. Any student missing a quiz will receive a grade of “0” for that quiz. Students are responsible for material delivered in class by the professor, assigned chapters in the text and any other selected readings as assigned.

**OUTLINING & CASE BRIEFS:** These are optional and highly recommended. Doing these right takes a substantial amount of time. Review the sample outline and case brief attached at the end of this syllabus “Book-briefing” means to brief your case in the book itself (e.g., in the margins, etc.) so that, if called upon, you can immediately recite the issue, facts and the like.

**GRADING:**

a. Grades will be assigned on a plus(+) / minus(-) basis.

b. Grades are not arrived at through negotiation. The only reason a grade will be changed is if there is a mathematical error in the calculation.

c. Failure to be prepared for class and excessive absences may lead to a grade being lowered. This is a discussion class; students are expected to come to class and be prepared.

d. Final grades will be assigned as follows:

90% Quizzes (top 10 scores out of 12 quizzes)
10% Individual Participation/Attendance = 100%

e. Any instance of cheating will result in a grade of “F” for the course and the student will be reported to the Ethics Committee for further disciplinary action, as appropriate.

f. **Once a quiz begins, no one may leave the room until such person’s quiz is completed and has been turned in to the professor.** All materials will be placed on the floor and there will be no talking until the last person has completed his or her quiz.

g. Each Quiz will be 20 questions (questions can be true/false, multiple choice, fill in the blank, etc).

Grading Scale:
For each Quiz:  
20 A  
19 A-  
18 A-  
17 B+  
16 B+  
15 B   
14 B   
13 B-  
12 B-  
11 C+  
10 C   
Below 10 – Not Passing

h. Grades will be assigned to students on their top 10 scores on the quizzes (the two lowest scores will be not be used in calculating the final grade in the class). Anyone who misses a quiz for any reason will be given a 0 for that quiz. **THERE ARE NO MAKE-UP EXAMS FOR ANY REASON.**

Communications between Professor and Students:

a. Students **are required** to use their Pepperdine email accounts. All communications between the
professor and the students will be made to the students’ Pepperdine email accounts.

When communicating with the professor by email, please identify in the subject heading THE NIGHT OF YOUR CLASS AND LOCATION.

Students are expected to respect personal honor and the rights and property of others at all times. The University rules on conduct can be found in the 2002 Academic Catalog. Additionally, students with disabilities are encouraged to familiarize themselves with the University’s Policies on Disabilities in the Catalog or contact the University’s equal opportunity officer, Dr. Calvin H. Bowers, at (310) 456-4208.
# SCHEDULE OF CLASSES

<table>
<thead>
<tr>
<th>WEEK</th>
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| 1    | May 4    | *Introduction.*
|      |          | Read: Chapters 1, 2 & 4 \**PRACTICE QUIZ***                                                        |
| 2    | May 11   | *Constitution and Crimes*\* Read: Chapters 3 & 5. \*Practice Quiz: Ch. 1, 2, & 4*                     |
| 3    | May 18   | *Torts.*\* Read: Chapter 6.\* Quiz: Ch. 3 & 5*                                                       |
| 4    | May 25   | *Negligence, Strict Liability & Product Liability*\* Read: Chapter 7 & 20\* Quiz: Ch. 6*             |
| 5    | June 1   | *Contracts.*\* Read: Chapters 9 thru 11.\* Quiz: Ch. 7 & 20*                                         |
| 6    | June 8   | *Contracts.*\* Read: Chapters 12 thru 14.\* Quiz: Ch. 9 thru 11*                                    |
| 7    | June 15  | *Contracts.*\* Read: Chapters 15 thru 17.\* Quiz: Ch. 12 thru 14*                                    |
| 8    | June 22  | *Intellectual Property and Unfair Competition*\* Read: Chapter 8.\* Quiz: Ch. 15 thru 17*           |
9       June 29

Agency Law.
Read: Chapters 35 & 36.
Quiz: Ch. 8

10      July 6

Business Org.
Read: Chapters 37 thru 39
Quiz: Ch. 35 & 36

11      July 13

Business Org.
Read: Chapters 40 through 42.
Quiz: Ch. 37 thru 39

12      July 20

Business Org.
Read: Chapters 43 through 45.
Quiz: Ch. 40 thru 42

13      July 27

Labor & Employment Law.
Read: Chapters 51
Quiz: Ch. 43 thru 45

14      Aug. 3

Legal and Professional Responsibilities of Auditors, Consultants, and Securities Professionals
Read: Chapter 46.
Quiz: Ch. 51
CHAPTER 1: THE NATURE OF LAW.

I. TYPES AND CLASSIFICATIONS OF LAW.

a. Types of Law.

1. Constitutions.

   A. Exists at both state and federal levels.

      (i) Separation of powers: US Constitution:

         (I) establishes a Congress and gives it power to legislate (make law) in certain areas; (II) provides a chief executive to execute/enforce the laws; and (III) helps create a judiciary to interpret the laws.

         (ii) Federalism Principle: US Constitution structures the relationship between federal govt. v. the states, respecting states’ power to legislate in certain areas.

   B. 2 functions:

      (i) Sets up structure of government for political unit it controls.

      (ii) Prevents other governmental units from taking certain actions by passing laws.

         * Example: prohibit government action restricting certain individual rights (e.g., Bill of Rights).

2. Statutes.

   A. Federal: Laws created by Congress.

   B. State: Laws created by a state legislature.


   A. Made and applied by judges as they decide cases not governed by statutes, etc.

   B. Theoretically, only applies at state level.

   C. Originated in medieval England.

   D. Stare decisis doctrine (let the decision stand).

   E. Pervades rules of torts, contracts and agency.
4. **Equity.** Provides discretionary justice in situations where common law rules would produce unfair results.

   A. **History.** Began as a separate equity court, which heard cases for which no adequate remedy at law was available. Courts of law and equity now merged in most states, and available remedies now may combine both law and equity. Also, now many equitable principles have blended together with common law/statutory rules.

   B. Remedies provided were unavailable in rigid common law courts.

      (i) Most important remedy: **Injunction.**

      (ii) Other equitable remedies include:

         (I) **Specific performance.** Require performance under the contract.

         (II) **Recession.** Rescind contract.

         (III) **Reformation.** Rewrite contract to reflect parties’ intentions.

5. **Administrative regulations & decisions.**

   A. Federal/State agencies are delegated power from the legislature.

   B. Agencies usually created via statute specifying areas in which agency can make law and scope of power.

   C. 2 kinds of law made by administrative agencies:

      (i) **Administrative regulations.** Appear in precise form in single authoritative source.

      (ii) **Agency decisions.** Internal court structure hears cases arising under statutes and regulations the agency enforces.

6. **Treaties.**

   A. Made by president with foreign governments.

   B. Approved by 2/3 of US Senate.

7. **Ordinances.** Enactments of municipalities (which exercise limited functions of state government).

8. **Executive orders.**

   A. Issued by President or state’s governor.

   B. This power usually results from a legislative delegation.
b. **Priority Rules.** (see, chart p. 5)

1. **Federal supremacy** (i.e., US Constitution, federal laws and treaties trump state laws.).
2. **Constitutions** (i.e., trump all other laws within their domain).
4. **State/Federal statutes** (i.e., state/federal statutes defeat conflicting laws (such as agency regulations) depending on legislative delegation for validity).
5. **State statutes** (and laws derived thereunder) trump inconsistent common law rules.

c. **Classifications of Law.**

1. **Criminal v. civil law.**
   
   A. **Criminal Law:**
   
   (i) Government prosecutes someone for committing a crime.
   (ii) Creates duties owed to the public.
   (ii) **Penalties:** Includes imprisonment & fines, among other things.

   B. **Civil Law:**

   (i) Mainly governs obligation between private parties.
   (ii) Government may be treated as a private party to a civil suit.
   (iii) **Penalties:** $ Damages and equitable relief.

2. **Substantive v. procedural law.**

   A. **Substantive Law:** Sets rights & duties of people as they act in society.

   B. **Procedural Law:** Controls behavior of government bodies in establishing and enforcing substantive law.

3. **Public v. private law.**

   A. **Public Law:** Regards powers of government, and relations between government and private parties (e.g., Con Law, Admin Law and criminal Law).

   B. **Private Law:** Established framework of legal rules enabling private parties to set rights/duties vis-à-vis each other.

II. **JURISPRUDENCE/PHILOSOPHY OF LAW.** (see, chart p. 7)

a. **Legal Positivism.**

1. Law = The command of a recognized political authority.
2. Positive laws are valid regardless of morality.
3. Positivist judges tend to enforce laws as written.
b. **Natural Law.**
   1. Merges law and morality. Some higher law binds all people.
   2. Unjust positive laws are not law (i.e., should not be obeyed).
   3. Natural law judges more likely to let morality influence decisions.

c. **American Legal Realism.**
   1. Key: *Law in action* (i.e., the behavior of those enforcing and interpreting positive law).
   2. Law = Behavior of public officials (e.g., judges) as they deal with matters before the legal system.
   3. Positive law and morality are not most important in determining what the law is.

d. **Sociological Jurisprudence.**
   1. Generic label to describe several different approached whose common aim is to examine law within its social context.
   2. No distinctive sociological definition of law.
   3. Practical implication: Tends to urge that law must change in accord with social values.

   *Rochin* case is example of liberalizing movement re criminal procedure in 1960’s.

III. **THE FUNCTIONS OF LAW.**

a. **Instrumentalist view:** As instrument for accomplishing chosen purposes.
   1. Pro: Adaptable to further social good.
   2. Con: Unpredictable and unstable because of adaptations’ outcome.

b. **Social functions** (always a tradeoff between conflicting ends):
   1. Peacekeeping.
   2. Check government power/promote personal freedom.
   3. Facilitate planning and realization of reasonable expectations.
   4. Promote economic growth via free competition.
   5. Promote social justice.
   6. Protect the environment.

IV. **LEGAL REASONING.**

a. **Basically deductive/syllogistic.**
   1. Legal rule: Major premise.
2. Facts: Minor premise.
3. Result: Product of combining the two.

b. **Case Law.** In cases governed by common law, courts look to prior cases for legal rules.
   1. *Stare decisis* doctrine: Like cases should be decided alike. Standard for choosing/applying prior cases. Prior case control decision.
      *Note:* Courts can overrule prior decisions.
   2. Distinguish cases with disparate facts. Prior case will not control decision.
   3. Determining whether a case is sufficiently similar to be controlled by prior decisions is a source of uncertainty re common law. Also gives common law adaptability to social conditions.
      *McPherson* case: Illustrates the common law’s adaptability over time.

c. **Statutory Interpretation.**
   1. Statutes often are ambiguously written or fail to anticipate certain situations.
   2. Various techniques exist to interpret statutes, which may yield different results:
      A. Plain meaning rule. If statute’s words have a clear common meaning, the court should apply the statute according thereto, period.
      B. Legislative history. Used in 2 overlapping ways:
         (i) Determine what legislature thought re specific meaning of statutory language; and
         (ii) Determine what legislature thought re overall goal of the statute.
         *Weber* case.
      C. General public purpose. The widely accepted general notions of public policy.
      D. Prior interpretations. Follow prior cases/admin decisions.
      E. Maxims. General rules of thumb.

d. **Limits on Courts’ Powers.**
   1. Written decisions are subject to scrutiny.
   2. Lower courts may fear being overruled on appeal.
   3. Judges tend to respect established precedents and legislatures’ will.
   4. Political factors.
   5. Courts can only decide genuine cases presented to it with real opposing parties.
CASE BRIEF FORMAT

X (Plaintiff) v. Y (Defendant)
State Z Supreme Court (Decision Date)

Issue: Whether X may recover from Y for negligence where X signed a disclaimer of liability in favor of Y?

Rule of Law: State “Z” negligence law.


Facts: X went on a bungee jumping expedition with Y company. X bumped into a bridge while dangling from the bungee cord because Y negligently placed X in the wrong spot to jump off.

Holding: No. X loses.

Rationale: X knowingly and effectively disclaimed any liability of Y for Y’s negligence. Y’s disclaimer is effective to shield Y from liability for negligence.