

Professor Lydie Cabrera Pierre-Louis
Agency, Partnerships &
Unincorporated Associations
Spring 2011

UNIVERSITY OF CINCINNATI COLLEGE OF LAW

Agency, Partnerships & Unincorporated Associations

Course Number: 24 BCL 701 001

SYLLABUS PART I

I. The Basics

A. The Required Texts and Documentary

The required text is Melvin Aron Eisenberg, *Corporations and Other Business Organizations, Cases and Materials (Unabridged Version)* (9th ed., Foundation Press).

Melvin Aron Eisenberg, *Corporations and Other Business Organizations, Cases and Materials* (2009 Supplement).

Aron Eisenberg, *Corporations and Other Business Organizations: 2007 Statutes and Rules* or latest version available.

Lydie Cabrera Pierre-Louis, *Introduction to Corporate Law Primer*. (Available on TWEN). Please read the Primer by the February 4th class.

From time to time, throughout the semester course certain information and/or documents will be posted on TWEN. Students are responsible for logging onto and downloading the requisite documents for class.

Documentary: *The Corporation*, a film by Mark Achbar, Jennifer Abbott and Joel Bakan. This documentary is available at the law school library, Reserve Desk, or at a local video store. It can also be purchased with an online book retailer. We will have a movie night next Thursday, January 20th to view and discuss the documentary.

Documentary: *Enron, The Smartest Guys in the Room*. This documentary is available at the law school library, Reserve Desk, or at a local video store. It can also be purchased with an online book retailer. Please note that we will have a movie night on Wednesday, April, 20th to view and discuss the documentary.

B. Hours, Office Number and Email

Class Hours/Location:	Wednesday:	9:00 A.M. – 10:25 A.M.	Room 114
	Friday:	10:40:A.M. - 12:05 P.M.	Room 114

Office Hours	Monday:	2:00 P.M. - 4 P.M.,
	Wednesday:	10:30 A.M. - 12:30 P.M., and
	Thursday:	12:05P.M. - 2:05 P.M.

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I am also available to meet with you by appointment.

Location: Professor Paul Caron's office.

Office Number: 513.556.0027

Cell Number: 347.260.0480—Please feel free to use it. I have unlimited minutes, and text which can be a dangerous thing in the hands of a New York Attorney.

Email: lydie.cabrera@uc.edu.

C. Quizzes, Final Exam, and Bump-Ups & Bump-Downs

The course grade will be based upon:

(1) closed book final exam (80%) and,

(2) scheduled quizzes (10%), and

(3) class participation: (1) volunteering to be on the *On Call List*, and (2) commenting on blog posts for the *Corporate Justice Blog* and/or *Nuestras Voces Latina Blog* (a Latino law professors blog) available at <http://corporatejusticeblog.blogspot.com> and <http://nuestrasvoceslatinas.com>, respectively (10%).

Quizzes may be a combination of short answer questions, true/false and/or multiple choices. The quizzes are given the first ten (10) minutes of class on alternating Thursdays commencing on February 3rd, the following quiz will be on February 17th, then on March 3rd, and so on and so on. Students will have the opportunity to dismiss, disregard, throw-out two (2) of their lowest quiz grades.

The final exam will consist of multiple-choice questions and One essay.

Professor Cabrera Pierre-Louis in her sole discretion reserves the right to increase (bump-up) any grade to the next highest grade immediately preceding a student's raw tabulated grade, based upon a student's excellent class participation during the semester. The inverse is also true, the Professor in her sole discretion also reserves the right to decrease (bump-down) any grade to the next lowest grade immediately preceding a student's raw tabulated grade, based upon a student's poor class performance.

D. Attendance, Lateness, Assigned Seats, "On Call," Not Prepared

Please comply with the law school's attendance policy. Kindly consult the *Student Handbook* regarding absences and lateness.

There is an assigned seating system for this course. You may select your seat on the first day of class. Once your seat is selected, it remains yours for the entire duration of the course. Please print your name on the class seating chart before leaving class on the first day.

Each class, Professor Cabrera Pierre-Louis will seek approximately four (4) students to

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volunteer to be *On Call* for the next class to: (1) provide the briefing for cases, (2) answer hypos, or (3) provide working definitions of legal and financial terms that appear in the readings. The remainder of the class should also be prepared to answer questions as well. The students who consistently volunteer are the only students who will be considered for “bump ups.” The more a student volunteers to be “on call” the more likely it is that the student will be considered for a “bump-up.” To receive a “bump up” is extremely competitive; approximately 10% of the class will receive a “bump up”.

Law school is a part of life, and sometimes life happens. It is conceivable that you may not be prepared for a particular class because life happened to you. As such, I have built into the class two “not prepared/ I pass professor, thank you so much for understanding that life happened to me” options. However, if you are called on and you are not prepared you will automatically be placed on the *On Call List* for very next class. If you are absent on a day that you were scheduled to be “On Call,” please make arrangements to have a colleague present in your place. Furthermore, you are permitted two (2) “not prepared/ I pass professor, thank you so much for understanding that life happened to me,” freebies for the semester. If you are “not prepared” more than two (2) times during the course of the semester, it will negatively affect your grade downgrade.

E. Business Law Society (BLS) and Investment Club

Students that are interested in starting a Business Law Society at the law school should feel free to chat with Professor Cabrera Pierre-Louis after class. One project the BLS can work on this semester is to accept an invitation to assist the City of Cincinnati Planning & Building Department to work with them in writing a policy opinion or drafting new legislation. Another project is the Financial Literacy Project sponsored by the Federal Reserve Bank and the Federal Deposit Insurance Corporation. Yet, another project is the creation of a business law newsletter which would provide brief updates and commentary on legal issues for the private/public business and legal communities.

Students that are interested in meeting informally to discuss investing strategies, opportunities in the markets or simply to chat about what is happening in the financial papers should chat with Professor Cabrera Pierre-Louis after class. If there is sufficient interest we can possibly create a more formal investment club. Corporate law is a fascinating area. Professor Cabrera Pierre-Louis will try and introduce you to many of its variances.

F. No Computer Policy

Professor Cabrera Pierre-Louis regrets to inform you that laptops are NOT allowed in this course.

Professor Cabrera Pierre-Louis is happy to inform you that as a result of the no computer policy, class discussions will be interactive, lively, and at times quite interesting. At the end of the day, it means statistically, arguably you should receive a better grade in this course than you would have received if laptops were allowed. Professor Cabrera Pierre-Louis is always looking out for you guys.

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II. Course Substance

A. Course Description

The study of agency law which is the umbrella conceptual framework for corporate law and its various facets including but not limited to: (1) the creation of agency relationship; (2) obligations of agents; (3) the responsibilities of principal; (4) the duties to third-parties; (5) limited liability; (6) control; (7) partnerships; (8) limited liability companies; (9) fiduciary duties; (10) private equity funds is a fascinating area of law. Agency law is all around us it affects us in everything that we do; not simply whether you have a brokerage account to trade stocks, bonds, futures et cetera. It affects you specifically if you have student loans, credit cards, checking/savings accounts, lease/finance a car, have a mortgage, and perhaps one day own a business. Sample corporate agreements, which contain agency principles and provisions are included in the *Introduction to Corporate Law Primer* for educational purposes only. Finally, we will use two documentaries: (1) *The Corporation*, as an overview of the development of corporate law; and (2) the story of Enron Corporation—*The Smartest Guys in the Room*, as the model of what can go very, very wrong with a corporation. Quizzes and the final exam multiple choice questions may incorporate certain material contained in the documentaries.

B. Objective

Corporate attorneys are skilled negotiators, contract drafters, and business advisors. We will review various corporate and financial documents during this course which may include, but is not limited to bylaws, operating agreements, minutes, and partnership agreements et cetera to ensure that you have the requisite skills to properly analyze corporate documents, and financial documents to effectively represent corporate clients.

C. Business Journals and/or Cable News Shows

It is highly recommended that each student should read a business newspaper or journal such as the Wall Street Journal, the Business Section of the New York Times, the Financial Times or Business Week on a daily or at a minimum weekly basis. In addition, cable/satellite news programs such as Mad Money, On the Money, or Fast Money, which are all CBNC programs are highly recommended.

Please Note: The final exam essay question will be “ripped from the headlines” from recent corporate news coverage. Professor Cabrera Pierre-Louis strongly encourages students to stay abreast of current corporate law occurrences that appear in the financial news.

D. Pre-Requisites

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All material discussed in the casebook within the page range provided for a particular assignment should be read by the students prior to attending class including the cases, statutory sections, definition, narratives and problems. References to California Statute Sections in your textbook should be replaced with references to Ohio Business Corporations Act Sections. Professor Cabrera Pierre-Louis will provide the Ohio Business Corporations Act Sections as needed.

Please note the Professor Cabrera Pierre-Louis has taken poetic license with the sequence in which corporate concepts are presented in the book that means sometimes we will not cover material in the numeric page sequence, in which it is presented in your textbook. For example, the more complicated aspects of the agency law that transition into corporate structure are discussed during the midpoint of the course when students are more familiar with the nuances of agency concepts within a corporate structure. Hopefully, the method to my proverbial madness will make learning the material easier for you.

Please note that given the time restrictions of only one hour and 25 minutes per class, Professor Cabrera Pierre-Louis may not be able to cover all of the readings during class time. Students are responsible for reading regardless of whether the material was actually reviewed during class time. Please set up a time to speak to the Professor Cabrera Pierre-Louis during office hours or by appointment, if certain legal or business concepts seem unclear or if the Professor Cabrera Pierre-Louis is unable able to review all of the assigned reading during a particular class. Professor Cabrera Pierre-Louis' office door is always open to students who seek to demystify the nuances of the law.

E. Review Sessions

Professor Cabrera Pierre-Louis is happy to schedule review sessions throughout the semester at times that are convenient for the majority of the students. There are two review sessions built into the course schedule. If the class desires additional review sessions, they will be scheduled at a time separate from class time, and can run for as long or as short as students would like them to be. Please inform Professor Cabrera Pierre-Louis when the class would like to schedule additional review sessions.

Course readings:

Date	Topics Covered
First Day of Class Assignment 1 January 19th	Review of Syllabus and Course Requirements Please read and be prepared to discuss: <i>Corporate Law: A Historical Perspective of the Supreme Court's Corporate Law Decisions from the Nineteenth Century to the Present</i> Available at: Social Science Research Network (SSRN) at:

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Date	Topics Covered
	http://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=944111
Assignment 2 January 21st	<p><u>Chapter I -Agency</u></p> <p>Section1—2</p> <p>Introduction-</p> <p>Authority</p> <p>P. 1- 19 and</p> <p>Additional readings on TWEN</p>
Assignment 3 January 26	<p><u>Chapter I</u></p> <p>Section 3—4</p> <p>Agent’s Duty of Loyalty-</p> <p>An Introduction to Financial Statements</p> <p>P. 19- 30</p> <p>and</p> <p>Additional readings on TWEN</p>
Thursday, January 27	
<p>Movie Night 6 PM - 8:00 PM</p> <p>(Popcorn will be provided by Professor Cabrera Pierre-Louis)</p>	<p>Documentary: <i>The Corporation</i></p>
Assignment 4 January 28th	<p><u>Chapter II-Partnership</u></p> <p>Section 1-3</p> <p>Partnership Formation-</p>

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Date	Topics Covered
	<p>The Ongoing Operation of Partnerships</p> <p>P. 31-49</p> <p>and</p> <p>P. 1-10 (2010 Supplement). Available on TWEN.</p>

<p>Assignment 5</p> <p>February 2nd</p>	<p><u>Chapter II</u></p> <p>Section 3- 6</p> <p>The Ongoing Operation of Partnerships-</p> <p>Partnership Interest and Partnership Property</p> <p>P. 50-71</p>
<p>Assignment 6</p> <p>February 4th</p>	<p><u>Chapter II</u></p> <p>Section 7-8</p> <p>The Partner's Duty of Loyalty-</p> <p>Dissolution (I): Dissolution By Rightful Election</p> <p>P.71 – 91</p> <p>(Read through the <i>Rosenfeld vs. Cohen</i> case)</p>
<p>Assignment 7</p> <p>February 9</p>	<p><u>Chapter II</u></p> <p>Section 8-9</p> <p>Dissolution (I): Dissolution By Rightful</p>

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	<p>Election –</p> <p>Dissolution (I): Dissolution By Judicial Decree</p> <p>P. 91-105</p> <p>(Begin with the Note on Partnership Breakup under UPA)</p>
<p>Assignment 8</p> <p>February 11th</p>	<p><u>Chapter VII-Alternative Forms of Business Organization: Limited Partnerships, Limited Liability Companies and Limited Liability Partnerships</u></p> <p>Section 1</p> <p>Limited Partnerships</p> <p>P. 466-483</p>
<p>Assignment 9</p> <p>February 16th</p>	<p><u>Chapter VII</u></p> <p>Fiduciary Obligations-Limited Liability Companies</p> <p>Section 1(e)-Section 2</p> <p>P. 483-505</p>
<p>Assignment 10</p> <p>February 18th</p>	<p><u>Chapter VIII-Section 1(a)</u></p> <p>Limited Liability Entities-</p> <p>Duty of Care</p> <p>P. 505-526</p>
<p>Assignment 11</p> <p>February 23rd</p>	<p><u>Chapter VIII</u></p> <p>Section 1(a)-1(b)</p> <p>Duty of Care-</p>

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	<p>The Business Judgment Rule</p> <p>P. 527-562</p>
<p>Assignment 12</p> <p>February 25th</p>	<p><u>Chapter VIII</u></p> <p>Section 1 (c)</p> <p>Duty to Ensure Corporation has Effective Internal Controls-</p> <p>Liability Shields</p> <p>P. 562-587</p>
<p>Assignment 13</p> <p>February March 2nd</p>	<p><u>Chapter IX-Duty of Loyalty</u></p> <p>Section 1-2</p> <p>Self-Interested Transactions-</p> <p>Duty of Controlling Shareholder</p> <p>P. 606-627</p>
<p>Assignment 14</p> <p>March 4th</p>	<p><u>Chapter IX-Duty of Loyalty</u></p> <p>Section 2</p> <p>Self-Interested Transactions-</p> <p>Duty of Controlling Shareholder</p> <p>P. 628-641, and</p> <p><u>Chapter IX-Duty of Loyalty</u></p> <p>Section 4</p> <p>Use of Corporate Assets, Competition with Corporation-</p>

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	Duties of Controlling Shareholder P. 654-666
Assignment 15 March 9 th	<u>Chapter IX-Duty of Loyalty</u> Section 5 Use of Corporate Assets, Competition with Corporation- Duties of Controlling Shareholder P. 666-685
Assignment 16 March 11 th	<u>Chapter IX-Duty of Loyalty</u> Section 5 Use of Corporate Assets, Competition with Corporation- Duties of Controlling Shareholder P. 685-709
Assignment 17 March 16 th	Review Session
Assignment 18 March 18 th	<u>Chapter IX-Duty of Loyalty</u> Section 3. Compensation P. 641-654 Drafting Assignment
March 21-25	<u>No Class!!!</u> <u>Enjoy Springbreak</u>

The syllabus for the remainder of the class will be posted on March 18th on TWEN.