UNIVERSITY OF WASHINGTON SCHOOL OF LAW

COURSE SYLLABUS

for

LEGAL PROBLEM SOLVING IN THE CONTEXT OF CORPORATE RISK

Spring 2018

Tuesday and Thursday, 8:50 AM -10:20 AM, March 27-May 17, 2018

Room: 117

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1. COURSE DESCRIPTION

Clients engage lawyers to help them solve legal problems. This course focuses on legal problem solving in the corporate context, and, in particular, resolution of legal risks at the intersection of the duties of officers and directors, corporate governance, securities regulation, the FCPA, internal investigations, whistleblowers, corporate therapeutics, D&O insurance, and related issues. Solving such problems requires navigating legal cross-currents, business realities, and the inter-personal dynamic among clients whose interests are not always perfectly aligned. Students' legal problem solving knowledge and skills will be developed through a combination of assigned readings on the relevant substantive law, class discussion of case studies and hypotheticals, role play, and problem solving exercises.

2. GOALS OF COURSE

- Develop an understanding of the role of a lawyer as a problem
- Develop practical ability to weigh competing legal, business, and inter personal considerations in providing useable
- Develop an ability to navigate the cross-currents when legal considerations (e.g., securities law, employment law, insurance law) or different legal proceedings (e.g., contemporaneous securities fraud litigation, derivative action, and SEC investigation) push in different
- Learn to analyze alternative courses of action in the context of multi-faceted corporate risks, and to present those alternatives to client decision

3. READING MATERIALS

- Securities Litigation: A Practitioner’ s Guide (Practicing Law Institute 2016)
- Shareholder Litigation in Washington (Washington State Bar Association 2014)
Federal Securities Law Liability of Underwriters. Accountants & Attorneys (G. Greer and Rugani; Bloomberg BNA) (Assigned Readings Available on Course Website)

U.S. Department of Justice Memorandum re "Individual Accountability for Corporate Wrongdoing" (September 9, 2015) (a/k/a "The Yates Memo") (Available on Course Website)

S. Department of Justice Memorandum re "Principles of Federal Prosecution of Business Organizations" (December 12, 2006) (a/k/a "The McNulty Memo") (Available on Course Website)

Whistleblowers Protection Statute and SEC Implementation Regulations (Available on Course Website)

Actual and Hypothetical Fact Scenarios Available on Course Website

4. COURSE METHODOLOGY

Seminar discussion of fact

Case study presentations by 2-3 person student teams of alternative courses of action and recommendations to clients

5. EVALUATION

It is essential that students come prepared for each seminar discussion Participation in the seminar is important both for learning and grading purposes.

Final grades will be based:

i. Seminar preparation, attendance and participation -33.3%

ii. Team presentations -33.3%

iii. Final individual presentation (20 minute PowerPoint Presentation) scheduled during finals week -33.3%

6. OFFICE HOURS

One hour after each Tuesday class or by appointment

COURSE OUTLINE

(Subject to adjustment for both timing and content during quarter)

WEEK 1 (March 27 and 29)

Required reading: Shareholder Litigation in Washington State, Chapter 2 (Duties of Officers and Directors) and Chapter 3 (Derivative Lawsuits); Hypothetical Scenario 1 (Galaxy Tech) (posted to class website)

Seminar focus:

i. framework for legal problem solving

ii. overview of corporate actors, responsibilities, and liability risks

iii. group analysis of Hypothetical Scenario 1

1. WEEK 2 (April 3 and 5)

Seminar focus:

i. overview of liability under key federal securities laws

ii. group analysis of Hypothetical Scenario 2

1. WEEK 3 (April 10 and 12)

Required reading: S.DOJ Memorandum re "Principles of Prosecution of Business Organizations" (posted to class website); U.S.DOJ Memorandum re "Individual Accountability for Corporate Wrongdoing" (posted to class website); SEC Publication "How Investigations Work" (posted to class website); Securities Litigation: A Practitioner’s Guide, Section 14:2 (SEC Investigations); Hypothetical Scenario 3 (posted to class website)

Seminar focus:

i. overview of SEC investigations

ii. group analysis of Hypothetical Scenario #3a & Hypothetical Scenario #3b

4. WEEK 4 (April 17 and 19)

Required reading: Section 21F of Securities Exchange Act of 1934 (Securities Whistleblower Incentives and Protection); Sec. 806 of Dodd Frank Act (18 U.S.C.Sec.1514(A)); SEC regulations promulgated pursuant to Section 21F (posted to class website); Section 14:2.2(8)-Whistleblowers, at pp. 14-5 to 14- 8 of Securities Litigation: A Practitioners Guide; Asadi v. G.E.Energy (USA) LLC, 720 F.3d 620 (S1h Cir. 2013); Berman v.Neo@Ogilvy LLC (2”d Cir. 2015); Hypothetical Scenario 4 (whistleblower fact pattern) (posted to class website)

Seminar focus:

i. overview of whistleblower issues

ii. group analysis of Hypothetical Scenario 4a, Hypothetical 4b & Hypothetical 4c

5. WEEK 5 (April 24 and 26)

Required reading: Foreign Corrupt Practices Act (15 U.S. Sec. 78dd-1, et seq.); SEC actions against Johnson Controls, Akami Technologies, Qualcomm, and BNY Mellon (all posted to class website); Hypothetical Scenario S(FCPA fact pattern) (posted to class website)

Seminar focus:

i. overview of FCPA issues

ii. group analysis of Hypothetical Scenario 5a, Hypothetical Scenario 5b & Hypothetical 5c
6. WEEK 6 (May 1 and 3)

- Required reading: Shareholder Litigation in Washington State, Chapter 4 (Protection of Directors and Officers from Liability-Exculpation, Indemnification, and Insurance); Securities Litigation: A Practitioner's Guide, Chapter 13 (Indemnification and D&O Insurance); Hypothetical Scenarios 6A (officer demand for indemnification fact pattern) & 6B (exculpation bylaw fact pattern) (posted to class website)
- Seminar focus:
  i. overview of exculpation, indemnification and insurance issues
  ii. group analysis of Hypothetical Scenarios 6a & Hypothetical 6b

7. WEEK 7 (May 8 and 10)

- European Union decision penalizing Microsoft for violating antitrust consent decree and shareholder derivative complaint against Microsoft's Board of Directors stemming from EU penalty (posted to class website)
- Seminar focus:
  i. overview of roles of directors' responsibility for antitrust compliance and non-monetary alternatives for dispute resolution
  ii. group analysis of Microsoft scenario
  iii. team presentations of advice and recommendations to clients concerning assigned problems

8. WEEK 8 (May 15 and 17)

- Required reading: Federal Securities Law Liability of Underwriters, Accountants and Attorneys, Chapter I (Unique Role of Gatekeepers and Overview of Federal Securities Law Risks) and Chapter 5 (Primary Liability Under §10(b) of the Securities & Exchange Act of 1934 and Rule 1Ob-5); Hypothetical Scenario 8 (auditor fact pattern) (posted to class website)
- Seminar focus:
  i. overview of role of accountants and lawyers in corporate governance and compliance
  ii. group analysis of Hypothetical Scenario 8a & Hypothetical Scenario 8b
  iii. team presentations of advice and recommendations concerning assigned problems

Course Summary:

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