



[AALP\\_GENERAL.png](#)

## INTRODUCTION

**Brief description:** The course is designed to give a general understanding of the following themes: common law; competition among states; tension among shareholders and managers; profit maximization; an introduction to the U.S. Corporate Governance and its regulation; the Stock Exchanges & securities law; Public Corporations; The Board of Directors, Fiduciary Duties, Shareholders; Takeovers; Federal Common Law; Insider Trading.

- **Titulación:** Anglo-American Law Program, Grado en Derecho, Grado en Relaciones Internacionales
- **Módulo/Materia:** Optatividad, derecho angloamericano
- **ECTS:** 3
- **Course, semester:** Third year, first semester
- **Character:** Optativa
- **Professor responsible for the subject:** Prof. Alberto Muñoz
- **Visiting Professor:** James Robert Brown Jr (Sturm College of Law, University of Denver)
- **Idioma:** Inglés
- **Schedule and Location:** The class will be delivered in an intensive format every morning from October 9th to 20th from 11:00 am to 14:00 pm. Please check WebUntis for classroom information.

Please note that the schedule is subject to changes due to reasons beyond our control.

## COMPETENCIAS

De acuerdo con la **Memoria del Grado en Derecho**, las competencias que los estudiantes deben llegar a dominar asociadas a las asignaturas Optat American Law Program del que forma parte esta asignatura son las siguientes:

### Competencias básicas

CB1 -

Que los estudiantes hayan demostrado poseer y comprender conocimientos en un área de esta base de la educación secundaria general, y se suele encontrar a un nivel que, si bien se apoya en libros de texto avanzados, incluye tamb

CB2 -

Que los estudiantes sepan aplicar sus conocimientos a su trabajo o vocación de una forma prof la resolución de problemas dentro de su área de estudio.

CB3 -

Que los estudiantes tengan la capacidad de reunir e interpretar datos relevantes (normalmente para emitir juicios que incluyan una reflexión sobre temas relevantes de índole social, científica

CB4 - Que los estudiantes puedan transmitir información,

ideas, problemas y soluciones a un público tanto especializado como no especializado.

CB5 -

Que los estudiantes hayan desarrollado aquellas habilidades de aprendizaje necesarias para er



### Competencias generales

CG1 - Poseer un conocimiento general de la disciplina y la metodología jurídicas que permita el ejercicio de actividades de carácter profesional en el ámbito del Derecho o la adquisición de los títulos complementarios exigidos por la ley para determinadas actividades

#### CG2

- Expresar y transmitir adecuadamente ideas complejas que permitan comunicar, de manera oral y escrita, soluciones fundadas en Derecho a un público especializado o no.

#### CG3

- Localizar y gestionar correctamente las fuentes jurídicas, tanto legales, jurisprudenciales y doctrinarias.

### Competencias específicas

CEE1 Conocer los conceptos jurídicos básicos de la tradición jurídica angloamericana de forma

## SYLLABUS

- Class 1:
  - My background
  - Class themes:
  - Sources of Regulation
  - Role of the Common Law: Common law v. civil law: Chapter 12, p. 738
  - The Role of the Public Corporation: Profit maximization: Chapter 11, pp. 649-650
  - The Tension between the Board of Directors and Shareholders: Chapter 7, pp. 349-350
  - Vocabulary Text, pp. 3-6; 352-54; 359-364 (The Players)
  - Example: Apple Proxy Statement:[\[1\]](#) director compensation, p. 38; diversity, p. 12; CEO compensation, p. 59 Questions: How many meetings did the board of Apple hold in 2022? See p. 25. What committees of the board does Apple have? See pp.19-20. What officers are paid the most at Apple? For the directors, what portion of the compensation paid to directors is in cash and what percentage is in stock?
  - Apple Form 10-K[\[2\]](#) read the first two pages (the cover pages) Where is Apple incorporated? How many shares does Apple have outstanding? What is Apple's market value? Where are Apple's shares traded?
- Class 2: The Regulators: The Role of Regulators in the Corporate Governance Process
  - State Law: The Role of Delaware
  - State Law and Corporations: Model Business Corporation Act[\[3\]](#)
  - The internal affairs doctrine: Chapter 2, pp. 18-20; 35-36
  - The financial benefits and Delaware
  - Delaware and the role of the courts: *Marchand v. Barnhill*, Revised Chapter 4, pp. 47-54
  - The Stock Exchanges
  - The role of listing standards: Chapter 2: 61-67
  - The Problems of Enforcement: See Chapter 2, pp. 72-74



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- NASDAQ & Diversity: Nasdaq's Board Diversity Rule,[\[4\]](#)
- The role of the Securities and Exchange Commission in the Corporate Governance Process
- The role of the Commission: Chapter 2, pp. 40-41
- The Commissioners of the SEC[\[5\]](#) The Chair's calendar: Nov. 2021[\[6\]](#)
- The voting records of commissioners, Calendar Year 2022[\[7\]](#)
- The Importance of Disclosure: See Chapter 9, pp. 545-548
- Class 3: Public Corporations (Purpose and Definition)
- Profit maximization & charitable contributions: Chapter 11, pp. 649-652; 656-664; Business Roundtable Statement on Purpose of a Corporation[\[8\]](#)
- Climate Change: A Climate for Change: Meeting Investor Demand for Climate and ESG Information at the SEC, Acting Chair Allison Herren Lee, Washington DC, March 15, 2021[\[9\]](#)
  - Relations with the Investing Public: Reporting requirements: Section 12(g) of the Exchange Act[\[10\]](#)
  - Reporting requirements, Chapter 9, pp. 527-530
  - Form 8-K: Chapter 9, pp. 539-544
  - How many employees does Apple have?[\[11\]](#)
- Class 4: Board of Directors: Responsibilities: Chapter 3, pp. 99-104
  - Board Legal Requirements Process: Number of directors: MBCA § 8.03; MBCA § 8.04; Staggered boards:
  - Director qualifications: MBCA § 8.02; *see also* SEC Item 407(d)(5) of Regulation S-K[\[12\]](#)
  - Apple: How many directors, how often do they meet, and what are their qualifications?
  - Board structure Structure: Chapter 3, pp. 118-120
  - Committees: Chapter 3, pp. 122-124; Chapter 2, pp. 54-56 (Rule 10A-3)
  - The Role of Independent Directors: pp. 105-112; 304-307
  - Board diversity Chapter 3, pp. 134-142
  - *Dymthification of the Board of Directors*, Text, pp. 163-169[\[13\]](#)
  - The example of Norway (and Spain): See Text, note 3, pp. 137-38
  - What is the diversity on the Apple board? See Apple Proxy Statement, p. 29
- Class 5& 6: Fiduciary Duties (care and loyalty)
  - Duty of Care: *Van Gorkom*, 149-160
  - Duty of Loyalty: *Julian*, Chapter 6, pp. 285-290
  - Duty of Good Faith, *In re Caremark*, Revised Chapter 4, pp. 35-38; *In re Boeing*, Revised Chapter 4, pp. 49-57
- Class 7: Environmental, Social and Governance (ESG) Matters
  - Revised Chapter 10, 1-6; 21-23; 31-38; 45-50;
  - Shareholder Proposals Stats for 2022; Gibson Dunn (read bullets 2 and 4)[\[14\]](#)
  - Apple Proxy Statement, Proposal No. 5 (79-81); Proposal No. 8 (pp. 89-92)
- Class 8 & 9: Shareholders
  - Legal Requirements
  - Process: Meetings: §§ 7.01; 7.02; 7.04; Notice of meeting: 7.05; Record date: §7.07; Virtual meetings: Del. Code ann. Tit. 8 § 211(a)(2) [\[15\]](#)
  - Matters to be approved: Amendments to the articles: MBCA § 10.03; Sale of assets: MBCA §12.02; Dissolution: MBCA § 14.02; Mergers: MBCA §§ 11.02; 11.04
- Majority v. plurality voting: Chapter 7, pp. 367-369; 375-76;



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- Relations with Shareholders: Proxy rules and shareholder proposals: Chapter 7, pp. 377-378
- Say on Pay: Chapter 6, pp. 341-344, Apple PS, p. 73
- Shareholder access: Nominations of Individuals, p. 111
- Class 10: Catch up and review

[1] [https://www.sec.gov/Archives/edgar/data/320193/000130817923000019/laap2023\\_def14a.htm](https://www.sec.gov/Archives/edgar/data/320193/000130817923000019/laap2023_def14a.htm)

[2] <https://www.sec.gov/ix?doc=/Archives/edgar/data/0000320193/000032019322000108/aapl-20220924.htm>

[3] See the link for Model Business Corporation Act (without comments) available at <http://apps.americanbar.org/dch/committee.cfm?com=CL270000>

[4] <https://listingcenter.nasdaq.com/assets/Board%20Diversity%20Disclosure%20Five%20Things.pdf>

[5] <http://www.sec.gov/about/commissioner.shtml>

[6] <https://www.sec.gov/foia/docs/secchaircalendar/chair-gensler-public-calendar-2021-11.pdf>

[7] <https://www.sec.gov/about/commission-votes/annual/commission-votes-ap-2022.xml>

[8] <https://www.businessroundtable.org/business-roundtable-redefines-the-purpose-of-a-corporation-to-promote-an-economy-that-serves-all-americans>

[9] <https://www.sec.gov/news/speech/lee-climate-change>

[10] See Section 12(g), <http://www.sec.gov/about/laws/sea34.pdf>

[11] The answer is on p. 4 of the Form 10-K.

[12] <http://www.law.uc.edu/sites/default/files/CCL/regS-K/index.html>

[13] [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2474394](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2474394)

[14] <https://www.gibsondunn.com/shareholder-proposal-developments-during-the-2022-proxy-season/>

[15] Delaware's corporate laws can be found at <http://www.corp.delaware.gov/DElaw.shtml>.

## EDUCATIONAL ACTIVITIES

**The Distribution of the student's workload measured in hours is the following:**

The course will take place in an intensive format, so there will be 30 hours of class, following the socratic method: any student may be called upon at any time. I consider preparation for and participation in class in determining final grades.

Therefore, students should invest at least 10 hours in preparing for class and be able to answer questions and follow a discussion.

Added to this students are expected to use 15 more hours in answering tutorial exercises and home activities that will be worth points of assessment.



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Plus extra 30 hours to study for personal study.

The exam will be three hours long.

## ASSESSMENT

### CONVOCATORIA ORDINARIA

There will be a final exam based on the materials and concepts covered in class (75% of the final grade). For those sick or confined for whatever reason, the final exam will be oral and online. Quality participation in class will count for 25% of the final grade.

### CONVOCATORIA EXTRAORDINARIA

The June grade will come completely from the final exam.

### OFFICE HOURS

If you wish to have an appointment with professor J. Brown, please write to him to his email address: [jbrown@law.du.edu](mailto:jbrown@law.du.edu)

## BIBLIOGRAPHY

*Corporate Governance: Cases and Materials*, J. Robert Brown Jr., Lisa L. Casey, New Providence, NJ : LexisNexis, 2012. [Localízalo en la Biblioteca](#)

Resources:

[1] <https://www.sec.gov/Archives/edgar/data/320193/000119312519004664/d667873ddef14a.htm>

[2] <https://www.sec.gov/Archives/edgar/data/320193/000032019318000145/a10-k20189292018.htm>

[3] See Model Business Corporation Act (without comments) available at [https://www.americanbar.org/content/dam/aba/administrative/business\\_law/corplaws/2016\\_mbca.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/business_law/corplaws/2016_mbca.authcheckdam.pdf)

[4] <http://www.sec.gov/about/commissioner.shtml>

[5] See Section 12(g): <http://legcounsel.house.gov/Comps/Securities%20Exchange%20Act%20Of%201934.pdf> (at page 116)

[6] See page 6 of Apple's Form 10-K (linked in footnote 2 above).

[7] <https://www.law.cornell.edu/cfr/text/17/229.407>

[8] <https://www.mckinsey.com/business-functions/organization/our-insights/delivering-through-diversity>

[9] [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2474394](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2474394)

[10] <https://www.wsj.com/articles/new-york-state-fund-snubs-all-male-boards-1521538321>

[11] Delaware's corporate laws can be found at <http://www.corp.delaware.gov/DElaw.shtml>



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[12] Read release at: <https://www.sec.gov/litigation/litreleases/2006/lr19932.htm>

[13] Read pp. 1-9 of opinion at; <https://www.sec.gov/litigation/opinions/2009/33-9085.pdf>

[14] Read release at: <https://www.sec.gov/litigation/litreleases/2007/lr20142.htm>

[15] Read release at: <https://www.sec.gov/litigation/litreleases/2009/lr21301.htm>

[16] Read release at: <https://www.sec.gov/litigation/litreleases/2012/lr22533.htm>