



**COVID-19: Lawyering in a Pandemic**  
**Law 718**  
**Summer 2020**  
**Course Syllabus**

Sessions will be delivered live via Zoom  
Course schedule: T, Th from 4:30-6:20pm

This online summer course will include two components. The first is a doctrinal 2-credit course (taught by a different faculty member each session) that will focus on the societal impacts of COVID-19 from a legal perspective. The second part (1-2 credits) will allow students to engage in distinct experiential projects to aid in important problem-solving and policy advocacy and to provide assistance as our country and world work to rebound from the impacts of COVID-19. Students must enroll in the course if they wish to enroll in the experiential component (as an add-on); however, the experiential component is not a requirement of the course.

**Course (2 cr)**

The course will meet twice per week (T, Th from 4:30-6:20pm) live via Zoom. Readings will be assigned by each faculty member. A tentative schedule of topics and faculty is included below. Students will be required to actively participate in a message board and write a final paper for the course. The course will be graded.

**Experiential Component (1-2 cr)**

Students enrolled in the course can register for experiential projects related to COVID-19 and the role lawyers need to play now & in the months and years ahead. Each project will be led by a faculty or adjunct faculty member. It may include supervised experiential work with outside organizations or courts, writing white papers or engaging in other policy advocacy work.

**Course Requirements**

This course will use a TWEN page for course readings and to post updates to the course syllabus and the class message board. Please be sure you add yourself to the course's TWEN site before the first class.

Readings will be posted for each session on the course TWEN site.

All students are expected to attend and participate in each class session. All classes will be conducted via Zoom at the following link: INSERT LINK

Each student will be paired with one faculty member from the course who will supervise and grade his or her final paper. Additionally, each student will be responsible for posting a post-class reflection on the message board for the topic/faculty session he or she is assigned.

### Message Board

*Pre-class conversations:* Faculty for each session will post a prompt/question on the TWEN message board five days before his or her session. The thread will open at 12pm and close at 12pm as indicated in the schedule below. Each student is expected to post at least two times on the thread before each class session: either in reply to the faculty prompt or by commenting on classmates' posts. Posts should be thoughtful and analytical.

*Post-class conversations:* After each session, students who have been assigned to work with that faculty member on their final paper will be responsible for posting a reflection on the session. The post should be between 300-400 words and posted within 24 hours of the conclusion of the class session. All other students in the class will be responsible for commenting (once) on the reflection post. If there are two students assigned to a faculty member, there will be two reflections and students may comment on either (or both). Each faculty member will read and comment on all threads related to his or her session. The post-class reflections will start with session 2.

### Summary:

- There are 13 faculty class sessions
- Faculty will post one prompt/question five days before class
- Students must reply/comment at least twice to each prompt/question
- After each class (starting with session two) students assigned that session/professor for their final paper will post a reflection
- All students are responsible for replying to that reflection thread

Message board schedule is posted below. At any point in the class there will be one pre-class thread open and one post-class reflection thread open.

COVID-19: Lawyering in a Pandemic - Message Board Schedule			
<i>Message board threads will open at 12pm and close at 12pm</i>			
Title	Message Board Opens	Session Date	Message Board Closes
Crisis Leadership in Law - Dean Varona	5/12/20	5/19/20	5/19/20
Regulatory and Statutory Response to Crisis – Charlton Copeland	5/16/20	5/21/20	5/23/20
Overview of the CARES Act – Small Businesses – Marcia Weldon	5/21/20	5/26/20	5/28/20
Finance and Stimulus – Bill Bratton	5/23/20	5/28/20	5/30/20
Workplace Safety and Job Loss in a Pandemic – Andrew Elmore	5/28/20	6/2/20	6/4/20
Cross-Border Movement of Goods and Services in a Pandemic – Kathleen Claussen	5/30/20	6/4/20	6/6/20
Force Majeure, Impossibility, Impracticability and Frustration of Purpose as Applied to COVID-19 – Bill Widen	6/4/20	6/9/20	6/11/20
Elections During a Pandemic – Fran Hill	6/6/20	6/11/20	6/13/20
Trends in Education – Osamudia James	6/11/20	6/16/20	6/18/20
International Disputes – Carolyn Lamm and Jonathan Hamilton	6/13/20	6/18/20	6/20/20
The Use of Criminal Law as a Tool to Fight the Pandemic – Scott Sundby	6/18/20	6/23/20	6/25/20
Bankruptcy –Drew Dawson	6/20/20	6/25/20	6/27/20
The Impact of a Pandemic on Legal Ethics and the Use of Technology – Robin Schard and Jan Jacobowitz	6/25/20	6/30/20	7/2/20

### Research Paper

All students will be responsible for submitting a research paper -- 15 pages, double-spaced, 12-point font on a mutually agreed topic with your assigned faculty member.

Writing Credit – Students wishing to use this paper to satisfy their writing requirement can, at the discretion and approval of their assigned faculty member, convert this paper into a writing requirement. Doing so will require working with faculty on topic selection, draft(s), meeting to review the draft(s) and multiple revisions concluding in a 25-30 page final paper.

### Grading

All students will be graded with a final letter grade as follows:

Final Research Paper – 80%

Message Board Posts and Attendance – 20%

Given the collaborative nature of this class, assigned faculty will grade the final paper and submit the final paper grades to the Vice Dean for Academic Affairs. The Vice Dean will evaluate all message board posts and tabulate final grades. Final papers will be due on 7/24/20.

### Title IX

The University of Miami seeks to maintain a safe learning, living, and working environment free from all types of sexual misconduct including but not limited to: Dating Violence, Domestic

Violence, Sex- or Gender-Based Discrimination, Sexual Assault (including Sexual Battery), Sexual Exploitation, Sexual Harassment, and Stalking. For additional information about the University's efforts to prevent, stop, and address sexual misconduct, including resources and reporting options, please visit [www.miami.edu/titleix](http://www.miami.edu/titleix) or contact the University's Title IX Office at [titleixcoordinator@miami.edu](mailto:titleixcoordinator@miami.edu).

### **Class Recordings**

Meetings of this course might be recorded. Any recordings will be available to students registered for this class. Class recordings are designed to supplement the classroom experience and are part of the class materials. As with all class materials, class recordings may not be reproduced, edited, redistributed, forwarded, posted or shared in whole or part through websites, social media or other online platforms without the instructor's prior express approval. The misuse of recorded lectures is an Honor Code violation which would be documented in your permanent record and reported to the Bar. If the instructor or a University of Miami office plans to use the recordings beyond this class, students identifiable in the recordings will be notified to request consent prior to such use.

### **Disability Issues**

If you have a disability, or suspect that you may have a disability, the Law School encourages you to contact Jessie Howell, Coordinator, Disability Services in the Office of Disability Services for information about available opportunities, resources, and services. Her phone number is 305-284-9907, and her email address is [jhowell@law.miami.edu](mailto:jhowell@law.miami.edu). You may also visit the Office of Disability Services website at [www.law.miami.edu/disability-services](http://www.law.miami.edu/disability-services).

### **Tentative Course Schedule**

<p><b>Session 1</b> (extended class until 6:50pm)  (5/19)</p>	<p>Part 1: Crisis Leadership in Law: Ten Fundamental Elements – Dean Tony Varona</p> <p>Part 2: Lawyers as Leaders in Times of Crisis (Panel Moderated by Dean Tony Varona) featuring distinguished Miami Law graduates:</p> <p>Jaret Davis, Co-Managing Shareholder, Greenberg Traurig</p> <p>Chief Judge Spencer Levine, 4<sup>th</sup> Circuit Court of Appeals</p> <p>Marilu Marshall, Senior VP Global Human Resources and Chief Diversity Officer, The Estee Lauder Companies Inc. and University of Miami Trustee</p> <p>Laurie Silvers, President and Co-Founder, Hollywood Media Corp. and University of Miami Trustee</p> <p>Message Board Thread: Open from 5/12 at 12pm – 5/19 at 12pm</p>
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	<p>Description: Leadership is challenging in ordinary times. In the midst of a crisis, leadership can be especially difficult, especially in large and complex legal institutions (e.g., law schools, legal public agencies, law firms, and courts). There are ten fundamental values and foci that, if attended to, can mean the difference between success and failure in crisis leadership in law. We will read about, examine, and discuss all ten in detail. Then, we will hear from a distinguished panel of leaders in law who have led their complex organizations effectively and intelligently through the COVID-19 crisis. How have they succeeded in leading their organizations through this crisis? What lessons have they learned that they can pass on to you? How is leading <u>legal</u> institutions especially challenging in times of crisis? What have been the pitfalls, the surprises, and the frustrations that they have found most notable? What do they predict will be the lasting effects of COVID-19 on law, lawyering, and our institutions? The panel will be an interactive one, and students will be able to ask questions of our distinguished guests.</p>
<p><b>Session 2</b>  (5/21)</p>	<p>Regulatory and Statutory Response to Crisis – Charlton Copeland</p> <p>Message Board Thread: Open from 5/16 at 12pm – 5/23 at 12pm</p> <p>Description: The Congress that inherited the coronavirus pandemic is one of the most polarized and ineffectual in history. Yet, in the aftermath of the COVID-19 pandemic, Congress has enacted three major pieces of legislation in the span of three weeks. Each of these pieces of legislation involves numerous administrative agencies in the task of implementing policy initiatives ranging from payroll stabilization to telehealth services. The COVID-19 pandemic, and the national response, demonstrates the centrality of the statutory and regulatory state as essential components to the nation’s capacity to respond to this, or any, crisis. Our unit will explore the legislative and regulatory dimensions of the national response to explore their lessons for our understanding of the regulatory state.</p>
<p><b>Session 3</b>  (5/26)</p>	<p>Overview of the CARES Act – Small Businesses – Marcia Weldon</p> <p>Message Board Thread: Open from 5/21 at 12pm – 5/28 at 12pm</p> <p>Description: This session will focus on the legislative process behind the enactment of the CARES Act, the purported benefits for small businesses, ethical issues surrounding the types of companies receiving loans through the Paycheck Protection Act, the rules governing the Economic Injury and Disaster loans, and potential legal pitfalls for businesses during the pandemic. Students will consider the CARES act from the perspectives of legislators, consumers,</p>

	employees, employers, and board members. The session will examine case studies of relevant businesses.
<b>Session 4</b>  (5/28)	<p>Finance and Stimulus – Bill Bratton</p> <p>Message Board Thread: Open from 5/23 at 12pm – 5/30 at 12pm</p> <p>Description: This session will look at monetary policymaking by the Federal Reserve. It will begin with the regular operations of the Federal Open Market Committee in setting the price of money, maintaining the liquidity of the banking system, and taking steps to contain inflation. It will go on to look at the bundle of crisis intervention measures instituted by the Federal Reserve to counter the economic stoppage in the wake of the Covid-19 pandemic. We also will compare the measures taken in respect of the financial crisis of 2008. Finally, we will consider alternative approaches.</p>
<b>Session 5</b>  (6/2)	<p>Workplace Safety and Job Loss in a Pandemic – Andrew Elmore</p> <p>Message Board Thread: Open from 5/28 at 12pm – 6/4 at 12pm</p> <p>Description: The pandemic has wreaked havoc and pain on working people. By the end of April 2020, 30 million people in the U.S. have become jobless, while millions of other workers are considered “essential” and required to report to work, despite the health risks. Florida’s unemployment insurance system, which provides replacement income during temporary periods of joblessness, and OSHA, the federal safety and health agency, have been assailed for failing to protect these vulnerable workers. What are the key employment protections during disasters like COVID-19, why didn’t they work here, and what are the possibilities for reform? This class will provide a basic overview of state unemployment insurance benefits and the CARES Act supplemental benefits, as well as the federal right to workplace safety. We will consider the inter-connectedness of rights enforcement and worker voice and the rights of immigrants and gig workers classified as independent contractors. We will conclude with a critical assessment of these protections, and consider alternative approaches, nationally and in Florida.</p>
<b>Session 6</b>  (6/4)	<p>Cross-Border Movement of Goods and Services in a Pandemic – Kathleen Claussen</p> <p>Message Board Thread: Open from 5/30 at 12pm – 6/6 at 12pm</p> <p>Description: The pandemic creates acute challenges for moving medical equipment and other goods and services around the world. Given the uncertainty, and the</p>

	<p>importance of protecting local populations, countries have put limits on exports of everything from masks to wheat. This session will examine the legal regime that governs such restrictions both in the United States and at the global level. With supply chains and labor forces disrupted, what can international law do to facilitate health and safety? What authorities do Congress and the president have to increase imports of critical supplies, or to keep supplies in the United States? What principles or values should inform decisions of who and what can move from place to place at this unprecedented time? We will consider what trade-related laws empower and constrain governments in trying to keep their communities safe and well, and whether those laws are the right ones.</p>
<p><b>Session 7</b>  (6/9)</p>	<p>Force majeure, impossibility, impracticability and frustration of purpose as applied to COVID-19 – Bill Widen</p> <p>Message Board Thread: Open from 6/4 at 12pm – 6/11 at 12pm</p> <p>Description: This topic covers various aspects of contract law which apply to disruptions of business arrangements caused by the COVID-19 health crisis. It includes consideration of the choice of law issues governing contract interpretation. Examples include the impact of the crisis on contracts for the sale of goods, commercial leases and insurance contracts. To set the stage, the course begins with analysis of a video clip of a doctor recounting his experience in attempting to procure N-95 masks for his hospital (including a visit from the FBI). Course materials then turn to examination of the historical treatment of excuses for performance of contractual obligations--starting with the case of Paradine v. Jayne through the English 'coronation cases.' Distinctions are made between doctrines of excuse based on impossibility, impracticability and frustration of purpose. Particular focus is given to the proper allocation of risk of loss when both parties to a contract are without fault. Contract examples considered from the current COVID-19 crisis include cancellation of performances of Hamilton by the Arsht Center and membership in clubs like Massage Envy.</p>
<p><b>Session 8</b>  (6/11)</p>	<p>Elections During a Pandemic – Fran Hill</p> <p>Message Board Thread: Open from 6/6 at 12pm – 6/13 at 12pm</p> <p>Description: The struggle to protect the health of the people of the United States and the struggle to protect democracy in the United States are taking place simultaneously, but they are not readily reconcilable. Protecting public health in the face of a virus for which there is no vaccine and no established treatment is a matter of social distancing. Running for office is an intense experience of personal interaction. This course looks at the incongruence</p>

	<p>between these two imperatives as they shape the processes and procedures adopted for nominating candidates, campaigning by candidates, and voting for candidates. At the same time, intense efforts to suppress voting are likely to continue. All of this will unfold against the certainty that foreign powers will continue their past efforts or undertake new efforts to use cyber warfare to attack our voting procedures and determine the results of the United States election.</p> <p>This lecture will look at how to conduct an election in the midst of a pandemic during a continuing cyber war. In the process, we may be looking at lasting changes in how we select candidates, how candidates campaign, how the right to vote is protected and how cyber-attacks are repelled. There may well be many different approaches to these challenges in various states, but it appears likely that “election day” will come to mean “election month” as voters mail in their ballots or vote during extended early voting periods that permit social distancing. We will look at a variety of such procedural responses and consider their implications for protecting both public health and the health of democracy.</p>
<p><b>Session 9</b>  (6/16)</p>	<p>Trends in Education – Osamudia James</p> <p>Message Board Thread: Open from 6/11 at 12pm – 6/18 at 12pm</p> <p>Description: This unit will broadly canvass the impact of COVID-19 on K-12 and higher education, including: the mass migration to remote learning and its consequences for students, teachers, parents, and workers; the lawsuits and debate about the value of education that the migration has prompted; and the racial and economic disparities in education that the pandemic has both highlighted and deepened.</p>
<p><b>Session 10</b>  (6/18)</p>	<p>International Disputes – Carolyn Lamm and Jonathan Hamilton</p> <p>Message Board Thread: Open from 6/13 at 12pm – 6/20 at 12pm</p> <p>Description: This session will cover the effects of COVID-19 on international disputes. The current pandemic has disrupted countless cross-border commercial transactions and foreign investments, which will result in an increased amount of international dispute work. Many of these transactions are subject to arbitration. The lectures will explore the basis for claims and defenses arising under the existing Treaties and trans-border agreements including fair and equitable treatment and expropriation theories, force majeure and the defense of necessity arising in the context of a pandemic and public health and related economic crisis.</p>



<p><b>Session 11</b>  (6/23)</p>	<p>The Use of Criminal Law as a Tool to Fight the Pandemic – Scott Sundby</p> <p>Message Board Thread: Open from 6/18 at 12pm – 6/25 at 12pm</p> <p>Description: This session will explore issues raised by the pandemic in the area of criminal law and procedure. Topics will include the availability and wisdom of utilizing criminal sanctions to battle the spread of diseases and the constitutionality of government tracking and surveillance regimes aimed at controlling a disease outbreak.</p>
<p><b>Session 12</b>  (6/25)</p>	<p>Bankruptcy –Drew Dawson</p> <p>Message Board Thread: Open from 6/20 at 12pm – 6/27 at 12pm</p> <p>Description: This session will look at the way bankruptcy law can provide some relief during the pandemic and its financial aftermath, how the CARES Act supplements federal bankruptcy relief (in particular as to small businesses), and the policy implications of Congress’s decision to prohibit CARES Act funding to go to companies already in bankruptcy.</p>
<p><b>Session 13</b>  (6/30)</p>	<p>The Impact of a Pandemic on Legal Ethics and the Use of Technology – Robin Schard and Jan Jacobowitz</p> <p>Message Board Thread: Open from 6/25 at 12pm – 7/2 at 12pm</p> <p>Description: Do you Zoom? Does Alexa play music in your home office? Are you in the cloud?</p> <p>These questions have become ubiquitous in the midst of the pandemic that has compelled the legal profession to dramatically increase its use of technology. Although not an early adopter of technology, the legal profession has been thrust into the tech world; yet, lawyers must continue to maintain the duties of competence, diligence, communication, and confidentiality.</p> <p>This lecture will look at the technology adopted by attorneys and courts in response to the pandemic, and it will explore the ethical issues that may arise when one wanders into unexplored tech terrain without the proper guidance. Issues such as maintaining confidentiality of information, increasing the security of communication, and what measures constitute diligence and reasonable efforts on the part of a lawyer will be discussed using some examples ripped from the headlines.</p>

DRAFT: 5/12/20