

SETON HALL UNIVERSITY
SCHOOL OF LAW
BUSINESS ASSOCIATIONS
Syllabus
Fall Term 2009

Professor Marina Lao

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Office: Room 415

Class: Mon, Tues: 10:20—11:35 (Rm 373); Thurs: 10:20—11:35 (Rm 273)

Office Hours: Mon, 3:30—5:00; Thurs, 11:45-1:00 p.m.

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Below is a syllabus of materials, grouped by topic (not by class period), that I hope to cover in this course. I will give the specific assignments for the following week during each Thursday's class. In addition to the main cases mentioned in the syllabus, please read the notes and note cases that precede and follow those cases, as well as relevant sections of the Restatement of Agency, UPA, Delaware General Corporations Law (DGCL), and the MBCA, even if they are not specifically included herein. While it is not required, a reading of the related materials in the recommended supplemental text would be very useful.

In addition to materials in the casebook, we will often draw on current business-related events for discussion, to the extent that they relate to the subject areas covered in this course. Please try to read the business section of the New York Times, or the Wall Street Journal, on a regular basis.

Primary Text: **Eisenberg, CASES AND MATERIALS ON CORPORATIONS AND OTHER BUSINESS ORGANIZATIONS (concise) (9th ed. 2005)**

Statutory Supplement.

Recommended Supplemental Reading:

Palmiter, Corporations – Examples & Explanations, 6th edition
(or) Pinto & Branson, Understanding Corporate Law.

Attendance: The law school's **mandatory attendance policy** will apply.

Class Participation: Class participation is important to the learning process. Please read the assigned materials and be prepared for class.

Final Exam: It will be **CLOSED BOOK**, and will consist of both multiple choice and essay questions.

Introduction and Agency

Agency, pp. 1-20

Who is an agent? Concept of authority. Liability of Principal to third parties. Text, pp. 1-16 (Morris Oil, p.2).

Fiduciary Obligations of Agents. Text, pp.16-20 (Tarnowski, p.16).

Partnership

What is a Partnership? Who are the partners? Partners compared with employees and lenders. Partnership by estoppel. Text, pp. 27-36 (Martin v. Peyton, p. 28; Lupien, p. 32).

Various legal aspects of partnership: entity vs. aggregate status; management rights of partners; indemnification and contribution; gain and loss sharing; authority; liability for partnership obligations. Text pp. 36-52 (Summers, p. 38; Northwest Inv, p.44)

Fiduciary Obligations of Partners. Text pp.53-57 (Meinhard, p. 53).

Partnership Dissolution. Text pp. 57-76

Right to dissolve; rightful dissolution; consequences of wrongful dissolution. (Creel, p.58; Page, p.65; Drashner, p. 70).

Settling Accounts After Dissolution, UPA §40(a) and (b) and §18(a) – problem handout

The Corporate Form

Choice of corporate form; choice of state of incorporation; basic corporate financial structure; incorporation process. Text pp. 77 – 85; recommended reading: Palmiter, Chap. 2 & 3

Promoters' Liability. Text pp. 85-87 (Goodman, p.86); recommended reading: Palmiter, Ch. 29.

Defective Incorporation: de facto corporation and corporation by estoppel. Text, pp. 88-92; recommended reading, Palmiter, Ch. 29.

Ultra Vires Doctrine. Text pp. 92-98 (Goodman v. Ladd, p.96); recommended reading, Palmiter, Ch. 3.

Corporate Structure

Legal structure of corporation. Statutory norms on corporate governance: directors; officers; shareholders. Text pp. 122-27; 130-42; 144-55 (Schnell, p. 131; Blasius, p. 133; MM, p.144); Text pp. 155-67); recommended reading: Palmiter, Ch. 7, 8, 30.

Cumulative Voting. Text pp. 167-70; recommended reading: Palmiter, Ch. 7.

Limited Liability and Piercing the Corporate Veil. Text pp. 170-71; 178-90 (Walkovszky, p.178; Minton, p.183; Sea-Land, p.186); recommended reading, Ch. 32.

Shareholder Informational Rights and Proxy Voting

Recommended Reading: Palmiter, Ch. 6, 9 & 10.

Shareholder rights to information under State law. Read Text pp. 196-203; (Saito, p.196).

Shareholder rights to information under federal law. Read Text pp. 210-15.

Liability Under the Proxy Rules: coverage of section 14; implied private cause of action; misrepresentations or omissions of material fact; scienter; reliance; causation. Read Text pp. 216-28 (Borak, p. 216; TSC v. Northway, p. 218; Mills, p. 217; Virginia Bankshares, p. 219).

Rules on shareholders proposals. Read Text pp. 228-38 (Roosevelt v. DuPont, p.229).

Proxy Contests, Read text pp. 238-45 (Rosenfeld)

Special Problems of Close Corporations

Recommended Reading: Palmiter, Ch. 25, 26 & 27

Introduction and analogy to partnership. Read Text pp. 246-58 (Donahue, p.248).

Special Voting Arrangements at the Shareholder Level. Read Text pp. 259 p (Ringling Bros., p.259).

Agreements Limiting Powers of Board. Read Text pp. 270-82 (McQuade, p.270; Galler, p.274).

Super quorum and super majority voting requirements. Read Text pp. 282-85 (Sutton, p.282).

Special fiduciary obligations. Read Text pp. 286-97 (Wilkes, p.287; Merola, p.294).

Share transfer restrictions. Read Text pp. 309-26 (FBI Farms, p.310; Gallagher, p.323).

Dissolution for Deadlock. Read Text pp. 327-28 (Wollman, p.327).

Dissolution for Oppression and Mandatory Buyout. Read Text pp. 329-46 (Kemp & Beatley, p.331; McCallum, p.340).

Alternative Forms of Business Organizations

Reference: parts of Palmiter, Ch.2

Limited Partnerships. Read Text pp. 350-72. (Gateway Potato Sales, p. 352; Gotham Partners, p.362).

Limited Liability Companies. Read Text pp. 372-79.

Limited Liability Partnerships. Read Text pp. 380-82.

Duty of Care of Corporate Officers and Directors

Recommended reading: Palmiter, Ch.11 &12

Basic Standard. Read Text pp. 383-95 (Francis, p.383).

Business Judgment Rule. Read Text pp. 396-420 (Kamin, p.396; Van Gorkom, p. 402).

Duty to Ensure Effective Internal Controls. Read Text pp. 420-33 (In re Caremark, p420).

Duty to Act in Good Faith. Read Text pp.434-42 (Disney, p.434).

D&O Liability Insurance. Read Text pp.443-45.

Duty of Loyalty of Corporate Officers and Directors

General Reading: Palmiter, Ch. 13 & 14.

Self-interested Transactions. Read Text pp. 446-53 (Lewis v. S.L. & E., p.446).

Statutory Approach, DGCL § 144. Read Text pp. 462-70 (Cookies Food Products, p.462).

The Waste Doctrine. Read Text pp. 470-71.

Corporate Opportunity Doctrine. Read Text pp. 472-88 (Northeast Harbor Golf Club, p.472). General Reading: Palmiter, Ch. 16.

Duties of Controlling Shareholders. Read Text pp. 489-509 (Sinclair, p.489; Kahn, p.495). General Reading: Palmiter, Ch. 17

Sale of Control. Read Text pp. 510-26 – (Zetlin, p. 510; Perlman, p.514; Essex Universal, p.519). General Reading: Palmiter, Ch. 20.

Rule 10b-5 as applied to duty to disclose material information (antifraud aspects of Rule)

Standing: in connection with Purchase or Sale of Securities. Elements of fraud applied to Rule 10b-5: misrepresentation or omission of material fact; scienter, reliance and causation. Read Text pp.528-80 (Wharf Holdings; TGS; Basic v. Levinson; Zanford).

General recommended reading: Palmiter, Ch. 22

Rule 10b-5 as applied to Insider Trading

General recommended reading: Palmiter, Ch. 23.

Read Text pp. 580-609.

Revisit TGS; Chiarella, p. 580; Dirks, p. 588; O’Hagan, p. 598.

Short Swing Trading, §16(b)

General recommended reading: Palmiter, Ch. 24.

Read Text pp. 612-24 (Gratz v. Claughton, p. 614).

Shareholder Derivative Suits

General recommended reading: Palmiter, Ch. 18.

Introduction and Nature of Derivative Action. Read Text pp. 641-54;

Individual Recovery. Read Text pp. 655-57 (Glenn, p.655).

Contemporaneous Ownership Rule. Read Text pp. 658-64 (Bangor), pp. 666-67.

Demand on Board and Termination of Suit on Recommendation of Board of Committee. Read Text pp. 667-94 (Marx v. Akers; Auerbach v. Bennett; Zapata Corp.).

Plaintiff's Counsel Fees. Read text pp. 696-704 (Sugarland)

Indemnification and Insurance. Read Text pp. 710-22 (Waltuch).