This course will focus on the structure and characteristics of several business entities, with particular attention to issues relating to large, publicly-held corporations. We will focus on Delaware law, with a secondary focus on other important states, such as New York and California. We will also consider the effect of federal laws on corporate governance.

Course Materials


Klein, Coffee & Partnoy, *Business Organization and Finance* (Foundation) can be helpful to read if you want to see another take on the materials. Bainbridge, *Corporate Law* is also a useful supplement. Do not underestimate the value of a good legal dictionary. You will run into many new terms in this class, and you need to understand these terms to make sense of the cases.

If you are interested in the history and social context surrounding the growth of the corporation, I recommend Micklethwait & Wooldridge, *The Company: A Short History of a Revolutionary Idea* (2005). Read it with a critical eye – they are corporate enthusiasts, to put it mildly, but they tell the story in a nice, concise fashion. Brands, *American Colossus* (2011) is also a nice, well-written account of the early growth of corporations along with the American economy, and is somewhat broader in scope than Micklethwait & Wooldridge.

Structure of the Course

I call on people in class and expect everyone to be prepared. Please use name cards each day. If there is a day when you cannot be prepared let me know by email before class and I will try to not call on you that day. Excessive requests to “opt out” of class participation will affect your final grade. Failure to “opt out” before class when you are unprepared will also have consequences.

Electronic Devices

You may not use electronic devices (computers, tablets, phablets, mobile phones, Commodore PETs, and the like) in class. For those of you who are distressed by this, you may want to watch this video.

For avoidance of doubt: this prohibition applies not only to laptops, but also to your phone.
Assignments

Assignments are listed below. Please read the indicated pages in the text and the relevant statutory provisions. I’ve tried to indicate the key statutes below, especially those outside the MBCA, but any statute discussed in the text may be discussed in class.

Most reading assignments include one or more exercises. We will work through these in class, and you should be prepared to discuss them.

Unless I notify you otherwise, you should stay current in your reading even if we occasionally fall behind schedule.

Any slides I use in class will also be placed on Blackboard after the class.

In a few cases I have assigned statutes that are not in your statutory supplement; please retrieve these statutes from LEXIS, Westlaw, Bloomberg Law, etc. In many cases I’ve provided links.

<table>
<thead>
<tr>
<th>Class No.</th>
<th>Topic</th>
<th>Assignment</th>
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</thead>
</table>
| 1.        | **Appendix A: Introduction to Financial Statements**  
               Balance Sheet  
               Income Statement  
               Cash Flow Statement  
               
               Prepare exercise A.1 |
| 2.        | **Chapter 1: Business Forms Overview**  
               Sole Proprietorship  
               Partnership  
               Limited Liability Partnership  
               Limited Partnership  
               Corporation  
               Limited Liability Company  
               Business Form Statistics  
               Why are there so many different forms?  
               Other forms  
               Some Key Concepts  
               
               **Key statutes (and other materials):**  
               Crack open the statute book |
| 3.        | **Chapter 2: Agency Law**  
               Creation of the Agency Relationship  
               When Is A Principal Bound To A Contract?  
               
               **Key statutes:**  
               Restatement (Third) of Agency, §§ 1.01, ch. 2, ch. 3, ch. 4, ch. 6  
               Restatement (Second) of Agency § 8A  
               Cal. Civil Code §§ 2295, 2309 | 31-52       |
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<tr>
<th>Class No.</th>
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| 4.       | **Chapter 2: Agency Law**  
**When Is A Principal Bound To A Contract?**  
**Tort Liability of the Principal**  
**The Principal-Agent Problem and Fiduciary Duties**  

*Key statutes (and other materials):*  
Delaware General Corporation Law ("DGCL") §§ 141(a)-(b), 142  
Delaware Limited Liability Company Act §§18-402, 18-407  
MBCA §§ 8.01(b); 8.41  
*Focus on Articles IV and V of the bylaws:*  
Restatement (Third) of Agency, § 2.04, ch. 7, ch. 8  
Cal. Civ. Code § 2343  
Ga. Code § 10-6-22 | 52-86 |
| 5.       | **Chapter 3: Choice of Form Considerations**  
**Tax Treatment**  
**Liability Exposure** | 87-122 |
| 6.       | **Chapter 3: Choice of Form Considerations**  
**Liability Exposure**  
**Attractiveness to Investors**  
**Other Considerations**  
**Conversion**  

*Key statutes:*  
DGCL § 102(b)(6)  
N.Y.B.C.L. § 630(a), (c) | 122-144 |
| 7.       | **Chapter 4: Partnerships and LLPs**  
**Partnerships**  
**Limited Liability Partnerships**  

*Key statutes (and other materials):*  
Uniform Partnership Act §§ 6, 7, 9, 12, 13, 18, 21, 25, 27-29, 30-38, 40  
Revised Uniform Partnership Act §§ 103, 104, 201-204, 301, 306-308, 401-404, 502, 503, 504, 601, 701, 703, 801, 807, 1001, 1002  
Del. Code Ann. tit. 6, §§ 15-207(b), 15-401(i)  
**The UPA (1914) and RUPA (1997) are under "Unincorporated Business Association Statutes" in the supplement** | 145-184 |
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<th>Chapter</th>
<th>Title</th>
<th>Key statutes (and other materials)</th>
<th>Page Numbers</th>
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<tr>
<td>8.</td>
<td><strong>Chapter 5. Limited Partnerships &amp; LLLPs</strong></td>
<td><strong>Limited Partnerships</strong>&lt;br&gt;<strong>Limited Liability Limited Partnerships</strong>&lt;br&gt;&lt;br&gt;<strong>Key statutes:</strong>&lt;br&gt;ULPA §§ 110, 201, 303, 305, 403, 404, 406, 408&lt;br&gt;6 Del. C. §§ 17-214, 17-1105&lt;br&gt;Cal.Corp.Code § 15903.03</td>
<td>185-210&lt;br&gt;The ULPA is under &quot;Unincorporated Business Association Statues&quot; in the supplement</td>
</tr>
<tr>
<td>9.</td>
<td><strong>Chapter 6. Limited Liability Companies</strong></td>
<td><strong>Formation</strong>&lt;br&gt;<strong>Governing Law</strong>&lt;br&gt;<strong>Operating Agreement</strong>&lt;br&gt;<strong>Management</strong>&lt;br&gt;<strong>Fiduciary Duties</strong>&lt;br&gt;<strong>Obligation of Good Faith and Fair Dealing</strong>&lt;br&gt;<strong>Liability Shield</strong>&lt;br&gt;&lt;br&gt;<strong>Key statutes (and other materials):</strong>&lt;br&gt;Delaware Limited Liability Company Act §§ 18-101(7), 201, 301 to 304, 402, 703(d), 1101, 1104&lt;br&gt;RULLCA §§ 102(10), 110, 304, 407, 409&lt;br&gt;California Corporations Code §§ 17704.10, 17708.08</td>
<td>211-234&lt;br&gt;The Delaware Limited Liability Company Act and RULLCA (2016) are under &quot;Unincorporated Business Association Statues&quot; in the supplement</td>
</tr>
<tr>
<td>10.</td>
<td><strong>Chapter 6. Limited Liability Companies</strong></td>
<td><strong>Transfer of LLC Interests</strong>&lt;br&gt;<strong>Allocation of Profits and Losses; Distributions</strong>&lt;br&gt;<strong>Dissolution</strong>&lt;br&gt;&lt;br&gt;<strong>Key statutes (and other materials):</strong>&lt;br&gt;Delaware Limited Liability Company Act §§ 18-101(3), 215(a), 215(b)(1), 404, 503, 504, 702, 704, 603, 801, 802&lt;br&gt;RULLCA §§ 501, 601, 701, 702, 708</td>
<td>234-275</td>
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<td>11.</td>
<td><strong>Chapter 7. The Incorporation Process</strong></td>
<td><strong>Pre-Incorporation Activities</strong>&lt;br&gt;<strong>Jurisdiction of Incorporation</strong>&lt;br&gt;<strong>Incorporation Mechanics</strong>&lt;br&gt;<strong>Defective Incorporation</strong>&lt;br&gt;&lt;br&gt;<strong>Key statutes (and other materials):</strong>&lt;br&gt;<a href="https://corpfiles.delaware.gov/Augustfee2019.pdf">https://corpfiles.delaware.gov/Augustfee2019.pdf</a>&lt;br&gt;DGCL §§ 101-03, 106 09, 121, 122, 124, 211, 131(a), 132(a), 141(a), (c), (l), 201, 242, 271, 204, 205&lt;br&gt;MBCA §§ 2.02-2.06, 3.01, 4.01, 6.01, 6.22, 10.03, 10.20</td>
<td>277-306&lt;br&gt;DGCL = Delaware General Corporation Law; MBCA = Model Business Corporation Act</td>
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<tr>
<td>12.</td>
<td><strong>Chapter 7. The Incorporation Process</strong></td>
<td><strong>Ethical Issues</strong>&lt;br&gt;<strong>Chapter 8. Corporate Finance</strong>&lt;br&gt;<strong>Debt</strong></td>
<td>306-334</td>
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<tr>
<td>Chapter</td>
<td>Section</td>
<td>Key Statutes and Rules</td>
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<td>14.</td>
<td>Chapter 9. Corporate Governance</td>
<td>Shareholders Directors Officers Bylaws Key statutes (and other materials): DGCL §§ 102(f), 109, 115, 122(5), 122(15), 141(k), 216 MBCA §§ 2.06, 7.02, 7.04, 7.05, 7.25, 7.27, 7.28, 8.02, 8.08, 8.10, 8.21, 8.22, 8.25, 10.20 Skim the bylaws: <a href="http://corporate.exxonmobil.com/en/investors/corporate-governance/by-laws/by-laws">http://corporate.exxonmobil.com/en/investors/corporate-governance/by-laws/by-laws</a></td>
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<tr>
<td>15.</td>
<td>Chapter 9. Corporate Governance</td>
<td>Charter Amendment Process Key statutes (and other materials): DGCL §§ 242 MBCA §§ 7.25, 10.03-10.05</td>
<td></td>
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<tr>
<td>16.</td>
<td>Chapter 10. Fiduciary Duties</td>
<td>Key statutes (and other materials): DGCL §§ 102(b)(7), 141(e) MBCA § 2.02(b)(4)</td>
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</table>

Chapter 10. Fiduciary Duties Fiduciary Duties of Directors Key statutes (and other materials): DGCL § 144
<table>
<thead>
<tr>
<th>Chapter</th>
<th>Title</th>
<th>Key statutes (and other materials)</th>
<th>Pages</th>
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</table>
| 17.     | Chapter 10. Fiduciary Duties  
Fiduciary Duties of Directors  
Fiduciary Duties of Officers | MBCA §§ 1.43(a); 7.41; 7.42; 7.44; 8.30; 8.31; 8.42; 8.60; 8.61; 8.62; 8.63; 8.70  
N.J. Stat. § 14A:2-7(3) (compare with DGCL § 102(b)(7))  
Del. Ch. Ct. R. 23.1  
FRCP 23.1 | 518-543 |
| 18.     | Fiduciary Duties of Controlling Shareholders  
Indemnification and Insurance | DGCL § 145  
Cal. Corp. Code § 317  
MBCA §§ 8.50-8.57 | 543-568 |
| 19.     | Chapter 11. Return on Investment | MBCA §§ 1.40(6); 6.40; 8.33, 10.05(4)(b)  
‘33 Act §§ 2(a)(11); 4(a)(1) | 569-598 |
DGCL §§ 102(b)(3); 214; 226, 350  
Cal. Corp. Code §§ 301.5(a); 708; 2115  
N.Y. Bus. Corp. Law §§ 622, 1104-a | 599-638 |
Disclosure Requirements | ‘34 Act §§ 12; 13; 15(d)  
‘34 Act Rule 10b-5 | 639-658 |
22. Chapter 13. Public Company Regulation
Proxy Voting Regulation
Corporate Governance Listing Standards
Insider Trading (on page 707, question 2, assume the transaction is a merger)

Key statutes (and other materials):
'34 Act § 10(b), 14(a), 14(e)
'34 Act Rules 10b-5, 14a-1, 14a-2, 14a-4, 14a-6, 14a-8, 14a-9, 14a-12, 14e-3
DGCL §§ 141; 223
California Corporations Code §§ 25402, 25502.5

23. Chapter 14. Mergers and Acquisitions
Friendly Acquisitions

Key statutes:
DGCL §§ 252, 253, 262
NYSE Listing Standard 312.03(c)

Hostile Acquisitions

Key statutes (and other materials):
'34 Act §§ 13(d), 14(d), 14(e)
'34 Act Rules 14d-2 through 14d-10, 14e-1
California Corporations Code § 1101(e)
DGCL § 203
NY Bus. Corp. L. § 717(b)

25. Advanced M&A
Handout on Blackboard

26. Review Session

Grading and Examinations

Examination

Your grade will be based primarily on an open book final examination at the end of the course. Several sample exams are on file.

Participation

Class participation and preparation are essential to the overall success of the course. I will take these factors into account and adjust grades accordingly, consistent with school policy.
While I reserve the right to exercise negative discretion, you will not be penalized for good faith participation, even if you don’t come up with the “right answer.”

Office Hours and Discussion

I am in my office (5th floor, room 521, way down at the end of the hall) most days of the week. Feel free to drop in to discuss anything related to the class. Questions or requests to schedule a meeting at a specific time can be sent to my Seton Hall e-mail account shown at the top of the syllabus (my preferred means of communication).

Disability Support

If you have, or think you might have, a disability that requires an accommodation in order to maximize your prospects for success in Law School, please contact either our Assistant Dean of Students, Andrea Cascarano, or the Office of Disability Support Services (“ODSS”) at the University at (973) 313-6003.

All accommodations must ultimately be sought through and approved by ODSS. It will make every effort to accommodate documented disabilities of every kind. The deadline for submitting applications (including reports from physicians, psychologists and other professionals) to ODSS to establish eligibility for accommodations on exams for the Fall semester is on or about November 1st and on or about April 1st for the spring semester. This deadline ensures that the documentation review process will be completed and accommodations in place in time for final exams. More information is provided online, but Dean Cascarano at the Law School can also advise you about the process.

Last updated: Tuesday, November 12, 2019