

## **SYLLABUS**

**BUSINESS ASSOCIATIONS (Spring 2020)**  
**Seton Hall University School of Law**  
**Professor Lubben**  
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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**

The required texts for this class are Sjostrom, *Business Organizations: A Transactional Approach* (3<sup>rd</sup> ed. 2019) (ISBN: 9781454897989), and the O'Kelley & Thompson statutory supplement (the 2019 or 2020 editions). Reading assignments are set forth below.

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.

<b>Class No.</b>	<b>Topic</b>	<b>Assignment</b>
1.	<b>Appendix A: Introduction to Financial Statements</b> Balance Sheet Income Statement Cash Flow Statement  <a href="#">Va. Code Ann. § 13.1-1208</a>	769-779  Prepare exercise A.1
2.	<b>Chapter 1: Business Forms Overview</b> 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  <i>Key statutes (and other materials):</i> <a href="http://bit.ly/2CuCPHV">http://bit.ly/2CuCPHV</a>	3-30  Crack open the statute book
3.	<b>Chapter 2: Agency Law</b> Creation of the Agency Relationship When Is A Principal Bound To A Contract?  <i>Key statutes:</i> Restatement (Third) of Agency, §§ 1.01, ch. 2, ch. 3, ch. 4, ch. 6 Restatement (Second) of Agency § 8A Cal. Civil Code §§ <a href="#">2295</a> , <a href="#">2309</a>	31-52

<b>Class No.</b>	<b>Topic</b>	<b>Assignment</b>
4.	<p><b>Chapter 2: Agency Law</b>            When Is A Principal Bound To A Contract?            Tort Liability of the Principal            The Principal-Agent Problem and Fiduciary Duties</p> <p><i>Key statutes (and other materials):</i>  <a href="http://bit.ly/2pdt5Ph">http://bit.ly/2pdt5Ph</a>            Delaware General Corporation Law ("DGCL") §§ 141(a)-(b), 142            Delaware Limited Liability Company Act §§18-402, 18-407            MBCA §§ 8.01(b); 8.41  <i>Focus on Articles IV and V of the bylaws:</i>  <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>            Restatement (Third) of Agency, § 2.04, ch. 7, ch. 8            Cal. Civ. Code § 2343            Ga. Code § 10-6-22</p>	52-86
5.	<p><b>Chapter 3: Choice of Form Considerations</b>            Tax Treatment            Liability Exposure</p>	87-122
6.	<p><b>Chapter 3: Choice of Form Considerations</b>            Liability Exposure            Attractiveness to Investors            Other Considerations            Conversion</p> <p><i>Key statutes:</i>            DGCL § 102(b)(6)            N.Y.B.C.L. § 630(a), (c)</p>	122-144
7.	<p><b>Chapter 4: Partnerships and LLPs</b>            Partnerships            Limited Liability Partnerships</p> <p><i>Key statutes (and other materials):</i>  <a href="http://bit.ly/2CxokCW">http://bit.ly/2CxokCW</a>  <a href="http://www.500fifthavenue.com/building.html">http://www.500fifthavenue.com/building.html</a>            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(l)            N.J. Stat. Ann. § 42:1A-4 (contrast with RUPA § 103)</p>	145-184  The UPA (1914) and RUPA (1997) are under "Unincorporated Business Association Statutes" in the supplement

8.	<p><b>Chapter 5. Limited Partnerships &amp; LLLPs</b>  Limited Partnerships  Limited Liability Limited Partnerships</p> <p><i>Key statutes:</i>  ULPA §§ 110, 201, 303, 305, 403, 404, 406, 408  6 Del. C. §§ <a href="#">17-214</a>, <a href="#">17-1105</a>  Cal.Corp.Code § <a href="#">15903.03</a></p>	185-210  The ULPA is under “Unincorporated Business Association Statues” in the supplement
9.	<p><b>Chapter 6. Limited Liability Companies</b>  Formation  Governing Law  Operating Agreement  Management  Fiduciary Duties  Obligation of Good Faith and Fair Dealing  Liability Shield</p> <p><i>Key statutes (and other materials):</i>  Delaware Limited Liability Company Act §§ 18-101(7), 201, 301 to 304, 402, 703(d), 1101, 1104  RULLCA §§ 102(10), 110, 304, 407, 409  California Corporations Code §§ <a href="#">17704.10</a>, <a href="#">17708.08</a>.</p>	211-234  The Delaware Limited Liability Company Act and RULLCA (2016) are under “Unincorporated Business Association Statues” in the supplement
10.	<p><b>Chapter 6. Limited Liability Companies</b>  Transfer of LLC Interests  Allocation of Profits and Losses; Distributions  Dissolution</p> <p><i>Key statutes (and other materials):</i>  Delaware Limited Liability Company Act §§ 18-101(3), 215(a), 215(b)(1), 404, 503, 504, 702, 704, 603, 801, 802  RULLCA §§ 501, 601, 701, 702, 708</p>	234-275
11.	<p><b>Chapter 7. The Incorporation Process</b>  Pre-Incorporation Activities  Jurisdiction of Incorporation  Incorporation Mechanics  Defective Incorporation</p> <p><i>Key statutes (and other materials):</i>  <a href="https://corpfiles.delaware.gov/Augustfee2019.pdf">https://corpfiles.delaware.gov/Augustfee2019.pdf</a>  DGCL §§ 101-03, 106 09, 121, 122, 124, 211, 131(a), 132(a), 141(a), (c), (f), 201, 242, 271, 204, 205  MBCA §§ 2.02-2.06, 3.01, 4.01, 6.01, 6.22, 10.03, 10.20</p>	277-306  DGCL = Delaware General Corporation Law; MBCA = Model Business Corporation Act
12.	<p><b>Chapter 7. The Incorporation Process</b>  Ethical Issues  <b>Chapter 8. Corporate Finance</b>  Debt</p>	306-334



17.	<p><b>Chapter 10. Fiduciary Duties</b>  Fiduciary Duties of Directors  Fiduciary Duties of Officers</p> <p><i>Key statutes (and other materials):</i>  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. § <a href="#">14A:2-7(3)</a> (compare with DGCL § 102(b)(7))  <a href="#">Del. Ch. Ct. R. 23.1</a>  <a href="#">FRCP 23.1</a></p>	518-543
18.	<p>Fiduciary Duties of Controlling Shareholders  Indemnification and Insurance</p> <p><i>Key statutes (and other materials):</i>  DGCL § 145  Cal. Corp. Code § 317  MBCA §§ 8.50-8.57</p>	543-568
19.	<p><b>Chapter 11. Return on Investment</b></p> <p><i>Key statutes (and other materials):</i>  MBCA §§ 1.40(6); 6.40; 8.33, 10.05(4)(b)  '33 Act §§ 2(a)(11); 4(a)(1)</p>	569-598  Skip Exercises 11.2 to 11.4
20.	<p><b>Chapter 12. Minority Shareholder Protections</b></p> <p><i>Key statutes (and other materials):</i>  MBCA §§ 6.30; 7.28; 7.32, 14.30, 14.34  DGCL §§ 102(b)(3); 214; 226, 350  Cal. Corp. Code §§ 301.5(a); 708; <a href="#">2115</a>  N.Y. Bus. Corp. Law §§ 622, 1104-a</p>	599-638
21.	<p><b>Chapter 13. Public Company Regulation</b>  Disclosure Requirements</p> <p><i>Key statutes (and other materials):</i>  '34 Act §§ 12; 13; 15(d)  '34 Act Rule 10b-5</p>	639-658

22.	<p><b>Chapter 13. Public Company Regulation</b>  Proxy Voting Regulation  Corporate Governance Listing Standards  Insider Trading (on page 707, question 2, assume the transaction is a merger)</p> <p><i>Key statutes (and other materials):</i>  '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 §§ <a href="#">25402</a>, <a href="#">25502.5</a></p>	658-708
23.	<p><b>Chapter 14. Mergers and Acquisitions</b>  Friendly Acquisitions</p> <p><i>Key statutes:</i>  DGCL §§ 252, 253, 262  NYSE Listing Standard 312.03(c)</p>	709-732
24.	<p><b>Chapter 14. Mergers and Acquisitions</b>  Hostile Acquisitions</p> <p><i>Key statutes (and other materials):</i>  '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)</p>	732-67
25.	Advanced M&A	Handout on Blackboard
26.	<b>Review Session</b>	

## 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 (5<sup>th</sup> 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.

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