

SYLLABUS

BUSINESS ASSOCIATIONS (Fall 2017)

Seton Hall University School of Law

Professor Lubben

stephen.lubben@shu.edu

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](#) (2nd ed. 2016) (ISBN: 978-1-4548-6838-5), and the O'Kelley & Thompson statutory supplement ([the 2017 edition](#), if available, or the [2016 edition](#)). 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](#).

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.

Class No.	Topic	Assignment
1.	Appendix A: Introduction to Financial Statements Balance Sheet Income Statement Cash Flow Statement Va. Code Ann. § 13.1-1208	743-752 <i>prepare exercise A.1</i>
2.	Chapter 1: Business Forms Overview Sole Proprietorship Partnership Limited Liability Partnership <i>Key statutes (and other materials):</i> Business Certificate for Sole Proprietorships and General Partnerships (NYC Business)	3-11
3.	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> Delaware's \$1 Billion Incorporation Machine By David Kocieniewski	11-29 <i>crack open the statute book</i>

Class No.	Topic	Assignment
4.	<p>Chapter 2: Agency Law Creation of the Agency Relationship When Is A Principal Bound To A Contract?</p> <p><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 §§ 2295, 2309 15 U.S.C. § 1602(p)</p>	31-47
5.	<p>When Is A Principal Bound To A Contract?</p> <p><i>Key statutes (and other materials):</i> Delaware General Corporation Law ("DGCL") §§ 141(a)-(b), 142 Delaware Limited Liability Company Act §§18-402, 18-407 MBCA §§ 8.01(b); 8.41 Exxon Mobil Corporation By-Laws (focus on Articles IV and V)</p>	47-60
6.	<p>Tort Liability of the Principal The Principal-Agent Problem and Fiduciary Duties of the Agent</p> <p><i>Key statutes:</i> Restatement (Third) of Agency, § 2.04, ch. 7, ch. 8 Cal. Civ. Code § 2343 Ga. Code § 10-6-22</p>	60-71
7.	<p>Chapter 3: Choice of Form Considerations Tax Treatment</p>	73-90
8.	<p>Liability Exposure</p> <p><i>Key statutes:</i> DGCL § 102(b)(6) N.Y.B.C.L. § 630(a), (c) California Corporations Code § 17703.04(b)</p>	90-118
9.	<p>Attractiveness to Investors Other Considerations</p>	118-126
10.	<p>Chapter 4: Partnerships and LLPs Partnerships</p> <p><i>Key statutes (and other materials):</i> Uniform Partnership Act §§ 6, 7, 9, 12, 25, 27, 40 Revised Uniform Partnership Act §§ 103, 201-204, 301, 401-404</p>	129-149
11.	<p>Partnerships Limited Liability Partnerships</p>	149-165

Class No.	Topic	Assignment
	<p><i>Key statutes:</i> Uniform Partnership Act §§ 9, 13 18, 21, 25, 27-29, 30-38, 40 Revised Uniform Partnership Act §§ 103, 104, 301, 306-308, 401, 404(g), 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</p>	
12.	<p>Chapter 5. Limited Partnerships & LLLPs Limited Partnerships Limited Liability Limited Partnerships</p> <p><i>Key statutes:</i> Cal.Corp.Code § 15903.03 <i>(As always, read the statutes cited in the chapter)</i></p>	167-192
13.	<p>Chapter 6. Limited Liability Companies Formation Governing Law Operating Agreement Management Fiduciary Duties Obligation of Good Faith and Fair Dealing</p> <p><i>Key statutes (and other materials):</i> Delaware Limited Liability Company Act §§ 18-201, 18-301 to 304, 402, 702, 703(d), 1101, 1104 California Corporations Code §§ 17704.10, 17708.08.</p>	193-207
14.	<p>Liability Shield 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 §§ 18-503, 504, 603, 801, 802</p>	207-244
15.	<p>Chapter 7. The Incorporation Process Pre-Incorporation Activities Jurisdiction of Incorporation Incorporation Mechanics</p> <p><i>Key statutes (and other materials):</i> Division of Corporations Fee Schedule, Delaware Department of State 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>	247-265
16.	<p>Defective Incorporation Ethical Issues Chapter 8. Corporate Finance Debt</p> <p><i>Key statutes (and other materials):</i> Rating Agencies Draw Fire on Capitol Hill</p>	265-281 283-291

Class No.	Topic	Assignment
17.	Debt Equity	292-302
18.	Internally Generated Funds Capital Structure Introduction to Federal Securities Regulation	352-373
19.	Chapter 9. Corporate Governance Shareholders Directors <i>Key statutes (and other materials):</i> DGCL §§ 109, 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	375-407
20.	Officers Bylaws <i>Key statutes (and other materials):</i> DGCL §§ 102(f), 115, 242 California Corporation Code §§ 211, 212 MBCA §§ 7.25, 10.03-10.05 Exxon Mobil Corporation By-Laws	408-427
21.	Chapter 10. Fiduciary Duties Fiduciary Duties of Directors <i>Key statutes (and other materials):</i> DGCL § 141(e) California Corporation Code §§ 204(a)(10); 309 12 U.S.C. §1821(k) New York Banking Law §7015	429-448
22.	Fiduciary Duties of Directors <i>Key statutes (and other materials):</i> DGCL § 102(b)(7) MBCA §§ 2.20(b)(4), 8.33	448-467
23.	Fiduciary Duties of Directors	468-493
24.	Fiduciary Duties of Directors Fiduciary Duties of Officers Fiduciary Duties of Controlling Shareholders <i>Key statutes (and other materials):</i> Delaware court of chancery issues significant ruling on the ability of creditors to assert fiduciary duty claims against directors: key takeaways. MBCA §§ 1.43(a)(3); 2.02(b)(4), (6); 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) Del. Ch. Ct. R. 23.1 FRCP 23.1	493-520

25.	Executive Compensation Indemnification and Insurance <i>Key statutes (and other materials):</i> DGCL §§ 122(5), (15); 145; 157 Cal. Corp. Code § 317 N.Y. Bus. Corp. Law § 505(d) MBCA §§ 8.50-8.57	520-537
26.	Chapter 11. Return on Investment Distributions Sales <i>Key statutes (and other materials):</i> MBCA §§ 1.40(6); 6.40; 8.33, 10.05(4)(b) Securities Act §§ 2(a)(11); 4(a)(1)	539-569 (skip Exercises 11.2 to 11.4)
27.	Chapter 12. Minority Shareholder Protections Negotiated Protections <i>Key statutes (and other materials):</i> MBCA §§ 6.30; 7.28; 7.32 DGCL §§ 102(b)(3); 214; 350 Cal. Corp. Code §§ 708; 301.5(a); 2115 N.Y. Bus. Corp. Law § 622	571-587
28.	Immutable Statutory Protections Heightened Fiduciary Duties Buy-Sell Agreements DGCL § 226 N.Y. Bus. Corp. Law § 1104-a MBCA §§ 14.30, 14.34	587-608
29.	Chapter 13. Public Company Regulation Disclosure Requirements <i>Key statutes (and other materials):</i> Securities Exchange Act §§ 12; 13; 15(d) Securities Exchange Act Rule 10b-5	609-629
30.	Proxy Voting Regulation <i>Key statutes (and other materials):</i> Securities Exchange Act § 14(a) Securities Exchange Act Rules 14a-1, 14a-2, 14a-4, 14a-6, 14a-8, 14a-9, 14a-12	629-648
31.	Proxy Voting Regulation Corporate Governance Listing Standards <i>Key statutes (and other materials):</i> DGCL §§ 141; 223	648-660
32.	Insider Trading (on page 678, question 2, assume the transaction is a merger) <i>Key statutes (and other materials):</i> Salman v. United States , 137 S. Ct. 420, 196 L. Ed. 2d 351 (2016).	660-663, 677-680 (i.e., skip Newman)

	<p><i>Silverberg v. Gold</i>, C.A. No. 7646-VCP (Del. Ch., Dec. 31, 2013). Securities Exchange Act §§ 10(b), 14(e) Securities Exchange Act Rules 10b-5, 14e-3 California Corporations Code §§ 25402, 25502.5</p>	
--	--	--

33.	Chapter 14. Mergers and Acquisitions Introduction Friendly Acquisitions DGCL §§ 251 (subparts a, b, c, and f), 259, 271	681-689
34.	Friendly Acquisitions <i>Key statutes:</i> DGCL §§ 253, 262 NY Bus. Corp. L. § 1319 California Corporations Code § 2115 N.J. Stat. §§ 14A:10-12, 14A:11-1 NYSE Listing Standard 312.03(c)	689-705
35.	Hostile Acquisitions <i>Key statutes (and other materials):</i> Securities Exchange Act §§ 13(d), 14(d), 14(e) Securities Exchange Act Rules 14d-2 through 14d-10, 14e-1 California Corporations Code § 1101(e) DGCL § 203 N.Y.B.C.L. § 717(b)	M&A Handout ("first class")
36.	Hostile Acquisitions	M&A Handout ("second class")
37.	(No class; Tuesday before Thanksgiving)	
38.	Hostile Acquisitions <i>Key statutes (and other materials)</i>	M&A Handout ("third class")
Last class	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 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: Monday, September 24, 2018