

**BUSINESS ORGANIZATIONS:
Introductory Memorandum and Syllabus
Fall 2009**

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Texts:

Textbooks: Smith and Williams, *Business Organizations: Cases, Problems, and Case Studies*, Aspen Press, 2d ed. 2008 (“S&W” on the assignment sheet).

Statutory Supplement: O’Kelley & Thompson, *Corporations and other Business Associations: Selected Statutes, Rules and Forms* (2009).

Course Description:

This course covers the law governing business associations. We begin with the law of agency, which is fundamental to all business associations. The remainder of the course is divided between closely held business associations and publicly held corporations. The study of closely held corporations is animated primarily by potential conflicts among owners, whereas the study of publicly held corporations is animated primarily by potential conflicts between shareholders and managers.

Closely held business associations are firms with a small number of owners, which often organize as partnerships or limited liability companies (LLCs), though many small businesses are corporations. While each form of business association is governed by its own statute, the challenges common in governing all closely held business associations ensure that our study of each of these entities emphasizes similar themes.

Our study of publicly held corporations will explore the ways in which state and national law empowers and constrains different classes of participants in the corporation, with special attention to the roles of shareholders and directors. We will conclude our study exploring the fiduciary obligations created by courts to regulate publicly held corporations.

Assignments: An assignment sheet for the course is attached to this memorandum. Each numbered assignment *generally* corresponds to one class period. Certain units of assigned readings are likely to take more than one class period to discuss, but should nevertheless be read as a single unit. Assignments include

the relevant provisions of the Uniform Partnership Act (1914) (“UPA”); the Revised Uniform Partnership Act (1997) (“RUPA”); the Model Business Corporation Act (“MBCA”); the Delaware General Corporation Law, or the Federal Securities Exchange Act of 1934, and rules thereto. It is extremely important to read the relevant statutory provisions before class. The law of business entities includes economic and legal arrangements developed by private contracts, by common-law standards, and by statutes, and all three must be attended to in order to develop a complete analysis.

Participation: Class participation is highly encouraged. As will be discussed in the first class, you will be working in teams throughout the semester on various types of in-class assignments, based on the problems and case studies indicated on the assignment sheet. You will be expected to sit with your team in order to work together during the class period.

Examination: **Your grade will be based on a one-hour multiple choice exam and a two-hour essay exam that you will take during the regularly scheduled time for exams for this class.** The exam will be an open-book exam. You may use your book, your statutory supplement, your class notes and any outlines you developed or to which you contributed.

Communication: My office is Room 231. I will generally be available throughout the week. I can easily be reached in person after class either in the Auditorium or in my office. I am happy to discuss substantive aspects of the class with students. I do not answer questions of the “Will this be on the exam?” or “I missed class today, what did we cover?” variety, although I do not expect graduate students will ask such questions.

Assignment Sheet: Business Associations

Prof. Cynthia Williams

Fall, 2009

I. The Law of Agency (Chapter 1)

1. Creation of an agency relationship

S&W, pp. 1-9

2. Fiduciary duties and principles of attribution and authority (actual authority)

S&W, pp. 10-21

Problem 1-1

3. Principles of attribution and authority: apparent authority and respondeat superior

S&W, pp.21-22 (through second full paragraph); 25-45

Problem 1-3

II. General Partnerships (Chapter 2)

4. Formation of a partnership

S&W, pp. 53-67

Problem 2-1

5. Management and fiduciary duties

S&W, pp. 67-85

Problem 2-2

6. Liability of partners to third parties

S&W, pp. 111-117

Problem 2.4

Review: Problem 2-3, pp. 85-86

III. Hybrid Entities (Chapter 2, conclusion, and Chapter 3)

7. Limited liability partnerships (LLPs)

S&W, pp. 117-131

Case study, Frode Jensen & Pillsbury Winthrop, LLP

8. Limited liability corporations (LLCs): Background, formation and management

S&W, pp. 143-148; 152-163

9. LLCs: Limited liability and fiduciary duties

S&W, pp. 167-186

IV. Corporations: Organization and Structure (Chapter 4)

10. Introduction; incorporation

S&W, pp. 221-236

11. Capital structure

S&W, pp. 237-247

Problem 4-1

12. Directors & shareholders

S&W, pp. 247-267

Problem 4-2

V. Corporations: Financial Rights of Shareholders (Chapter 5)

13. Dividends and distributions/limited liability

S&W, pp. 269-281

Problem 5-1 (pp. 299-300)

VI. Control of the Closely Held Firm (Chapter 6)

14. Shareholder Agreements and Transfer Restrictions

S&W, pp. 301-317

Problem 6-1

15. Classified Shares and Supermajority Requirements

S&W, pp. 330-341; 344-359

Problem 6-3

VII. Oppression of Minority Shareholders (Chapter 7)

16. The Plight of Minority Shareholders

S&W, pp. 385-403

Problem 7-1

17. Minority Oppression and Remedies

S&W, pp. 403-422

Problem 7-2

VIII. Control of the Publicly Held Firm (Chapter 8)

18. Shareholder Voting

S&W, pp. 423-425; 430-447

19. Federal Proxy Regulation

S&W, pp. 447-460

Problem 8-1

20. Shareholder Proposals

S&W, pp. 460-479

Problem 8-2

IX. Duty of Care (Chapter 9)

21. The Duty of Care and the Business Judgment Rule; Decision-Making Context

S&W, pp. 501-522
Problem 9-1

22. The Oversight Context and Waste

S&W, pp. 522-534; 566-574
Problem 9-2

23. The Role of Good Faith

S&W, pp. 534-566
Problem 9-3

24. Shareholder Primacy

S&W, pp. 575-584
Problem 9-4

X. Duty of Loyalty (Chapter 10)

25. Conflict of Interest Transactions Generally

S&W, pp. 593-612
Problem 10-2 (p. 626-628)

26. Majority or Controlling Shareholders and Procedural Mechanisms to Limit Judicial Review

S&W, pp. 612-626
Problem 10-1

27. Procedural Mechanisms, continued

S&W, pp. 628-638
Problem 10-3

XI: Review: Fiduciary Duties

28. Salomon Brothers Case Study

S&W, pp.584-592