

Business Organizations: Reading Assignments

Weeks 1 Through 14

Professor Young

Weeks 1 and 2

Introduction to Business Forms: The Subject in General

pp 1-7

The Statutes, Introduction to Agency, Liability From The Agency Relationship; Duties of the Agent and the Principal to Each Other

pp 7-28

Duties of the Agent and the Principal to Each Other; Principal's Duty to the Agent; Termination of the

Agent's Power

Pp 20-30

The General Partnership; Introduction, The Definition of Partnership

Martin v Peyton—brief focusing on facts supporting existence of a partnership and facts not supporting existence of a partnership

The Partnership Agreement; Entity v. Aggregate Views, Partnership by Estoppel

pp 39-42

Week 3

Management and Operation;

Summers v Dooley—brief focusing on rights of management and operation of the partnership

pp 43-44

National Biscuit Co. v Stroud—brief with focus on power to act of partnership

pp 46-47

Financial Rights and Obligations; Partnership Accounting' Sharing of Profits and Losses

Kessler v. Antinora—brief focusing on general rule related to profits and losses in partnerships and exceptions to general rule

pp 48-59

Business Organizations, pg 2

Roach v Mead—brief focusing on circumstances surrounding the loan and nature of the relationship between plaintiff and defendant

pp 48-64

Indemnification and Contribution; Fiduciary Duties—The Common Law

Meinhard v Salmon—brief focusing on duty of defendant to plaintiff and also be prepared to discuss dissenting opinion

pp 67-71

The Duty of Loyalty

Enea v Superior Court—brief with focus on nature of partnership relationship

Pp 73-75

California Corporations Code (2019 Desktop Edition)

Title 2 Partnerships Sections 15901.02 through 15901.17

pp 445-455

Week 4

Duty of Care; Contractual Limitations; Duties When Leaving a Partnership

Bane v Ferguson—brief with focus on plaintiff's theories of liability and rationale for court's decision

Contractual Limitations

Singer v Singer—brief with focus on how contractual limitations may affect duties of the partners

Meehan v Shaughnessy—brief with focus on conduct of plaintiffs which may or may not have breached their fiduciary duties

Ownership Interests and Transferability; Partnership Property; Dissociation and Dissolution; Dissolution Under UPA

Rapoport v 55 Perry Co—brief with focus on right of new partners to enter into partnership

pp 78-119

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Week 5

California Corporations Code

Formation; Certificate of Limited Partnership and Other Filings; General Partners

Sections 15902.1 through 15906.05

Pp 455-474

Week 6

Disregard of the Corporate Entity; The Common Law Doctrine of Piercing the Corporate Veil; The Piercing Doctrine in Federal/State Relations; “Reverse Piercing”

Bartle v. Home Owners Co-op—brief focusing on rationales for piercing or not piercing the corporate veil

Read other cases in this section and be prepared to discuss

pp 177-224

Week 7

Management and Control of the Corporation; The Traditional Roles of Shareholders and Directors; Action of Officers; Management and Control of the Publicly Held Corporation

Pp 283-306

California Corporations Code, Chapter 3, Sections 300 through 301.5; Sections 302 through 305

Week 8

Management and Control of the Publicly Held Corporation; Corporate Governance in the Twenty-First Century; Business Failures and Corporate Scandals

pp 355-364

Week 9

Proxy Regulations: Securities Exchange Act of 1934: Rule 14a-9 promulgated by the SEC.

pp 388-413

Note: Caterpillar Case: importance of MD&A section of Annual Financial Report: 10-K, 10-Q and 8-Q

Note: TSC Industries Case: definition of “materiality” for purposes of bringing either a 14a-9 or 10b-5 action.

“Say on Pay” Dodd-Frank provisions and Regulation FD (Fair Disclosure)

Pp 421-423

Duty of Care and the Business Judgment Rule (BJR)

Schlensky Case: brief on development of BJR

Van Gorkom Case: brief focusing on breach of the duty of care by the BOD notwithstanding the BJR

Pp 425-447

Week 10

BJR: Caremark Claims

In re Caremark Intern. Inc.: brief case focusing on Board’s duty of oversight.

Note: Francis v United Jersey Bank in notes on page 456

Stone v Ritter: brief case noting “red flags” that establish breach of duty of oversight.

Pp 447-460

Duty of Loyalty:

Marciano v Nakash: brief focusing on self-dealing transactions as breach of duty.

Heller v Boylan: brief focusing on executive compensation as “waste”. Note the reference to Rogers v Hill, a SCOTUS case.

Wilderman v Wilderman: read, noting the application to closely held corporations.

Brehm v Eisner and In re Walt Disney Co Derivative Litigation: read noting how claims of excessive executive compensation packages are handled modernly.

Pp 460-490

Week 11

Controlling Shareholder Interest:

Sinclair Oil: read noting which duties were not breach vs. those that were by parent company.

Weinberger v UOP, Inc.: read and do your best to sort out the facts noting what management did that allegedly breached their duty of loyalty.

Corporate Opportunity Doctrine: usurping a corporate opportunity as breach of duty of loyalty.

Northeast Harbor Golf Club: brief case noting law relative to seizing a corporate opportunity.

pp 514-523

Disclosure:

Malone v Brincat: brief case focusing on duty of honesty and candor in communicating with shareholders

pp 523-530

Shareholder Derivative Litigation:

Gall: read to get majority view of the law relative to dismissal by Board of derivative suit.

Zapata: read to get Delaware handling of motion by Corp to dismiss derivative litigation.

Aronson: read to understand when demand on the Board is deemed "futile". Also note the definition of the BJR which you are expected to know.

In re Oracle Corp: read, noting the lack of independence of the SLC under the first prong of the Zapata test.

pp 530-565

Week 12

Insider trading in violation of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10(b)-5 promulgated by the SEC thereunder.

Note cases: Blue Chip Stamps case; Ernst & Ernst; and Santa Fe.

Enron Case: read to help understand role of corporate greed in securities fraud.

pp. 637-651

Chiarella: brief to get idea of the potential penalties for insider trading.

U.S. v O'Hagan: brief focusing on expansion of insider trading under the misappropriation theory.

SEC v Cuban: brief to see how Rule 10b-5-2 can create coa under a misappropriation theory of insider trading.

Dirks: brief focusing on tipper/tippee liability for violating insider trader laws.

pp 651-693

Week 13

Insider Trading and Tippee Liability:

US v Newman: read to get recent view on establishing tippee liability.

Salman v US: read focusing on proving tipper inappropriately benefited under the Dirks analysis
pp 693-704

Penalties Insider Trading: pp 705-707

Section 16 violations: short term profiting in sale/purchase of equity securities by covered persons. Note: This is an important securities violation to know.

Pp 707-714

Traditional 10b-5 violation by corporation:

Basic v Levinson: read noting fraud on the market theory to establish causation.

pp 714-730

Sale of Control: Majority shareholder selling their controlling interest.

DeBaun: brief noting application to closely held corporation.

Perlman: read noting how minority shareholders were able to establish the sale of controlling interest to be deemed a corporate opportunity case.

Pp 731-748

Week 14

Takeovers: anti-takeover strategies

Pp 765-800

Judicial Review of Defensive Strategies taken by Board

Unocal Proportionality Test: note case, page 803

Schnell Principles: note 3, page 805

Revlon Duties: when sale of corporation is inevitable. Page 806

Lock-ups

Pp765-816

Review: To be scheduled.

Course-Specific Policies

1. Many of the cases we will cover involve factual situations occurring in unfamiliar business settings and the corresponding use of unfamiliar business terminology. This, coupled with the compressed nature of the coverage, requires students to diligently read all assigned materials, including materials posted on TWEN, and, if necessary, to read supplemental materials to enhance the mastery of the topics BEFORE coming to class. It is also highly advisable that you access CALI lessons on topic areas covered in the course. You should always familiarize yourself with relevant terminology. The better prepared the students, the better the classroom experience will be for everyone, including the professor. Students are required to prepare their own written briefs for each major case assigned in the casebook as well as those cases that are required to be read on TWEN, if applicable. Those briefs are to be brought to class. Well-written briefs facilitate more robust classroom discussion. NO BOOKBRIEFING; NO CANNED BRIEFS. If you are unprepared when called upon or if you do not have a written brief of your own creation, you may be given either a full or half absence for that class. ALWAYS BRING A COPY OF YOUR BRIEF THAT YOU ARE PREPARED TO HAND IN AT THE END OF THE CLASS. Briefs will be collected periodically.

NOTE: Briefing is not optional...it is mandatory.

Preparation, attendance, and participation are essential elements of the class. The classroom experience in general and the Transactional Track, in particular, are designed to enhance your mastery of the subject matter. Be prepared to engage in thoughtful dialogue for everyone's benefit.

Briefing Format: You should use the briefing methodology as instructed in your 1L year. However, classroom discussion will often be focused on key facts, issues, holdings and reasoning. NOTE: You should be extracting legal rules from the briefs...rules that are given meaning because they are provided in a factual context.

2. **Attendance:** Attendance is mandatory. There are no "excused" absences. The College of Law policy regarding attendance will be strictly adhered to, which means you cannot miss more than 20% of our classes. As a practical matter you shouldn't miss any classes if you want to maximize your chances of success in the class. Should a student be unprepared when called upon in class, the student will be given either a full or half absence for that class.

3. **Laptops, Tablets, etc.:** I am seriously considering prohibiting laptops, tablets, and other electronic devices during class. I will inform you of my decision on that issue at the second meeting of class. There will be no negative consequences related to use of electronic devices at the first meeting. In many instances, in a classroom setting, use of laptops, tablets and other electronic devices seriously impedes the learning process as students tend to get wrapped up in transcribing everything being said in class, or, conversely, using the laptop for purposes unrelated to the class. Full engagement during class is key.

ABA Standard 310

This course is designed to satisfy the requirements of ABA Standard 310. Standard 310 requires that for each hour of in-class time, students spend two hours preparing for class (reading or completing class assignments or assessments). Students are therefore expected to spend at least 6 hours per week preparing for this class.

Disability Accommodation Statement

Students with disabilities should refer to the policies described at the University of La Verne Disabled Student Services Handbook (as of September 13, 2017 located at <https://sites.laverne.edu/disabled-student-services/disabled-student-services-handbook/>, which can be found on the website of the University of La Verne Disabled Student Services website (<https://sites.laverne.edu/disabled-student-services/disabled-student-services-handbook/>) or at their office. Temporary accommodations are offered on a case-by-case basis. All required documentation must be submitted by the student before any formal accommodations and should be made directly to the Director of Student Affairs.

Any student eligible for and requesting academic accommodations due to a documented disability (or a suspected disability) is asked to contact the College of Law Director of Student Affairs and Americans with Disabilities Act Compliance Officer, Akita Mungaray by email at amungaray@laverne.edu or by phone at (909) 460-2017. Her office is located on the first floor of the College of Law, Office #107. You can also contact Cynthia Denne at the University of La Verne Disabled Student Services Office at (909) 448-4441. The office is located at the La Verne campus Health Center. In order to be considered for accommodations, disabilities must be documented and the proper medical evaluations must be submitted. The office is here to help you succeed in law school. Visit it online at <https://sites.laverne.edu/disabled-student-services/>

BUSINESS ORGANIZATIONS

Professor Young

University of La Verne College of Law

Spring, 2019

3 Units

Professor

Brenda Harrison Young

Phone: 626 644 7295

Class Time and Place

Meeting Day: Tuesdays

Meeting Time: 6:30 p.m. to 9:30 pm

Location: tbd

Course Description

This course examines the laws governing modern business entities, including agency, partnership, and limited liability companies. The course also examines legal issues relevant to the control and management of a corporation, with a focus on public corporations.

This course is part of the Transactional Track which integrates Business Organizations, Sales, and Negotiation. Business Organizations introduces the student to basic business principles starting with agency/principal and the various business entities available to carry on a business, including sole proprietorships, partnerships, limited partnerships, joint ventures, limited liability partnerships (LLPs), limited liability companies (LLCs) and the corporation its various iterations. These entities are examined through the lens of an attorney who must advise his or her client on the advantages and disadvantages of operating in the various business forms. We will examine operational issues both from the perspective of owner/managers and from a creditor's standpoint associated with various business entities. We will also explore liability issues associated with the breach of common law duties and liability associated with Federal Securities violations under the Securities Act of 1933 and the Securities Exchange Act of 1934.

The course is a primer in basic business terminology, attorney/client relationships, and touches on basic accounting and finance principles.

Students are not expected to develop expertise in the field of business law from this survey course. The course will, however, provide the foundation for further study and practice in the area of business law.

Basis of Grade

Examinations: There will be a three-hour final exam at the end of the semester worth 80% of your final course grade. It is currently contemplated that the examination will consist of both essay and objective questions, including a multiple-choice section. Students will be informed if a different format is going to be used. Numeric grades will be assigned in accordance with College of Law guidelines as set forth in the MAPP.

Participation and non-graded Assessments: Students will be given multiple non-graded assignments that are formative assessments, designed to monitor your progress towards mastery of the material. These assessments may be administered in class or as a take home. Each assignment is to be turned in by the designated time and completed with appropriate diligence. In addition, students are to come to class with their own **written briefs** ready to participate in classroom dialog. Participation and non-graded assessments will constitute 10% of your final grade. Missing more than two class sessions for any reason will negatively impact your participation component of your course grade.

Graded Assessments: In addition, graded assessments in the form of in-class quizzes, midterms, or take-home assignments may be administered for an additional 10% of your grade. The final exam will therefore be worth 90% to 80% of your final course grade.

Grading: Assignments and problems, graded or ungraded, are to be turned in on time, done in good faith, and according to instructions. No assignment will be accepted after the due date and time. If you are unable to attend a class the day an assignment is due, it is your responsibility to submit it to me via email (an email address will be provided shortly) or by physical delivery to a faculty secretary, no later than the day and time due. If you are absent during a class in which a graded or ungraded assignment is administered, you will not receive credit.

Required Materials

The Law of Business Organizations, Macey, Moll, Hamilton, Thirteenth Edition, West American Casebook Series

California Corporations Code 2019: Annotated, by Thomas Reuters

