

COURSE SYLLABUS
(Anticipated - Subject to Change)
Business Entity Fundamentals
Fall 2021
Professor Lipshaw
4 Credits

Instructor Information:

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For more information about me, see <http://www.professorlipshaw.com>

Course Information:

Meetings: M W 6:00-7:50 pm. Enter via the Zoom link on Blackboard.
Credit Hours: 4*

Overview

Important Notice: When you get to the Exam Format section below, you'll see that this course involves a series of online multiple choice quizzes as 1/2 of your total grade.

The subject of the first quiz is this Syllabus! Take advantage of an early opportunity to get some easy points.

Remote Learning Adjustments

The Fall 2021 version of this course is going to meet entirely via Zoom.

My primary concern is creating a vibrant learning experience even though the course is being conducted remotely. It is difficult enough to find energy for a face-to-face class that begins at 6:00 p.m. and ends at 7:50 p.m., much less one in which you are looking at a computer the whole time.

The best analogy I can offer is that converting a course from a face-to-face experience to Zoom is like adapting a book or a play into a screenplay for a movie. That is going to be a continuing effort on my part.

* I am required by the school administration to advise you that a "credit hour" is an amount of work that reasonably approximates not less than one hour of classroom or direct faculty instruction and two hours of out-of-class student work per week for fifteen weeks, or the equivalent amount of work over a different amount of time.

In face-to-face classes, I am notoriously anti-paternal and libertarian about things like where you sit, how you take notes, whether you want to waste \$50,000 worth of tuition surfing the Internet in the back row during class, etc. For the time being, I am going to impose more rules concerning the conduct of the class, mainly because this is all such a new mode of operation for all of us.

1. Please log into the Zoom class if at all possible through the link provided on Blackboard. This will ensure that your attendance is recorded (see Participation and Attendance below).
2. Please have your video on as the default during class, absent extenuating circumstances.
3. You are always welcome to ask questions. The most effective way of doing so is to send me the question in “Chat” or to use the “Raise Hand” function (in Participants).
4. I recommend that you enable the “Side-by-Side” function in your screen sharing so that you can see both me and the others in the class as well as my shared screen simultaneously.
5. I understand the most difficult aspect of this format is the extended time we all sit in chairs looking at computer screens. I am going to ensure that we have some kind of interactive interlude at least every ten minutes or so during every class. The interludes will take, among others, the following forms:
 - Polling questions related to the material we have either just discussed or are about to discuss. (Note: Zoom will keep a record of your participation in those polls. I only care about your participation, not what you answer. There is a grading bonus for 90% participation in the polling questions. See “Grading” below.)
 - “Stand up” or “take a lap around the room” breaks. We will certainly do that for five minutes in the middle of the class period, but more often if our attention is wavering.
6. I am also notoriously unenthusiastic in face-to-face classes about cold-calling and the so-called Socratic method, particularly in upper-level courses.
7. I very much welcome your suggestions, given the novelty of the experience. Obviously I don't promise to implement them all, but I would rather hear about improvement possibilities sooner rather than later.

Course Objectives and Learning Outcomes

This section of the course is a rigorous introduction to business entity law, geared particularly toward students who intend to pursue the Business Law and Financial Services Concentration and/or a career in transactional law. While it will serve as a basis for the business law aspects of the bar exam, please be advised that I do not teach all aspects of the doctrine covered on the bar exam, and do teach aspects of business law contexts and practice that are not the subject of bar

exam questions. You are well-advised to supplement your bar preparation with one of the bar review courses. As an aid in that effort, the following is an annotation I prepared in the fall 2019 of the Multistate Essay Examination with my class coverage:

Business Associations

Agency and Partnership	
I. Agency relationships	A. Creation B. Types C. Termination
II. Power of agent to bind principal	A. Authority B. Apparent authority C. Inherent agency power
III. Vicarious liability of principal for acts of agent	
IV. Fiduciary duties between principal and agent	A. Duty of care B. Duty of loyalty C. Duty of obedience
V. Creation of partnerships	A. General partnerships B. Limited partnerships C. Limited liability partnerships
VI. Power and liability of partners	
VII. Rights of partners among themselves	A. Profits and losses B. Management and control C. Duty of care D. Duty of loyalty
VIII. Dissolution	A. Distinguished from winding up and termination B. Rightful versus wrongful C. General partnerships, limited partnerships, or limited liability partnerships
IX. Special rules concerning limited partnerships	A. Disclosure requirements B. The control limitation C. Economic rights of limited partners

Comparison of Professor Lipshaw’s Business Entity Fundamentals Coverage to the UBE – Multistate Essay Examination Topics for Business Associations

As my syllabus makes clear, this is a course designed primarily to teach students the fundamental doctrine one needs to know to be a business lawyer. It is not intended to substitute for bar review. We cannot cover everything in a 4-credit survey course and some topics on which the bar examiners choose to focus are, in my view, too ministerial or boring to cover in class.

I have, however, looked at the MEE topics and compared them to the topics in my syllabus for purposes of giving you an idea of what you likely need to pick up in the bar review process that we either didn’t cover at all, or which we may have touched on but not to the extent you would need to know in order to be fully prepared.

The green highlighted MEE topics are those I believe we cover in substantial breadth and depth. The red highlighted topics are those we did not cover at all.

The yellow topics are those we touched on and probably need to be supplemented.

Disclaimer: These are topics listed on the ncbex.org website as of Nov. 25, 2019. I have not looked at actual questions or other bar prep materials as to ANY of the topics, however highlighted. This is meant for guidance only.

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Corporations and Limited Liability Companies

I. Formation of organizations	A. Articles of incorporation B. Bylaws C. Articles of organization; certificates of formation D. Operating agreements
II. Pre-organization transactions	A. Promoters: contracts and fiduciary duties B. Subscriptions for shares
III. Piercing the veil	
IV. Financing the organization	A. Sources of finance B. Securities issuance and characteristics C. Dividends and distributions D. Redemptions and repurchases
V. Management and control	A. Shareholders 1. Meetings: annual, notice, and quorum 2. Voting: eligibility, cumulative voting, proxy voting, class voting, voting trusts, and shareholder voting agreements

Business Associations (continued)

B.	Directors
1.	Meetings: quorum and notice
2.	Action by written consent
3.	Action by committee
4.	Director's objections to actions
C.	Officers
1.	Authority
2.	Officer's liability on corporate obligations
D.	Members and managers
1.	Authority
2.	Liability
3.	Powers
VI.	Fiduciary duties
A.	Directors, officers, and shareholders
B.	Managers and members
VII.	Close corporations and special control devices
A.	Share transfer restrictions
B.	Special agreements allocating authority
C.	Resolutions of disputes and deadlocks
D.	Option or buy/sell agreements
VIII.	Organizational structure including relationships between parents and subsidiaries
A.	Amendments
1.	Articles of incorporation and bylaws
2.	Articles of organization, certificates of formation, and operating agreements
B.	Mergers and consolidations
C.	Sales of substantially all assets
D.	Recapitalizations
E.	Exchanges of securities
F.	Dissolution of organization
IX.	Shareholder and member litigation: direct, derivative, and class litigation

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Moreover, there are at least two approaches to teaching this material. One is to proceed serially through the doctrine and the business forms – agency to partnership to corporations and so on. The other approach is “topical,” and it is the method I use. We undertake an overview in the first two units, with the idea of putting the law in a business planning context and learning a common terminology. We then proceed topically through a comparative assessment of management, finance, limited liability, fiduciary duty, and end game issues.

Be forewarned. The course serves as an introduction to “numeracy” and financial concepts (including basic accounting) and includes some math. If you don’t want to have to do some simple arithmetic and some algebra and have it count as a small part of your overall grade, don’t take this section. Rest assured, however, that there is no trigonometry or differential calculus.

When you have completed the course, you should have a working knowledge of the basic business entity forms, partnership, corporation, and LLC, the reasons one would organize a business in one of those forms or another, and the differences among the forms in terms of financial, management, ownership, and liability objectives of the participants. You should also have a basic understanding of business financial accounting.

Required Materials:

I use Blackboard as my primary means of communicating with you outside of class. You are responsible for checking it regularly. I supply a LOT of information, including all of the Power Point diagrams and schematics you will see in class.

Texts:

Ribstein, Lipshaw, Fershee, & Miller, Unincorporated Business Entities, 5th ed. (LexisNexis) (“UBE”)

Bainbridge, Corporate Law, 4th ed. (Foundation Press) (“Bainbridge”)

There are no texts or casebooks presently existing that organize the material for all of the basic business forms in the topical approach described above.

As to unincorporated business entities (sole proprietorship, partnership, and LLCs), UBE is the book my co-authors and I designed to permit teaching in just that manner, and it is one of the required materials. It has been in the market long enough that you should be able to acquire a used version.

As to corporations, we will use Bainbridge, a highly readable text on corporate law, written by one of the leading scholar/teachers in the field, Stephen Bainbridge.

Cases:

Cases not found in UBE are posted under the appropriate unit within Course Materials on Blackboard. I have edited them myself to make them more readable. I present the cases as learning tools rather than precedent, so I don't show much of the editing.

Statutes:

You will not need to purchase a separate statutory supplement.

We have not updated UBE, so some of the statutes included in it are outdated. Here is a list of the statutes we will work with in this class and where you will find them:

Uniform Partnership Act (1914), in UBE, pp. 613-30. (I will refer to this as the “UPA”. This version of the partnership statute is still in effect in eleven jurisdictions, including MA, RI, and NY.)

Uniform Partnership Act (1997, last amended 2013), on Blackboard. (I will refer to this as “RUPA,” pronounced ROO-PAH, or the Revised Uniform Partnership Act. It is in effect in all the other states except LA, plus D.C., Puerto Rico, and the U.S. Virgin Islands.)

Model Business Corporation Act, on Blackboard.

Delaware General Corporation Law, on Blackboard.

Delaware LLC Act, in UBE, pp. 855-89.

Uniform Limited Liability Company Act (2006, last amended 2013), on Blackboard. (I will refer to this as “ULLCA,” pronounced ULL-CAH. It is in effect in 21 jurisdictions, including CT and VT. For reasons we will discuss in class, LLC laws are far less uniform than the partnership laws.

Attendance and Class Participation

It is important that you attend class. I am well known for tailoring my exams to what we covered in class. My casual observation is that there is a correlation between class attendance and engagement and grades. The best teaching you are going to get on that will be in class.

The Law School’s student attendance policy is set forth in Section II.B of the Rules and Regulations, which can be found at the following URL: <http://www.suffolk.edu/law/student-life/rulesandregs.php#rule2B>.

I am required by the University Faculty Handbook to establish a system monitoring student attendance in order to comply with federal student loan regulations. The precise nature of the system is up to me. While I believe that attending class is highly correlated to getting the best possible grade you can get (i.e. it ought to be clear that all of my evaluations of you in quizzes and exams flow from what I talk about in class), I do not take your attendance into account when calculating grades. I believe that attendance in a graduate level professional school, like where you sit (when we have face-to-face classes) or how you take notes, is a matter of your own personal choice, responsibility, and accountability.

For remote learning, Zoom establishes a record of your attendance as long as you sign on through the link on Blackboard. To the extent that there are any administrative or other issues in this course that relate to your attendance (i.e., getting credit for the course; compliance with regulations in connection with any student loans, etc.), that will be the record.

Recording and Class Notes

I want to remove some of the note-taking (particularly the “transcription” kind) pressure.

Normally, I audio record and make ALL face-to-face classes available via an MP3 posted under “Course Recordings” on Blackboard. Zoom will permit me to do so through the same link, but you will also get the video.

At the end of each unit, I also post my class notes. I don’t do it until the end of the unit because I’m always tweaking them and so I don’t have the final until then.

If you take notes, concentrate on engaging with what’s important - you can always go back and pick up details later.

NOTICE: YOU MAY ONLY LISTEN TO THE RECORDINGS VIA THE LINK PROVIDED, AND MAY NOT DOWNLOAD OR RECORD THEM. THE CLASS NOTES AND THE RECORDINGS ARE MY PROPERTY, AND YOU ARE PERMITTED TO USE THEM FOR

THIS CLASS ONLY. ANY REBROADCAST, REPUBLICATION, OR RETRANSMISSION WITHOUT THE EXPRESS WRITTEN CONSENT OF ME IS STRICTLY PROHIBITED.

Quizzes, Exam, and Grading

1. One-half of your grade will be based on the final exam. The final exam is going to be entirely multiple choice. It will involve ten situations with a number of questions following each fact situation for a total of forty (40). The final exam will be **OPEN BOOK**. Some questions will involve simple algebra or arithmetic of the kind covered in class. You may bring a low-tech calculator (i.e. one that is not combined with a device that allows you voice or data access to the outside world).

2. One-half of your grade will be based on a series of multiple-choice quizzes to be administered online through Blackboard over the course of the semester. There will be nine quizzes, including one at the end of each unit. **The first quiz will cover this syllabus!!!!** The quizzes are “Open Book” under Suffolk’s definition. That means there are no restrictions on what you may look at when you do the quizzes. I drop your lowest quiz score. **The only restriction on the quizzes is that you are bound under the Honor Code to do them yourself.**

Each quiz is worth 10 points, but some units are long enough to merit two quizzes which will be due at the same time.

Syllabus Quiz - 10

Unit 1 - 10

Unit 2a - 10

Unit 2b - 10

Unit 3a - 10

Unit 3b - 10

Unit 4a - 10

Unit 4b - 10

Unit 5 - 10

Unit 6a - 10

Unit 6b - 10

Unit 7 - 10

Unit 8 - 10

3. **As an added incentive during the remote teaching, and a spur to continued participation, there is a bonus of ten (10) points available for answering polling questions during class. Zoom will record your participation. You get credit for participating whether or not the answer is correct (assuming the nature of the question is that it has a correct answer). You get the bonus if you participate in ninety (90%) of the polling questions over the course of the semester. The ten points will be in addition to the final essay and quiz points.**

4. Here is how your raw score in the class gets calculated. The only thing that matters is your absolute number of points on the quizzes (as adjusted) and the final.

There are 130 points in total on the quizzes in total (see above). If you managed to be perfect on all of them, one 10 point quiz score would be dropped. Accordingly, the maximum raw quiz score possible in the class is 120.

The final will have 40 multiple questions, each worth 3 points, for a total of 120 points.

If you got all 120 points from the quizzes and 40 questions right on the final, you'd have 240 in total. That is the highest possible score from the quizzes and exam.

In addition, you can earn the 10 points for polling question participation noted above. Hence, it is actually possible, if you were the first student ever to get all of the quiz and exam points, AND you got all the participation points, to end up with 250.

5. Once I have a complete spreadsheet of everybody's points, the highest number will set the curve as an A, the median number will be a B+ as required by school policy, and I will fairly distribute the grades in relation to those scores.

6. Even though the final exam will be multiple choice, I will post exam essay questions I used in my previous LLC/Partnership and Corporations courses.

Accommodations

If you anticipate issues related to the format or requirements of this course due to the impact of a disability, it is important that you contact the Law School's Dean of Student Office for further information and assistance, including information on disability-related accommodations. That office can then plan how best to coordinate any accommodations. Please do not contact me directly about exam accommodations as it may impact the anonymity of the grading system.

Mental health, stress and substance abuse

As a student, you may experience a range of issues that can cause barriers to learning, such as strained relationships, increased anxiety, health issues, alcohol/drug problems, feeling down, difficulty concentrating, lack of motivation, or feeling ill. These concerns or other stressful events may lead to diminished academic performance or may reduce your ability to participate in daily activities. Suffolk University services are available to assist you in addressing these and other concerns you may be experiencing. You can learn more about the broad range of medical services and confidential mental health services available on campus at the following websites:

[Counseling Center](http://www.suffolk.edu/offices/989.html) -- <http://www.suffolk.edu/offices/989.html>,

[Office of Health and Wellness Services](http://www.suffolk.edu/offices/932.html) -- <http://www.suffolk.edu/offices/932.html>

Law Students may also wish to access the services of Lawyers Concerned for Lawyers –

www.lclma.org

In addition, the Law School Dean of Students Office is available to discuss resources and possible approaches to address the academic/enrollment impact of the above issues. (The Law Dean of Students Office is on the 4th floor, within the Dean's Suite – LawDeanOfStudents@suffolk.edu).

Class Assignments and Outlines:

I organize the reading assignments by unit. The units do *not* correspond to class sessions. I do not include reading references to specific statutes. You will pick that up through reading the text and the cases and listening in class.

I. BASIC FORMS

Unit 1: Business Imperatives of Entity Selection

Reading: UBE, §§1.01 – 1.06

Confidential Memorandum for one of Mary Williams, Carl Vaughn, or Ben Moore (adaptive release on Blackboard under Course Materials)

Please read the memorandum from your client. It is confidential and should not be shared with anyone except the Breakout Room group to which you will be assigned in the first class session.

The memorandum contains important background you will need to understand your client's business imperatives for an upcoming negotiation over the business entity form and attributes for a startup high tech venture.

You will prepare for the negotiation in a 15 minute breakout session.

- I. Introduction
 - A. The context of business law
 - B. Remote logistics
- II. Motivating concerns
 - A. Liability to third parties
 - B. Management of an enterprise
 - C. Finance and taxes
 - D. Ownership and transfer of interests
- II. Theoretical concepts
 - A. Transaction costs
 - B. Agency costs
 - C. Default rules and the Coase Theorem

- D. Debt, equity, risk, and return

Unit 2: Overview of the Basic Forms

Reading: UBE, Chapter 2; §§3.01, 3.02, 3.03 (pp. 25-29; 36-49), 3.05 (pp. 57-67)
Bainbridge, §§1.1, 1.2, 2.1, 2.2, 2.3, 2.5A, 2.7
Energy Transfer Partners, L.P. v. Enterprise Products Partners, L.P.
McDermott, Inc. v. Lewis
Theodora Holding Corp. v. Henderson

The following is supplemental reading if you are interested. Professor Bainbridge and I have engaged in an academic debate about “corporate purpose,” to be published in the *Journal of Corporation Law*. Feel free to follow the link and download the articles.

Jeffrey M. Lipshaw, *The False Dichotomy of Corporate Governance Platitudes*,
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3660450

Stephen M. Bainbridge, *Making Sense of The Business Roundtable’s Reversal on Corporate Purpose*, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3664078

- I. The Nature of the Firm
 - A. From Sole Proprietorship to Corporation
 - B. Intentionality
 - C. Standard Form Flexibility
 - D. Personhood and Taxation
- II. Partnerships
 - A. Governing Law
 - B. Objective Characterization
 - C. Indicia
 - 1. Profit-sharing
 - 2. Everything else
 - 3. Distinguishing other relationships
 - D. Inadvertent Partnerships
 - 1. As between partners: *Energy Transfer Partners, L.P. v. Enterprise Products Partners, L.P.*
 - 2. As to third parties: *Minute Maid v. United Foods*
- III. Corporations
 - A. The Nature of the Corporation
 - 1. Conceptual Metaphors
 - 2. Sources of Law
 - B. Some Corporate Law Basics
 - 1. Corporation as Client
 - 2. Terminology
 - a. Profit versus non-profit
 - b. Public versus closely-held
 - c. Incorporators

- d. Articles or Certificate of Incorporation
 - e. Board of Directors
 - f. Bylaws
 - g. Officers
 - h. Shareholders
 - i. Other stakeholders
 - 3. Internal Affairs Doctrine – *McDermott v. Lewis*
 - 4. Why Delaware is So Important
 - 5. Corporate Purpose – Theodora
- IV. LLCs
- A. Kintner, Check-the-Box, and Development of the Form
 - B. ULLCA, RULLCA, Delaware and Other Governing Statutes
 - C. Formation Issues

II. THE LIFE OF THE ENTERPRISE

Unit 3: Ownership and Management

Reading:

UBE, §§4.01, 4.02 (pp. 94-95), 4.03, 4.04, 4.05A (pp. 104-119), 4.05B (pp. 125-127; 131-138), 4.05C (pp. 159-164)

Bainbridge, Chapter 5, Chapter 10 (§§10.1, 10.2A, 10.2B, 10.2C)

Auer v. Dressel

Campbell v. Loew's, Inc

CA, Inc. v. AFSCME

- I. Agency in Voluntary Transactions
 - A. Agency, Business Firms, and an Introduction to the Problem of Authority
 - B. Agency Formation
 - C. Agent's Authority
 - 1. Actual
 - a. Express
 - b. Implied
 - 2. Apparent
 - a. Sources
 - b. Reasonableness
 - c. Manifestation
 - 3. Agency in Action - *Essco*
 - 4. Inherent Agency Power & Undisclosed Principal – *Kidd, Watteau*
 - 5. Ratification
- II. Agency and Management in Partnership
 - A. Default Rules under UPA and RUPA
 - B. Variations – *Bailey v. Fish & Neave*
- III. Agency and Management in LLCs
 - A. Member-managed and Manager-managed

- B. Agency
- IV. Corporate Management
 - A. Separation of Powers between Boards and Shareholders
 - B. Board of Directors
 - C. Officers
 - D. Shareholders
 - 1. Basic Rights
 - 2. Meetings
 - 3. Voting Rights
 - 4. Conflicts Between Shareholders and Boards
 - a. Shareholder Initiated Action (*Auer; Campbell*)
 - b. Bylaw Amendments (*CA, Inc.*)

Unit 4: Finance and Capital Structures

Reading: UBE, §§5.01, 5.02 (pp. 201-205, Note 4 on p. 210); 5.04, 5.05 (note there is a typo in the balance sheets on page 221 and the top of page 222 – Liabilities + Owners' Equity = \$500,000, not \$300,000) Domain Associates, L.L.C. v. Shah (skip the DCF discussion) Bainbridge, §§3.1, 13.1, 13.2, 13.3, 13.4 Klang v. Smith's Food & Drug Centers, Inc.

- I. Business Numeracy
 - A. The Legal Context of Business Accounting
 - B. The Basics of Financial Accounting
 - 1. Introduction
 - 2. The Fundamental Equation and the Pool Metaphor
 - 3. Assumptions Upon Which Financial Accounting is Based
 - 4. The Magic of Double Entry Bookkeeping
 - 5. The Balance Sheet
 - a. Types of Accounts
 - b. Balance Sheet Transactions
 - 6. Income Statement
 - a. Types of Accounts
 - b. Transaction Bookkeeping
 - c. Income Statement Transactions
 - 7. Accrual versus Cash Accounting (and Cash Flow Statements)
 - 8. Accounting Value versus Market Value
 - 9. Auditing, GAAP, and GAAS
 - C. Reprise on Context
- II. Partnership and LLC structures
 - A. Default rules for capital contribution and sharing the operating results
 - 1. Partnership
 - 2. LLC
 - B. Capital accounts in partnership and LLC law (*Darr/Domain*)
 - C. Loss sharing anomalies (*Kessler*)

- III. Corporate financial structures
 - A. Forms of securities
 - 1. Common stock
 - 2. Preferred stock
 - 3. Debt
 - 4. Hybrids
 - 5. Options and other derivatives
 - B. Authorized, issued, and outstanding shares
 - C. Shareholder distributions and legal capital rules – *Klang*

Unit 5: Vicarious and Limited Liability

Reading: UBE, §§6.01, 6.02A (not Thompson), 6.03 (not Kaycee)
Bainbridge, §§4.1, 4.2, 4.3A-B, 4.3D2
Walkovsky v. Carlton
Freeman v. Complex Computing Co.
Gardemal v. Westin Hotel Co.
OTR Associates v. IBC Services
Sedgwick Properties Development Corp. v. Hinds

- I. Default Rules on Partners' Vicarious Liability and Exhaustion - *Gildon*
- II. Piercing the Veil in Corporations and LLCs
 - A. Corporations
 - 1. Tort Cases - *Walkovsky*
 - 2. Contract Cases – *Freeman*
 - 3. Corporate Groups – *Gardemal/OTR*
 - B. LLCs – *Sedgwick*

Unit 6: Fiduciary Obligations

Reading: UBE, §§8.01, 8.02B, 8.03B1, 8.04, 8.05A (pp. 402-403); 8.05B
Bainbridge, §§7.1, 6.1 (intro), 6.1A, 6.2, 6.3, 6.4D, 6.5, 7.4, 7.6A, 7.6B,
7.6C, 8.1, 8.2, 8.5A, 8.5B (intro)
Shlensky v. Wrigley
Kamin v. American Express
Little v. Waters
Puma v. Marriott
Guth v. Loft, Inc.
Francis v. United
Smith v. Van Gorkom
Marchand v. Barnhill
Sinclair Oil v. Levien
Zahn v. Transamerica, Inc.
Wilkes v. Springside Nursing Homes, Inc.
Miller v. HCP

Lipshaw, *Sarbanes-Oxley, Jurisprudence, Game Theory, Insurance, and Kant: Toward a Moral Theory of Good Governance*, 50 WAYNE L. REV. 1083 (2004) – pp. 1098-1103 (on how directors’ and officers’ insurance works).

- I. Fiduciary Obligations Generally – *Meinhard*
- II. Partnership Fiduciary Obligations
- III. Corporate Fiduciary Obligations
 - A. The Business Judgment Rule
 - 1. The Basic Rule - *Shlensky*
 - 2. Financial Decisions - *Kamin, Little*
 - B. The Duty of Loyalty
 - 1. Director Conflicts – *Puma*
 - 2. Corporate Opportunity – *Guth*
 - C. The Duty of Care
 - 1. Statutory Standards
 - 2. Individual Directors – *Francis*
 - 3. The Board
 - a. Decision-Making Process – *Smith v. Van Gorkom*
 - b. Oversight - *Marchand*
 - c. Director Liability and its Amelioration
 - i. Exculpation under DGCL §102(b)(7)
 - ii. Indemnification
 - iii. Directors’ & Officers’ Insurance
 - D. Controlling Shareholders
 - 1. Public corporations – *Sinclair; Zahn*
 - 2. Closely held corporations – *Wilkes*

- IV. Fiduciary Duties in Hybrid Unincorporated Entities
 - A. Active and Passive Owners in Unincorporated Entities – *Auriga (skim only)*
 - B. Waivers under Delaware Law – *Fisk, Miller*
- V. Remedies
 - A. Partnership Accountings
 - B. Direct and Derivative Actions
 - 1. Corporate – refer back to *Marchand*
 - 2. Non-corporate – *Anglo-American*

III. ENDGAMES

Unit 7: Breaking Up the Partnership or LLC

Reading: UBE, §§7.01, 7.02, 7.03A, 7.03C, 9.01, 9.02, 9.05A, 9.07B-C
Horowitz v. Farbman

- I. Transfer of Partnership or LLC Interests
 - A. Partnership – *Sunshine Cellular; Horowitz v. Farbman*
 - B. LLCs – *Achaian*
 - C. The Structural Complexity Issue
- II. Dissolution and Dissociation of Partnerships under UPA and RUPA
 - A. Overview and Flow Chart
 - 1. The Classic Law of Dissolution under UPA
 - 2. The Concept of Dissociation without Dissolution under RUPA
 - B. Accounting and Valuation Issues in Dissociation and Buyouts
 - 1. Goodwill – *Spayd*
 - 2. Settling Up Between Partners (UPA 40; RUPA 806)
 - C. Contentious Issues during Buyout and Continuation
 - 1. Expulsion or Forced Buyout - *Cadwalader*
 - 2. Breaking Up is Hard to Do – *Meehan*
- III. LLC Dissolution

Unit 8: Corporate Takeover Defenses

Reading: Bainbridge, §§12.1 (intro), 12.1A, 12.5, 12.6, 12.8, 12.9 (intro), 12.9B, 12.9C

Unocal Corp. v. Mesa Petroleum Co.
Revlon, Inc. v. MacAndrews & Forbes
Corwin v. KKR Financial Holdings, LLC

- I. Antitakeover Device Typology
 - A. Takeover Overview
 - B. Classified Boards
 - C. Poison Pills

- D. Share Repurchases
- E. Lockups
- II. Judicial Review of Antitakeover Devices
 - A. Proportionality – *Unocal Corp.*
 - B. Auctions – *Revlon*
 - C. Shareholder Approval - *Corwin*