

SYLLABUS **Corporations**

Fall Semester – 2009

Tuesday & Thursdays 10:30-11:45 Room 230

Professor: Anne Tucker Nees
Office 410
404. 413. 9179 (*office*)
anees@gsu.edu
Office Hours: Wednesdays from 10:00-11:45, and by appointment

Required Text

- Klein, Ramseyer, and Bainbridge, Business Associations: Cases and Materials on Agency, Partnerships and Corporations (7th Edition, 2009, Foundation Press)
- Klein, Ramseyer, and Bainbridge, Business Associations: Statutes and Rules, (2009 Foundation Press) (hereinafter referred to as the “Supplement”)
 - The casebook occasionally refers to statutes that are reprinted in your book of selected statutes. Refer to your statutory supplement to familiarize yourself with what the statutes say. I will also recommend specific statutes to review.

Recommended Supplemental Reading

- Bainbridge, Corporate Law, (2nd Ed., Foundation Press) [reviews course concepts in depth]

and/or

- Klein & Coffee, Business Organization and Finance: Legal and Economic Principles, (Foundation Press) [provides a very good description of basic business principles related to the course as well as reviews course concepts]

Course Description

Whether you have a business background or interest will not be determinative of your success in or enjoyment of this course. Believe it or not, this is an incredibly interesting, relevant, and fun course regardless of your prior experience or future goals. In today’s society there is no avoiding the far reach of businesses whether you plan on practicing family law or estate law (dividing up family businesses), general litigation (your clients will likely be businesses or individuals in business), criminal law (white collar crimes), or transactional law (you already know why you signed up for this course). Every practicing attorney should know a little about corporations, partnerships, and agency law. The course will also help you on the bar exam, whatever state’s exam you may be taking.

In this course, you will primarily focus on the laws governing corporations, but will also briefly survey other various business entities including proprietorships, general partnerships, limited partnerships, and limited liability companies. In addition, at the

beginning of the semester you will start with a brief discussion of agency law and the economics of a firm.¹

All business entities (other than sole proprietorships) have a root somewhere in a state statute, so we will spend a significant amount of time on the statutes governing these entities. The statutes are in the supplement. In some cases, the statutes are very specific and answer most questions. In other instances, the statutes are broad and need judicial interpretation. For specific statutes, we will use cases and problems to illustrate how the statutes are applied. For broad statutes, we will use cases to show how the gaps in the statutes have been resolved. Hence, the cases and statutes are both relevant to our study.

In addition to the traditional lecture and Socratic method utilized in law school courses, I will incorporate a variety of teaching methods requiring students to participate in small groups, complete drafting exercises, take ungraded quizzes, and provide written answers to questions. I will also strive to incorporate news items and current events when relevant to our subject matters.

Course Objectives

1. Identify when the law recognizes and respects the separateness of the corporate form and when the law holds the people operating the business personally liable.
2. Identify the various sources of law affecting corporations (and other business entities) so that when faced with a client question you can efficiently research the issue.
3. Identify procedural and planning elements involved in forming the most appropriate business entity, including default rules regarding duties, division of control and money, personal liability, and tax consequences.
4. Articulate common competing forces within business decisions such as control, agency costs, etc., and the mechanisms to balance them so that you may (1) provide business planning and transactional advice that is responsive to your clients' needs and/or (2) understand the motivations and contexts in which a business dispute arose so that you can successfully conduct issue analysis, discovery, settlement, and/or litigation.

Important Class Policies

THE RULE OF COMMON SENSE

Upon entering law school, you became a member of the legal profession. Therefore, I expect you to act like a lawyer when in class—be prepared, be diligent, be courteous. When in doubt as to the appropriate course of action, use common sense whether it be in regards to electronic devices, arrival time, classroom conduct, or any other myriad of issues that may arise during the course of the semester.

¹ Note, for more in-depth treatment of various smaller business entities including partnerships, LPs, LLPs, and LLCs, please consider taking Unincorporated Business Associations in the Spring. In that course we will deal with the specific creation, planning, and litigation needs of small businesses as well as explore theories of liability arising under agency law that is helpful in both a litigation and transactional practice.

ATTENDANCE AND PREPARATION

Attendance and preparation are critical to your success in this course, and are therefore, mandatory. At the beginning of each class you will be expected to sign an attendance sheet. To keep things honest, please do not sign in for a neighbor or friend. If you have more than 5 total absences, I reserve the right to exclude you from the exam. Please reference the College of Law's 2009-2010 Bulletin available at http://law.gsu.edu/registrar/pdf/College_of_Law_Bulletin_2009-2010.pdf for additional information regarding attendance policies.

On the second day of class, students will select an assigned seat for the duration of the course. Class will begin promptly at 10:30 am. Please be in your seat and ready to learn.

Note taking is strongly encouraged, whether it be by laptop or pen and paper. Dictation, however, is strongly discouraged—try to put the lecture notes in your own words. Similarly, audio recordings of class are prohibited pursuant to the policies stated in the Bulletin. Please come see me in advance of classes conflicting with a religious holiday or other significant events so that we can make appropriate arrangements.

If assignments are collected for participation points, they must be turned at the date and time requested. No late assignments. No exceptions. All assignments collected will be reviewed on a \checkmark , $\checkmark+$, or $\checkmark-$ basis. If you are absent from class, you may email the homework **before** the start of class.

During class, students will be called on to answer questions, as well as will be given the opportunity to volunteer. If you are not prepared for the day, please come see me or email me **before** class. Otherwise, if you are called upon and are not prepared (by admission or obvious inability to answer questions), then your attendance record may be deducted by $\frac{1}{2}$ for the day and counted towards your total unexcused absences referenced above.

Class participation and attendance may be a factor in your final grade. I reserve the right to increase or decrease grades by $\frac{1}{3}$ of a letter grade (e.g. if a student earned a B, participation could be grounds to bump a grade to a B+ or a B-). Please note that the determinative factors are consistent attendance, preparation, and quality (not quantity) of contribution.

As with any policy, those stated herein are guidelines meant to inform your decisions and actions over the course of the semester. If you have any questions, or special circumstances that you believe may warrant an exception to a stated policy, please come see me immediately.

ACADEMIC MISCONDUCT

Please refer to the College of Law's Honor Code for a full discussion of what constitutes academic misconduct and the consequences for failure to comply. The Honor Code is available at <http://law.gsu.edu/registrar/bulletin/honorcode.php>.

TWEN

Please sign up for the TWEN page that corresponds with this course. On the TWEN website, you will find reading assignments, homework problems, directed reading questions, class announcements, and supplemental readings. Please contact the Westlaw Representatives, or me, if you have questions about registering for or using the course website.

AVAILABILITY

You are invited to come visit me during my posted office hours (Wednesdays from 10:00 - 11:45), which I will keep throughout the semester. In addition, I am available by appointment and will generally try to keep an open door policy (meaning that if my door is open, just knock and come on in!). You may also email me questions. Basically, my approach is to be available at a time and forum that is convenient for you. In addition to these traditional forums to ask specific questions, you may have lunch with me during one of three brown bag lunches throughout the semester (at noon on September 16, October 14, and November 18). During these brown bag lunches, you will bring your lunch and have an informal conversation with me and some of your classmates on all things ranging from the course, to career plans, to life outside of the law school. Sign up sheets are posted on the TWEN course site. Please note that participation in a brown bag lunch will not be considered when assessing participation points (it's a brown bag, not a brown nose session).

EXAM

Your exam will be a 3-4 hour limited open book (e.g., individually prepared outlines and statutory supplements). The exam will be comprised primarily of essay questions, however, due to the size of the class, I reserve right to include multiple choice and short answer questions as a part of the exam. To assist in preparations for the exam, I will make available a practice essay question with a sample answer. Additionally, I will host a review session, to be scheduled at a later date.

Course Overview

[Note, reading lists for each unit will be individually posted on TWEN.]

Unit I: Agency

During this unit, we will examine the following questions:

- A) Who is an Agent?
- B) What are the Sources of Law that Govern Agency Relationships?

First Day: Reading Assignment

Klein, Ramseyer & Bainbridge (7th Ed., 2009) pp. 1-13

Including the following cases: *Gorton v. Doty* and *Gay Jenson Farms Co. v. Cargill*

Review Case Questions and the ** Planning Question on P. 13 **

Supplement—Restatement of the Law (Third) Agency

§§ 1.01, 1.03

§§ 2.01, 2.02, 2.03, 2.05

- C) How does an Agency Relationship Arise?
 - 1) Actual Authority
 - 2) Apparent Authority
 - 3) Implied Authority
 - 4) Ratification & Estoppel
- D) What is the Liability of Principal to 3rd Parties in Contract?
- E) What are the Fiduciary Obligations of Agents & Principals?
 - 1) During Agency
 - 2) After Agency Relationship Terminated

Unit2: Partnerships

During this unit, we will examine the following questions:

- A) What are the Laws that Govern Partnerships?
- B) What is a Partnership?
 - 1) Contract Formation
 - 2) Estoppel & Implied
- C) What are the Fiduciary Obligations of Partners?
- D) What are the Consequences of Certain Business Needs such as Capital Raising & Dissolution?
- E) How do Limited Partnerships Differ from General Partnerships?

Unit 3: The Corporate Form

During this unit, we will examine the following questions:

- A) What is the “Corporate Entity” and What are its Elements?
 - 1) Promoters
 - 2) The Corporate Entity and Limited Liability
 - 3) Shareholder Derivative Actions
 - a) Demand Requirements
 - b) Special Litigation Committees

Unit 4: Limited Liability Companies

During this unit, we will examine the following questions:

- A) How is an LLC Distinct in Nature from a Corporation?
- B) What are the Laws that Govern LLCs?
- C) How to Form an LLC?
- D) What is the Role of Operating Agreements?
- E) What are the Fiduciary Obligations of LLC Members?
- F) What is Piercing the Veil, and How to do it with LLCs?
- G) How to Dissolve a LLC and the Consequences?

Unit 5: Corporate Duties

During this unit, we will answer the following questions:

- A) When Corporate Players (Directors, Officers, and Controlling Shareholders) Owe Fiduciary Obligations, and to Whom.
 - 1) What is the Duty of Care?
 - 2) What is the Duty of Loyalty?
 - a) Corporate Opportunity
 - b) Controlling Shareholders
 - 3) What is the Duty of Good Faith?
- B) What are the Specific Obligations with regards to Disclosures and Certain Trades?
 - 1) Securities Definitions
 - 2) Rule 10b(5)
 - 3) Insider Trading
 - 4) Short Selling
- C) What is the Role of Indemnification in Litigating over Corporate Duties?

Unit 6: Control Problems

- A) What is a Proxy Fight?
 - 1) Cost Reimbursements
 - 2) Private Actions
- B) What Tools are Available to Shareholders?
 - 1) Shareholder Proposals
 - 2) Inspection Rights
 - 3) Voting Control
- C) What are the Unique Control Issues with Closely Held Corporations?
- D) What Constitutes an Abuse of Control?
- E) What Is the Relationship Between and the Planning Considerations for Control, Duration, and Dissolution of a Corporation?

Unit 7: Mergers & Acquisitions

During this unit, we will examine the following questions:

- A) What is a Merger?
 - 1) De Facto Mergers
- B) What are the Unique Legal Issues involved in a Merger?
 - 1) Freeze Outs
 - 2) De Facto Non-Mergers
 - 3) LLC Mergers
- C) What are Take Overs and What Unique Legal Issues do they Raise?
 - 1) Unocal & Revlon Doctrines

Additional concepts that may be covered if time allows, and will be decided based upon student interest:

- A) Economics of the Firm
- B) Preemptive Rights of Shareholders
- C) Dilution Rights
- D) Distribution Rights to Shareholders
- E) Corporate Debt