

## **BUSINESS ASSOCIATIONS (§ 234)**

Western State College of Law Fall 2020 M (full semester), W (first four weeks) 6:40 p.m. – 9:50 p.m.	Instructor: Stephen Hendricks Email: <a href="mailto:smhendricks@wsulaw.edu">smhendricks@wsulaw.edu</a> Office Hours: M (full semester), W (first four weeks) 5:30 p.m. – 6:30 p.m.; Occasional Th and Sa afternoons (will be posted as available) Office Location: Zoom Meeting Room
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### **COURSE POLICIES**

#### **OBJECTIVES AND SCOPE OF THE COURSE**

This course is a survey of the of laws governing modern business associations. We will cover a number of topics, including rules of business entity formation; features of the limited liability system; fiduciary duties, including board of directors' decision making and oversight; dominant shareholder duties; corporate governance; mergers and acquisitions, securities fraud; and shareholder rights. We will focus on the common law of corporations and other non-corporate business entities, as well as Delaware law, with a secondary focus on other important state business laws, such as New York. We will also discuss the effect of federal laws on corporate governance.

The course is divided roughly into six parts:

- Background and Entity Formation
- The Shareholders' Derivative Action
- Directors, Officers, and Dominant Shareholders Fiduciary Duties
- Securities Fraud and White-Collar Crime
- Mergers, Acquisitions, and Takeovers
- Closely Held Corporations and Non-Corporate Entities

#### **TEXTS**

**Required:**                    *Business Associations*, Tenth Edition, 2018  
 William A. Klein, J. Mark Ramseyer, and Stephen M. Bainbridge  
 Foundation Press

*Business Associations: Agency, Partnerships and Corporations - Statutes and Rules*, 2020 Edition  
 William A. Klein, J. Mark Ramseyer, and Stephen M. Bainbridge  
 Foundation Press

## **COURSE WEBSITE**

In order to facilitate class administration, I have set up a TWEN (Westlaw) website for this course. The website includes supplemental materials and additional information related to the course, posted throughout the semester. You are required to register for the course as soon as possible, preferably before the beginning of the semester, as there are a few first-class reading assignments that you need. Additionally, the sign-up sheet for office hours will be maintained exclusively on the TWEN site. You are responsible for checking the website regularly and you will be responsible for all materials posted on it.

## **ASSIGNMENTS**

You will be required to complete three types of assignments this semester:

1. Weekly reading assignments
2. Periodic online forum discussions
3. One writing assignment

### **Reading Assignments**

See the Syllabus below for the schedule, specified by date and class number. Should we get off schedule (though I do not anticipate that), I will post any revisions to the reading assignments on TWEN and/or a revised syllabus.

### **Online Forum Discussions**

In addition to the assignments below on the Syllabus, periodically (no more than 6 times) throughout the semester, you will be required to respond to various question prompts or forum postings on the TWEN website. More information about each assignment will be given after the first day of class.

### **Writing Assignment**

You will be given a one writing assignment this semester. It will be due around the halfway point in the semester. More information about the writing assignment will be given after the first day of class.

## **EVALUATION AND FINAL EXAM**

Grades for this class will be based substantially on the forum discussions, the writing assignment, and a written final exam. In addition, I will factor class participation that is of high quality (not necessarily quantity) into students' final assessments. The forum discussions will count for 15% of your final grade for the course. The writing assignment will be worth 15% of your final grade for the course. The final exam will be a 4-hour take-home exam. It will be composed of a mixture of short answer questions and essay questions. The final exam will count for 70% of your grade for the course. You can find some of the previous exams I have given posted to the TWEN site and I encourage you to access the previous exams early in the semester.

## **PREPARATION REQUIREMENTS FOR CLASS**

You must be prepared for each class. Being prepared means that you have completed the reading assignments for that class, including the statutes, rules, codes, etc. Additionally, you must take the time to read the Analysis, Problems, Planning, and Questions after each case and section (where applicable) and be prepared to discuss them in class.

**Pursuant to ABA Standard 310, you are expected to devote at minimum two (2) hours of out-of-class time preparing for each hour of classroom instruction. It is estimated that, on average, the assigned reading and other classroom preparation should require six or more hours outside of class for each class session (note that the first four weeks of class will require a minimum of twelve hours out-of-class time preparing). The assignments each week have been calibrated for you to achieve this minimum requirement.**

## **ATTENDANCE AND PARTICIPATION**

In this course, the cases will be analyzed and illuminated through students' responses to questions during class (the Socratic Method). Emphasis will be on the factual context and the reasoning underlying the holdings in the cases, not simply the "black letter" rules derived from the holdings. **You will, therefore, be expected to have carefully read and briefed each case and any analysis, problems, and planning sections after each case in the casebook, and reviewed the applicable statutes in the weekly assignments.** Unless otherwise instructed, you are responsible for all materials assigned and you are expected to be prepared, regardless of where we are on the syllabus in the class discussions.

Your attendance and participation in all classes are required. Attendance will be taken via Zoom. **Failure to prepare for a class may count as an absence.** Students who are absent from more than three classes will be academically withdrawn from the course.

## **REQUIREMENTS FOR STUDENTS IN ZOOM SESSIONS**

Each class meeting this semester will meet via Zoom. You should think of attending class via Zoom the same way you think of attending class in-person, on campus.

Zoom has a number of tools available to you as a student: yes/no symbols, raise hand and thumb icons, share screen (with permission of the professor), chat windows, etc. **Please familiarize yourself with those tools before the first class so that you can use them as requested by me.** I will inform you about the ways in which you should use these tools.

I may use a number of interactive functions in Zoom to engage with you, e.g., polling questions, breakout rooms, as well as asking you to share your screen, type in the chat window. Like being called on in a live classroom, you are expected to participate fully in these activities and functions, i.e., answer polling questions, speak with your classmates in breakout groups, share your screen as requested, etc.

The following are required for Zoom sessions:

- Find a dedicated quiet space to attend Zoom sessions, to minimize the chances that you will be disrupted during the session.
- Arrive to class early and dressed as you would to attend an in-person class.
- Your camera must be turned on for the duration of the class. If desired, you can use the background settings in Zoom to create an artificial background that blocks the view of your space while still allowing you to be seen on camera.
- Come prepared, as you would for an in-person class. Participation in Zoom classes is as important as it is during an in-person class session.
- Do not multitask – stay focused on the class discussion – do not wander in and out of the Zoom session.
- If you have to miss a Zoom session, or arrive late or leave early, notify the professor in advance, as you would for an in-person class.
- If you have connectivity issues, whether it be long-term or short-term, that impact your ability to participate (e.g., if you are limited to dial-in without video), notify your professor so other accommodations can be explored.
- Do not post screenshots or recordings of any Zoom classes on social media. **Such actions would constitute a violation of the Student Honor Code.** If you need access to a recording of the Zoom session, please contact your professor.
- Sign into Zoom with the name under which you are registered for class. If you prefer to be called by a different name or nickname, please notify your professor in advance so you are not marked absent.
- Unless your professor instructs you otherwise, **mute your microphone when you are not speaking.** Unmute to speak or to ask or answer questions.
- Zoom classes are not YouTube or Netflix. You should be actively engaged in answering questions, taking notes, writing down questions you wish to ask later during class or during office hours, etc. This will not only help you stay engaged and participating in class, it will also help your learning in the online format.

## **PROGRAMMATIC LEARNING OUTCOMES**

**Western State College of Law's curriculum is designed so that every student achieves a level of competency prior to graduation in each of the eight Programmatic Learning Outcomes listed below:**

**(1) Doctrinal Knowledge**

Students will demonstrate knowledge of substantive and procedural law in the core curriculum subjects, including Contracts, Criminal Law, Criminal Procedure, Torts, Real Property, Business Associations, Evidence, Civil Procedures, Constitutional Law, Estates, Community Property, Remedies, and Professional Responsibility.

**(2) Practice Skills**

Students will demonstrate the development of other law practice skills. Each student's chosen outcomes within this category will be varied based on the student's particular interests, coursework and work experiences. They may include, but are not limited to, the following topics: oral presentation and advocacy; interviewing; counseling; client service and business development; negotiations, mediation, arbitration, or other alternate dispute resolution methods; advanced legal research and writing (excluding purely academic papers and the first four units earned in introductory first-year legal research and writing class); applied legal writing such as drafting contracts, pleadings, other legal instruments; law practice management or the use of technology in law practice; cultural competency; collaboration or project management; financial analysis, such as accounting, budgeting project management, and valuation; cost benefit analysis in administrative agencies; use of technology, data analyses, or predictive coding; business strategy and behavior; pre-trial preparation, fact investigation, such as discovery, e-discovery, motion practice, assessing evidence, or utilizing experts; trial practice; professional civility and applied ethics; a law clinic that includes a classroom component; or a legal externship that includes a classroom component.

**(3) Legal Analysis**

Students will demonstrate the ability to identify the factual and legal issues implicated by a fact pattern and to appropriately use cases (including identifying the salient features of an appropriate precedent case, identifying legally significant similarities or differences between the precedent case and a fact pattern and explaining why those are legally significant) and rules (including the ability to connect legally significant facts in a fact pattern to the rule) to predict how a court would decide the issue. Students will also demonstrate the ability to identify and evaluate the public policies of a precedent case or rule, and be able to evaluate how public policy can impact the application of a rule to the legal issue.

**(4) Legal Research**

Students will demonstrate the ability to locate relevant legal authority using a variety of book and electronic resources, and to properly cite to such legal authority.

(5) **Communication**

Students will demonstrate the ability to communicate both orally and in writing in a manner appropriate to a particular task to effectively convey the author or speaker's ideas. This includes audience sensitivity in written and oral communication (the ability to adopt a tone, style and level of detail appropriate to the needs, knowledge and expertise of the audience); and written communication basic proficiency (the ability to use the conventions of grammar, spelling, punctuation, diction and usage appropriate to the task and sufficient to convey effectively the author's ideas).

(6) **Advocacy of Legal Argument**

Students will demonstrate the ability, in both oral and written formats, to evaluate the legal, economic and social strengths and weaknesses of a case and use case and statutory authority as well as public policy to persuade others. Making policy-based arguments includes the ability to identify and evaluate the public policies of a precedent case or rule and their implications, and be able to assert such appropriate arguments to support a particular application or distinction of a precedent case to a legal controversy or a particular resolution of the application of a rule to the legal controversy.

(7) **Client Sensitivity and Cultural Competency**

Students will demonstrate an awareness of clients' needs and goals, including a sensitivity to clients' background and circumstances (including, but not limited to, socio-economic, gender, race, ethnicity, educational, disability and/or religious background(s)), the ability to make decisions that reflect an appropriate focus on those needs and goals, and awareness that cultural issues may affect the relevance of facts and application of the law.

(8) **Legal Ethics**

Students will demonstrate the ability to identify ethical issues in law practice contexts and make appropriate decisions to resolve such issues.

**DISABILITY SERVICES STATEMENT:**

Western State College of Law provides accommodations to qualified students with disabilities. The **Disabilities** Services Office assists qualified students with disabilities in acquiring reasonable and appropriate accommodations and in supporting equal access to services, programs, and activities at Western State College of Law.

To seek reasonable accommodations, a student must contact Senior Assistant Dean Donna Espinoza, Student Services Director and Disabilities Services Coordinator, whose office is in the Students Services Suite, room 111. Dean Espinoza's phone number and email address are: (714) 459-1117; [despinoza@wsulaw.edu](mailto:despinoza@wsulaw.edu). When seeking accommodations, a student should notify Dean Espinoza of her or his specific limitations and, if known, her or his specific requested accommodations. Students who seek accommodations will be asked to supply medical

documentation of the need for accommodation. Classroom accommodations are not retroactive, but are effective only upon the student sharing approved accommodations with the instructor or professor. Therefore, students are encouraged to request accommodations as early as feasible with Dean Espinoza to allow for time to gather necessary documentation. If you have a concern or complaint in this regard, please notify Dean Espinoza; or please notify Dean Allen Easley at [aeasley@wsulaw.edu](mailto:aeasley@wsulaw.edu) or (714) 459-1168. Complaints will be handled in accordance with the College of Law's "Policy against Discrimination and Harassment."

## SYLLABUS

### Required Readings and Assignments (Associated Abbreviations Appear in Syllabus):

["KRB"]: Klein, Ramseyer, & Bainbridge, *Business Associations* (10<sup>th</sup> Ed., 2018).

["SR"]: Klein, Ramseyer, & Bainbridge, *Agency, Partnerships, LLCs, and Corporations Statutes and Rules* (2020).

["HO"]: There are several handouts that you will need to read. The handouts are available on TWEN. The handouts usually consist of recent cases, policy releases, news articles, corporate filings, academic writings, etc., each of which will be associated with a particular weeks' class topic.

["OL"]: There are sources for you to read online. The link to the source appears in the syllabus below.

["WA"]: You are required to prepare and turn in three written assignments over the course of the semester. The assignment instructions and details are available on TWEN.

<u>Topics</u>	<u>Date</u>	<u>Class</u>
<p><b>A. Background on the Business Association</b></p> <ol style="list-style-type: none"> <li>1. The Nature of the Business Association and its Role in Society HO: Mickelthwaite &amp; Woolridge, <i>The Company</i>, "Utopia Limited" HO: Hart, "An Economist's Perspective on the Theory of the Firm"</li> <li>2. Common Law Business Associations: Agency and Partnership Law and Unlimited Personal Liability HO: Agency and Partnership Law Overview</li> <li>3. Legal Identity of Corporations: Personhood and Choice of Law SR: Delaware General Corp. Law ("DGCL") § 109 HO: <i>Citizens United v. Federal Election Commission</i> (2010) KRB: 187-198</li> </ol> <p><b>B. Entity Formation and the Limited Liability System</b></p> <ol style="list-style-type: none"> <li>1. Creating Limited Liability: Entity Formation: The Formalities of Creating an Entity and Choosing the Type of Entity SR: DGCL §§ 101-106; 141(a)-(b); 142 OL: <a href="https://www.sba.gov/business-guide/launch-your-business/choose-business-structure">https://www.sba.gov/business-guide/launch-your-business/choose-business-structure</a></li> </ol>	8/24/20	1
<p><b>C. Creditors' Rights Within the Limited Liability System</b></p> <ol style="list-style-type: none"> <li>1. Piercing the Corporate Veil and Personal Liability for Shareholders KRB: 198-214</li> </ol> <p><b>D. Corporate Debt and Bondholder Rights</b></p> <ol style="list-style-type: none"> <li>1. Debtor's Sale of Substantially All Its Assets and Incurring Additional Debt KRB: 887-915</li> </ol>	8/26/20	2
<p><b>E. The Shareholder Derivative Action (Lawsuit) (Shareholder Enforcement of Fiduciary Duties)</b></p> <ol style="list-style-type: none"> <li>1. Procedural Issues of a Derivative Action Part I – Direct vs. Derivative;</li> </ol>	8/31/20	3



<p>Requirement for Demand  SR: Federal Rules of Civil Procedure (“FRCP”) Rule 23.1  KRB: 358-380  HO: <i>In Re Dow Chemical Company Derivative Litigation</i> (2010)</p>		
<p><b>The Shareholder Derivative Action (cont.)</b></p> <p>2. Procedural Issues of a Derivative Action Part II – Special Litigation Committees; Director Independence  SR: DGCL § 141(c)(2)-(4), (e), (f), (h)  KRB: 380-399</p> <p>3. Substantive Issues of a Derivative Action – The Purpose of a Corporation  KRB: 214-220</p> <p>4. Substantive Issues of a Derivative Action – The Fiduciary Duty of Care and the Business Judgment Rule  SR: DGCL §§ 101(b); 102(a)(3); 121-122; 124  KRB: 220-232</p>	9/2/20	4
<p><b>The Shareholder Derivative Action (cont.)</b></p> <p>5. Substantive Issues of a Derivative Action – The Fiduciary Duty of Care and the Requirement of an Informed Decision  SR: DGCL §§ 102(b)(7)  KRB: 277-303</p> <p>6. Substantive Issues of a Derivative Action – The Fiduciary Duty of Loyalty in Interested Director Transactions  KRB: 303-309  SR: DGCL § 144  KRB: 309-315; 336-339</p>	9/9/20	5
<p><b>The Shareholder Derivative Action (cont.)</b></p> <p>7. The Fiduciary Duty of Loyalty (Corporate Opportunities Doctrine, Dominant Shareholder Duties)  KRB: 315-336  <b>Due: WA #1</b></p>	9/14/20	6
<p><b>The Shareholder Derivative Action (cont.)</b></p> <p>8. The Obligation for Directors and Officers to Act in Good  KRB: 339-358; 399-410</p>	9/16/20	7
<p><b>F. Indemnification, Advancement of Fees, and Insurance</b></p> <p>1. Indemnification, Advancement of Fees, and Insurance  SR: DGCL § 145  KRB: 512-526  <b>Due: WA #2</b></p>	9/21/20	8
<p><b>G. Corporate Governance</b></p> <p>1. Shareholder Voting and The Proxy System  KRB: 601-612; 527-538  SR: DGCL §§ 160; 211; 212; 214; 216; 242; 244; Exchange Act § 14</p>	9/28/20	9

2. Shareholder Proposals KRB: 554-587 HO: Sample Shareholder Proposal SR: SEC Rule 14a-8	10/5/20	10
3. Shareholder Inspection Rights KRB: 587-601 HO: <i>Tiger v. Boast Apparel, Inc.</i> (2019) SR: DGCL § 220	10/12/20	11
<b>H. Inside Information</b> 1. Insider Trading KRB: 468-502 SR: Exchange Act § 10(b); SEC Rule 10b-5 2. Short Swing Profits KRB: 502-512 SR: Exchange Act §16(b) <b>Due: WA #3</b>	10/19/20	12
<b>I. Mergers, Acquisitions, and Takeovers</b> 1. Negotiated Transactions and Freeze-Out Mergers KRB: 729-770 SR: DGCL §§ 251; 262; 271	10/26/20	13
<b>Mergers, Acquisitions, and Takeovers (cont.)</b> 2. Takeovers: The Unocal and Revlon Duties (Part I) KRB: 780-815	11/2/20	14
<b>Mergers, Acquisitions, and Takeovers (cont.)</b> 3. Takeovers: The Unocal and Revlon Duties (Part II) KRB: 815-860	11/9/20	15
<b>J. Closely Held Corporations</b> 1. Control in Closely Held Corporations KRB: 613-643	11/16/20	16
<b>K. Non-Corporate Business Entities</b> 1. The Limited Liability Company (“LLC”): Formation, The Operating Agreement, Capitalization HO: Sample LLC Operating Agreement KRB: 233-253; 267-271	11/30/20	17
2. The LLC: Fiduciary Duties and Piercing the LLC Veil KRB: 261-267; 253-261 3. The LLC: Dissolution KRB: 272-276 4. Limited Partnerships (“LP”) and Limited Liability Partnerships (“LLP”) SR: Uniform Partnership Act (1997) Article 9. KRB: 175-186	12/7/20	18