

WESTERN STATE COLLEGE OF LAW**BUSINESS ASSOCIATIONS (§ 234)****Fall 2021**

Instructor: Stephen Hendricks
Email: smhendricks@wsulaw.edu
Office Location: TBD

SYLLABUS & COURSE POLICIES**OBJECTIVES AND SCOPE OF THE COURSE**

Business Associations is a semester-long, four (4) credit course. The course will cover the laws governing modern business associations, which is derived primarily from various state statutes and judicial law, which tends to clarify the statutes and fill in any gaps left by the statute. While the laws differ from state to state, there are common doctrines and theories that pervade. This course will focus on those commonalities and highlight the important differences.

We will focus on the law of corporations and other non-corporate business entities, including agency law, general partnerships, limited partnerships (LP), and limited liability companies (LLC). We will also discuss the effect of federal laws on corporate governance.

The course will cover the following twelve topics:

- Introduction
- General Partnerships
- Other Business Entities
- Corporate Purpose
- Corporate Formation
- Financial Matters
- Piercing the Corporate Veil
- Management and Control
- Fiduciary Duties
- Derivative Litigation
- Securities Fraud and Insider Trading
- The Takeover Movement

The statutes and judicial law covered in this course will frequently not be bright line rules, courts in different states often adopt different interpretations of common business law doctrines and some courts within the same state often interpret the same rule differently depending on the facts of the case. Thus, you will be tested on how well you have mastered these critical thinking skills, not just the black letter law.

We will explore the legal and practical issues that business lawyers encounter as they handle their clients' cases. You will learn both the litigation and the transactional side of being a business lawyer, including both the procedural and substantive rules. You will come to view these rules as comprising an integrated system that business lawyers use to achieve their clients'

goals. You will learn the policies and goals behind the rules and will be challenged to articulate how well these rules achieve those policies and goals and whether they should be changed.

TEXTS

Required: *Business Organizations, An Integrated Approach*, 2019
Lisa M. Fairfax
Foundation Press

COURSE WEBSITES

In order to facilitate class administration, I have set up a TWEN (Westlaw) site for this course. The website includes assigned readings not in the casebook, supplemental materials, and additional information related to the course, posted throughout the semester. The TWEN site is also where you will participate in forum discussions. You are required to register for the course as soon as possible, preferably before the beginning of the semester, as there is important information that will be useful to you before the first-class meeting. 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.

EVALUATION AND FINAL EXAM

Grades for this class will be based substantially on the midterm and final exams, as well as participation in discussion forums posted to the TWEN site. In addition, I will factor class participation that is of high quality (not necessarily quantity) into students' final assessments. The final exam will account for 75% of your final grade for the course. The midterm exam will account for 15% of your final grade for the course. The forum discussions and various other assignments will account for 10% of your final grade for the course.

You can find some of my previous exams posted to the TWEN site and I encourage you to access the previous exams early in the semester.

PREPARATION AND PARTICIPATION REQUIREMENTS FOR CLASS

In this course, the cases will be analyzed and illuminated through students' responses to questions during class. 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 reviewed any applicable statutes related to the weekly assigned reading. Additionally, students are required to prepare written answers to the questions and problems that are listed before and after most cases in the casebook.

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

Your attendance and participation in all classes are required. It is solely the responsibility of the individual student to personally sign the attendance sheet for each class. Failure to prepare for a class will count as an absence. Students who are absent from more than **THREE (3)** classes will be academically withdrawn from the course.

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. 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 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):

["CB"]: *Business Organizations, An Integrated Approach*, Lisa M. Fairfax, 2019.

["HO"]: Handouts can be found on the TWEN site.

WEEK 1: August 23 & 25

1. Introduction to Business Organizations, CB 1-8
2. General Partnerships
 - A. Overview, CB 9
 - B. Establishing a Partnership, CB 12-13
 - C. Key Features, CB 14
 - D. Authority and Agency, CB 15-21
 - E. Liability, CB 22-25
National Biscuit Co. v. Stroud
 - F. Sharing of Profits and Losses, CB 26-32
Kessler v. Antinora
Kovacik v. Reed
 - G. Fiduciary Duty, CB 32-38
Meinhard v. Salmon
 - H. Dissolution, CB 38-46
Collins v. Lewis
 - I. Summary, CB 47-48

WEEK 2: August 30 & September 1

3. Other Business Entities
 - A. Overview, Common Features, General Partnership in Review, CB 49-53
 - B. Limited Liability Partnership, CB 53-55
 - C. Limited Partnership, CB 55-68
Gateway Potato Sales v. G.B. Investment Company
Shimko v. Guenther
 - D. Limited Liability Limited Partnership, CB 68
 - E. Limited Liability Company, CB 69-70
 - F. Corporation, CB 70-72
 - G. Summary and Review, CB 73
4. Corporate Purpose, CB 75-89

WEEK 3: September 8

5. Corporate Formation
 - A. Overview, Where to Incorporate, The Process of Incorporation, Corporate Purpose CB 91-101
 - B. Liability for Pre-Incorporation Acts, CB 102-109
Stanley J. How & Assoc., Inc. v. Boss
Sherwood & Roberts-Oregon, Inc. v. Alexander
 - C. Defective Incorporation, CB 110-118
Robertson v. Levy
Harry Rich Corp. v. Feinberg
Cantor v. Sunshine Greenery, Inc.
 - D. The Ultra Vires Doctrine, CB 119-131
A.P. Smith Mfg. Co. v. Barlow
Theodora Holding Corporation v. Henderson
Kahn v. Sullivan
 - E. Summary and Review, CB 132

WEEK 4: September 13 & 15

6. Financial Matters
 - A. Overview, Raising Capital in the Corporation, CB 205-209
 - B. Equity Securities, CB 209-217
 - C. Debt Obligations, CB 217-219
 - D. Sweat Equity/Human Capital, CB 219
7. Piercing the Corporate Veil
 - A. Overview, CB 133-137
Sea-Land Services, Inc. v. Pepper Source (HO)

WEEK 5: September 20

8. Piercing the Corporate Veil (cont.)
 - B. Piercing in Contract Cases, CB 137-147
Bartle v. Home Owners Coop.
DeWitt Truck Brokers v. W. Ray Flemming Fruit Co.
Bagels Brothers Maple, Inc. v. Ohio Farmers, Inc.
 - C. Piercing in Tort Cases, CB 147-152
Minton v. Cavaney
Baatz v. Arrow Bar

WEEK 6: September 27

9. Piercing the Corporate Veil (cont.)
 - D. Enterprise Liability, CB 152-162
Walkovszky v. Carlton

- Smith v. McLeod Distributing, Inc.*
- E. Piercing and Federal Law, CB 162-165
Carter-Jones Lumber Company v. Ltv Steel Company
- F. Summary and Review, CB 166

WEEK 7: October 4**Midterm Examination****WEEK 8:** October 11

- 10. Management and Control
 - A. Overview, Authority of Directors, Authority of Officers, CB 167-178
Lee v. Jenkins Brothers
 - B. Shareholder Authority, Shareholder Voting in Private Companies, CB 178-198
McQuade v. Stoneham
Clark v. Dodge
Galler v. Galler
Ringling Bros.-Barnum & Bailey v. Ringling

WEEK 9: October 18

- 11. Management and Control (cont.)
 - C. Shareholder Voting in Public Corporations, CB 198-202
Lovenheim v. Iroquois Brands, Ltd. (HO)
Trinity Wall Street v. Wal-Mart Stores, Inc. (HO)
 - D. Summary and Review, CB 203

WEEK 10: October 25

- 12. Fiduciary Duties
 - A. Overview, Duty of Care and the Business Judgment Rule, CB 228-265; 272-279
Dodge v. Ford Motor Co.
Shlensky v. Wrigley
Smith v. Van Gorkom
In re The Walt Disney Company Derivative Litigation

WEEK 11: November 1

- 13. Fiduciary Duties (cont.)
 - B. Duty of Loyalty and Section 144, CB 279-292
Bayer v. Beran (HO)
Benihana of Tokyo, Inc. v. Benihana, Inc. (HO)
Valeant Pharmaceuticals International v. Jerney
Marciano v. Nakash
 - C. Duty of Oversight and Good Faith, CB 293-308
In re Caremark Int'l. Inc. Derivative Litigation

Stone v. Ritter
D. Summary and Review, CB 309-310

WEEK 12: November 8

14. Derivative Litigation vs. Direct Litigation
Grimes v. Donald (HO)
15. Derivative Litigation and the Demand Requirement, CB 311-329
Aronson v. Lewis
Rales v. Blasband (HO)
Zapata Corp. v. Maldonado

WEEK 13: November 15

16. Derivative Litigation and the Demand Requirement (cont.), CB 329-350
In re Oracle Corp. Derivative Litigation
Beam v. Stewart
Delaware County Employees Retirement Fund v. Sanchez
Summary and Review

WEEK 14: November 22

17. Securities Fraud and Insider Trading
 - A. Overview, Material Misstatements and Omissions, CB 377-384
Basic Inc. v. Levinson
 - B. Insider Trading, CB 385-401; 415-433
SEC v. Texas Gulf Sulphur Co.
Chiarella v. United States
United States v. O'Hagan
Dirks v. SEC
United States v. Newman
Salman v. United States
Summary and Review

WEEK 15: November 29

18. The Takeover Movement
 - A. Overview, Tender Offers at a Glance, CB 435-444
 - B. Judicial Responses to Takeovers, CB 447-454
Unocal Corporation v. Mesa Petroleum Co.
 - C. CB 465-479
Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc
Paramount Communications, Inc. v. Time
 - D. Summary and Review, CB 493-494