

Syllabus and Course Policies for
BUSINESS ASSOCIATIONS – LAW 234 A

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SCOPE OF THE COURSE

Business Associations is a semester-long, four-unit 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 relationships, 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 topics:

- Agency Relationships
- Partnerships (General & Limited)
- Corporate Purpose, Formation, and Financing the Corporation
- Corporate Management and Control
- Fiduciary Duties
- Derivative Litigation
- Closely Held Corporations
- Limited Liability Companies
- Disregarding the Limited Liability Shield
- Managing Liability Exposure
- White Collar Crime

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 AND MATERIALS

The required books must be brought to all classes. You are expected to have read any statutes, rules, or Restatement sections to which the cases and material in the casebook refer.

Required Texts: STEPHEN M. BAINBRIDGE, BUSINESS ASSOCIATIONS, CASES AND MATERIALS ON AGENCY, PARTNERSHIPS, LLCs AND CORPORATIONS (11th ed. 2019)

WILLIAM A. KLINE, ET. AL. BUSINESS ASSOCIATIONS, AGENCY, PARTNERSHIPS, LLCs, AND CORPORATIONS 2021 STATUTES AND RULES¹

Supplement: In addition to the required texts, I have prepared a Handout for you with additional course materials. The material in the handout is required reading, which is indicated in the Reading Assignments beginning on page 7. The handout can be accessed for free on TWEN.

COURSE WEBSITE

To facilitate class administration, I have set up a TWEN (Westlaw) site for this course. The website includes the Handout, 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. You are responsible for checking the website regularly and you will be responsible for all materials posted on it.

¹ You are expected to have read any statute, rule, or Restatement section in the Statutes and Rules supplement to which the cases and material in the Casebook refer or as they appear on the Reading Assignments below. However, these statutes and rules are freely available for viewing and printing on Westlaw and LEXIS. Given the demands of law school, I believe that most of you would prefer the convenience of a hardcopy book containing these sections, and for this reason I am assigning the Statutes and Rules text. If you wish to skip the printed copy, and download the relevant statutes and rules provisions yourself, you are welcomed to do so.

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, rules, or Restatement sections 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 classes will be academically withdrawn from the course.

WESTERN STATE COLLEGE OF LAW - 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. 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."

READING ASSIGNMENTS

Key: [“CB”]: STEPHEN M. BAINBRIDGE, BUSINESS ASSOCIATIONS, CASES AND MATERIALS ON AGENCY, PARTNERSHIPS, LLCs AND CORPORATIONS (11th ed. 2019).

[“HO”]: Handout can be found on the TWEN site.

[“SR”]: WILLIAM A. KLINE, ET. AL. BUSINESS ASSOCIATIONS, AGENCY, PARTNERSHIPS, LLCs, AND CORPORATIONS 2021 STATUTES AND RULES .²

WEEK 1: August 24

1. Introduction to Business Associations

A. HO: 2-22

B. SR: Model Business Corporation Act § 6.22; Delaware General Corporation Law § 106

2. Agency

2A. Who is an Agent?

A. CB: 1-13

B. SR: Restatement (Second) Agency §§ 1, 3

WEEK 2: August 29 & 31

2B. Liability to Third Parties in Contract

A. CB: 13-45

B. Restatement (Second) Agency §§ 7, 8-8B, 26-27, 82

2C. Liability of Principal to Third Parties in Tort

A. CB: 45-82

B. SR: Restatement (Second) Agency §§ 219-220, 228-229

2D. Fiduciary Obligations of Agents

A. CB: 82-92

B. SR: Restatement (Second) Agency § 13, 379-388

² You are expected to have read any statute, rule, or Restatement section in the Statutes and Rules supplement to which the cases and material in the Casebook refer or as they appear on the Reading Assignments. However, these statutes and rules are freely available for viewing and printing on Westlaw and LEXIS. Given the demands of law school, I believe that most of you would prefer the convenience of a hardcopy book containing these sections, and for this reason I am assigning the Statutes and Rules text. If you wish to skip the printed copy, and download the relevant statutes and rules provisions yourself, you are welcomed to do so.

WEEK 3: September 7

3. General Partnerships

3A. What is a Partnership and Who are the Partners?

- A. CB: 93-111, 140-149
- B. SR: Uniform Partnership Act (1914) §§ 2-3, 6-7, 18
- C. SR: Uniform Partnership Act (1997) §§ 102-103, 201-202, 401

3B.1 Partnership Property and the Fiduciary Obligation of Partners

- A. CB: 138-140, 111-124
- B. SR: Uniform Partnership Act (1914) §§ 8, 24-28
- C. SR: Uniform Partnership Act (1997) §§ 203-204, 404, 409, 503

WEEK 4: September 12 & 14

3B.2 Fiduciary Obligations of Partners (cont.)

- A. CB: 124-138

3C. Partnership Dissolution

- A. CB: 150-166
- B. SR: Uniform Partnership Act (1914) §§ 31-41
- C. SR: Uniform Partnership Act (1997) §§ 601-603, 701-704, 801-806

4. Limited Partnerships

- A. CB: 203-206; 166-178

5. Corporations

5A. Formation, Financing the Corporation, Pre-incorporation Liability

- A. CB: 181-183
- B. HO: 23-31
- C. SR: Model Business Corporation Act §§ 2.01-2.04, 6.01, 6.03, 6.21
- D. SR: Delaware General Corporation Law §§ 101-102 (skim), 106, 108, 109, 121-122; Restatement (Second) Agency § 326

5B. Managing the Corporation

- A. CB: 183-190
- B. HO: 32-37
- C. Delaware General Corporation Law §§ 141-142
- D. Model Business Corporation Act §§ 8.01, 8.03, 8.20, 8.24, 8.40-8.41

WEEK 5: September 19

5C. The Duties of Directors and Officers (Fiduciary Duties)

5C.1 The Duty of Care and the Business Judgment Rule

A. CB: 212-251

B. SR: Model Business Corporation Act §§ 8.30-8.31

5C.2 The Duty of Loyalty and the Entire Fairness Doctrine

A. CB: 251-256

5C.3 The Obligation of Good Faith

A. CB: 295-296

WEEKS 6 & 7: September 26 & October 3

5C.4.1 Fiduciary Duty Issues – Duty of Care: Executive Compensation, Oversight

A. CB: 296-313

B. SR: Delaware General Corporation Law § 102(b)(7)

5C.4.2 Fiduciary Duty Issues – Duty of Loyalty: Interested Director Transactions & Opportunities Belonging to the Corporation

A. 257-294

B. SR: Delaware General Corporation Law § 144

WEEK 8: October 10

Midterm Exam — Cumulative through week 7.

WEEK 9: October 17

5C.4.3 Fiduciary Duty Issues – Mergers & Acquisitions: Negotiated Transactions & Freeze-Out Mergers

A. 675-720

B. SR: Delaware General Corporation Law §§ 151(b), 160(a), 251(f), 262, 271

WEEKS 10 & 11: October 24 & 31

5C.4.4 Fiduciary Duty Issues – Mergers & Acquisitions: Takeovers

A. 720-809

B. HO: 38-43

C. SR: SEC Rule 13e-4(f)(8)

WEEK 12: November 7

5D. Derivative Litigation Procedure

- A. CB: 314-320; 329-349; 355-365
- B. HO: 44-69
- C. SR: Federal Rules of Civil Procedure 23.1
- D. SR: Model Business Corporation Act § 7.42

WEEK 13: November 14

5E Shareholder Rights

- A. CB: 483-494; 510-523
- B. SR: Delaware General Corporation Law § 113
- C. SR: SEC Rule 14a-8

5F. Issues of Control in Closely Held Corporations

- A. 566-592
- B. SR: Delaware General Corporation Law §§ 218, 342(1), 351

WEEK 14: November 21

6. LLCs

- A. CB: 871-891; 899-923

WEEK 15: November 28

7. Disregard the Limited Liability Shield (“Pierce the Veil”)

- A. CB: 196-202; 190-196; 891-899
- B. SR: Model Business Corporation Act § 6.22(b)

8. Managing Liability Exposure

- A. CB: 468-482
- B. SR: Delaware General Corporation Law § 145

WEEK 16: December 5

9. White Collar Crime

- A. CB: 365-381; 423-439
- B. HO: 70-78
- C. CB: 439-458