

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

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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

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

COURSE WEBSITES

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. The TWEN site is also where you will participate in forum discussions, and access and turn in various other assignments. 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.

The TWEN site can be found here:

<https://lawschool.westlaw.com/twen/course/295944/join/YKF4UADPKQZG6DXFE329>

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 and various other assignments given throughout the semester. 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

This class is structured differently from most other law school classes. Some of the classes will be delivered to you asynchronously and other classes will be delivered to you synchronously. In either case, you will use Zoom to access each class session. Thus, this course calls on you, the student, to be responsible for various aspects of your learning. Much of our synchronous class time will be spent discussing the cases and problems assigned in the syllabus (the Socratic Method). You are to work through and have prepared answers for the questions and problems that precede and follow each case or section in the casebook. We will discuss them and solutions to them in class. This is how you will learn to apply the law to a set of facts to act like a lawyer and solve business law problems and issues. **You will, therefore, be expected to have carefully read and briefed each case and all questions and problems sections before and after each case in the casebook, as well as have reviewed the applicable statutes.**

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.

Whether the class session is delivered asynchronously or synchronously you will be responsible for completing the assignment for that class. If the class session is delivered asynchronously, a forum discussion topic or other assignment will be posted for that class session and you will be responsible for participating in the discussion or completing the assignment.

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. Attendance will be taken via Zoom, whether the class session is delivered asynchronously or synchronously. **Failure to prepare for a class, including failure to participate in forum discussions or complete an assignment, may count as an absence.** Students who are absent from more than three classes may be academically withdrawn from the course.

REQUIREMENTS FOR STUDENTS IN ZOOM SESSIONS

Each synchronous 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.

The Meeting ID for synchronous class sessions is:

Meeting ID: 933 3660 0729

Passcode sent via Student Services

The link for asynchronous class sessions will be sent via email.

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. 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.

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

["S"]: The class session will be held synchronously, which means it will be delivered live at the regularly scheduled class time.

["AS"]" The class session will be held asynchronously, which means it will be pre-recorded and uploaded to Zoom before the regularly scheduled class time. It will be your responsibility to access the pre-recorded video sometime before the next scheduled class session. (This schedule is subject to change with advance notice).

January 20 (S)

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

January 25 (AS) & 27 (S)

2. General Partnerships, continued (AS)
 - 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
3. Other Business Entities (S)
 - 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 (S)

February 1 (S) & 3 (AS)

- 5. Corporate Formation (S)
 - 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
- 6. Financial Matters (AS)
 - 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

February 8 (S), 10 (AS) & 16 (AS)

- 7. Piercing the Corporate Veil
 - A. Overview, CB 133-137
 - 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*
 - D. Enterprise Liability, CB 152-162 (AS)
 - 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

February 22 (S/AS)

8. 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
 - C. Shareholder Voting in Public Corporations, CB 198-202
 - D. Summary and Review, CB 203

March 1: Midterm**March 8**

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

March 22

9. Fiduciary Duties, continued
 - B. Duty of Loyalty and Section 144, CB 279-292
Valeant Pharmaceuticals International v. Jerney
Marciano v. Nakash
 - C. Duty of Oversight and Good Faith, CB 293-308
In re Caremark Intern. Inc. Derivative Litigation
Stone v. Ritter
 - D. Summary and Review, CB 309-310

March 29 (AS)

9. Fiduciary Duties, continued

April 5

10. Derivative Litigation and the Demand Requirement, CB 311-350
Aronson v. Lewis
Zapata Corp. v. Maldonado

In re Oracle Corp. Derivative Litigation
Beam v. Stewart
Delaware County Employees Retirement Fund v. Sanchez
 Summary and Review

April 12

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

April 19

12. The Takeover Movement
 - A. Overview, Tender Offers at a Glance, CB 435-444
 - B. Federal Regulation and the Williams Act, CB 445-446
 - C. Responses of State Legislatures, CB 447
 - D. Judicial Responses to Takeovers, CB 447-465
Unocal Corporation v. Mesa Petroleum Co.
Moran v. Household International, Inc.
Unitrin, Inc. v. American General Corporation

April 26

12. The Takeover Movement, continued
 - E. Judicial Responses to Takeovers, continued . CB 465-491
Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc
Paramount Communications, Inc. v. Time
Ebay Domestic Holdings, Inc. v. Newmark
Air Products and Chemicals, Inc. v. Airgas
 - F. A Final Look at Corporate Purpose, CB 491-492
 - G. Summary and Review, CB 493-494

May 3

Catch Up & Review