

BUSINESS ORGANIZATIONS

Law 626B-001

Fall 2009

Tues./Thurs. 6:15 – 7:40 p.m.; Rm 102

Instructor: Nancy G. Neslund
E-mail: nancy.neslund@unlv.edu
Office: 434 RAJ Building
Phone: 895-2699

I am available for office hours at any mutually convenient time. Please call and/or email me if you would like to schedule an appointment. Please be aware that I tend to check my e-mail more frequently than I check my voice mail. If you are in the building and want to see me, you may also just drop by. My door will be open if I am available.

Required:

- *Business Associations, Cases and Materials on Agency, Partnership and Corporations*, Klein, Ramseyer & Bainbridge (7th ed. Foundation Press)
- *Business Associations Agency, Partnerships, LLCs & Corporations, 2009 Statutes and Rules*, Klein, Ramseyer & Bainbridge (Pub.: Foundation Press)

Course Description:

This course is designed as an exploration of the principal forms of business organization, with the primary emphasis on partnerships, corporations (both public and private) and limited liability companies (LLCs). It will establish a foundation understanding of agency principles and various state and federal laws regulating business entities. Additionally, we will discuss the lawyer's role as a business advisor, the business contexts in which the covered legal principles apply, and the broader business and societal environment in which business decisionmakers operate.

Course Objectives:

On completion of this course, you should be able to:

1. Recognize, analyze and assess agency relationships.
2. Compare and contrast the characteristics of the various forms of business organization, as well as evaluate the appropriateness of particular forms to specific client facts.
3. Understand the fiduciary duties of business decisionmakers which arise under state and federal law and be able to recognize and evaluate their applicability to specific client facts.
4. Understand and explain the use and process of bringing shareholder derivative suits.
5. Understand, evaluate and discuss specific issues of corporate governance and corporate citizenship.

Course Grade:

Attendance—Regular attendance is required. Except in truly extraordinary circumstances, you should be seated when class begins, be present for the entire class and stay until the period ends. A sign-in sheet will be circulated at the beginning of each class. It is your responsibility, particularly if you come in late, to make sure that you have signed in. In accordance with ABA policy, any student absent for more than 20% of our scheduled class time may not receive credit for the course.

UNLV Religious Holidays Policy: As a general rule, a student missing a class because of observance of a religious holiday shall have the opportunity to make up the missed work. Students must notify instructors of

anticipated absences by the last day of late registration to be assured of this opportunity. I will always try to accommodate requests, even if they are beyond this deadline, but please let me know as far in advance as possible.

Class Participation— Participation is expected. I will both “cold” call on students and at times take volunteers. If you volunteer occasionally (for example, with regard to cases or discussions with which you are more comfortable), you are less likely to be called on with regard to topics about which you are less comfortable.

Regular and quality participation may earn a student a half-letter grade increase applied in computing the final course grade. This means that if your course grade would otherwise be a B (based on your final exam), quality participation could raise it to a B+. The term “quality” refers to relevant participation in response to in-class questions and discussions and not the quantity of that participation. “Regular” suggests something more than rare, isolated or occasional participation.

Similarly, students who are who are unprepared when called on and who do not participate voluntarily may have their final course grade reduced by a half-letter grade. In this context “unprepared” is somewhat narrowly defined to refer to responses which, in my estimation, indicate a high probability that the assigned reading was not completed before coming to class.

Final Exam—Course grades will be primarily determined by a three-hour exam (followed by adjustment for attendance and participation as previously discussed). This exam will be closed book and may have a combination of multiple choice, short answer and essay portions. Please note that it is one of your duties as a student to demonstrate to me that you have mastered the material. Students who genuinely know the material are virtually always able to demonstrate that fact by presenting coherent, rational, organized and readable essays. Points will not be awarded simply because some of the “right words” are included in an answer: The answer as a whole must demonstrate that the subject is understood by the student.

Please recall that final course grades for the class as a whole must meet the requirements of the School of Law grading curve. For this purpose, the two sections (day and evening) will be treated as separate classes.

Students are allowed and encouraged to use computers for taking the final exam.

Housekeeping Matters:

TWEN—Students should register for this class’s TWEN website at <http://lawschool.westlaw.com>. To access TWEN, you will use your Westlaw password. The same TWEN page will be used by both day and evening sections. The syllabus, reading assignments and class announcements will be posted there. In addition, I will use TWEN e-mail addresses in the event of a need to communicate with students, either individually or collectively, outside of class. It is your responsibility to keep your TWEN email address updated and receipt of messages sent through TWEN will be presumed.

Electronics—All telephones, pagers, PDAs, etc. should be turned off or set to silent during class. Computers may be used in class for class-appropriate uses. Students are advised to adhere to the “Policy on Computer Use” found in Sec. 6.01 of the Student Handbook. Recording of classes, in any fashion, is not permitted except in accordance with the “Policy on Recording Classes” found in Sec. 6.02 of the Student Handbook.

Food and Drink—Provided the classroom remains clean, students are welcome to bring beverages to class. This privilege is subject to revocation at any time. Food is not permitted.

Honor Code—All students are expected at all times to uphold the Academic Honor Code of the School of Law, as set forth in the Student Handbook. Any violations will be handled in the manner prescribed in the handbook.

UNLV Disability Statement:

The Disability Resource Center (DRC) coordinates all academic accommodations for students with documented disabilities. The DRC is the official office to review and house disability documentation for students, and to provide them with an official Academic Accommodation Plan to present to the faculty if an accommodation is warranted. The DRC strongly encourages faculty to provide accommodations only if and when they are in receipt of said plan. Faculty should not provide students accommodations without being in receipt of this plan.

UNLV complies with the provisions set forth in Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990, offering reasonable accommodations to qualified students with documented disabilities. If you have a documented disability that may require accommodations, you will need to contact the DRC for the coordination of services. The DRC is located in the Student Services Complex (SSC), Room 143, and the contact numbers are: Voice (702) 895-0866, TTY (702) 895-0652, fax (702) 895-0651. For additional information, please visit: <http://studentlife.unlv.edu/disability/>.

SEMESTER READING ASSIGNMENTS

In general, each numbered assignment represents reading for one class. In some cases, our discussions may extend beyond one class period. In these cases you should still read the next numbered assignment for the next class. **Students are responsible for all assigned reading, whether or not it is also discussed in class.** As additions are made and any modifications become necessary to these assignments, they will be posted on TWEN and announced in class or noticed via a class email. Unless otherwise indicated, page numbers refer to our casebook and statutory and restatement provisions can be found in the Klein statute and rules supplement.

Setting the Stage

- 1: Forms of Business Organizations: Comparison Chart [posted on TWEN under Course Materials]

The Basics

- 2: Agency: Authority and ratification—pp. 1-16, 23-26, 31-35; Restatement 3d, Agency—1.01, 1.02, 2.01-2.03, 4.01
- 3: Agency: Tort liability—pp. 42-48; Rest. 3d, Agency—7.01, 7.03
- 4: Partnerships: General principles—pp. 140-44, 87-91, 101-04, 132-35; Uniform Partnership Act (UPA) 201-204, 301, 306(a) [unless otherwise indicated, all references to the UPA are to the UPA (1997)]
- 5: Partnerships: Dissociation, dissolution, losses and buyouts—pp. 153-58, 170-78; UPA 601-603, 801, 701(a)-(d) & (h), **as well as** UPA (1914) §31
- 6: Corporations: Basics for both private and public corps—Model Business Corporation Act (MBCA) 1.40, 2.01-.06, 3.01, 3.02, 4.01, 5.01, 6.01, 6.03, 6.22, 6.31, 6.40(a)-(c), 7.01, 7.04(a), 7.05(a), 7.21(a), 7.22(a) & (b), 7.28(a) & (b), 8.01, 8.03, 8.05(a) & (b), 8.08(a) & (d), 8.20-.22, 8.24, 8.25(a) & (e), 8.40(a), 10.03, 10.20; pp. 537-38; CALI Lessons *Mechanics of Incorporation and Defective Incorporation* and *Types of Securities* [accessible from the left navigation bar of our TWEN site]
- 7: Other forms of business organization—pp. 282-93; Uniform Limited Liability Company Act (ULLCA) 101, 103, 105, 108, 112, 201-03, 301, 303, 404, 405, 406(a), 501, 502, 503(a), 601, 603(a), 701(a); 26 USC §§13619a)-(b)(1), 1362(a)-(b)(3), (c), (d)(1)-(2) & (g) [locate online through Lexis or WestLaw]
- 8: Federal vs. state regulation—pp. 404-21
- 9: Review

Fiduciary Duties

- 10: Duty of loyalty—
- 11: Duty of loyalty: Business opportunities—
- 12: Duty of loyalty: Dominant owners—
- 13: Duty of care—
- 14: Duty of care: Business judgment rule—
- 15: Disclosure and fairness—
- 16: Inside information—
- 17: Derivative suits: Part— I
- 18: Derivative suits: Part II—
- 19: Review

Corporate Governance and Corporate Citizenship

- 20: Limited liability; Piercing the veil—
- 21: Control in close corporations—
- 22: Control in public corporations: Part I—
- 23: Control in public corporations: Part II—
- 24: Shareholders and stakeholders—
- 25: Corporate citizenship—
- 26: Review