
TABLE OF CONTENTS

| | |
|---|-----------|
| PREFACE..... | III |
| TABLE OF CASES..... | XXIX |
| Chapter 1. Agency; The Sole Proprietorship..... | 1 |
| 1. The Sole Proprietorship..... | 1 |
| 2. Agency..... | 2 |
| A. The Authority of an Agent..... | 2 |
| Esso Geometric v. Harvard Industries | 3 |
| Speed v. Muhamna..... | 11 |
| Notes on Sources of Agent's Authority | 13 |
| Morris Oil Co. v. Rainbow Oilfield Trucking, Inc. | 22 |
| Notes on Liability of Agents Who Acted for Disclosed, Partially Disclosed, or Undisclosed Principal | 26 |
| Note on Ratification | 27 |
| Notes on Third Person's Liability | 28 |
| B. The Agent's Tortious Conduct..... | 30 |
| Koutsogiannis v. BB&T | 31 |
| C. The Agent's Duty of Loyalty..... | 34 |
| Jensen & Meckling, Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure | 34 |
| Tarnowski v. Resop | 34 |
| Rash v. J. V. Intermediate, Ltd. | 38 |
| Restatement Third § 8.05, Illustration 1 | 40 |
| Reading v. Attorney-General..... | 40 |
| D. Imputation of Agent's Knowledge | 42 |
| Carter v. Gugliuzzi..... | 42 |
| Chapter 2. A Primer on Accounting and Finance | 45 |
| 1. An Introduction to Accounting and Financial Statements | 45 |
| Lawrence A. Cunningham, Introductory Accounting, Finance and Auditing for Lawyers 35–36 | 45 |
| David R. Herwitz & Matthew J. Barrett, Accounting for Lawyers 3, 8–11, 14, 30, 32–4..... | 46 |
| Note on the Link Between the Income Statement and the Balance Sheet | 50 |
| R. Hamilton, Fundamentals of Modern Business 154–55..... | 50 |
| Note on Accrual Accounting and the Conventions of Accounting..... | 51 |
| Note on Accounting and Audit Standard Setters and the Audit Opinion | 55 |
| 2. Present Value: Its Utility and Calculation..... | 56 |
| A. Techniques of Determining Present Value..... | 56 |
| Problems | 62 |
| B. Stock Valuation Model..... | 63 |
| C. Valuing a Business..... | 65 |
| Jeffrey D. Bauman, Russell B. Stevenson, Jr., and Robert J. Rhee, The Old Man and the Tree: A Parable of Valuation, in Business Organizations—Law and Policy 386–392..... | 65 |

| | | |
|-------------------------------------|--|-----------|
| 3. | What Is Risk and Diversification? | 71 |
| | W. Klein, J. Coffee & F. Partnoy, Business Organization and Finance 242–44 | 71 |
| | Note on Joy v. North | 74 |
| | Howell E. Jackson, Louis Kaplow, Steven M. Shavell, W. Kip Viscusi & David Cope, Analytical Methods for Lawyers 214–221..... | 75 |
| | Note on the Capital Asset Pricing Model, Systemic Risk, and Estimating Returns | 79 |
| 4. | Market Efficiency: The Hypothesis and Qualifications..... | 82 |
| | Richard A. Brealey, Stewart C. Myers & Franklin Allen, Principles of Corporate Finance 329–332, 336, 339–342, & 344–347 | 82 |
| | Daines & Hanson, The Corporate Law Paradox: The Case for Restructuring Corporate Law | 87 |
| Chapter 3. Partnerships..... | | 89 |
| | Introductory Note | 89 |
| 1. | What Constitutes a General Partnership?..... | 89 |
| | Hilco Property Services, Inc. v. United States | 89 |
| | Martin v. Peyton | 90 |
| | Lupien v. Malsbenden | 94 |
| | Notes on the Formation of Partnerships | 97 |
| 2. | The Legal Nature of a Partnership..... | 98 |
| | Notes on the Legal Nature of a Partnership: Entity or Aggregate Status..... | 98 |
| 3. | The Ongoing Operation of Partnerships | 101 |
| | A. Management..... | 101 |
| | Summers v. Dooley | 101 |
| | Sanchez v. Saylor | 103 |
| | Notes on the Management of Partnerships..... | 104 |
| | Note on What Law Governs the Internal Affairs of Partnerships | 106 |
| | B. Indemnification and Contribution | 107 |
| | Note on Indemnification and Contribution | 107 |
| | C. Distributions, Remuneration, and Capital Contributions | 108 |
| | Question..... | 108 |
| | D. Capital Accounts and Draws | 108 |
| | William Klein, John C. Coffee & Frank Partnoy, Business Organization and Finance 79–84 | 108 |
| 4. | The Authority of a Partner..... | 112 |
| | RNR Investments Limited Partnership v. Peoples First Community Bank | 113 |
| | Northmon Investment Company v. Milford Plaza Associates | 117 |
| | Notes on the Authority of a Partner | 118 |
| 5. | Liability for Partnership Obligations | 119 |
| | Davis v. Loftus | 120 |
| | Notes on Liability for Partnership Obligations | 120 |
| 6. | Partnership Interests and Partnership Property | 122 |
| | Rapaport v. 55 Perry Co. | 122 |

| | |
|---|-----|
| Bauer v. Blomfield Co..... | 125 |
| Notes on Partnership Property | 129 |
| Notes on Partnership Interests..... | 131 |
| 7. The Partner's Duty of Loyalty..... | 133 |
| Meinhard v. Salmon..... | 133 |
| Latta v. Kilbourn..... | 138 |
| Enea v. Superior Court..... | 138 |
| Robert W. Hillman, Donald J. Weidner & Allan G. Donn, The Revised Uniform Partnership Act § 404, at 381–386 | 142 |
| Notes on Suits by a Partner Against a Partnership | 143 |
| 8. Dissolution (I): Dissolution by Rightful Election | 144 |
| Girard Bank v. Haley..... | 144 |
| Creel v. Lilly | 145 |
| Disotell v. Stiltner..... | 151 |
| McCormick v. Brevig..... | 153 |
| Farnsworth v. Deaver | 157 |
| Notes on Distributions in Dissolution and “Services Partners”..... | 159 |
| Note on Joint Ventures..... | 161 |
| Page v. Page | 163 |
| Leff v. Gunter | 165 |
| Rosenfeld, Meyer & Susman v. Cohen..... | 166 |
| Notes on Partnership Breakup Under the UPA | 166 |
| Notes on Partnership Breakup Under RUPA | 169 |
| Robert W. Hillman, Donald J. Weidner & Allan G. Donn, The Revised Uniform Partnership Act § 701, at 523, 527–529 | 172 |
| Corrales v. Corrales | 173 |
| Robert W. Hillman, Donald J. Weidner & Allan G. Donn, The Revised Uniform Partnership Act § 801, at 560 & 567 | 173 |
| 9. Dissolution (II): Dissolution by Judicial Decree and Wrongful Dissolution..... | 174 |
| Congel v. Malfitano..... | 174 |
| Drashner v. Sorenson | 180 |
| Note on Wrongful Dissolution | 184 |
| Note on the Expulsion of a Partner | 184 |
| Levy v. Nassau Queens Medical Group..... | 186 |
| Crutcher v. Smith | 187 |
| 10. Limited Partnerships..... | 188 |
| A. The Uniform Limited Partnership Acts..... | 188 |
| B. Formation of Limited Partnerships | 189 |
| C. Liability of Limited Partners..... | 189 |
| Gateway Potato Sales v. G.B. Investment Co. | 189 |
| D. Corporate General Partners | 195 |
| Note on Corporate General Partners | 195 |
| In re USA Cafes, L.P. Litigation | 196 |
| E. The Taxation of Unincorporated Business Organizations | 200 |
| F. Fiduciary Obligations of Limited Partners and the Obligation of Good Faith | 202 |
| Labovitz v. Dolan | 202 |
| Dieckman v. Regency GP LP | 205 |

| | |
|---|------------|
| Brinckerhoff v. Enbridge Energy Co..... | 210 |
| 11. Limited Liability Partnerships | 215 |
| Note on Limited Liability Partnerships | 215 |
| Ederer v. Gursky..... | 215 |
| Bromberg & Ribstein, Limited Liability Partnerships, The Revised Uniform Partnership Act, and the Uniform Limited Partnership Act | 222 |
| Note on Liability for Involvement..... | 223 |
| Chapter 4. The Foundations of a Corporation..... | 225 |
| 1. The Characteristics of a Corporation | 225 |
| 2. The Architecture of Corporate Law | 226 |
| 3. Which State's Law Governs a Corporation's Internal Affairs? | 227 |
| VantagePoint Venture Partners 1996 v. Examen, Inc | 228 |
| Friese v. Superior Court | 235 |
| 4. Selecting a State of Incorporation..... | 240 |
| 5. Organizing a Corporation..... | 247 |
| 6. The Basic Types of Financial Securities..... | 250 |
| 7. The Seductive Qualities of Debt | 254 |
| John D. Ayer, Guide to Finance for Lawyers, 295–297 | 254 |
| Note on the Tax Shield of Debt | 256 |
| Note on Leverage and the Risk of Financial Distress | 258 |
| 8. Equitable Subordination of Shareholder Claims..... | 260 |
| Note on Equitable Subordination of Shareholder Claims | 260 |
| Gannett Co. v. Larry | 261 |
| Note on Equitable Subordination vs. Piercing the Veil..... | 262 |
| Note on Characterization of Promoter's Advances | 262 |
| 9. Requisites for Valid Action by the Board | 264 |
| Fogel v. U.S. Energy Systems, Inc | 264 |
| Notes on Requisites for Valid Action by the Board | 268 |
| Note on Board Committees | 270 |
| 10. The Normal Requisites for Valid Shareholder Action | 271 |
| Gwyn R. Hartman Revocable Living Trust v. S. Mich. Bancorp, Inc..... | 271 |
| Notes on the Normal Requisites for Valid Shareholder Action | 273 |
| Espinoza v. Zuckerberg | 275 |
| 11. The Election of Directors..... | 276 |
| A. Staggered Boards | 277 |
| B. Cumulative Voting | 278 |
| C. Plurality Voting..... | 282 |
| Bryn R. Vaaler, Majority Election of Directors: Where Are We Today? | 283 |
| Note on Trend in Plurality vs. Majority Voting | 284 |
| D. Proxy Access | 285 |
| E. Short Slates | 285 |
| 12. Removal of Directors..... | 286 |
| In re VAALCO Energy Shareholder Litig. | 286 |
| Notes on the Removal of Directors | 287 |

| | | |
|--|---|------------|
| 13. | Requisites for Valid Action by Corporate Officers | 288 |
| | Note on Authority | 288 |
| | Notes on the Authority of Corporate Officers | 288 |
| | Schoonejorgen v. Curtiss Wright Corp..... | 293 |
| 14. | The Classical Ultra Vires Doctrine..... | 293 |
| | Introductory Note..... | 293 |
| 15. | The Objective and Conduct of the Corporation..... | 296 |
| A. | The Maximization of Shareholder Wealth | 296 |
| | Henry Hu, New Financial Products, The Modern Process of Financial Innovation, and the Puzzle of Shareholder Welfare..... | 296 |
| B. | Interests Other than Maximization of Shareholders' Wealth..... | 298 |
| | Note on Dodge v. Ford Motor Co. | 298 |
| | Note on Maximizing for the Long-Term vs. the Short-Term..... | 300 |
| | Note on Other Constituencies Under Delaware Law | 303 |
| | Other Constituency Statutes..... | 306 |
| | Milton Friedman, The Social Responsibility of Business Is to Increase its Profits | 307 |
| | Oliver Hart & Luigi Zingales, Companies Should Maximize Shareholder Welfare Not Market Value | 307 |
| | Note on Benefit and Flexible Purpose Corporations | 308 |
| | A.P. Smith Mfg. Co. v. Barlow..... | 310 |
| | Notes on the Conduct of the Corporation | 314 |
| | Note on Political Contributions by Corporations | 316 |
| Chapter 5. The Legal Structure of Publicly Held Corporations | | 319 |
| | Melvin A. Eisenberg, The Structure of the Corporation 1 | 319 |
| | Introductory Note | 319 |
| 1. | The Legal Distribution of Power Between the Board and the Shareholders, and Equitable Limits on the Board's Legal Power..... | 320 |
| A. | The Legal Distribution of Power Between the Board and the Shareholders..... | 320 |
| | Charlestown Boot & Shoe Co. v. Dunsmore | 321 |
| | People ex rel. Manice v. Powell | 322 |
| | Franchise Services of North America v. United States | 323 |
| B. | Equitable Limits on the Board's Legal Powers | 324 |
| | Schnell v. Chris-Craft Industries, Inc..... | 324 |
| | A.A. Berle & G. Means, The Modern Corporation and Private Property | 326 |
| | Blasius Industries, Inc. v. Atlas Corp..... | 326 |
| | Note on Further Proceedings in Blasius..... | 333 |
| | Note on the Business Judgment Rule..... | 333 |
| C. | The Role of Bylaws in the Allocation of Power Between the Board and the Shareholders..... | 334 |
| | CA, Inc. v. AFSCME Employees Pension Plan | 336 |
| 2. | Corporate Governance and the Rise of Institutional Shareholders.... | 344 |
| A. | Shareholder Voting | 344 |
| | Robert B. Thompson & Paul H. Edelman, Corporate Voting..... | 344 |
| | Note on Weighted Voting in Publicly Held Corporations..... | 347 |

| | | |
|----|---|------------|
| | Note on Empty Voting and Record Date(s) | 350 |
| B. | Financial Institutions and Their Advisors | 353 |
| | Notes on the Role of Shareholders Under Modern Corporate Practice | 353 |
| | Ronald J. Gilson & Jeffrey N. Gordon, The Agency Costs of Agency Capitalism: Activist Investors and the Revaluation of Governance Rights..... | 366 |
| | Note on Impact of Activism on Shareholder Value..... | 367 |
| | Brav, Jiang, Partnoy & Thomas, Hedge Fund Activism, Corporate Governance, and Firm Performance | 367 |
| | Note on the Problem of Free-Riding | 372 |
| 3. | Vote Buying..... | 373 |
| | Portnoy v. Cryo-Cell International, Inc..... | 373 |
| 4. | Funding Proxy Contests | 379 |
| | Rosenfeld v. Fairchild Engine and Airplane Corp..... | 380 |
| | Heineman v. Datapoint Corp. | 387 |
| 5. | The Allocation of Power Between the Board and the CEO | 388 |
| | Notes on the Management of Publicly Held Corporations | 388 |
| | Marcel Kahan & Edward Rock, Embattled CEOs | 389 |
| | Jill E. Fisch, Book Review of Macey, The Overstated Promise of Corporate Governance | 391 |
| | Note on the Role of Takeovers in the Structure of the Corporation .. | 392 |
| | Chapter 6. Shareholder Informational Rights & Proxy Voting..... | 395 |
| 1. | Shareholder Information Rights Under State and Federal Law | 395 |
| | A. Inspection of Books and Records..... | 395 |
| | Saito v. McKesson HBOC, Inc..... | 395 |
| | Notes on Shareholders' Inspection Rights..... | 400 |
| | B. The Stockholder List in a Dematerialized World | 404 |
| | Concept Release on the U.S. Proxy System..... | 404 |
| | Note on Broker's Discretion to Vote Customer Shares..... | 410 |
| | Note on Consents and Who's a Record Holder | 411 |
| | F. Balotti & J. Finkelstein, The Delaware Law of Corporations and Business Associations § 7.45 | 412 |
| | C. Reporting Under State Law | 413 |
| | D. An Overview of the SEC and the Securities Exchange Act..... | 414 |
| | SEC, The Investor's Advocate: How the SEC Protects Investors, Maintains Market Integrity, and Facilitates Capital Formation | 414 |
| | E. Periodic Disclosure Under the Securities Exchange Act..... | 416 |
| | Note in Periodic Reporting by Registered Corporations..... | 416 |
| | Note on Vanishing Holders and Listed Companies | 418 |
| | F. Disclosure Under Stock Exchange Rules..... | 419 |
| 2. | The Proxy Rules: An Introduction | 419 |
| | Notes—An Overview of the Proxy Rules | 420 |
| 3. | The Proxy Rules: Shareholder Access | 428 |
| | A. The Dissident's Access Provision: Rule 14a-7 | 428 |
| | B. Shareholder Proposals Under Rule 14a-8 | 428 |
| | Note on No-Action Letters Interpreting Rule 14a-8 | 429 |

| | |
|--|------------|
| Trinity Wall St. v. Wal-Mart Stores, Inc. | 430 |
| Gibson Dunn, Shareholder Proposal Developments.... | 438 |
| Note on Private Ordering and Shareholder Proposals | 442 |
| Note on “Settlements” of Shareholder Proposals | 442 |
| C. Shareholder Access to the Nominating Process | 443 |
| 4. Materially Misleading Proxies and Rule 14a-9 | 444 |
| Note on J.I. Case Co. v. Borak | 444 |
| Wyandotte v. U.S. | 445 |
| Cort v. Ash..... | 445 |
| Mills v. Electric Auto-Lite Co. | 445 |
| Note on Further Proceedings in Mills v. Electric Auto-Lite | 451 |
| TSC Industries, Inc. v. Northway, Inc. | 451 |
| Virginia Bankshares, Inc. v. Sandberg..... | 453 |
| Wilson v. Great American Industries, Inc..... | 460 |
| Notes on Causation, Reliance, and Standing in Private Actions | |
| Under the Proxy Rules..... | 460 |
| Note on the Standard of Fault in Private Actions Under the Proxy | |
| Rules | 462 |
| Note on State Law..... | 463 |
| Chapter 7. Personal Liability in a Corporate Context..... | 465 |
| 1. Preincorporation Transactions by Promoters | 465 |
| 2. Consequences of Defective Incorporation..... | 467 |
| Notes on Defective Incorporation..... | 468 |
| Fred McChesney, Doctrinal Analysis and Statistical Modeling in | |
| Law: The Case of Defective Incorporation..... | 471 |
| 3. Veil Piercing | 472 |
| Introductory Note on Limited Liability | 472 |
| Fletcher v. Atex, Inc..... | 473 |
| Walkovszky v. Carlton..... | 478 |
| Note on Further Proceedings in Walkovszky v. Carlton | 483 |
| Berle, The Theory of Enterprise Entity..... | 483 |
| Notes on Limited Liability Against Tort Claimants..... | 485 |
| Minton v. Cavaney | 490 |
| Arnold v. Browne | 492 |
| Slottow Fidelity Federal Bank v. American Casualty Co. | 492 |
| Truckweld Equipment Co., Inc. v. Olson..... | 492 |
| Radaszewski v. Telecom Corp. | 493 |
| Sea-Land Services, Inc. v. Pepper Source | 494 |
| Kinney Shoe Corp. v. Polan..... | 497 |
| Eisenberg, Corporate Groups, in the Law Relating to Corporate | |
| Groups..... | 499 |
| Berkey v. Third Ave. Ry. Co..... | 500 |
| Carte Blanche (Singapore) Pte., Ltd. v. Diners Club International, | |
| Inc..... | 500 |
| Note on Variations Among States in Applying the Piercing-the- | |
| Veil Doctrine..... | 501 |
| Note on an Empirical Analysis of Piercing Cases..... | 501 |

| | |
|--|-----|
| 4. The Corporate Entity and the Interpretation of Statutes and Contracts | 502 |
| Brotherhood of Locomotive Eng'rs v. Springfield Terminal Ry. Co. | 502 |
| Note on Interpretation..... | 507 |
| Note on the Corporation's Faith | 508 |
| Note on the Entity and the Environment | 509 |
| Chapter 8. The Special Problems of Shareholders in Close Corporations..... | |
| 1. Introduction..... | 515 |
| Notes on Legislative Strategies Toward the Close Corporation | 515 |
| Note on Non-Electing Corporations..... | 517 |
| 2. Voting Arrangements at the Shareholder Level..... | 520 |
| A. Shareholder Voting Agreements | 520 |
| Ringling Bros.-Barnum & Bailey Combined Shows v. Ringling | 520 |
| Notes on Shareholder Voting Agreements and Irrevocable Proxies..... | 527 |
| Haft v. Haft..... | 530 |
| B. Voting Trusts..... | 532 |
| Notes on Voting Trusts | 532 |
| C. Classified Stock | 534 |
| Note on Classified Stock | 534 |
| 3. Agreements Controlling Decisions That Are Within the Board's Discretion | 535 |
| McQuade v. Stoneham..... | 536 |
| Note on Clark v. Dodge..... | 539 |
| Galler v. Galler..... | 539 |
| Note on Further Proceedings in Galler v. Galler | 544 |
| Wasserman v. Rosengarden | 545 |
| Adler v. Svingos | 546 |
| Myocare Nursing Home, Inc. v. Fifth Third Bank..... | 547 |
| 4. Supermajority Voting and Quorum Requirements at the Shareholder and Board Levels..... | 549 |
| Sutton v. Sutton | 549 |
| 5. Fiduciary Obligations of Shareholders in Close Corporations..... | 552 |
| Donahue v. Rodd Electrotype Co. | 552 |
| Note on Nixon v. Blackwell | 560 |
| Rosenthal v. Rosenthal..... | 561 |
| Wilkes v. Springside Nursing Home, Inc. | 562 |
| Zimmerman v. Bogoff | 568 |
| Smith v. Atlantic Properties, Inc. | 568 |
| Sletteland v. Roberts | 572 |
| Merola v. Exergen Corp. | 573 |
| Blank v. Chelmsford Ob/Gyn, P.C. | 576 |
| 6. Restrictions on the Transferability of Shares, and Mandatory-Sale Provisions | 576 |
| Introductory Note | 576 |

| | |
|--|------------|
| F.B.I. Farms, Inc. v. Moore..... | 577 |
| Evangelista v. Holland | 584 |
| Notes on Restrictions on Transferability and Mandatory Sales of Stock..... | 585 |
| Gallagher v. Lambert..... | 589 |
| Jensen v. Christensen & Lee Insurance..... | 592 |
| Jordan v. Duff & Phelps, Inc..... | 593 |
| Nemec v. Shrader..... | 597 |
| 7. Dissolution and Associated Remedies | 600 |
| A. Dissolution for Deadlock..... | 600 |
| Wollman v. Littman | 600 |
| Notes on Dissolution for Deadlock | 601 |
| B. Dissolution for Oppression and Mandatory Buy-Out | 602 |
| Note on Hetherington and Dooley..... | 602 |
| Matter of Kemp & Beatley, Inc. | 603 |
| Meiselman v. Meiselman | 609 |
| Note on Evolving Expectations | 611 |
| Thompson, The Shareholder's Cause of Action for Oppression | 611 |
| Kelley v. Axelsson | 611 |
| McCann v. McCann..... | 612 |
| Haynsworth, The Effectiveness of Involuntary Dissolution | |
| Suits as a Remedy for Close Corporation Dissension | 615 |
| Note on the Duties of Care and Loyalty in Close Corporations | 616 |
| McCallum v. Rosen's Diversified, Inc. | 617 |
| Muellenberg v. Bikon Corp..... | 620 |
| Brodie v. Jordan | 621 |
| Haynsworth, The Effectiveness of Involuntary Dissolution | |
| Suits as a Remedy for Close Corporation Dissension | 622 |
| Notes on Dissolution | 622 |
| Note on Valuation of the Minority's Shares | 624 |
| Charland v. Country View Golf Club, Inc..... | 625 |
| Note on Minority and Marketability Discounts | 630 |
| Note on Matter of Pace Photographers..... | 630 |
| Friedman v. Beway Realty Corp. | 632 |
| 8. Custodians and Provisional Directors | 633 |
| Shawe v. Elting | 634 |
| Notes on Custodians and Provisional Directors | 641 |
| 9. Arbitration..... | 642 |
| Application of Vogel | 642 |
| Lane v. Abel-Bey | 643 |
| Shell, Arbitration and Corporate Governance | 644 |
| Chapter 9. Limited Liability Companies..... | 645 |
| Meyer v. Oklahoma Alcoholic Beverage Laws Enforcement Commission | 645 |
| 1. Introduction: Formation and Management of LLCs..... | 646 |
| Racing Investment Fund 2000, LLC v. Clay Ward Agency, Inc. | 647 |

| | |
|---|-----|
| Notes on Organizational Considerations in Forming LLC | 649 |
| Estate of Collins v. Geist | 651 |
| Notes on Members' Rights..... | 656 |
| Ott v. Monroe | 658 |
| 2. LLCs and the Distinct Entity Concept | 659 |
| A. The Entity Feature and Its Disregard..... | 659 |
| 3519–3513 Realty, LLC v. Law | 659 |
| GreenHunter Energy, Inc. v. W. Ecosystems Tech., Inc. | 660 |
| B. Suits on Behalf of the LLC | 665 |
| Tzolis v. Wolff | 666 |
| Elf Atochem North America, Inc. v. Jaffari..... | 669 |
| 3. Fiduciary Duties | 671 |
| Salm v. Feldstein | 671 |
| VGS, Inc. v. Castiel..... | 673 |
| Solar Cells, Inc. v. True North Partners, LLC | 676 |
| Gatz Props., LLC v. Auriga Capital Corp..... | 682 |
| Note on Implied Covenant of Good Faith and Fair Dealing | 688 |
| Gerber v. Enter. Prods. Holdings, LLC | 691 |
| 4. Disassociation and Dissolution | 697 |
| Lieberman v. Wyoming.com LLC..... | 697 |
| Reese v. Newman | 703 |
| In the Matter of 1545 Ocean Avenue, LLC. | 706 |
| Haley v. Talcott..... | 712 |

| | |
|---|------------|
| Chapter 10. The Duty to Act with Care, in Good Faith, and Lawfully | 717 |
| 1. The Duty of Care..... | 717 |
| A. The Basic Standard of Care..... | 717 |
| Francis v. United Jersey Bank | 717 |
| Aronson v. Lewis | 729 |
| Quillen, <i>Trans Union</i> , Business Judgment, and Neutral Principles | 730 |
| In re Emerging Communications, Inc. Shareholders Litigation | 730 |
| Note on Causation..... | 731 |
| B. The Business Judgment Rule..... | 734 |
| Kamin v. American Express Co. | 734 |
| Notes on Divergence Within the Business Judgment Rule..... | 738 |
| Smith v. Van Gorkom | 744 |
| Note on Substance and Process in the Duty of Care | 762 |
| C. The Duty to Monitor, Compliance Programs, and Internal Controls..... | 762 |
| In re Caremark International Inc. Derivative Litigation..... | 762 |
| In re Massey Energy Company Derivative and Class Action Litigation | 775 |
| Note on Corporate Criminal Liability, the Sentencing Guidelines, and Compliance Programs..... | 779 |
| ABA Section of Business Law, Committee on Corporate Laws, Corporate Director's Guidebook | 781 |

| | |
|---|------------|
| Eisenberg, The Board of Directors and Internal Control | 782 |
| Note on Civil Liability of Directors and Officers to Third Persons..... | 783 |
| D. Liability Shields | 784 |
| Malpiede v. Townson | 785 |
| E. Directors' and Officers'—Liability Insurance..... | 790 |
| Notes on Directors' and Officers' Liability Insurance..... | 790 |
| 2. The Duty to Act in Good Faith | 792 |
| In re the Walt Disney Company Derivative Litigation | 792 |
| Stone v. Ritter | 797 |
| Central Laborers' Pension Fd. and Steamfitters Local 449 Pension Fd. v. Dimon | 800 |
| 3. The Duty to Act Lawfully | 801 |
| Miller v. American Telephone & Telegraph Co. | 801 |
| Notes on Criminal Liabilities of Directors and Officers | 804 |
| Chapter 11. The Duty of Loyalty | 809 |
| 1. Self-Interested Transactions | 809 |
| Gantler v. Stephens | 809 |
| RBC Capital Mkts., LLC v. Jervis, | 815 |
| Shocking Technologies, Inc. v. Kosowsky..... | 817 |
| Matthew D. Cain, Jill E. Fisch, Sean J. Griffith & Steven Davidoff Solomon, How Corporate Governance Is Made: The Case of the Golden Leash | 818 |
| Note on Remedies for Violation of the Duty of Loyalty | 821 |
| 2. Self-Dealing Transactions | 823 |
| A. Common Law..... | 823 |
| Marsh, Are Directors Trustees?—Conflicts of Interest and Corporate Morality | 823 |
| Note on Associates of Directors and Senior Executives..... | 826 |
| B. Statutory Approach..... | 827 |
| Sutherland v. Sutherland | 827 |
| Talbot v. James | 831 |
| Lewis v. S.L. & E., Inc. | 837 |
| Note on the Breadth of Fairness Inquiry | 845 |
| Cookies Food Products v. Lakes Warehouse | 846 |
| Notes on the Effect of Approval of Self-Interested Transactions by Disinterested Directors | 853 |
| Notes on Shareholder Ratification | 856 |
| 3. Compensation..... | 859 |
| Aggarwal, Executive Compensation and Corporate Controversy | 859 |
| Note on Tax Treatment of Executive Compensation | 862 |
| Freedman v. Adams | 863 |
| In re Inv'rs Bancorp, Inc. Stockholder Litig..... | 865 |
| Note on Accounting Treatment of Options | 871 |
| Kevin J. Murphy, The Politics of Pay: A Legislative History of Executive Compensation in Research Handbook on Executive Pay 11, 35 (Thomas & Hill eds. 2013)..... | 872 |
| Ryan v. Gifford | 873 |

| | |
|--|-----|
| Note on “Spring-Loaded” Options | 877 |
| Note on Challenges to Compensation in Close Corporations..... | 878 |
| Wilderman v. Wilderman | 880 |
| Notes on CEO Compensation..... | 880 |
| Harwell Wells, U.S. Executive Compensation in Historical Perspective, in Research Handbook on Executive Pay 41, 48–49, 55..... | 882 |
| Note on Addressing Excessive Executive Compensation Through Disclosure and Governance | 883 |
| Notes on the Compensation of Nonexecutive Directors | 886 |
| 4. Use of Corporate Assets: The Corporate Opportunity Doctrine | 888 |
| Hawaiian International Finances, Inc. v. Pablo | 888 |
| Forkin v. Cole | 891 |
| Northeast Harbor Golf Club, Inc. v. Harris | 891 |
| Note on Further Proceedings in Northeast Harbor Golf Club, Inc. v. Harris..... | 900 |
| Broz v. Cellular Information Systems, Inc..... | 901 |
| David J. Greene and Co. v. Dunhill International, Inc. | 905 |
| Notes on the Corporate Opportunity Doctrine..... | 906 |
| In re eBay, Inc. Shareholders Litigation..... | 910 |
| 5. Duties of Controlling Shareholders | 912 |
| A. Regulating the Exercise of Control | 912 |
| Sinclair Oil Corporation v. Levien | 913 |
| Kahn v. Lynch Communication Systems, Inc. | 919 |
| Note on an Alternative Focus to Challenge Transactions with Controlling Stockholders | 921 |
| Jones v. H. F. Ahmanson Company | 921 |
| Note on Family Controlled Public Companies | 929 |
| B. Class Wars | 930 |
| In re Trados Incorporated Shareholder Litigation | 930 |
| L.C. Masters Fund, Ltd. v. James..... | 946 |
| Note on Implying an Allocation Ratio..... | 950 |
| Zahn v. Transamerica Corporation..... | 951 |
| Note on Further Proceedings in Zahn v. Transamerica Corp.... | 957 |
| Note on the Duty of Disclosure by Controlling Shareholders Under Delaware Law | 958 |
| C. Sale of Control..... | 960 |
| Zetlin v. Hanson Holdings, Inc..... | 960 |
| Andrews, The Stockholder’s Right to Equal Opportunity in the Sale of Shares..... | 961 |
| Javaras, Equal Opportunity in the Sale of Controlling Shares: A Reply to Professor Andrews | 963 |
| Gerdes v. Reynolds..... | 965 |
| Note on Further Proceedings in Gerdes v. Reynolds | 970 |
| Perlman v. Feldmann | 970 |
| Note on Further Proceedings in Perlman v. Feldmann..... | 975 |
| Harris v. Carter..... | 975 |
| Note on the Theory of Corporate Action | 975 |

| | |
|---|------|
| D. The Sale of a Corporate Office..... | 976 |
| Essex Universal Corp. v. Yates | 976 |
| Note on Essex Universal Corp. v. Yates | 985 |
| Note on Tag-Along and Drag-Along Provisions | 985 |
| Chapter 12. The Antifraud Provision: Section 10(b) and Rule 10b-5 987 | |
| 1. An Introduction to Section 10(b) and Rule 10b-5..... | 987 |
| The Wharf (Holdings) Limited v. United International Holdings, Inc..... | 987 |
| Note on Private Actions Under Rule 10b-5 | 991 |
| 2. What Constitutes a Misrepresentation?..... | 992 |
| A. Duty to Speak | 993 |
| Gallagher v. Abbott Laboratories..... | 995 |
| B. Opinion Statements | 999 |
| Omnicare, Inc. v. Laborers Dist. Council Constr. Indus. Pension Fund..... | 999 |
| C. Forward Looking Statements..... | 1005 |
| 3. Materiality..... | 1007 |
| Basic Inc. v. Levinson | 1007 |
| Note: More on the Probability-Magnitude Approach to Materiality | 1011 |
| 4. Scienter..... | 1013 |
| 5. Primary Participants After <i>Central Bank</i> | 1014 |
| Lorenzo v. SEC | 1017 |
| West Virginia Pipe Trades Health & Welfare Fund v. Medtronic, Inc..... | 1023 |
| 6. Standing to Sue..... | 1025 |
| 7. The Private Securities Litigation Reform Act and Securities Litigation Uniform Standards Act | 1028 |
| Notes on Impact of Congressional Reform | 1030 |
| Notes on Pleading Scienter After the PSLRA | 1031 |
| 8. Causal Relationship..... | 1034 |
| A. Litigating Transaction Causation..... | 1035 |
| Affiliated Ute Citizens v. United States | 1035 |
| Halliburton Co. v. Erica P. John Fund, Inc. | 1039 |
| Notes on the Forensics of Fraud-on-the-Market | 1046 |
| Note on Class Certification in Fraud on the Market Cases | 1047 |
| B. Loss Causation | 1048 |
| Metzler Investment GMBH v. Corinthian Colleges, Inc. | 1050 |
| Note on Bundling and Its Consequences | 1054 |
| 9. The Junction of Breaches of Fiduciary Duty and Rule 10b-5 | 1055 |
| Santa Fe Industries, Inc. v. Green..... | 1055 |
| 10. Remedies in Private Actions Under Rule 10b-5..... | 1061 |
| Note on Proportionate Liability | 1064 |
| Note on Sanctions Beyond Private Suits | 1065 |

| | |
|--|-------------|
| Chapter 13. Insider Trading..... | 1067 |
| 1. The Common Law Background..... | 1067 |
| Notes on the Duties of Directors and Officers Under the Common Law When Trading in Their Corporation's Stock | 1067 |
| 2. The Federal Disclose or Abstain Requirement | 1070 |
| In the Matter of Cady, Roberts & Co..... | 1070 |
| Securities and Exchange Commission v. Texas Gulf Sulphur Co. | 1071 |
| SEC v. Texas Gulf Sulphur Co..... | 1086 |
| How Pervasive Is Insider Trading? | 1087 |
| Why Prohibit?..... | 1089 |
| Note on the "Use" Test Under Rule 10b-5 | 1093 |
| Chiarella v. United States..... | 1094 |
| After the Fall..... | 1101 |
| United States v. O'Hagan..... | 1102 |
| Note on Who's a Misappropriator?..... | 1113 |
| Dirks v. Securities and Exchange Commission | 1116 |
| After the Fall..... | 1126 |
| Salman v. United States..... | 1127 |
| SEC, Selective Disclosure and Insider Trading | 1134 |
| Note on Insider Trading Enforcement..... | 1136 |
| 3. Liability for Short-Swing Trading Under § 16(b) of the Securities Exchange Act..... | 1137 |
| Report of the Task Force on Regulation of Insider Trading, Part II: Reform of Section 16..... | 1139 |
| Gratz v. Claughton..... | 1141 |
| Notes on the Computation of Profits Under § 16(b) | 1144 |
| Note on the Interpretation of § 16(b) | 1146 |
| Note on "Unorthodox" Transactions Under § 16(b) | 1147 |
| Note on Attribution of Ownership Under Sections 16(a) and (b) | 1150 |
| Note on Statutory Insider Status at Only One End of a Swing..... | 1152 |
| Note on Who Is an "Officer" Under § 16(b) | 1153 |
| Note on Deputization..... | 1155 |
| 4. Corporate Recoveries for Inside Trading Under State Law..... | 1157 |
| Diamond v. Oreamuno..... | 1157 |
| Chapter 14. Shareholder Suits..... | 1165 |
| 1. Introduction..... | 1165 |
| Background Note | 1165 |
| Macey & Miller, The Plaintiffs' Attorneys' Role in Class Actions and Derivative Litigation: Economic Analysis and Recommendations for Reform | 1167 |
| Note on Empirical Studies of Shareholder Litigation | 1169 |
| Notes on Who Can Bring a Derivative Action..... | 1176 |
| Notes on Personal Defenses | 1178 |
| Note on the Corporation as an Indispensable Party | 1179 |
| 2. The Nature of the Derivative Action | 1180 |
| Tooley v. Donaldson, Lufkin, & Jenrette, Inc. | 1180 |
| Int'l Brotherhood of Electrical Workers Local No. 129 Benefit Fund v. Tucci | 1186 |

| | |
|--|------|
| Notes on the Distinction Between Derivative and Direct Actions | 1190 |
| Barth v. Barth | 1191 |
| 3. Individual Recovery in Derivative Actions..... | 1195 |
| Glenn v. Hoteltron Systems, Inc. | 1195 |
| Notes on Individual Recovery in Derivative Actions | 1196 |
| 4. The Contemporaneous-Ownership Rule..... | 1199 |
| Bangor Punta Operations, Inc. v. Bangor & Aroostook R.R. | 1200 |
| Rifkin v. Steele Platt..... | 1206 |
| Notes on the Contemporaneous-Ownership Rule..... | 1207 |
| 5. Right to Trial by Jury in Derivative Actions..... | 1210 |
| 6. The Demand Requirement | 1212 |
| Introductory Note..... | 1212 |
| Marx v. Akers..... | 1213 |
| Del. County Employees Ret. Fund v. Sanchez..... | 1222 |
| Notes on Independence..... | 1225 |
| The Demand Requirement and Preclusion in Multi-Forum Litigation | 1230 |
| Note on Model Act's Universal Demand..... | 1230 |
| Auerbach v. Bennett | 1231 |
| Zapata Corp. v. Maldonado | 1237 |
| Boland v. Boland Trane Associates, Inc. | 1244 |
| Note on Cuker v. Mikalauskas..... | 1249 |
| In re PSE & G Shareholder Litigation | 1251 |
| 7. Demand on the Shareholders | 1251 |
| 8. Indemnification and Insurance..... | 1253 |
| A. Indemnification | 1253 |
| Waltuch v. Conticommodity Services, Inc. | 1254 |
| Note on the Scope of Indemnification Provisions..... | 1268 |
| Note on Advances | 1271 |
| B. Insurance | 1271 |
| 9. The Role of Corporate Counsel..... | 1271 |
| Bell Atlantic Corp. v. Bolger | 1271 |
| Notes on Problems Concerning the Law Governing Lawyers in Derivative Actions..... | 1275 |
| 10. Settlement of Shareholder Suits..... | 1278 |
| Clarke v. Greenberg | 1278 |
| Background of the Purpose and Consequences of Court Approval of Settlements..... | 1280 |
| Desimone v. Industrial Bio-Test Laboratories, Inc..... | 1282 |
| Background Note on Judicial Approval of Settlements..... | 1283 |
| Macey & Miller, The Plaintiffs' Attorneys' Role in Class Actions and Derivative Litigation: Economic Analysis and Recommendations for Reform | 1284 |
| Note on Delaware's Antidote for the Epidemic of Deal Litigation ... | 1285 |
| Note on Settlements Without the Plaintiff's Consent | 1288 |
| 11. Plaintiff's Counsel Fees | 1289 |
| Tandycrafts, Inc. v. Initio Partners | 1289 |
| Sugarland Ind., Inc. v. Thomas..... | 1290 |
| G & N Aircraft, Inc. v. Boehm..... | 1291 |

| | |
|--|-------------|
| Macey & Miller, The Plaintiffs' Attorneys' Role in Class Actions and Derivative Litigation: Economic Analysis and Recommendations for Reform | 1292 |
| Background Note on the Award of Counsel Fees to Successful Derivative-Action Plaintiffs..... | 1293 |
| Goodrich v. E.F. Hutton Group | 1296 |
| Further Notes on Plaintiff's Counsel Fees | 1297 |
| 12. Security for Expenses | 1299 |
| West Hills Farms, Inc. v. RCO AG Credit, Inc. | 1299 |
| Background Note on Security-for-Expenses Statutes | 1301 |
| 13. Private Ordering and Shareholder Suits | 1302 |
| Chapter 15. Corporate Combinations, Tender Offers and Defending Control..... | 1307 |
| 1. Corporate Combinations..... | 1307 |
| A. Sale of Substantially All Assets | 1307 |
| Hollinger, Inc. v. Hollinger International, Inc. | 1307 |
| Note on Sale of Substantially All Assets | 1315 |
| B. The Appraisal Remedy..... | 1315 |
| Notes on the Appraisal Remedy | 1316 |
| Piemonte v. New Boston Garden Corp. | 1318 |
| Notes on Appraised Value: The Battling Experts..... | 1325 |
| Notes on Discounts and Premiums in Appraisal Proceedings..... | 1330 |
| Notes on Exclusivity of the Appraisal Remedy | 1333 |
| C. Statutory Mergers..... | 1337 |
| (1) Classical Mergers | 1337 |
| (2) Small-Scale Mergers | 1339 |
| E. Welch, A. Turezyn II & R. Saunders, Folk on the Delaware General Corporation Law § 251.2.2.1 | 1339 |
| (3) Short-Form Mergers..... | 1340 |
| D. Tax Aspects of Corporate Combinations | 1340 |
| E. The Stock Modes and the De Facto Merger Theory..... | 1342 |
| Hariton v. Arco Electronics, Inc. | 1343 |
| Note on Another Approach to Legislative Intent: Rath v. Rath Packing Co..... | 1345 |
| Note on Heilbrunn v. Sun Chemical Corporation | 1347 |
| Farris v. Glen Alden Corp. | 1348 |
| Notes on Farris | 1354 |
| Notes on the Survivor's Liability to the Transferor's Creditors | 1355 |
| F. Triangular Mergers and Share Exchanges | 1357 |
| Terry v. Penn Central Corp..... | 1357 |
| Notes on Triangular Mergers, Share Exchanges, Entity Conversions | 1360 |
| G. Freezeouts..... | 1363 |
| Notes on Freezeout Techniques | 1363 |
| Weinberger v. UOP, Inc..... | 1365 |
| Kahn v. M & F Worldwide Corp..... | 1380 |

| | |
|---|-------------|
| Note on the Purpose Test..... | 1384 |
| Glassman v. Unocal Exploration Corp..... | 1386 |
| Solomon v. Pathe..... | 1388 |
| In re Pure Resources, Inc. Shareholder Litigation | 1389 |
| Delaware's Streamlined Back-End Merger Procedure | 1394 |
| In re Volcano Corp. Stockholder Litig. | 1395 |
| Notes on "Going Dark" | 1398 |
| 2. Hostile Takeovers and Defending Control | 1400 |
| The Lexicon of the Battle for Control | 1400 |
| A. The Williams Act..... | 1402 |
| Notes on the Williams Act Provisions..... | 1403 |
| B. Assessing the Target's Response..... | 1409 |
| Unocal Corp. v. Mesa Petroleum Co. | 1409 |
| Note on Unitrin, Inc. v. American General Corp. | 1418 |
| Note on Unocal | 1421 |
| C. Poison Pills | 1421 |
| Air Products and Chemicals, Inc. v. Airgas, Inc. | 1427 |
| Note on Dead Hand Proxy Puts | 1434 |
| D. The "Revlon Moment" | 1435 |
| Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc..... | 1435 |
| Paramount Communications, Inc. v. Time Inc. | 1445 |
| Notes on Revlon in Operation | 1459 |
| Lyondell v. Ryan..... | 1464 |
| C&J Energy Servs. v. City of Miami Gen. Employees' & | |
| Sanitation Employees' Ret. Trust | 1466 |
| Corwin v. KKR Fin. Holdings LLC | 1470 |
| Sciabacucchi v. Liberty Broadband Corp..... | 1472 |
| Note on Defensive Maneuvers Outside of Delaware | 1473 |
| 3. Protecting the Deal | 1475 |
| Omnicare, Inc. v. NCS Healthcare, Inc. | 1475 |
| Note on Force-the-Vote Provisions. | 1486 |
| Note on Termination Fees | 1487 |
| 4. State Takeover Statutes | 1488 |
| 5. Restructurings and the Bondholders | 1493 |
| Sharon Steel Corporation v. The Chase Manhattan Bank | 1494 |
| Metropolitan Life Insurance Company v. RJR Nabisco, Inc. | 1502 |
| Katz v. Oak Industries, Inc. | 1510 |
| Chapter 16. Distributions to Shareholders..... | 1515 |
| 1. Dividend Policy | 1515 |
| A. The Elements of Dividend Policy | 1516 |
| Richard A. Brealey & Stewart C. Myers & Franklin Allen, | |
| Principles of Corporate Finance | 1516 |
| Brav, Graham, Harvey & Michael Payout Policy in the 21st | |
| Century | 1519 |
| B. Judicial Review of Dividend Policy | 1520 |
| (1) Publicly Held Corporations with a Controlling | |
| Shareholder | 1520 |
| Baron v. Allied Artists Pictures Corporation | 1520 |

| | |
|--|-------------|
| (2) Close Corporations | 1526 |
| Note on Compelling Dividends in Close Corporations..... | 1526 |
| 2. Limitations on Dividends Under Creditors' Rights Law..... | 1528 |
| Notes on the Law of Creditors' Rights..... | 1529 |
| 3. Limitations on Dividends Under the Corporate Statutes | 1531 |
| A. Introduction..... | 1531 |
| B. Traditional Statutes—Capital-Impairment Statutes | 1532 |
| (1) The Capital-Impairment Test and Its Meaning..... | 1532 |
| Note on Revaluation of Assets and <i>Klang v. Smith's Food & Drug Centers, Inc.</i> | 1534 |
| Notes on Balance Sheet Accounting for Corporate Equity..... | 1536 |
| (2) Exceptions to the Basic Capital-Impairment Test..... | 1537 |
| (a) Nimble Dividends | 1537 |
| (b) Wasting-Asset Corporations | 1538 |
| Note on Wasting-Asset Corporations | 1538 |
| (c) Dividends out of Capital Surplus | 1538 |
| Note on Dividends out of Capital Surplus | 1538 |
| C. Traditional Statutes—Earned-Surplus Statutes | 1539 |
| Note on the Earned-Surplus Test | 1539 |
| 4. The Modern Dividend Statutes for Corporations and LLCs..... | 1540 |
| Kummert, State Statutory Restrictions on Financial Distributions by Corporations to Shareholders (Pt. II) | 1541 |
| 5. Contractual Restrictions on the Payment of Dividends | 1541 |
| Bayless Manning & James J. Hanks, Jr., Legal Capital 94–95 | 1541 |
| 6. Liability of Directors and Managers for Improper Distributions | 1543 |
| Note on Liability of Directors and Managers for Improper Dividends..... | 1544 |
| 7. Liability of Members and Shareholders for Improper Distributions | 1545 |
| <i>Weinstein v. Colborne Foodbotics LLC</i> | 1546 |
| Notes on Member and Shareholder Liability for Improper Distributions..... | 1549 |
| 8. Repurchase by a Corporation of Its Own Stock | 1552 |
| Wm. A. Klein, John C. Coffee & Frank Partnoy, <i>Business Organization and Finance</i> 398–99 | 1552 |
| A. Financial Limitations on Stock Repurchases..... | 1553 |
| Note on Liability for Repurchases in Violation of Statutory Financial Provisions..... | 1555 |
| B. Non-Financial Rules Concerning Stock Repurchases..... | 1556 |
| Note on Status of Repurchased Shares | 1556 |
| Notes on Non-Financial Limitations on Stock Repurchases.... | 1557 |
| 9. Liability for Watered Stock and Related Issues | 1560 |
| Chapter 17. The Public Distribution of Securities | 1565 |
| 1. Introduction..... | 1565 |
| A. An Overview of the Securities Markets..... | 1565 |
| James D. Cox, Robert W. Hillman & Donald C. Langevoort, <i>Securities Regulations: Cases and Materials</i> 1–3 | 1565 |

| | | |
|----|--|------|
| B. | An Overview of the Securities Act | 1567 |
| | Securities and Exchange Commission, the Investor's Advocate: How the SEC Protects Investors and Maintains Market Integrity | 1567 |
| | SEC, Q & A: Small Business and the SEC | 1568 |
| C. | An Overview of the Underwriting Process | 1570 |
| | L. Loss & J. Seligman, Fundamentals of Securities Regulation 73–86..... | 1570 |
| | Coffee & Sale, Securities Regulation—Cases and Materials 80–81..... | 1573 |
| D. | On-Ramp Dispensations for Emerging Growth Companies..... | 1573 |
| 2. | What Constitutes a “Security” | 1575 |
| | McGinty, What Is a Security? | 1575 |
| | Note on the Meaning of “Investment Contract” | 1576 |
| | Note on What Is “Stock”: Landreth Timber Co. v. Landreth | 1580 |
| 3. | What Constitutes a “Sale” and an “Offer to Sell” | 1586 |
| | Note on the Meaning of “Sale” and “Offer to Sell” | 1586 |
| 4. | The Requirement of Registration..... | 1587 |
| | A. The Broad Sweep of Section 5 | 1587 |
| | B. The Intrastate Exemption | 1588 |
| | (1) Statutory Intrastate Exemption..... | 1588 |
| | Securities Act Release No. 4434 (1961)..... | 1588 |
| | (2) Intrastate Safe Harbor Exemptions..... | 1591 |
| | C. Private Placements | 1592 |
| | S.E.C. v. Ralston Purina Co. | 1592 |
| | Note on Doran v. Petroleum Management Corp..... | 1595 |
| | SEC, Q & A: Small Business and the SEC | 1598 |
| | D. Limited Offerings | 1599 |
| | SEC, Rule 504 of Regulation D: A Small Entity Compliance Guide for Issuers | 1599 |
| | Rule 506 of Regulation D | 1601 |
| | Note on JOBS Act and General Solicitations | 1603 |
| | Note on Crowdfunding | 1603 |
| | E. Regulation A | 1606 |
| | SEC, Amendments for Small and Additional Exemptions Under the Securities Act (Regulation A) | 1606 |
| | Note on the Significance of Exemptions | 1609 |
| | Note on the Integration of Securities Issues | 1610 |
| F. | Transactions Not Involving an Issuer, Underwriter, or Dealer..... | 1610 |
| | (1) Who Is a Statutory Underwriter | 1612 |
| | Note on the Meaning of Term “Offers or Sells for an Issuer in Connection with . . . the Distribution of Any Security” | 1612 |
| | Note on the Meaning of the Term “Any Person Who Has Purchased from an Issuer with a View to . . . Distribution” | 1613 |
| | (2) Sales by Controlling Persons..... | 1614 |
| | Note on Offers or Sales by Controlling Persons | 1614 |

| | |
|--|------|
| (3) Rules 144 and 144A..... | 1617 |
| Revisions to Rule 144..... | 1617 |
| Securities Act Release No. 6862 (1990) | 1621 |
| (4) Resales to Accredited Investors..... | 1622 |
| (5) The “4 1-1/2” Exemption..... | 1623 |
| Note on Exempted Securities | 1623 |
| 5. Mechanics of Registration | 1624 |
| Note on the Registration Process..... | 1624 |
| Note on the Integration of Disclosure Under the 1933 and 1934 Acts..... | 1625 |
| Note on Shelf Registration | 1627 |
| 6. Duties and Prohibitions When a Security Is in Registration | 1629 |
| A. Overview | 1629 |
| Securities Act Release No. 4697 (1964) [Offers and Sales of Securities by Underwriters and Dealers] | 1629 |
| B. The Pre-Filing Period | 1631 |
| Note on in the Matter of Carl M. Loeb, Rhoades & Co. and Chris-Craft Industries v. Bangor Punta Corp..... | 1633 |
| Note on SEC’s Guidance for Communications During Quiet Period | 1635 |
| C. The Waiting Period | 1637 |
| D. The Post-Effective Period | 1640 |
| 7. Liabilities Under the Securities Act | 1641 |
| Notes on Liabilities Under the Securities Act | 1641 |
| Escott v. Barchris Constr. Corp. | 1644 |
| 8. Blue Sky Laws..... | 1663 |
| Notes on Blue Sky Laws..... | 1663 |
| INDEX | 1665 |