

TABLE OF CONTENTS

PREFACE	III
ACKNOWLEDGMENTS	V
TABLE OF CASES	XXV
Chapter 1. Introduction to Business Forms	1
A. The Subject in General	1
B. An Introduction to Business Forms	3
C. The Statutes	7
Chapter 2. Agency	9
A. Introduction	9
B. The Creation of the Agency Relationship	10
C. Liability from the Agency Relationship	12
1. Tort Liability from the Agency Relationship	12
Notes.....	15
2. Contract Liability from the Agency Relationship	16
a. Liability of the Principal to the Third Party.....	17
i. Actual Authority	17
ii. Apparent Authority and Estoppel	18
Notes.....	19
iii. Inherent Authority	21
Notes.....	23
iv. Ratification	24
Notes.....	25
b. Liability of the Third Party to the Principal.....	26
c. Liability of the Agent to the Third Party	27
Note	28
D. Duties of the Agent and the Principal to Each Other	28
1. The Agent's Duties to the Principal	28
2. The Principal's Duties to the Agent	30
E. Termination of the Agent's Power.....	30
Chapter 3. The General Partnership.....	33
A. Introduction	33
B. Formation	33
1. The Definition of Partnership.....	33
Martin v. Peyton.....	34
Notes.....	37
2. The Partnership Agreement	39
3. Entity v. Aggregate Views	40
Notes.....	41
4. Partnership by Estoppel	42
Smith v. Kelley	42
Notes.....	43

C.	Management and Operation.....	43
	Summers v. Dooley.....	43
	Notes	45
	National Biscuit Co. v. Stroud.....	46
	Notes	47
D.	Financial Rights and Obligations.....	48
1.	Partnership Accounting	48
	Robert W. Hamilton and Richard A. Booth, Business Basics for Law Students: Essential Concepts and Applications	50
	Notes.....	54
2.	Sharing of Profits and Losses	55
	Kessler v. Antinora.....	56
	Notes.....	59
3.	Liability to Third Parties	61
a.	Liability of the Partnership	61
b.	Liability of the Partners	61
	Problem	62
	Roach v. Mead.....	62
	Notes.....	64
4.	Indemnification and Contribution.....	66
E.	Fiduciary Duties.....	67
1.	The Common Law.....	67
	Meinhard v. Salmon	67
	Notes.....	71
2.	Statutory Developments and the Role of Contract	72
a.	The Duty of Loyalty	73
	Enea v. Superior Court.....	73
	Notes.....	75
b.	The Duty of Care.....	78
	Bane v. Ferguson	78
	Notes.....	80
c.	Contractual Limitations.....	82
	Singer v. Singer	82
	Notes.....	84
3.	Duties When Leaving a Partnership.....	84
	Meehan v. Shaughnessy.....	84
	Notes.....	90
	Problem	91
F.	Ownership Interests and Transferability	91
1.	Partnership Property	91
	Notes.....	92
2.	Transferring a Partnership Interest	92
	Rapoport v. 55 Perry Co.	92
	Notes.....	95
G.	Dissociation and Dissolution	96
1.	Dissolution Under UPA.....	96
	Notes.....	97
	Collins v. Lewis.....	98
	Notes.....	102

Dreifuerst v. Dreifuerst.....	102
Notes.....	105
Note on Continuation Agreements.....	108
Problem.....	109
Bohatch v. Butler & Binion.....	109
Notes.....	115
2. Dissociation and Dissolution Under RUPA.....	117
Saint Alphonsus Diversified Care, Inc. v. MRI Associates, LLP.....	119
Notes.....	122
Problem.....	123
Problem.....	123
Chapter 4. The Development of Corporation Law in the United States:	
Jurisdictional Competition.....	125
Louis K. Liggett Co. v. Lee.....	126
Notes.....	129
Dole Food Company, Inc. Proxy Statement.....	135
Notes.....	137
Chapter 5. The Formation of a Closely Held Corporation.....	141
A. Where to Incorporate.....	141
B. How to Incorporate.....	141
Notes.....	143
Sample Minutes of Organizational Meeting of Directors.....	150
Notes.....	150
Sample Bylaws.....	151
Note.....	151
C. The Decline of the Doctrine of <i>Ultra Vires</i>	151
711 Kings Highway Corp. v. F.I.M.'s Marine Repair Serv., Inc.....	152
Notes.....	154
Sullivan v. Hammer.....	154
Notes.....	159
Problem.....	159
D. Premature Commencement of Business.....	159
1. Promoters.....	159
Notes.....	161
Stanley J. How & Assoc., Inc. v. Boss.....	162
Notes.....	165
2. Defective Incorporation.....	167
Robertson v. Levy.....	167
Notes.....	170
Frontier Refining Company v. Kunkel's, Inc.....	172
Notes.....	176
Chapter 6. Disregard of the Corporate Entity.....	177
A. The Common Law Doctrine of Piercing the Corporate Veil.....	177
Bartle v. Home Owners Co-op.....	177
Notes.....	179
Woodruff Construction, LLC v. K.W. "Casey" Clark.....	179

Notes	183
Baatz v. Arrow Bar.....	185
Notes	189
Radaszewski v. Telecom Corp.	190
Notes	192
Fletcher v. Atex, Inc.	194
Notes	197
B. The Piercing Doctrine in Federal/State Relations	201
United States v. Bestfoods.....	201
Notes	210
Stark v. Flemming.....	211
Roccogrondi v. Unemployment Comp. Bd. of Review	212
Notes	212
C. “Reverse” Piercing	213
Cargill, Inc. v. Hedge.....	213
Notes	214
Pepper v. Litton.....	216
Notes	218
D. Successor Liability	218
Nissen Corp. v. Miller	219
Notes	223
Chapter 7. Financial Matters and the Corporation	225
A. Debt and Equity Capital.....	225
B. Types of Equity Securities	226
1. Shares Generally	226
2. Common and Preferred Shares	226
3. Special Contractual Rights of Publicly Traded Preferred Shares	228
4. Classes of Common Shares	231
Notes.....	231
C. Issuance of Shares: Herein of Subscriptions, Par Value, and Watered Stock	232
1. Share Subscriptions and Agreements to Purchase Securities	232
2. Authorization and Issuance of Common Shares Under the MBCA.....	233
3. Par Value and Stated Capital.....	234
Hanewald v. Bryan’s Inc.	234
Notes.....	238
4. Eligible and Ineligible Consideration for Shares	238
5. Par Value in Modern Practice	239
Ted J. Fiflis, Homer Kripke, and Paul M. Foster, Accounting for Business Lawyers	242
Notes.....	242
D. Debt Financing	243
1. The Concept of Leverage.....	243
2. Tax Treatment of Debt.....	247
Notes.....	248
3. Debt as a Planning Device	249
Note	249
E. Planning the Capital Structure for the Closely Held Corporation	249

F.	Public Offerings	250
	Notes	252
	Securities and Exchange Comm'n v. Ralston Purina Co.	253
	Notes	256
	Securities Act Release No. 33-6389	257
	Securities Without Registration Under the Securities Act of 1933 (Regulation D)....	257
	Notes	257
G.	Issuance of Shares by a Going Concern: Preemptive Rights and Dilution	259
	Stokes v. Continental Trust Co. of City of New York	259
	Notes	262
	Katzowitz v. Sidler	263
	Notes	267
H.	Distributions by a Closely Held Corporation	268
	Dodge v. Ford Motor Co.	268
	Notes	271
I.	Legal Restrictions on Distributions	272
	1. The Model Business Corporation Act	272
	Official Comment to MBCA § 6.40	273
	Notes.....	276
	2. Non-Model Act Statutes	276
	a. Pure Insolvency Test	276
	b. "Earned Surplus" Dividend Statutes.....	276
	c. "Impairment of Capital" Dividend Statutes	277
	d. Distributions of Capital Surplus.....	278
	Notes.....	279
Chapter 8. Management and Control of the Corporation		281
A.	The Traditional Roles of Shareholders and Directors	281
	McQuade v. Stoneham	281
	Notes	284
	Galler v. Galler	286
	Notes	291
	Zion v. Kurtz.....	293
	Notes	298
	Matter of Auer v. Dressel.....	298
	Notes	304
B.	Shareholder Voting and Agreements	305
	Salgo v. Matthews	305
	Notes	307
	Note	310
	Humphrys v. Winous Co.	311
	Notes	315
	Ringling Bros.-Barnum & Bailey Combined Shows v. Ringling	316
	Notes	322
	New York—McKinney's Bus. Corp. Law §§ 609, 620.....	323
	Notes	323
	Brown v. McLanahan	328
	Notes	331
	Lehrman v. Cohen	332

Note	338
Ling and Co. v. Trinity Sav. and Loan Ass'n	339
Notes	342
C. Action by Officers	344
In the Matter of Drive-In Development Corp.	344
Notes	345
Lee v. Jenkins Bros.	346
Notes	349
Problem	352
Chapter 9. Management and Control of the Publicly Held Corporation	353
A. Corporate Governance	353
Business Roundtable: Statement on the Purpose of a Corporation	354
William T. Allen, Our Schizophrenic Conception of the Business Corporation	354
B. "Social Responsibility" or the Lack Thereof.....	356
Denis Leonard and Rodney McAdam, Corporate Social Responsibility	356
Daniel R. Fischel, The Corporate Governance Movement.....	357
Note	358
The American Law Institute, Principles of Corporate Governance: Analysis & Recommendations.....	358
Note	359
Illinois Business Corporation Act.....	359
Pennsylvania Business Corporation Law	359
Notes	360
C. Business Failures and Corporate Scandals.....	361
C. William Thomas, The Rise and Fall of Enron	361
1. The Response to the Business Failures and Corporate Scandals	366
2. The Sarbanes-Oxley Act.....	367
3. Analysis of the Provisions of the Sarbanes-Oxley Act	370
4. The Financial Crisis of 2007–2010	373
Notes.....	378
D. Shareholders.....	378
1. In General	378
Joseph A. Livingston, The American Stockholder	378
2. The Growth of Institutional Investors	379
Richard H. Koppes, Corporate Governance: Institutional Investors, Now in Control of More than Half the Shares of U.S. Corporations, Demand More Accountability	379
Notes.....	379
E. Directors.....	380
Myles L. Mace, Directors: Myth and Reality	380
Notes	381
Jonathan R. Macey, Corporate Governance: Promises Made, Promises Broken	382
F. Proxy Regulation and Disclosure Requirements.....	388
1. Scope of Regulation	388
Securities Exchange Act of 1934 §§ 14(a), 12(a), 12(g)	388
2. Proxy Forms, Proxy Statements, and Annual Reports	389
a. Form of Proxy.....	389
b. Proxy Statements	391

c.	Annual Reports	392
d.	Management’s Discussion of Financial Condition and Results of Operations	392
	In the Matter of Caterpillar, Inc.	394
	Note	398
3.	False or Misleading Statements in Connection with Proxy Solicitations	399
	Regulation 14A. Solicitation of Proxies	399
	Notes	399
	Virginia Bankshares, Inc. v. Sandberg	400
	Notes	409
4.	Shareholder Proposals	410
	Regulation 14A. Solicitation of Proxies (Rule 14a–8)	410
	Notes	412
5.	Communicating with Shareholders	417
	Regulation 14A. Solicitation of Proxies (Rule 14a–7)	417
	Notes	417
6.	“Say on Pay”	417
7.	Regulation FD	418
8.	The SEC and Proxy Advisors	419
Chapter 10. Duty of Care and the Business Judgment Rule		423
	Shlensky v. Wrigley	423
	Notes	427
	Smith v. Van Gorkom	430
	Notes	442
	Del. Gen. Corp. Law	443
	Notes	443
	In re Caremark Intern. Inc. Derivative Litigation	445
	Note	453
	Stone v. Ritter	454
	Notes	457
	Marchand v. Barnhill	457
Chapter 11. Duty of Loyalty and Conflict of Interest		463
A.	Self-Dealing	463
	Marciano v. Nakash	463
	Notes	465
	In re El Paso Corp. Shareholder Litigation	466
	Notes	474
B.	Executive Compensation and the Waste Doctrine	476
	Heller v. Boylan	476
	Note	480
	Wilderman v. Wilderman	480
	Note	483
	Brehm v. Eisner	483
	In re Walt Disney Co. Derivative Litigation (Brehm v. Eisner)	487
	Notes	490
C.	Controlling Shareholder Conflicts of Interest	492
	Sinclair Oil Corp. v. Levien	492

Notes	497
Weinberger v. UOP, Inc.	497
Notes	509
Kahn v. M & F Worldwide Corp.	512
Notes	514
Note on Forum Selection and Fee Shifting in Delaware	517
D. Corporate Opportunity.....	519
Northeast Harbor Golf Club, Inc. v. Harris.....	519
Notes	526
E. Disclosure.....	528
Malone v. Brincat	528
Notes	535
Chapter 12. Shareholder Derivative Lawsuits.....	537
Gall v. Exxon Corp.	537
Notes	539
Zapata Corp. v. Maldonado	540
Note	548
Aronson v. Lewis	549
Notes	556
In re Oracle Corp. Derivative Litigation	560
Notes	563
Gordon v. Goodyear.....	564
Cuker v. Mikalauskas	568
Notes	571
Chapter 13. Dissension in the Closely Held Corporation.....	575
A. Deadlock.....	575
Gearing v. Kelly.....	575
Note	577
In re Radom & Neidorff, Inc.	577
Notes	581
B. Oppression	583
Donahue v. Rodd Electrotpe Co.....	585
Frank H. Easterbrook and Daniel R. Fischel, Close Corporations and Agency Costs	593
Notes	595
Problem	595
Note on Employment, Management, and Dividend Expectations in Closely Held Corporations	596
Wilkes v. Springside Nursing Home, Inc.....	598
Frank H. Easterbrook & Daniel R. Fischel, Close Corporations and Agency Costs	604
Notes	604
Problem	606
Merola v. Exergen Corp.	606
Notes	609
In re Kemp & Beatley, Inc.	610
Note on “De Facto” Dividends	615

Note on General and Specific Reasonable Expectations.....	615
Notes	616
Problem	618
Problem	619
Nixon v. Blackwell.....	620
Douglas K. Moll, Minority Oppression and the Limited Liability Company: Learning (or Not) from Close Corporation History	621
Notes	622
Gallagher v. Lambert	624
Notes	630
C. Remedies for Dissension	632
Davis v. Sheerin	632
Robert B. Thompson, The Shareholder’s Cause of Action for Oppression.....	637
Notes	639
Problem	643
Chapter 14. Transactions in Shares: Securities Fraud and Sales of Control	645
A. The Development of a Federal Remedy: Rule 10b–5	645
Securities Exchange Act of 1934 § 10(b).....	645
Rule 10b–5: Employment of Manipulative and Deceptive Devices.....	645
Notes	646
Notes	649
Notes	651
Note	652
In re Enron Corporation Securities, Derivative & ERISA Litigation	652
Notes	658
B. Insider Trading.....	659
Dennis W. Carlton and Daniel R. Fischel, The Regulation of Insider Trading	659
Notes	661
Chiarella v. United States	662
Notes	669
United States v. O’Hagan	673
Notes	682
Michael Kaplan, Rule 10b5–1 Plans: What You Need to Know.....	683
Securities and Exchange Commission v. Cuban	685
Note	691
Dirks v. SEC	692
Notes	699
Salman v. United States	701
United States v. Martoma	705
Note on Subsequent Developments in Martoma	709
Notes	712
Insider Trading and the 2019 Coronavirus (COVID-19)	712
Note	713
Securities Exchange Act of 1934 § 20A.....	714
Notes	714
Securities Exchange Act of 1934 § 16	715
Notes	716

C.	Judicial Development of Liability for Securities Fraud.....	721
	Basic Inc. v. Levinson.....	721
	Notes	733
	Note on McDermid v. Inovio Pharmaceuticals.....	733
D.	Liability for Securities Fraud: Statutory Regulation.....	737
	Richard M. Phillips and Gilbert C. Miller, <i>The Private Securities Litigation Reform Act of 1995: Rebalancing Litigation Risks and Rewards for Class Action Plaintiffs, Defendants and Lawyers</i>	737
E.	Sales of Control.....	741
	DeBaun v. First Western Bank and Trust Co.	741
	Notes	747
	Perlman v. Feldmann.....	749
	Notes	754
	Chapter 15. Indemnification and Insurance	759
	Merritt-Chapman & Scott Corp. v. Wolfson	759
	Notes	761
	Aleynikov v. Goldman Sachs Group, Inc.	763
	Notes	766
	McCullough v. Fidelity & Deposit Co.	767
	Notes	770
	Thomas D. Long, <i>How Strong Is Your D&O Safety Net</i>	770
	Notes	774
	Chapter 16. Takeovers.....	775
A.	The Beginnings of the Takeover Movement.....	776
	William Allen, <i>U.S. Corporate Governance in a Post-Managerial Age</i>	776
	1. Proxy Fights.....	776
	2. Cash Tender Offers	779
	Robert W. Hamilton and Richard Booth, <i>Corporation Finance: Cases and Materials</i>	779
	Notes.....	781
	3. Leveraged Buyouts.....	782
B.	Litigation About Takeover Transactions	782
	In re Trulia Inc. Stockholder Litigation.....	783
	Note	786
C.	Defenses: State Legislation	786
	CTS Corp. v. Dynamics Corp. of America	786
	Notes	793
	Norman Veasey et al., <i>The Delaware Takeover Law: Some Issues, Strategies and Comparisons</i>	794
D.	Defenses: Poison Pills	795
	Moran v. Household Int'l, Inc.	795
	Notes	802
	Mentor Graphics Corporation v. Quickturn Design Systems, Inc.	803
	Notes	809
E.	Takeover Defenses and Judicial Review.....	809
	Notes	811
	Notes	814

Notes	817
F. Lockups	820
Steven M. Davidoff and Christina M. Sautter, Lock-Up Creep	820
Notes	825
G. Material Adverse Effect Clauses	825
H. Fundamental Transactions and the MBCA.....	826
Notes	830
Chapter 17. Corporate Books and Records.....	833
Lebanon County Employees’ Retirement Fund v. Amerisourcebergen Corporation.....	834
Notes	843
Chapter 18. The Limited Partnership.....	847
A. Introduction	847
Note on Statutory “Linkage” and “De-Linkage”	849
B. Formation	850
Notes	850
C. Management and Operation.....	853
Notes	854
D. Financial Rights and Obligations.....	856
Notes	856
E. Entity Status	857
Note	857
F. Limited Liability	858
1. The Control Rule	858
Gateway Potato Sales v. G.B. Investment Co.....	859
Note on the Statutory Evolution of the Control Rule	864
Notes.....	865
Problem	867
2. Control of the Entity General Partner	868
Robert W. Hamilton, Corporate General Partners of Limited Partnerships	868
Problem	871
Notes.....	871
G. Fiduciary Duties.....	872
1. General Partners	872
Notes.....	874
In re USACafes, L.P.	876
Notes.....	880
2. Limited Partners	882
KE Property Management Inc. v. 275 Madison Management Corp.	883
Notes.....	886
H. Ownership Interests and Transferability	889
Notes	891
I. Dissociation and Dissolution	892
1. Dissociation.....	892
Leslie A. Droubay, The Certainty of Death and Taxes for Family Limited Partnerships.....	893
Robert T. Danforth, The Role of Federalism in Administering a National System of Taxation	893

Notes.....	894
2. Dissolution	895
Notes.....	895
J. A Final Look	896
Chapter 19. The Limited Liability Partnership.....	899
A. Introduction	899
Robert W. Hamilton, Registered Limited Liability Partnerships: Present at the Birth (Nearly)	899
B. Formation	901
Notes	901
C. Limited Liability	904
Kus v. Irving	904
Notes	905
Problem	908
Ederer v. Gursky	908
Notes	912
D. The Limited Liability Limited Partnership.....	914
Notes	914
Problem	915
Chapter 20. The Limited Liability Company	917
A. Introduction	917
Notes	918
B. Formation	920
Notes	921
C. Management and Operation.....	925
1. General Governance.....	925
Notes.....	925
Problem	926
2. Authority.....	926
Taghipour v. Jerez.....	927
Notes.....	930
3. Inspection and Information Rights	933
Kasten v. Doral Dental USA, LLC	933
Notes.....	944
D. Financial Rights and Obligations.....	945
Notes	945
E. Entity Status	946
Premier Van Schaack Realty, Inc. v. Sieg	946
Notes	950
F. Limited Liability	953
1. The Scope of Limited Liability.....	954
Pepsi-Cola Bottling Co. v. Handy	954
Notes.....	958
2. Piercing the Veil	960
Kaycee Land & Livestock v. Flahive	960
Notes.....	964

G.	Fiduciary Duties.....	967
1.	The Basic Duties.....	967
	VGS, Inc. v. Castiel	967
	Notes.....	972
	Problem	975
	Problem	976
2.	The Role of Contract.....	976
	Fisk Ventures, LLC v. Segal.....	977
	Note on Gerber and the Implied Covenant Under Delaware Law	985
	Notes.....	988
	Problem	991
	Problem	992
	Note on Default Fiduciary Duties Under Delaware Law	992
	Anderson v. Wilder.....	996
	Notes.....	1001
H.	Ownership Interests and Transferability	1003
	Achaian, Inc. v. Leemon Family LLC	1003
	Notes	1010
	Note on Charging Orders.....	1010
I.	Dissociation and Dissolution	1013
	Douglas K. Moll, Minority Oppression and the Limited Liability Company:	
	Learning (or Not) from Close Corporation History	1013
	Lieberman v. Wyoming.com LLC	1016
	Notes	1025
	IE Test, LLC v. Carroll	1028
	Notes	1035
	Dunbar Group, LLC v. Tignor	1035
	Notes	1039
	Problem	1043
J.	The Nature of the LLC: Regulatory Issues.....	1044
	Poore v. Fox Hollow Enterprises	1044
	Notes	1045
K.	A Final Look	1048
	INDEX.....	1051