

Business Associations Syllabus - Spring 2007

Professor Cox

Class Attendance and Preparation Policy. Frequent absences or lack of preparation are each inconsistent with the professional standards the Duke Law School expects of its students. A report in class from the person being called upon will require the following to occur on the part of the unprepared student. Within 48 hours of the occurrence the student will deliver a memo to me of not less than 1000 words providing an original (the memo may not contain more than 10 percent attributed quotes from other sources) statutory and case analysis of developments related to the material that the student was unprepared to discuss in class. The memo will be graded by me with a maximum of zero points but a possibility of - 10 points that will be taken into consideration in the final exam. However, I can understand that on a limited number of occasions events not entirely within the student's control may prevent him/her from preparing for the day's assignment. By informing me of this before class, preferably by dropping by my office, you will be relieved of the obligation to prepare for class and may attend the lecture. This exception, however, is intended to be a very limited one.

No Laptops. I have been gravely disappointed with the dynamics of the classroom since the law school introduced the laptop requirement. I believe it is time for us to enter a grand experiment. Therefore, laptops will not be permitted to be operated during the class. I appreciate your understanding on this and am most willing to discuss this decision with you if you like. But let's give it a try and see how it works.

Final Examination. The exam will consist of 2-3 essay questions and 25+ objective questions. It will be a closed book exam. You are, however, expected to bring to the exam your copy of the statutory materials that were used in the course. The statutes that accompany you into the final examination should not have more than eight words written on any page containing a statute or rule that is referenced in the course syllabus. Underlining, tabbing and highlighting are permitted. The following are responses to some specific questions that have come up in the past on the eve of the exam (when everyone except you seem to be going crazy):

1. writing only on pages of code sections we have used in course;
2. Limited to 8 words per page per code section;
Thus, if a code spans 2 pages, and you have 13 words on one page and no more on the next page where code continues, this works.
3. I expect to have a clean copy of the syllabus in the exam package.
4. You may tab the code and a FEW words on the tab do not count toward the 8 word limit, but don't take advantage of this!

Office Hours. I can typically be found in my office Monday, Tuesday and Thursday between 11 a.m. and noon. If this is not a convenient time for you, just let me know when you would like to schedule an appointment. You can do this by speaking to me in the classroom or reaching me by Email: cox@law.duke.edu

Meeting Dates. Class will not normally meet on Friday, except that we will meet on Friday January 12th and 19th at our regular class time and location. The Class will not meet on January 25 and February 8th.

Lunch? One of my growing regrets is the lack of systematic contact between me and my students. We all have to eat lunch; usually I bring one and eat it at my desk while working. If you and at least one other person want to share a sandwich in the blue lounge, let me know and we'll put our schedules together and have lunch together. I am good for about 30 minutes of lunch, then I start to be a bore. E-mail is generally a good way to work this out.

Course Assignments

I. Introduction to Business Organizations and Agency Concepts

CB 1-2

CB 7-top 24

II. Introduction to the Law of Partnerships

A. Formation

CB 31-top 32

RUPA §§ 101(6), 203

Lupien v. Malsbenden at 36 *et. seq.*

CB 39-top mid 40

CB 59-60

Davis v. Loftus at 61 *et. seq.*

B. Contextualizing the Partnership

CB mid 40-42

C. Managing the Partnership

Paciaroni v. Crane (handout materials)

CB 46-48

RUPA §§ 103, 401(f), (i) (j), 403

D. Liability of Partners

RUPA §§ 305 & 306

CB mid 62-63

Redman v. Walters (handout materials)

RUPA §§ 301, 303(a), (d)(1), (e) & (f)

E. Partnership Property and Breakups

CB mid 67-mid 71

Page v. Page at 88 *et. seq.*

CB bottom 99-105

RUPA §§ 601 (1)- (3), (6) & (7), 602, 603, 701 (a)- (c), (f) & (h), 801 (1) -(3), 802 (a)(b), 803 (a) & 804

CB 97-99

III. Formation of the Corporation

A. Selecting a Corporate Domicile: Internal Affairs Doctrine

CB 106-116

B. Drafting the Articles of Incorporation

- MBCA § 2.02 (a)
 - C. Defective Incorporation
 - MBCA §§ 203, 204 & 205
 - CB 117-124
- IV. The Shareholder Primacy Model and Other Constituencies
 - Note on *Dodge v. Ford Motor Co.* CB bottom 134 *et. seq.*
 - A.P. Smith Mfg. Co. v. Barlow* at 137 *et. seq.*
 - CB 142-mid 145
 - MBCA § 3.02(13)
 - Credit Lyonnais Bank Nederland v. Path Comm.* at 145 *et. seq.*
- V. Allocation of Power between Owners and Managers
 - A. The Institutional Setting
 - CB 154-162
 - B. The Power of the Board of Directors
 - Del. § 141(a)
 - MBCA § 8.01
 - Charlestown Boot & Shoe Co. v. Dunsmore* at 162 *et. seq.*
 - CB 165
 - Del. § 141(k)
 - MBCA § 8.08(a)(b) & (d)
 - C. Equitable Limitations - Thwarting the Exercise of Shareholders' Franchise
 - Schnell v. Chris-Craft Ind., Inc.* at 166 *et. seq.*
 - Blasius Ind. Inc. v. Atlas Corp.* at 167 *et. seq.*
 - Del. § 109(a)
 - D. Supervoting Shares and the Threat to Control
 - CB 177- 180
 - E. Bylaw Initiatives
 - Int'l Brotherhood of Teamsters v. Fleming Companies, Inc.* at 180 *et. seq.*
 - MBCA §§ 10.20 & 10.21
 - F. The Board's Role and Limitations
 - CB 198 - mid 200
 - CB mid 206- top 207
 - G. State of Incorporation
 - CB bottom 200 - mid 206
 - H. Formalities for Director Meetings
 - CB bottom 207-top 210
 - MBCA §§ 8.20 - 8.25
 - G. Cumulative Voting for the Election of Directors
 - CB mid 217-top 220
 - MBCA § 7.28
- VI. Limited Liability: Piercing the Corporate Veil
 - CB mid 220-top 221
 - Walkovsky v. Carlton* at 227 *et. seq.*

Sea-Land Services, Inc. v. Pepper Source at 243 *et. seq.*
CB bottom 246-top 247
CB top 248 - bottom 248
Note on *United States v. Bestfoods* at 248 *et. seq.*
CB mid 256-257

VII. Equitable Subordination
CB bottom 252-254

VIII. Shareholder Information Rights & Record of Ownership
Saito v. McKesson HBOC, Inc. at 258 *et. seq.*
CB bottom 263-top 269
MBCA §16.02
CB mid 269 - top 270

IX. Federal Proxy Rules

A. Introduction

CB top 270 -mid 281
Rules 14a-1(f), (l)(1) & (2)(iv); 14a-2(b)(1) & (2)

B. Misleading Proxy Materials

Rule 14a-9
Mills v. Electric Auto-Lite Co. at 282 *et. seq.*
Note on *TSC Ind. v. Northway, Inc.* at 288 *et. seq.*
Virginia Bankshares, Inc. v. Sandberg at 290 (omit concurring/dissenting opinions)

C. Shareholder Proposal Rule

Rule 14a-8(a),(b)(1), (g), (i) & (j)
CB mid 303- mid 304
CB mid 313 - bottom 315

X. Close Corporations

A. Special or Non-Special Area

CB 325-top 326
Donahue v. Rodd Electrotype Co. at 327 *et. seq.*
Note on *Nixon v. Blackwell* at 334 *et. seq.*

B. Legislative Developments for Close Corporations

MBCA §§ 732(a) & (b)
CB bottom 336 - top 341

C. Voting Arrangements

Ringling Bros-Barnum & Bailey Combined Shows v. Ringling at 341 *et. seq.*
MBCA §§ 7.30 & 7.31
CB bottom 348-356

D. Directors' Voting Agreements

Note on *Clark v. Dodge* at 362
Galler v. Galler at 362 *et. seq.*
CB bottom 368-mid 369

- MBCA § 7.32(a)(1)-(8)
Adler v. Svingos at 370 *et. seq.*
- E. Supervoting/quorum Requirements
MBCA §§ 7.27, 7.28 & 8.24
Del. §§141(b) & 216
- F. Fiduciary Protection
Rosenthal v. Rosenthal at 375
Wilkes v. Springside Nursing Home at 375 *et. seq.*
- G. Share Transfer Restrictions
CB bottom 411-12
F.B.I. Farms, Inc. V. Moore at 412 *et. seq.*
CB mid 421 - top 425
MBCA § 6.27
- H. Dissolution
Wollman v. Littman at 433-434
CB 434
Matter of Kemp & Beatley, Inc. at 438 *et. seq.*
MBCA 14.30 & 14.34(a)(b) & (d)
Meiselman v. Meiselman at 444 *et. seq.*
McCallum v. Rosen's Diversified, Inc. at 448 *et. seq.*
Mullenberg v. Bikon Corp. 451
CB 452-mid 454
- XI. Alternatives to Corporate Form
 - A. Limited Partnership
RULPA § 303 (Handout)
CB 466-67
CB 482-83
Gotham Partners, L.P. v. Hallwood Realty Partners at 483 *et. seq.*
CB bottom 492-493
 - B. Limited Liability Company
CB 494-499
CB mid 511-514
Del. Ltd. Liability Co. Act §§ 18-101(7), 201(a)(1)-(3), 402, 503, 702(a)(1)(2),
704(a)(1)(2) & 801(a)(1)-(3) & (b)
- XII. Issuance of Shares
MBCA §§ 6.21(b)-(d) & (f), 6.30
Del. §§ 152, 153, 154, 156 & 162(a)
- XIII. Dividends and Share Repurchases
 - A. The Policy-Finance Question
CB 1225-1230
 - B. Regulatory Issues
CB mid 1247-1249

Dividend Handout Materials
Del. §§ 170(a) & 160(a)(1)
MBCA §§ 1.40(6) & 6.40 (a)-(d)

XIV. Fiduciary Obligations of Officers and Directors

A. Duty to be Attentive

Francis v. United Jersey Bank at 515 *et. seq.*
Note on Causation CB 528-531
MBCA § 8.30

B. Substantive Standard for Care-Based Decision

Kamin v. American Express Co. at 531 *et. seq.*

C. Reasonable Investigation

Smith v. Van Gorkom at 544 *et. seq.*
MBCA §§ 8.30 & 8.31

D. Compliance Systems

In re Caremark Int'l Inc. Derivative Litigation at 562 *et. seq.*
CB 574- bottom 578

E. Statutory Developments

Del. § 102(b)7

MBCA § 2.02(b)(4)

Emerald Partners v. Berlin at 580

Malpiede v. Townson at 580 *et. seq.*

F. A “Third” Duty- Good Faith?

In re Walt Disney Company Derivative Litigation (handout)

G. Violation of Criminal Statute

Miller v. Amer. Tel. & Tel. Co. at 596 *et. seq.*
CB at 599 - 603

H. D & O Insurance

CB mid 603-605

I. Self-Dealing Transactions

Del. § 144

Lewis v. S. L. & E., Inc. at 609 *et. seq.*

I. Executive Compensation

CB 644- mid 648

J. Corporate Opportunities

Northeast Harbor Golf Club, Inc. v. Harris at 658 *et. seq.*

ALI Principles of Corporate Governance § 5.05 (Casebook 663-64)

CB 666-mid 668

In re eBay Inc. at 677-78

XV. Controlling Stockholder’s Fiduciary Obligations

A. Disputes Between Classes of Shares

Zahn v. Transamerica Corp. at 678 *et. seq.*
CB 685-top 686

B. Disclosure Obligations

CB bottom 686-top 688

C. Exercising Influence

Sinclair Oil Corp. v. Levien at 688 *et. seq.*

Levco Alternative Fund v. The Readers' Digest at 709-711

D. Transfers of Control

Jones v. H.F. Ahmanson & Co. 711 *et. seq.*

CB 720-top 724

Perlman v. Feldman at 731 *et. seq.*

E. Sale of Corporate Office

Essex Universal Corp. v. Yates at 738 *et. seq.*

MBCA § 8.10

XVI. Derivative Suit Litigation

A. Nature of the Suit

CB 912-top 918

Tooley v. Donaldson, Lufkin, & Jenrette, Inc. at 919 *et. seq.*

Barth v. Barth at 926 *et. seq.*

B. Vicarious Incapacity and Contemporaneous Ownership Rules

Bangor Punta Operations, Inc. v. Bangor & Aroostook R.R. at 936 *et. seq.*

CB 944-946

MBCA § 7.41

C. The Demand on the Directors Requirement

Marx v. Akers at 950 *et. seq.*

MBCA §§ 7.42, 7.43 & 7.44

D. The Special Litigation Committee

Zapata Corp. v. Maldonado at 967 *et. seq.*

CB bottom 978-982

E. Paying the Lawyers

Tandycrafts, Inc. v. Initio Partners at 992 *et. seq.*

F. Indemnification of Officers and Directors

Del. § 145

Waltuch v. Conticommodity Services, Inc. at 1005 *et. seq.*

G. Attorney Client Privilege and Representative Suit Litigation

CB bottom 1028- 1031

H. A Retrospective Look at Shareholder Suits

CB 1033-1039

XVII. Corporate Combinations

A. Sale of All or Substantially all the Assets

Del. § 2.71

MBCA §§12.01 & 12.02

Hollinger, Inc. V. Hollingers Int'l, Inc. at 1040 *et. seq.*

B. Statutory Merger and Short-Form Merger

CB 1056-bottom 1060

MBCA §§ 11.01, 11.02(a)(c), 11.04 & 11.05

C. De Facto Merger Doctrine

CB 1080-mid 1081

Hariton v. Arco Electronics, Inc. at 1062 *et. seq.*

Farris v. Glen Alden Corp. at 1065 *et. seq.*

CB mid 1079-1081

D. Appraisal Remedy

MBCA § 13.02(a)(1) & (3), (b)(1) & (3)

CB bottom 1051-1055

E. Merger Cash Outs

CB bottom 1081-1082

Weinberger v. UOP, Inc. at 1083 *et. seq.*

MBCA § 13.02(b)(3)(4), (c), (d) & (i)(A)(B)

Glassman v. Unocal Exploration Corp. at 1098 *et. seq.*

Solomon v. Pathe at 1102 *et. seq.*

Note on *Pure Resources* at 1104-1109

Coggins v. New England Patriots Football Club, Inc. at 1110 *et. seq.*

Alpert v. 28 Williams St. Corp. at 1111 *et. seq.*

XVIII. The Market for Control- Defending Control

A. Defensive Measures

Unocal Corp. v. Mesa Petroleum Co. at 1124 *et. seq.*

Note on *Unitrin, Inc.* at 1135-1138

B. The “Revlon Moment”

Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc. at 1163 *et. seq.*

C. What’s Left

Paramount Communications, Inc. V. Time, Inc., (handout materials)

D. Deal Protection Provisions and Fiduciary Out Clause

Omnicare, Inc. v. NCS Healthcare, Inc. at 1206 *ete seq.*

E. Williams Act Provisions

CB bottom 1120-1124

Securities Exchange Act §§ 13(d)(1), 14(d)(1) & 14(e)

Exchange Act Rules 14d-7, 14d-8, 14d-10, 14e-1, and 14e-2

F. State Anti-takeover Provisions

CB mid 1221-1224

Del. § 203 (a)(b)(1)&(4) & (c)(5)[first 5 lines of text only]

XIX. The Regulation of Insider Trading

A. Historical Precedents

In the Matter of Cady Roberts & Co. at 760 *et. seq.*

SEC v. Texas Gulf Sulphur Co. at 760 *et. seq.*

B. Constriction of Doctrine

Chiarella v. United States at 817 *et. seq.*

Dirks v. Securities and Exchange Commission at 826 *et. seq.*

C. Restoration of Doctrine

United States v. O’Hagan at 837 *et. seq.*

Rules 10b5-1 & 10b5-2

- CB 808
- Exchange Act Regulation FD, Rules 100 - 102 in Supp. at 301 *et. seq.*
- Rule 14e-3 (a) & (d) of the Exchange Act
- D. Short-Swing Trading
 - Exchange Act Section 16
 - CB 860-mid 872
 - CB bottom 891 - 895
- XX. The Scope of the Anti Fraud Provision
 - A. Introduction
 - Section 10(b) of the Exchange Act
 - Rule 10b-5 of the Exchange Act
 - B. Materiality and Causation
 - Basic Inc. v. Levinson* at 785 *et. seq.*
 - CB mid 800-mid 804
 - Dura Pharmaceuticals, Inc. v. Broudo* (handout materials)
 - C. Standing and “In Connection With” Requirements
 - The Wharf (Holdings) Ltd. v. United Int’l Holdings, Inc.* at 752 *et. seq.*
 - CB 756-mid 758
 - D. Scier, Aiding and Abetting
 - CB 758-top 760
 - CB bottom 805-top 810
 - E. The Deception Requirement
 - Santa Fe Industries, Inc. v. Green* at 849 *et. seq.*
 - Exchange Act Section 14(e)
 - F. Duty to Speak
 - CB bottom 857-mid 860

That’s All Folks

Business Associations
Assignment
Professor James D. Cox

Wednesday, January 10th

Introduction to Business Organizations and Agency Concepts

CB 1-2

CB 7-top 24

Introduction to the Law of Partnerships

- A. Formation
 - CB 31-top 32
 - RUPA §§ 101(6), 203
 - Lupien v. Malsbenden* at 36 *et. seq.*
 - CB 39-top mid 40
 - CB 59-60
 - Davis v. Loftus* at 61 *et. seq.*
- B. Contextualizing the Partnership
 - CB mid 40-42

Thursday, January 11th

- C. Managing the Partnership
 - Paciaroni v. Crane* (handout materials)
 - CB 46-48
 - RUPA §§ 103, 401(f), (i) (j), 403
- D. Liability of Partners
 - RUPA §§ 305 & 306
 - CB mid 62-63
 - Redman v. Walters* (handout materials)
 - RUPA §§ 301, 303(a), (d)(1), (e) & (f)

Friday, January 12th- (Makeup Class)

- E. Partnership Property and Breakups
 - CB mid 67-mid 71
 - Page v. Page* at 88 *et. seq.*
 - CB bottom 99-105
 - RUPA §§ 601 (1)- (3), (6) & (7), 602, 603, 701 (a)- (c), (f) & (h), 801 (1) -(3), 802 (a)(b), 803 (a) & 804
 - CB 97-99

Tuesday, January 16th

Formation of the Corporation

- A. Selecting a Corporate Domicile: Internal Affairs Doctrine
 - CB 106-116
- B. Drafting the Articles of Incorporation
 - MBCA § 2.02 (a)
- C. Defective Incorporation
 - MBCA §§ 203, 204 & 205
 - CB 117-124

Wednesday, January 17th

The Shareholder Primacy Model and Other Constituencies

- Note on *Dodge v. Ford Motor Co.* CB bottom 134 *et. seq.*
- A.P. Smith Mfg. Co. v. Barlow* at 137 *et. seq.*

CB 142-mid 145

MBCA § 3.02(13)

Credit Lyonnais Bank Nederland v. Path Comm. at 145 *et. seq.*