

BUSINESS ASSOCIATION 1
Professor Andrea L. Johnson

COURSE DESCRIPTION

This course will examine the law relating to different types of legal entities, such as agency, partnerships, limited liability companies, and corporations. The course will focus on Oregon law to the extent possible or the model rules that reflect corporate practices in Oregon. The format of the course is designed to familiarize students with general case law and practical problems associated with business organizations and planning, and then will look at issues that are likely to be tested on the bar exam. This course will cover a lot of content. Students will be given practice questions and a web-based workbook to help you understand practical applications of the principles learned in class, and the interrelationship between concepts.

ORGANIZATION OF COURSE

The topics covered in this course will help prepare students to answer corporate law questions on most state bar exams and give you an introduction into practical business law skills, such as negotiation and drafting. The course will focus on the legal issues associated with selecting an appropriate legal entity for different types of businesses. The topics covered will include agency and partnerships, close corporations and limited liability companies. In lieu of a final exam, students will go through an interactive, web-based workbook called "The Dealmaker," which contains lessons, questions and answers. The Dealmaker focuses on concepts that may not be included in the textbook, but will be a review of what we have discussed in class. The Dealmaker will time, record, and grade your responses. In addition, students will work in small groups to negotiate the proper legal entity for a business, and then draft a 3 page Deal Memo.

TEACHING METHODOLOGY

Professor Johnson uses a modular approach and formative assessment in teaching to integrate practical skills such as creative problem solving and applied reasoning into the course. A modular approach is problem-based, meaning that the lessons are placed in the context of problems. Professor will also use practice questions to review material. In addition, students will receive immediate feedback on questions, so that they can incorporate the feedback into the learning process. Learning will occur in building blocks, which will culminate in a negotiation and drafting exercise where students will role play and negotiate the appropriate business entity in a case study problem, and then draft a deal memo that will reflect the critical terms of the ownership agreement.

COURSE MATERIALS

The course materials include a textbook, a statutory supplement, and a Cyber Workbooks module called "The Dealmaker." The required textbook for the class is Corporations Including Partnerships and Limited Partnerships, Tenth Ed. by Robert W. Hamilton. The Tenth Edition is different than the Ninth Edition, but the cases assigned are the same with minor differences, although the page numbers are different. Students should also get the Statutory Supplement to Cases and Materials on Corporations, also by Robert W. Hamilton, which is a good reference, particularly if you plan to practice in this area. You can use an older version.

Students should purchase a license for The Dealmaker module from the Bookstore. You will receive your user name and password through your email account to access The Dealmaker module. The course will also have a web page. The website will include a class list with email addresses, Class Materials, which reflect the professor's notes and overheads used in class, and tips for using the Dealmaker program.

Students should bring their Statutory Supplement and Class Materials to class. Students will refer to sections in the Statutory Supplement and will be expected to be familiar with the covered provisions. Students may exclude the notes at the end of each section unless specifically assigned.

GRADING

The class will be conducted by lecture and class discussions. Students will also negotiate and draft a deal memo in small groups. Students will be assigned to brief a case in class and answer a problem. Class attendance and preparation is mandatory and points will be deducted for repeated and unexcused absences, or lack of preparation. Students will be graded on class participation, The Dealmaker, and a Deal Memo.

Grades will be computed as follows:

The Dealmaker -----	40 points
Deal Memo -----	50 points
Problems (case & problem)-----	10 points

	100 points

The Deal Memo will require students to work in small groups to negotiate an agreement. Students will be assigned to groups of up to 5 persons. A team leader will be responsible for coordinating activities within each group. Students who volunteer as team leaders for the exercises can get up to 1 point extra credit, which will be added to their raw score.

READING ASSIGNMENTS: Reading assignments may be shortened or omitted as time requires. All notices of any changes in the reading assignments will be in writing.

PART I: SELECTING THE BUSINESS ENTITY

I. AGENCY & PARTNERSHIP

This section will focus on basic agency and partnership principles. Students will be introduced to two brothers, Andrew and Bob, who desire to start a retail computer software business. We will examine the different types of business relationships that they can enter into while conducting business.

Week of 6/30/09

A. INTRODUCTION TO AGENCY & PARTNERSHIP:

1. Chapter 1 pp 1-7
2. Notes 1-8 pp 7-8, pp 9-14, notes 1-4 pp 14-15, notes 1-2 p 29
3. Statutory Supp. pp 1-5
4. Statutory Supp. RUPA §§201-204, 301, 306, 401, 404-406
5. Class Materials
 - a. Types of Business Entities-----1
 - b. CONTEXT: AB Software Store-----2
 - c. Other Types of Business Relationship --- 3
 - d. Review of AB Software Store-----4
 - e. Instructions for The Dealmaker-----5-6

B. PARTNERSHIPS: SCOPE OF RIGHTS

1. Statutory Supp. pp 6-10
2. Class Materials
 - a. Partner's Liability of Losses-----7
 - b. Apparent Authority-----8

C. PRACTICE OF LAW

1. Chapter 2 pp 34-35, pp 37-38, 41-46, 49-50, note 1-5 pp 50-51
 - a. Expulsion of Partners-----9

D. PARTNERSHIP MANAGEMENT AND LIABILITY

1. Chapter 2: National Biscuit v. Stroud pp 52-54
2. Smith v. Dixon pp 54-55
3. Note 1-3 p 55
4. Roach v. Mead pp 60-64
5. Statutory Supplement UPA §§18, 40, RUPA §§307, 401, 404, 807
6. Class Materials
 - a. Partnership Liability-----10
 - b. CONTEXT: AB Software Store----- 11
 - c. Summary of Partnership Liability ---12

Week of 7/6/09

E. PARTNER'S RIGHTS AND DUTIES

1. Chapter 2: Meinhard v. Salmon pp 64-69
2. Notes 3 p 69
3. Partnership Property pp 72-73, notes 2-4 p 73-74
4. Partnership Accounting pp 75-80, notes 1-3 pp 80-81
5. Class Materials
 - a. Property Rights-----13
 - b. Formula Partnership Accounting-----14

F. DISSOLUTION & DISASSOCIATION

1. Chapter 2 pp 81, Note 2 pp 82
2. Collins v. Lewis pp 82-86, notes 3-4 p 86
3. 8182 Maryland Assoc. LP v. Sheehan, pp 95-100
4. Gibbs v. Breed, pp 104-109
5. Bohatch v. Butler & Binion pp 109-115, notes 1-3 p 116
6. Supp. §§601-603, 801-804
7. Class Materials
 - a. Events of Dissolution -----15
 - b. Review of Agency & Partnership -----18
 - c. Issues to Address in Partnership
Question-----20

II. TYPES OF BUSINESS ENTITIES

This section will focus on the different types of business entities, i.e., partnerships, corporations, limited liability companies, including the advantages and disadvantages and the steps needed to create each type of entity.

A. LIMITED PARTNERSHIPS

1. Chapter 3 Corporate General Partners pp 135-141
2. 21st Century Partnership pp 147-150
3. In re Spree.com pp 150-152
4. In re USA Cafes pp 141-144
5. Notes 1-2 p 144

- 6. Class Materials
 - a. Partnerships-----21
 - b. Checklist for Partnerships-----22
 - c. Essential terms of Partnership----23

B. LIMITED LIABILITY COMPANIES

- 1. Chapter 4 pp 154-156, 159-162
- 2. Blackmore Partners pp 162-166
- 3. ELF Atochem N.A. pp 166-172
- 4. Marie L. Kasten pp 185-188
- 5. Final Look pp 189-191
- 6. Supp ULLCA §§301-303, 602-603, 902-903
- 7. Class Materials
 - a. Comparison Between LLCs and LLP-----24
 - b. Characteristics of LLCs -----25
 - c. Checklist for a Limited Liability Company-----26

C. CLOSE CORPORATIONS

- 1. Chapter 6: pp 212-214, 220-227
- 2. Robinson v Levy pp 245-248, notes 1-8 pp 249-250
- 3. Supp. MBCA (1984) §§ 2.02, 1.23, 2.05-2.06, 4.02, 5.01
- 4. Buy-Sell Agreements Notes 2-3 pp 488-490
- 5. Note 3 p 490
- 6. Supp. MBCA §§7.31-7.32
- 7. Class Materials
 - a. Necessary Terms of Agreement -----27
 - b. Types of Corporations-----28
 - c. Close Corporations-----29
 - d. Checklist for Corporations-----30
 - e. Essential terms ----- 31
 - f. Bylaws-----32
 - g. Buy-Sell Agreements-----33
 - h. Exercising Rights-----35

(Work on the Dealmaker Program)

III. UNDERSTANDING THE DEAL

This section focuses on understanding the parties' interests, including obtaining financing and tax matters associated with starting a business. Students will be asked to select the appropriate business entity for a hypothetical case study and then negotiate and draft a deal memo reflecting the basic terms of an ownership agreement.

Week of 7/13/09

A. FINANCIAL MATTERS

1. Chapter 8: pp 314-321
2. Hanewald v. Bryan's Inc. pp 328-331
3. Consideration of Shares pp 331-333
4. Debt Financing & Leverage pp 338-343
5. Planning pp 343-344, notes 2-4 pp 347
6. Supp MBCA §§ 6.01-6.03, 6.21-6.24
7. Class Materials
 - a. Basic Terms -----36
 - b. Financing a Business-----37
 - c. Disposition of Investor's Money-----38
 - d. Types of Equity Shares-----39
 - e. Disposition of Shares-----40
 - f. Comparison of Debt and Equity-----41
 - g. Review Questions-TBD

B. FINANCING A BUSINESS

1. Class Materials
 - a. Sources of Capital-----42
 - b. Types of Commercial Paper-----43
 - c. Issues in Getting Financing-----44
 - d. Types of Collateral-----45
 - e. Credit Information-----46
 - f. Concept of Leverage-----47

C. TAX MATTERS

1. Chapter 3 pp 123-128 (exclude notes)
2. Class Materials
 - a. Tax Terms-----48
 - b. Taxation Rules-----49
 - c. Tax Implications-----50
 - d. Tax Hypotheticals-----51

D. DISTRIBUTIONS, MANAGEMENT, AND CONTROL

1. Chapter 8: Wilderman v. Wilderman, pp 391-394
2. Donahue v. Rodd, pp 397-406 , notes 1-2 pp 406-407
3. Model Business Corporation Act pp 410-415
4. Galler v. Galler pp 424-429
5. Zion v. Kurtz pp 433-435

- 6. Supp. MBCA §§6.27-6.40
- 7. Class Materials
 - a. Summary of Disposition of Shares----80
 - b. Shareholder Agreements-----81
 - a. Ways of Exercising Voting Rights----82
 - b. Proxy Regulation-----83

E. SELECTING THE BUSINESS ENTITY

- 1. Class Materials
 - a. Factors in Selecting a Business Entity--60
 - b. Mandatory Ownership Provisions-----61
 - c. Distributions, Preferences & Preemptions--62
 - d. Review Shareholder Control of Corp.---- 63
 - e. Comparison of Business Entities-----64
 - f. Hypotheticals -----66
 - g. AB Software Store-----68

**F. DEALMAKER NEGOTIATION (July 16-17)
Complete Dealmaker Program by 7/15/09**

- 1. Class Materials
 - c. Provisions for An Ownership Agreement--69
 - d. Introduction to Yes-----71

Individual Deal Memos due 7/23/09. Email your Memo to alj@clark.edu using your identification number to identify yourself, party name and group number.

PART 2: CLOSELY HELD CORPORATIONS

I. RECOGNIZING THE CORPORATE ENTITY

This section will focus on close corporations, including pre-incorporation steps and promoter liability, disregarding the corporate entity, corporate governance, and going public.

Week of 7/20/09

A. PROMOTERS

- 1. Chapter 6: pp 236-238
- 2. Stanley J. How & Assoc. v. Boss pp 239-243
- 3. Notes 1-6 pp 243-244
- 4. Class Material
 - a. Promoter Liability Rules-----75
 - b. Promoter Rules-----76
 - c. Promoter Question----- 77

B. DISREGARD CORPORATE ENTITY

- 1. DeWitt Truck Brothers pp 260-264
- 2. Note 1-2 pp 264-265
- 3. U.S. v Best Foods pp 289-299

4. Fletcher Atex pp 276-280
5. Class Material
 - a. Disregard of Corporate Entity-----78
 - b. Test for Alter Ego-----79

II. CORPORATE GOVERNANCE

This section will focus on the governance and management of closely-held corporations including fiduciary duties of care, loyalty, and good faith in the context of self-dealing, corporate opportunities, dissension, and sale of control.

A. DUTY OF CARE & BUSINESS JUDGMENT RULE

1. Chapter 11: Stone v. Ritter pp 701-703
2. Aronson v. Lewis pp 724-733
3. Malone v. Brincat, pp 703-712
4. Class Materials
 - a. Basic Concepts -----84
 - b. Director's Duty of Care-----85
 - c. Review Questions-----87

B. SELF-DEALING

1. Chapter 12: Marciano v. Nakash pp 756-759
2. Notes 1-3 pp 759-760
3. Notes 1-2, 5-8 pp 797-798
4. Class Materials
 - a. Self-Dealing Rules of Thumb-----88

Week of 7/27/09

C. CORPORATE OPPORTUNITY

1. North Harbor Golf pp 799-807
2. Class Materials
 - a. Corporate Opportunity Doctrine -----89
 - b. Overview of Corporate Opportunity Tests---90
 - c. Review Questions-----91

D. DEADLOCK, DISSENSION & DISSOLUTION

1. Chapter 9: Gearing v. Kelly pp 491-492
2. Davis v. Sheerin pp. 499-503

E. SALE OF CONTROL

1. Chapter 9, Debaun v. First W. Bank pp 519-525
2. Note 1 pp 525
3. Perlman v. Feldman pp 527-533
4. Supp. MBCA §§11.01-11.03, 12.30
5. Class Materials
 - a. Sale of Shares-----92

F. PUBLIC OFFERINGS (SECURITIES ACT 1933)

1. Chapter 8: pp 347-351
2. SEC v Ralston Purina pp 353-355
3. Securities Act Release 33-5450, pp 356-358
4. Securities Act Release 33-6389, pp 358-359
5. Regulation D - Securities Act of 1933, pp 359-364
6. Smith v. Goss pp 365-368
7. Class Materials
 - a. General Provisions-----52
 - b. Def. under the Securities Act of 1933-----53
 - c. Regulation D-----54
 - d. Going Public-----57
 - e. Questions Related to SEA of 1933-----58

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G. Review Questions-Oral Exam (5 points)