

UNIVERSITY OF MEMPHIS SCHOOL OF LAW
Law 211: BUSINESS ORGANIZATIONS I

Fall 2006

Professor Thaddeus Pope

Contacts: Room 233; tmpope@memphis.edu; 901-678-1623

Time and place: M W H 8:00 to 8:50 a.m. Room 250

I. Course Objectives

The course provides a general introduction to several forms of business organizations. In the first half of the course, we will cover: (i) agency law as it relates to commercial enterprises, (ii) general and limited partnerships, and (iii) limited liability companies. In the second half of the course, we cover select aspects of corporations, including: (iv) formation, limited liability, and piercing the veil; (v) shareholder derivative litigation; (vi) special control problems in close corporations; and especially (vii) director and officer fiduciary duties of care and loyalty.

The course is part of the required curriculum. It is intended to lay the groundwork for other courses, including: Business Organizations II (Corporate Finance), Business Planning, Securities Regulation, Corporate Taxation, and Partnership Taxation. Yet, even without these upper-level electives, this course will provide you with the opportunity to get three things: (1) further honed legal analysis and writing abilities, (2) a basic systematic understanding of the legal structures through which business is conducted, and (3) a solid foundation for tackling three of the twelve essay subjects tested on the Tennessee Bar Exam (Agency, Corporations, and Partnerships).

II. Required Materials

- A. WILLIAM A. KLEIN, J. MARK RAMSEYER & STEPHEN M. BAINBRIDGE, BUSINESS ASSOCIATIONS: CASES AND MATERIALS ON AGENCY, PARTNERSHIPS, AND CORPORATIONS (6th ed. Foundation 2006) [“KRB”].
- B. STEPHEN M. BAINBRIDGE, AGENCY, PARTNERSHIPS & LLCs (Foundation 2004) [“SMB”].
- C. FRANKLIN A. GEVURTZ, CORPORATE LAW ANTHOLOGY (Anderson 1997) [“FAG”].

- D. I will regularly post Tennessee statutes, cases, and other materials to the course TWEN site. These materials can be readily and freely downloaded in PDF. I will announce these postings in class, indicating whether they are recommended or required.

III. Class schedule

- A. The class will meet on Mondays, Wednesdays, and Thursdays from 8:00 to 8:50 a.m. in Room 250.
- B. The class will *not* meet on Monday, September 4th, due to Labor Day. And the class will not meet on Thursday, November 23rd, due to Thanksgiving. The last class meets on Wednesday, November 29th.
- C. Depending on class interest, I am happy to schedule a “review” class during the two weeks before the final exam.

IV. Attendance, Preparation, and Participation

- A. Attendance: Under American Bar Association rules, 80% attendance (32 of 40 sessions) is required to allow you to write the final exam. Attendance will be taken by passing class lists for signature at the start of each class session.
- B. Preparation: Students must come to class prepared to discuss the material assigned. All assigned cases must be read and briefed, and all problems must be considered, before the applicable class session. You do not need to know the correct answer (if there is one), but know the reading material and make a reasonable effort to think about the issues raised in the problems and questions.
- C. Class participation: All students are expected to participate in class discussions. If illness or emergency prevents you from being fully prepared, please notify me *before* class. I reserve the right to reward exemplary class participation by raising your grade one step (*e.g.* from B+ to A-).

V. Classroom etiquette

- A. The classroom environment must be conducive to learning for all students. Distractions made possible by advances in technology may undermine that goal.
- B. Audial: During class, in addition to usual courtesies, kindly disable and refrain from using cell phones, pagers, and any other communication device other than your laptop computer.

- C. Visual: Please refrain from displaying wallpaper, screen savers, or other material on your laptop computer that you can reasonably expect to be offensive to other students.
- D. End Time: I will be diligent about starting the class precisely at 8:00 and ending it precisely at 8:50. In return, please do not begin to pack-up at 8:47 or 8:48 while others are still trying to be engaged in the class discourse.

VI. Grading

- A. Quizzes and Problems (20%)
- B. Final Exam (80%)
- C. To make my calculations more objective and transparent, I convert the above percentages into points. There are a total of 225 points for the course. The final exam is worth 180 points. The exercises and problems are worth a total of 45 points. Grading methods are more fully explained in the next two sections.

VII. Required Quizzes and Problems

- A. While I will provide informal, oral feedback during class discussions, I do not want the first *formal* feedback that you receive to be your graded final exam, provided several weeks *after* the end of the semester. Therefore, I will assign ten weekly multiple choice quizzes and/or short essay problems of the type that will appear on the Final Exam. These will usually be quite short, consisting, for example, of just one question or just one paragraph.
- B. I will grade the quizzes. For the short essays, I will distribute a score sheet and/or a model answer. But I am happy to review and provide individualized feedback on your essay. Just ask.
- C. The ten quizzes and essays, in the cumulative, comprise 20% of your total course grade. Each one is worth 4.5 points or 2% of your total course grade.
- D. While I may ask you to complete some quizzes and essays during class, you will complete most of the quizzes and essays before class on the course TWEN site. I will announce and post the problems and questions at least three days in advance of the due date. I will either review the quiz/problem in class or post a feedback memo. More details will be discussed when the first problem is assigned.

VIII. Final Exam

- A. Date: The final exam is scheduled from 9:00 a.m. to 12:00 p.m. on Friday, December 8, 2006.
- B. Format and Length: The final examination will be comprised of three parts. The first part will include true/false and multiple choice questions. The second part will include short answer questions. The third part will include a long essay problem.
- C. Coverage: The exam will test those concepts and issues either covered in assigned readings or explored during class lectures and discussions.
- D. Open Book: On the exam, you will be allowed to use any written or printed materials you choose. No electronic devices are permitted.
- E. Grading and Feedback: All exams will receive a raw score from zero to 180. The raw score is meaningful only relative to the raw score of the other students in the class. The raw score will be converted to a scaled score, based on the class curve. For example, if the highest raw score in the class were 120, then that student would receive an A. I will distribute an explanatory memo and/or a model answer after the exam. A copy of last year's memo is posted on the TWEN site.

IX. Office Hours

I look forward to talking to you outside of class. There are several means of doing this:

- A. After class: I will remain in the classroom after each class for all trailing questions, until or unless we are kicked out by another class.
- B. Office: I can typically be found in my office after class. If this is not a convenient time, just let me know in class or by email and we can make an appointment with each other. You are welcome to drop in my office anytime, but it is best to confirm a particular time in advance.
- C. Email: Feel free to e-mail me at tmpope@memphis.edu if you are unable to come by in person.
- D. Lunch: I have found that grabbing a quick lunch is a good way to get to know each other by class. If you and one or two other students want to share a bite, please let me know. In general, it would be best to suggest in advance a few proposed dates, so we can match our schedules.

X. TWEN Site

The TWEN site will include the following materials:

- A. PowerPoint slides for each class, posted shortly before each class
- B. Links to MP3 recordings of each class posted after each class
- C. Problems and Quizzes (see section VII, *supra*)
- D. Tennessee statutes, cases, and other materials

Warning!! Do not permit the availability of these materials to deter you from preparing and participating in class. I provide these materials to supplement and enhance classroom learning, not to substitute for it. It is important to remember that knowledge acquisition is only one small part of law school education. I plan to do little lecturing during classes. Lectures may seem to provide more value – more content, more certainty. It may seem like you are “learning” more. But this would be poor preparation for the practice of law where there is little certainty. Furthermore, nonattendance is not an option given University and ABA attendance requirements (see section IV, *supra*).

XI. Study Aids and Reference Materials

Below I have outlined some of the standard resources available in the area of business organizations. I have asterisked my favorites. Review and consultation of these materials is *not* a requirement of the course. You really do not need to consult any of them. Two ancillaries are already required for this course. I list sources here only as a guide should you want to further explore any topic. Please note that these are substantive materials. I do *not* generally recommend buying or relying on commercial outlines or canned briefs (*e.g.* Emanuels, Gilberts, Casenotes, BarCharts, E-Z Review, Black Letter, Legal Path).¹

A. Study Aids

- 1. STEPHEN M. BAINBRIDGE, CORPORATION LAW AND ECONOMICS (Foundation 2002).
- 2. DOUGLAS BRANSON, QUESTIONS & ANSWERS: BUSINESS ASSOCIATIONS (Lexis 2004) (multiple choice questions with explanations).

¹ I cannot vouch for the following materials. But I realize that some students have a long commute. Therefore, should it be useful, I note that there are some audio materials available: James D. Cox, *Corporations* (Sum & Substance 2004) (CD); Kaufman, *Agency and Partnership* (Law School Legends 2006) (cassette); Christopher H. Munch, *Agency* (Sum & Substance 1997) (cassette); Christopher H. Munch, *Partnerships* (Sum & Substance 1997) (cassette); Therese Maynard, *Corporations* (Law School Legends 2006) (cassette); PMBR, *Corporations* (CD).

3. *Center for Computer-Assisted Legal Instruction, [Business Associations], <<http://www2.cali.org/index.php?fuseaction=lessons.subjectlist&cat=BA>> (The CALI Library of Lessons includes over forty (40) interactive, computer-based lessons on Business Organizations topics.)
4. ROBERT C. CLARK, CORPORATE LAW (Aspen 1986).
5. JAMES D. COX & THOMAS LEE HAZEN, CORPORATIONS (Aspen 2d ed. 2003) (the student text adapted from the three-volume treatise).
6. JAMES D. COX, SUM & SUBSTANCE QUICK REVIEW: CORPORATIONS (4th ed. 2004).
7. FRANKLIN A. GEVURTZ, GEVURTZ' HORNBOOK ON CORPORATION LAW (West 2000).
8. WILLIAM A GREGORY, GREGORY'S HORNBOOK ON THE LAW OF AGENCY AND PARTNERSHIP (West 3d ed. 2001).
9. ROBERT W. HAMILTON, THE LAW OF CORPORATIONS IN A NUTSHELL (West 5th ed. 2000).
10. ROBERT W. HAMILTON & RICHARD A. BOOTH, BUSINESS BASICS FOR LAW STUDENTS: ESSENTIAL CONCEPTS AND APPLICATIONS (Aspen 4th ed. 2006) (this covers BusOrgs but also goes way beyond the scope of the course).
11. ROBERT W. HAMILTON, BUSINESS ORGANIZATIONS: UNINCORPORATED BUSINESSES AND CLOSELY HELD CORPORATIONS: ESSENTIAL TERMS AND CONCEPTS (Aspen 1996) (this covers BusOrgs but also goes way beyond the scope of the course).
12. J. DENNIS HYNES & MARK J. LOEWENSTEIN, AGENCY-PARTNERSHIP AND THE LLC IN A NUTSHELL (West 3d ed. 2005).
13. *WILLIAM A. KLEIN & JOHN C. COFFEE, JR., BUSINESS ORGANIZATION AND FINANCE (Foundation 2004) (from the same "Concepts and Insights" series as the SMB book).
14. *DANIEL S. KLEINBERGER, AGENCY, PARTNERSHIPS, AND LLCs: EXAMPLES & EXPLANATIONS (Aspen 2002) (this well-regarded series not only clearly explains the legal principles but also helps you apply them).
15. *ALAN R. PALMITER, CORPORATIONS: EXAMPLES & EXPLANATIONS (Aspen 5th ed. 2006) (this well-regarded series not only clearly explains the legal principles but also helps you apply them).
16. *ARTHUR R. PINTO & DOUGLAS M. BRANSON, UNDERSTANDING CORPORATE LAW (Matthew Bender 2004).

17. ROBERTA ROMANO ED., FOUNDATIONS OF CORPORATE LAW (Foundation 1993).
18. JOSEPH SHADE & DAVID G. EPSTEIN, BUSINESS STRUCTURES IN A NUTSHELL (West 2003).
19. JOSEPH SHADE, BUSINESS ASSOCIATIONS IN A NUTSHELL (West 2d ed. 2006).

B. Reference Materials²

1. ABA SECTION ON BUSINESS LAW, MODEL BUSINESS CORPORATIONS ACT (ABF 3d ed. 2003).
2. *AMERICAN LAW INSTITUTE, RESTATEMENT OF THE LAW (2D) OF AGENCY (West 1958), Westlaw database REST-AGEN.
3. AMERICAN LAW INSTITUTE, RESTATEMENT OF THE LAW (3D) OF AGENCY (Tentative drafts 2001-2005), Westlaw database REST-AGEN.
4. AMERICAN LAW INSTITUTE, PRINCIPLES OF CORPORATE GOVERNANCE: ANALYSIS AND RECOMMENDATIONS (ALI 1994) (2 volumes).
5. CARTER G. BISHOP & DANIEL S. KLEINBERGER, LIMITED LIABILITY COMPANIES: TAX AND BUSINESS LAW (Warren Gorham & Lamont looseleaf) (2001), Westlaw database WGL-LLC.
6. ALAN R. BROMBERG & LARRY E. RIBSTEIN, BROMBERG AND RIBSTEIN ON LIMITED LIABILITY PARTNERSHIPS AND THE REVISED UNIFORM PARTNERSHIP ACT (Aspen 2006).
7. ALAN R. BROMBERG & LARRY E. RIBSTEIN, BROMBERG AND RIBSTEIN ON PARTNERSHIPS (Aspen looseleaf).
8. J. WILLIAM CALLISON & MAUREEN A. SULLIVAN, LLCs: A STATE-BY-STATE GUIDE TO LAW AND PRACTICE (West 2006), Westlaw database LLC.
9. J. WILLIAM CALLISON & MAUREEN A. SULLIVAN, PARTNERSHIP LAW AND PRACTICE: GENERAL AND LIMITED PARTNERSHIPS (West 2005), Westlaw database PTNRSHPLP.

² This is just a selection of general reference books on the topics covered in the course. Therefore, I have not included treatises on securities, tax, or related issues not directly addressed in the course. Not have I included CLE or other more practice/planning-oriented, as opposed to doctrinal, materials.

10. ZOLMAN CAVITCH, BUSINESS ORGANIZATIONS WITH TAX PLANNING (Matthew Bender looseleaf), full-text on LEXIS.
11. JAMES D. COX, THOMAS LEE HAZEN & F. HODGE O'NEAL, COX & HAZEN ON CORPORATION: INCLUDING UNINCORPORATED FORMS OF DOING BUSINESS (Aspen 2d ed. 2003) (three-volume treatise).
12. ARTHUR FIELD, LEGAL OPINIONS IN BUSINESS TRANSACTIONS (PLI looseleaf).
13. *WILLIAM MEADE FLETCHER, FLETCHER CYCLOPEDIA OF THE LAW OF PRIVATE CORPORATIONS (West looseleaf) (35 volumes, the most cited secondary authority in the area).
14. GENERAL BUSINESS ORGANIZATION FORMS, CLAUSES, AND CHECKLISTS, Westlaw database BUSFORM-GEN.
15. RICHARD D. HARROCH, PARTNERSHIPS AND JOINT VENTURE AGREEMENTS (on LEXIS).
16. HARRY G. HENN & JOHN R. ALEXANDER, LAWS OF CORPORATIONS AND OTHER BUSINESS ENTERPRISES (West 3d ed. 1983).
17. NICHOLAS KAREMBELAS, LLCs: LAW, PRACTICE, AND FORMS (West 2d ed.), Westlaw database LLCLPF.
18. WILLIAM E. KNEPPER, LIABILITY OF CORPORATE OFFICERS AND DIRECTORS (7th ed. Matthew Bender looseleaf) (2 volumes).
19. F. HODGE O'NEAL & ROBERT B. THOMPSON, OPPRESSION OF MINORITY SHAREHOLDERS AND LLC MEMBERS: PROTECTING MINORITY RIGHTS IN SQUEEZE-OUTS AND OTHER INTRACORPORATE CONFLICTS (West CBC looseleaf).
20. F. HODGE O'NEAL & ROBERT B. THOMPSON, CLOSE CORPORATIONS AND LLCs: LAW AND PRACTICE (West 3d ed. 2004) (2 volumes).
21. LARRY RIBSTEIN & ROBERT KEATINGE, RIBSTEIN & KEATINGE ON LLCs (West 2d ed. 2004) (3 volumes), Westlaw database RKLLC.
22. WARREN A. SEAVEY, HANDBOOK OF THE LAW OF AGENCY (West 1964).
23. JOHN K. VILLA, CORPORATE COUNSEL GUIDELINES (West ACC looseleaf).

C. **Tennessee Materials**

1. *Tennessee Revised Uniform Partnership Act of 2001* (2001 Tenn. Pub. Acts, Ch. 353), <<http://www.state.tn.us/sos/acts/102/pub/pc0353.pdf>>, Westlaw database TN-STAT, or www.michie.com.
2. *Tennessee Revised Limited Liability Company Act* (2005 Tenn. Pub. Acts, Ch. 286), <http://www.state.tn.us/sos/acts/104/pub/pc0286.pdf>, Westlaw database TN-STAT, or www.michie.com.
3. *Tennessee Corporation Code* (Tenn. Code, Title 48, Chs. 11-27), Westlaw database TN-STAT, or www.michie.com.
4. THOMAS M. LEVEILLE, *TENNESSEE LEGAL AND BUSINESS FORMS* (West Lawyers Coop. looseleaf).
5. RICHARD R. SPORE III, *BUSINESS ORGANIZATIONS IN TENNESSEE* (M. Lee Smith looseleaf).
6. *TENNESSEE CORPORATIONS 2D* (West looseleaf) (apparently superseding RONALD LEE GILMAN, *TENNESSEE CORPORATIONS*).

COURSE READING OUTLINE

The outline below is intended to give you a sense of the course coverage. It is *not* a reading schedule. Following its sequence, I will give specific assignments a week at a time.

Much of *Business Organizations* involves how lawyers can plan and advise clients to avoid or constrain disputes. Furthermore, solving problems is the skill you will employ on the exam and in practice. Therefore, I will regularly depart from the traditional Socratic and case method to employ the problem solving method. To facilitate this, in addition to reading the cases, please also read and prepare all questions in the “Analysis,” “Planning,” “Policy,” and “Problems” sections of the casebook.

While the casebook is popular, well-edited, and thick with problems; it is thin on theory and any treatise-like account of the law. The SMB and FAG ancillaries address this gap. The relevant legal principles are well-exemplified and applied in the casebook cases. We will tease them out, discuss them, and apply them in class. The ancillary tests offer a clear exposition of the black letter law and some unified methods of thinking about the subject. My goal in assigning them is to help you get a reliable overview, leaving more class time (otherwise spent on lecture) for interactive dialogue and examination of problems.

- I. Agency** [approximately 9 classes]
- A. Imputation of the Agent's Acts to the Principal [KRB 1-13; SMB 17-33]
[Recommended: Rest.2d § 1]
 - B. The Agent's Authority to Bind the Principal [KRB 14-46; SMB 33-62]
[Recommended: Rest.2d §§ 3-8B, 26-27, 33-35, 82, 144, 159-60, 186, 194-195A]
 - C. Liability of the Principal to 3d Parties in Tort [KRB 47-79; SMB 62-89]
[Recommended: Rest.2d §§ 2, 219-220, 228-231]
 - D. The Agent's Fiduciary Obligations to the Principal [KRB 80-90; SMB 89-99]
[Recommended: Rest.2d §§ 376-404]
- II. Partnerships** [approximately 9 classes]
- A. What is a Partnership? Who are the Partners? [KRB 91-109; SMB 100-116; Tenn. Code Ann. §§ 61-1-101 & -202]
 - B. Fiduciary Obligations of Partners [KRB 110-131; SMB 132-149]
 - C. Partnership Property [KRB 132-135; SMB 125-132; Tenn. Code Ann. § 61-1-401]
 - D. Management of the Partnership [KRB 140-151; SMB 116-125; Tenn. Code Ann. §§ 61-1-301, -305 & -401]
 - E. Dissolution of the Partnership [KRB 152-196; SMB 149-171; Tenn. Code Ann. §§ 61-1-601, -602, -603, -701, -703, -801 & -807]
 - F. Limited Partnerships [KRB 197-199; SMB 171-177; Tenn. Code Ann. §§ 61-2-201, -302 & -1205]
- III. Corporations: Nature** [approximately 6 classes]
- A. Promoters and Limited Liability [KRB 200-206; FAG 79-90; Tenn. Code Ann. §§ 48-11-201, 48-12-101 to -106, 48-14-101]
 - B. Piercing the Corporate Veil [KRB 207-231; FAG 61-78; Tenn. Code Ann. §§ 48-1-114, 48-16-203]
 - C. Shareholder Derivative Actions [KRB 232-281, FAG 176-208; Tenn. Code Ann. §§ 48-17-401]

D. Business Ethics [KRB 282-298; Tenn. Code Ann. § 48-13-101, -102, 48-18-301]

IV. Limited Liability Companies [approximately 2 classes]

A. Formation, Governance, Limited Liability, Fiduciary Duties, and Dissolution
[KRB 300-327; SMB 179-199; Tenn. Code Ann. §§ 48-1-106, -114, -201, -202,
48-2-205(b)(13), 48-4-403(b), 48-6-620(a)]

V. Corporations: Duties of Corporate Insiders [approximately 6 classes]

A. Duty of Care [KRB 328-373; FAG 95-121; Tenn. Code Ann. § 48-13-301]

B. Duty of Loyalty [KRB 374-412; FAG 122-162; Tenn. Code Ann. § 48-13-302]

C. [Skip materials on financing, securities, disclosure, insider information]³

VI. Close Corporations: Governance & Control Problems [approximately 8 classes]

A. Shareholder Agreements [KRB 599-629; FAG 263-283; Tenn. Code Ann. §§ 48-17-203, -301, -302, 48-18-101 to -111, 48-18-201 to -206]

B. Abuse of Control [KRB 630-663]

C. Options for Oppressed Minority Shareholders [KRB 664-692; FAG 284-302;
Tenn. Code Ann. §§ 48-64-301]

D. Fiduciary Duties of Controlling Shareholders [KRB 693-712]

³ Since this is only a three-credit course on all basic forms of business organizations, it necessarily cannot comprehensively cover the law of corporations. Topics frequently tested on both the MBE and the Tennessee Corporations essay exam concern corporate governance and finance issues (especially federal securities laws) covered only in upper-level electives in the UM curriculum.