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# Business Associations (Law 250)

Berkeley Law Autumn 2011 Tu-Th-Fr 8:40-9:50 Room 132 Profs. Justin McCrary & Eric Talley
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In virtually every area of legal practice, some rudimentary knowledge about the laws governing business organizations (and particularly corporations) proves helpful. This 4-unit course provides much of that foundation, examining the laws governing the modern business association. We will cover a number of topics, including rules of agency law, corporate formation, corporate identity, rights of creditors, fiduciary duties, corporate governance, executive compensation, mergers and acquisitions and securities fraud. At its core, this is a survey course, so many of the topics we will discuss also have advanced courses in the business law curriculum offering a more detailed treatment. Consequently, our key goal will be to understand the rudimentary structure of each topic, and how the topics interrelate – in particular how company law mediates relationships among different "constituencies" of the firm, including owners, managers, creditors, employees, customers, and suppliers. Viewed in this light, the governance of a corporation implicates the same challenges and concerns that affect any multiparty economic relationship, ranging from problems of collective action, free riding, private information, bounded rationality and opportunism. The laws governing business organizations are an important set of rules, institutions, and practices that regulate and address these concerns.

The course is divided roughly into six parts:

- Background and Corporate Formation
- Creditors' Rights and Capital Structure
- Shareholders' Rights and the Derivative Action
- Corporate Governance
- White Collar Crime
- Mergers, Acquisitions and Takeovers

# Web Page:

In order to facilitate class administration, we have promulgated a *bSpace* website for the course. We will use the course website extensively to post course announcements, a calendar of class sessions with reading assignments, flow charts, answers to frequently asked questions and answers, and "on-line" copies of the syllabus, supplemental readings and other handouts and/or study aids. In addition, we have unlocked a discussion page on bSpace that students may wish to utilize, and which we will loosely moderate, chiming when appropriate.

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# **Weekly Reading Assignments:**

See the schedule below, specified by date. Should we get off schedule (though we do not anticipate that), we will post any revisions to the reading assignments on bSpace and/or a revised syllabus.

# **Wall Street Journal**

In addition to the required texts for the course, we are asking all students to subscribe to the Wall St. Journal. The *Journal* offers a 15-week student subscription for around \$30 (which represents a 75% discount off the rack price). Other longer term subscriptions are available for students as well. We will frequently be referring to articles in the paper as well as utilizing some of the free utilities that the paper offers on-line. You can subscribe over the web by filling out the appropriate fields on the following URL (see Professor Talley if you have any questions):

http://subscribe.wsj.com/semester

#### **Evaluation/Final Exam**

Grades for this class will be based substantially on a final exam. It will be a 3.5 hour "in class" exam. It will be composed of a mixture of multiple choice and short answer questions (closed book) and essay questions (open book). It is currently scheduled for **Wednesday**, **December 7, 2011, 1:30 pm – 4:00 pm.** A more detailed description (and some sample questions) will be provided later in the term. In addition, we will factor class participation that is of high quality (not necessarily quantity) into students' final assessments.

### Required Readings (Associated Abbreviations Appear in Syllabus):

["KRB"]: Klein, Ramseyer, & Bainbridge, Business Associations (7<sup>th</sup> Ed., 2009).

["SS"]: Klein, Ramseyer and Bainbridge's Business Associations-Agency, Partnerships, LLC's and Corporations, Statutes and Rules (2011). ). (Note that law students can access these sources on line as well).

["HO"]: There will also be numerous handouts we will distribute (over bSpace) during the course of the term, usually consisting of recent cases, policy releases, news articles, corporate filings, academic writings, etc., each of which will be associated with particular days' lectures.

## **Optional Reading (on reserve):**

Klein & Coffee, Business Organization and Finance (2010). Palmiter, Corporations: Examples And Explanations (2006) Clark, Corporate Law (Foundation Press, 1991) (Treatise)

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# **Syllabus**

(Supplementary installments may follow)

As you will see in the schedule below, there are a few days where we need to cancel class. We must reschedule makeup sessions for these missed lectures. In addition, because this course meets in Fridays, the Law School makes it our responsibility to schedule two additional (so-called) "Pope Gregory" sessions during the term to make up for two Friday holidays. Our experience has taught us that scheduling makeup slots can be difficult for a class this size. Consequently, we propose that we make use of our morning teaching block, accommodating the makeup sessions by beginning selected class sessions ½ hour early, at 8:10 am. These extended days are designated with a star ("\*") in the schedule below. We have tried to spread these extended slots (and the associated pain) out over the course of the term.

Topic	Date	Instructor
A. Background and Corporate Formation		
1. The Nature of The Firm, and its Relation to Company Law	8/25	Talley
HO: Mickelthwaite & Woolridge, <u>The Company</u> Ch. 1, "Utopia Limited"		
HO: Hart, "An Economist's Perspective on the Theory of the Firm"		
2. Common Law Business Associations: Agency Law, and (potentially) Unlimited Liability	8/26; 8/30; 9/1; 9/2; 9/6	Talley
KRB: Ch. 1, pp. 1-34; 38-75.		
SS: pp. 1-29; Scan 2nd and 3rd Restatements of Agency HO: Practice Problems on Agency		
3. Opting Out of Unlimited Liability: Corporate Formation	9/8*	Talley
SS: Skim Del. Gen. Corp. Law ("DGCL"), formation Subchapter I, pp 99-112.		
HO: The Formalities of Creating a Delaware Corporation		
HO: Corporate Formation Checklist and Supporting Documents (Compressed File) HO: DGCL "Treasure Hunt"		
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4. Legal Identity of Corporations: Personhood, Residence & and Choice of Law	9/9; 9/13	Talley
HO: Vantagepoint v. Examen (2005)		
HO: Citizens United v. Federal Election Commission (2010)		
HO: Hertz v. Friend (2009)		

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B. Creditors' Rights and Capital Structure		
1. Recovery from Shareholders, and Piercing the Corporate Veil KRB Ch. 3, pp. 189-213.	9/15; 9/20	Talley
HO: Limited Liability and the Corporate Veil HO: The (Not So) Simple Law of Veil Piercing		
Guest Speaker: Hope Schmeltzer, Chief Counsel, California Coastal Commission	9/16	
2. Valuation and Accounting	9/22*	Talley
HO: A Primer on Cash Flow Analysis, Compounding and Present Discounted Value Pratt & Niculita Ch. 4		
3. Capital Structure, Corporate Debt, and Bondholder Rights KRB 837-75.	9/23; 9/27	Talley
C. Shareholder Rights and the Derivative Action		
<ol> <li>Shareholder Enforcement of Fiduciary Duties: The Derivative Action Process KRB 214-64</li> </ol>	9/29*, 9/30*	McCrary
<ul><li>HO: North Am. Catholic Educational Programming Foundation, Inc.</li><li>v. Gheewalla</li><li>HO: In Re Dow Chemicals SH Litigation</li></ul>		
2. Substance of a Shareholder Suit (I): Ultra Vires, "Waste", and the Purpose of the Corporation KRB 264-80.	10/4, 10/6	McCrary
SS: DCGL §§ 101; 102; 121; 122; 124; 141 HO: California's Proposed "H" Corporation Statute (skim)		
3. Substance of a Shareholder Suit (II): The Duty of Care KRB 310-36.	10/7, 10/11	McCrary
SS: DGCL §§ 102; 141		
4. Substance of a Shareholder Suit (III): The Duty of Loyalty, The Duty to Act in Good Faith  KRB 336-74; KRB 375-403	10/13*, 10/14*	McCrary
SS: DGCL §§ 144		
HO: Loyndell v. Ryan		
5. Indemnification, Advancement of Fees, and Insurance	10/18, 10/20	McCrary

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KRB 508-20.

SS: DGCL § 145

HO: Indemnification and D&O Insurance - The Basics

HO: Schoon v. Troy

**D.** Corporate Governance

1. Structure, Shareholder Voting, Proxy System, and the Blasius Duty 10/21, 10/25\*, McCrary

10/27

11/29

KRB: 570-74; 521-31

SS: DGCL §§ 160, 211, 212, 214, 216, 242, 244; Exchange Act § 14

HO: Blasius Industries, Inc. v. Atlas Corp.

2. Shareholder Proposals and Inspection Rights 10/28, 11/1 McCrary

KRB: 547-69

SS: SEC Rule 14a-8, DGCL § 220

Class cancellations 11/3, 11/4

E. White Collar Crime

1. Inside Information 11/8\* **McCrary** 

KRB 467-498

SS: Securities Exchange Act of 1934, §16(b); SEC Rule 10b-5

2. White Collar Crime and Corporate Misconduct 11/10 **McCrary** 

Guest Speaker: Melinda Haag, U.S. Attorney for the Northern

District of California

Official Holiday (Veterans' Day) 11/11

F. Mergers, Acquisitions and Contests for Control: The Unocal and 11/15, 11/17, McCrary 11/18, 11/22,

**Revion duties** 

KRB 733-811

SS: DGCL § 160, 251, 253, 262, 271

Official Holiday (Thanksgiving) 11/24, 11/25

Extra "Floating" Day 12/1