**SYLLABUS**

**CORPORATIONS**

**Fall 2013**

**Professor Markham**

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 **Meeting Time: MTuW 2:15-3:25
Meeting Location: 170**

**Contact Information:**

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* jmarkham@law.berkeley.edu

**Office Hours:**

* Tuesday 3:30 p.m. - 5:00 p.m.
* Other times by appointment or drop in

**General**

* **Laptop Computer Policy.** Laptops are not permitted in class. Cell phones, PDAs and all other electronic communications devices should be turned off during class.

**Required and Recommended Reading (Associated Abbreviations Appear in Syllabus):**

* **["Eisenberg"]:** Casebook, Eisenberg, *Corporations and Other Business Organizations: Cases & Materials* (10th ed. Unabridged).
* **[Supp.]:** Supplement: *Corporations and Other Business Organization: Statutes, Rules, Materials, and Forms* (2011 ed.) All references to statues and to the ALI Principles of Corporate Governance are available in this supplement or on-line.
* **[“HO”]: There will also be numerous handouts distributed (over bSpace)**
* **[WSJ]: *The Wall Street Journal.*** In addition to the required texts for the course, all students are required 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: <http://subscribe.wsj.com/semester>

**Optional Reading (on reserve):**

* **Bainbridge: Corporate Law (Concepts & Insights Series, 2d ed. 2009)**
* **Palmiter, Corporations: Examples And Explanations (2006)**

**ASSIGNMENTS**

1. **Introduction to the Course**
2. (Aug. 21): The Nature of the Firm

**READING:** [**HO] Soderquist, “Theory of the Firm: What a Corporation Is”**

1. (Aug. 26): Agency Law: Introduction

**READING: Eisenberg** pp. 1-20; Restatement (third) Agency §§1.01 – 1.04; 2.01 – 2.07

1. (Aug. 27): Agency Law, continued

**READING: Eisenberg** review pp. 1-20; pp. 20-26; Restatement of Agency, Third §§8.01-8.05

1. (Aug. 28): Basics of Accounting and Finance

**READING: Eisenberg** pp. 27-44; prepare problems posted on bSpace

1. **Foundations of a Corporation**
2. (Sept. 3): Characteristics of common forms of enterprise

**READING: Eisenberg**, pp. 62-92; Supplement: Revised Uniform Partnership Act (1997) §§ 103, 202, 203, 301, 305 and 306

1. (Sept. 4): Introduction to the concept of fiduciary duty

**READING: Eisenberg,** pp. 105 - 116; Cal. Corporations Code §16404

1. (Sept. 9): Characteristics of the corporate form

**READING: Eisenberg,** pp. 192-193 (mid); 216-222; 228-233; 248 (bot.)-256 (top); 261-262

1. : (Sept. 10): Corporate governance: shareholder voting and the public corporation

**READING: Eisenberg,** pp. 267-283 (top)

1. (Sept. 11): Corporate governance: Shareholder activism

**READING: Eisenberg, pp.** 302-317

1. (Sept. 16): Shareholder informational rights

**READING: Eisenberg, pp.** 343-357; **HO** *State ex rel Pillsbury v. Honeywell, Inc.,* 291 Minn. 322, 191 N.W.2d 406 (1971)(posted on bSpace); Calif. Corp. Code §§1600, 1601; Del. Gen. Corp. Law §§ 219, 220

1. (Sept. 17): Proxy voting and Exchange Act. § 14(a)

**READING: Eisenberg, pp.** 386-404; Securities Exchange Act §14(a) and Rule 14a-9

1. (Sept. 18): Some limitations on shareholder limited liability; “piercing the corporate veil”

**READING: Eisenberg, pp.** 408-422; 429-436

1. (Sept. 23): Shareholder liability, cont.

**READING: Eisenberg, pp.** 436(mid)-450(top)

**III. Special Problems In The Close Corporation**

1. (Sept. 24): Characteristics of close corporations

**READING: Eisenberg**, pp. 452-464

1. (Sept. 25): Fiduciary duties in the context of the close corporation

**READING: Eisenberg,** pp. 489-504

1. (Sept. 25) Fiduciary duties, cont.

**READING: Eisenberg**, pp. 505-513

1. () Valuation of the close corporation as a business

**READING: Eisenberg,** pp. 513-530

1. (Oct. ) Share transfer restrictions in close corporations

**READING: Eisenberg,** pp. 530-544 (top)

1. (Oct. ) Share transfer restrictions, cont.

**READING: Eisenberg,** pp. 544-554

1. (Oct. ) Dissolution as a remedy

**READING: Eisenberg,** pp. 555-566; Del. Gen. Corp. Law §§273, 355; Cal. Corp. Code §§1800, 1804, 2000

1. (Oct. ) Duties of care and loyalty in the close corporation

**READING: Eisenberg,** pp. 567-582; Minn. Stat. Ann. §302A.751

**IV. Fiduciary Duties of Management**

1. (Oct. ) General fiduciary duties of the board of directors

**READING: Eisenberg,** pp.622-638

1. (Oct. ) The duty of care and the business judgment rule

**READING: Eisenberg,** pp.638-648

1. (Oct. ) The business judgment rule (cont.)

**READING: Eisenberg,** pp. 648-665

1. (Oct. ) The duty of oversight

**READING: Eisenberg,** pp. 666-678

1. (Oct. ) The duty of oversight, corporate legal compliance and the federal sentencing guidelines.

**READING: Eisenberg,** pp. 678-683; **HO** - Markham, “The Failure of Corporate Governance Standards and Antitrust Compliance” (excerpt #1)

1. (Oct. ) Liability shields and director and officer liability insurance

**READING: Eisenberg,** pp. 683-692, Del. Gen. Corp. Law §102(b)(7); Cal. Corp. Code § 204(a)(10). **HO** - Markham, “The Failure of Corporate Governance Standards and Antitrust Compliance” (excerpt #2)

1. (Oct. ) The duty of “good faith;” the effect of illegal conduct by the board

**READING: Eisenberg,** pp. 693-707

1. (Oct. ) Self-interested transactions and the duty of loyalty

**READING: Eisenberg,** pp.708-726

1. ***and 31***(Oct. 30 and Nov. 4) The corporate opportunity doctrine and the duty of loyalty

**READING: Eisenberg**, pp. 105-109; 780-803

1. (Nov. 4) The corporate opportunity doctrine (cont.)

**READING: Review session 30 and 31 assigned reading**

1. (Nov. 5) The problem of executive compensation

**READING: Eisenberg,** pp. 756-780**; HO** - NY Times article “Unstoppable Climb in CEO Pay” (June 29, 2013); **HO** - TBA

1. (Nov. 6) The problem of executive compensation (cont.)

**READING: HO -** Fried and Bebchuk, “Executive Compensation as an Agency Problem” (excerpt)

**NOTE: NO CLASS NOV. 11**

**V. Fiduciary Duties of Controlling Shareholders**

1. (Nov. 12) Duties of controlling shareholders

**READING: Eisenberg, pp.804-820; ALI Principles of Corporate Governance §§5.10-5.12**

1. (Nov. 13) Duties of controlling shareholders (cont.)

**READING: Eisenberg, pp.820-834 (top)**

1. (Nov. 18) Sales of controlling shares

**READING: Eisenberg, pp. 842-857**

**VI. Shareholder Protections**

1. (Nov. 19) The shareholder derivative suit

**READING: Eisenberg, pp. 1044-165**

1. (Nov. 20) The shareholder derivative suit (cont.)

**READING: Eisenberg, pp. 1065-1073; ALI Principles of Corporate Governance §7.01**

1. (Nov. 25) The shareholder derivative suit (cont.)

**READING: Eisenberg, pp. 1080-1082 (mid); 1086-1096**

1. (Nov. 26) A (very) brief look at securities law protections

**READING: Eisenberg, pp. 871-874; 363 (bot.)-365 (top); 366; 368-374**

**REVIEW SESSION (To Be Scheduled)**