

Business Organizations

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Room 107, Monday and Wednesday, 10:00am to 11:50pm

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Syllabus

Course Objectives

After completing this course, I would like you to understand:

- the differences between the various forms of business entities;
- some of the practical aspects of being a business lawyer; and
- how to read and apply a statute or provision in a contract or governing document

Course Description

This course will examine the laws governing business organizations, with an emphasis on corporations. We will cover agency, partnerships and the structure and function of a corporation.

The subject matter will be taught using the “problem method” to promote a practical understanding of business organizational law. Additionally, students will be required to read and interpret the core statutory provisions that govern each business organization. We will focus on Delaware law, with a secondary focus on other important states.

The course is a four (4) unit course. Grades will be awarded primarily based on an in-class final exam. However, class participation and in-class exercises may be considered as well. Students will be permitted to use computers on the exam. This course may be taken for a grade or CR/D/F.

Business Organizations (Law 603) is a mandatory course for the Business Law Certificate and is a prerequisite or co-requisite for many other business law courses

Required Reading

The casebook is required for this course. The statutory supplement is strongly recommended. You will need to consult statutes on a regular basis, but you can obtain statutory information from sources other than the statutory supplement and print relevant provisions to use for the exam. The statutory supplement will not necessarily have all of the statutes we will cover. One source of the statutory material is the volume listed below. I will post free PDFs of statutes to the course website, and this syllabus contains links to free statutory materials. These books have been ordered by the bookstore.

- Required: Sjostrom, [Business Organizations: A Transactional Approach](#) (2nd ed. 2016) (ISBN: 978-1-4548-6838-5)
- Strongly Recommended: Corporations and Other Business Associations Selected Statutes, Rules, And Forms: 2019 Supplement (compiled by Charles R. T. O'Kelley and Robert B. Thompson)
- Optional:
 - Hornbook supplement: Bainbridge, [Corporate Law](#)
 - Lynn Stout, *The Shareholder Value Myth* (2012)
 - Henry Hansmann & Renier Kraakman, [The End of History for Corporate Law](#), 89, *Geo. L.J.* 432 (2001)
 - Historical Context
 - Micklethwait & Wooldridge, [The Company: A Short History of a Revolutionary Idea](#) (2005)
 - Brands, [American Colossus](#) (2011)

Please note that we are using the 2nd edition of Sjostrom rather than the newest 3rd edition. In my view, the updates to the third edition are sufficiently small that at this time, they do not justify the increased cost to students. The 3rd edition sells online for around 270 USD, compared to less than 50 USD for a copy of the second edition.

The law relating to business entities is frequently determined by statute. Every state has its own “corporate code,” “partnership act,” and “LLC act.” Nevertheless, most states base their statutes on “model acts” that were developed by the National Conference of Commissioners on Uniform State Laws. For this reason, we will study the “model acts” that relate to the different forms of business entity. For example, we’ll study the Model Business Corporation Act to learn the rules governing corporations; the Revised Uniform Partnership Act to learn the general rules relating to partnerships, etc. Specific state

acts can be found online, and at some of the sites listed below—you may wish to pay particular attention to the laws of Delaware, California, and New York.

Throughout the casebook, the authors frequently refer to provisions from state statutes and the model acts. **You are responsible for reading those provisions.** To stress the importance of this point, let me repeat it: **Read the statutory provisions referenced in the casebook.** This takes some time and effort, but will pay dividends when it comes to (1) your understanding of the law; and (2) your performance in this course. If you ignore the statutory supplement, you will have a very limited understanding of the law governing business entities.

Free versions of many of the statutes may be available online. Some links are provided below. Note that free online resources may be out of date or contain errors, and may not have the official comments. Electronic versions may also be available online through Lexis or Westlaw. You will want to bring print copies of the statutes to class and for the exam.

Links to Selected Statutes Online

- Corporate Law Statutes
 - Model Business Corporations Act (MBCA):
 - (see PDFs on course website)
 - Delaware General Corporation Law (DGCL):
 - <http://delcode.delaware.gov/title8/c001/>
 - https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3891109
 - New York Business Corporation Law
 - <http://public.leginfo.state.ny.us/lawssrch.cgi?NVLWO:> (select BSC)
 - California
 - <https://leginfo.legislature.ca.gov/faces/codesTOCSelected.xhtml?tocCode=CORP>
- Restatement of Agency
 - RSA 2nd
 - <http://blenderlaw.umlaw.net/wp-content/uploads/2007/08/restatement-second-of-agency.pdf>
 - RSA 3rd
 - [Westlaw Link](#)
- Partnership
 - Model Acts
 - Uniform Partnership Act (1914)
 - <https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=310ed586-27bc-2fdd-e732-81f2af14d7e4&forceDialog=1>
 - Revised Uniform Partnership Act (1997)

- <https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=d4bd53b5-0e2a-d71e-6d84-66a26e296324&forceDialog=0>
 - Delaware Revised Uniform Partnership Act
 - <http://delcode.delaware.gov/title6/c015/>
 - Limited Partnership
 - Uniform Limited Partnership Act
 - 2001, last amended 2013 (emphasize 2001)
 - <https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=97a8ae95-627c-8d7b-555f-fac280ec75a2&forceDialog=1>
 - 1976, last amended 1985
 - <https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=265a3650-64bd-a604-eca5-4c68557a8abb&forceDialog=0>
 - Delaware
 - <http://delcode.delaware.gov/title6/c017/>
 - Limited Liability Company
 - Uniform Limited Liability Company Act (emphasize ULLCA 2006)
 - <https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=e4ceb7e3-92e4-7d79-c8f9-912e670bef23&forceDialog=1>
 - Delaware (emphasize Delaware)
 - <http://delcode.delaware.gov/title6/c018/>
 - Securities Laws
 - Sarbanes Oxley
 - <http://www.sec.gov/about/laws/soa2002.pdf>
 - Securities Act of 1933
 - <https://www.sec.gov/about/laws/sa33.pdf>
 - Investment Company Act of 1940
 - <http://www.sec.gov/about/laws/ica40.pdf>

Course Work & Grading

Your grade in the class will be based primarily on an open book final examination. The precise format of the exam will depend on whether the exam is in person or remote.

If the public health / COVID situation permits in-person testing under proctored conditions, then the exam will include between 50 and 80 multiple choice questions and will be approximately 3 hours long. The exam may, but will not necessarily, include a few short answer questions as well.

However, if the public health / COVID situation does not permit in-person testing under proctored conditions, then the exam will instead consist of a take home essay. The essay will be due one week from the last day of class and should reflect engagement with the material and independent thought. Concise, clear writing is appreciated. “Notes dumps” will not earn full points. The essay should be no more than

4,000 words long. This is a maximum, not a target. Please include a word count with your essay. I suggest that you use the questions in the prompt (or similar language) as subheadings to help structure your essay.

Potential Essay Prompt: Part I (Approx. 33%):

Business corporations have overtaken sole proprietorships and partnerships as the leading form of business organization for large scale business enterprises. What differences between partnerships and corporations are important to explain this preference by large companies for the corporate form? Why do many businesses continue to be organized using other forms, such as partnerships, limited partnerships, and limited liability companies? Why are many businesses organized as combinations of multiple legal forms rather than as a single business entity under one form?

Potential Essay Prompt: Part II (33%):

Are there criteria other than shareholder wealth maximization that should be used to evaluate corporate governance mandates? What criteria should be used? How should they be weighted? What are the disadvantages of using these criteria in addition to or instead of shareholder wealth maximization? What are the advantages?

Potential Essay Prompt: Part III.a. (Approx. 17%):

NASDAQ has recently required NASDAQ listed companies to have at least 2 board members who contribute to diversity: women, racial minorities, and/or LGBTQ board members.

<https://listingcenter.nasdaq.com/assets/Board%20Diversity%20Disclosure%20Five%20Things.pdf>

Nasdaq-listed companies with five or fewer board members, will only be required have one diverse member. Companies that don't meet the diversity criteria will not be delisted but must publicly explain why they could not comply.

Will this mandate likely increase value for shareholders? If so, how and why? If not, why not? What information or studies would help us answer these questions?

Potential Essay Prompt: Part III.b. (Approx. 17%):

Your client wishes to retain access to public markets but does not wish to change the demographic composition of its board to comply with the Nasdaq diversity requirement described above. How would you advise your client to phrase their reasoning in their disclosures of non-compliance?

Are there options that would enable your client to circumvent the NASDAQ requirement (even the disclosure requirement) and still retain access to public equity markets, while complying with the law? Please explain.

It is essential that you attempt to read the statutes and answer the questions and complete the exercises in the text, as well as working any supplemental problems I may assign through the course website. The questions and exercises will help you learn the material.

I encourage you to form study groups to work the questions and problems before class. I recommend forming a small study group (2-4 students) and meeting before class to discuss the problems, and at the end of each week to review.

Class Participation & Class Attendance

Class attendance, participation, and preparation are expected. I strongly recommend you attend class every day. I reserve the right to reward exceptional class participation or penalize exceptionally poor class participation in determining the final grade.

During class, you may be connected to the Internet only for purposes related to class. This would include, for example, looking at a court opinion or statute we are discussing or searching for information relevant to a point we are discussing. This does not include, for example, reading the news, e-mailing classmates, or sending instant messages. I very much encourage the use of computers in the classroom and encourage you to be active learners. Like any technology, however, computers can be misused. Please do not let your computer become a distraction to you or your classmates.

Class Cancellations

Our class will not meet on Monday, September 13 or Wednesday October 20. (Your other USC classes scheduled for this day will meet). I will need to cancel at least one additional class session, TBA. All cancelled classes will be made up.

Assuming only two cancelled classes this semester, we will need to make up 200 minutes of class time over the course of the semester. We'll discuss a makeup schedule early in the semester. I propose that we make-up class by extending class by a total of 20 minutes per week for the first 10 weeks of the semester. This could be done by adding 10 minutes per day (Mondays and Wednesdays) or by extending class on Wednesdays only by 20 minutes so that instead of ending at 11:50pm class would end at 12:10pm.

Office Hours:

I will stay after class to answer any questions. If you cannot meet at the end of class, please email me or contact my assistant to set up an appointment. If you schedule an appointment, I will usually be available to meet on Monday or Wednesday afternoons before 1pm or after 3:30pm. If it is inconvenient to meet in person, we can also schedule remote office hours by phone or through video conferencing, using Zoom.

Name Placards and Seating

Please bring a name placard to class and place it in front of you. If you have lost your name placard, you may obtain a free replacement from Michael Earnhart mearnhart@law.usc.edu. Please keep the back-row empty for guests and visitors.

Guest Lectures

There may be guest lectures from USC alumni or others in business law or finance. Students should attend these guest lectures, the same as any other class, and the material may be tested.

Syllabus Revisions

I may post revisions to the syllabus or announce changes in class. Please check the course website regularly!

Course Outline

I expect that we will cover roughly one to two chapters of the casebook per week of class. The numbers below do not necessarily correspond to class sessions—we may move a bit faster or slower. To be prepared for class I recommend having read through the end of the chapter we are currently discussing and into the start of the next chapter.

Number	Topic	Assignment
1.	Appendix A: Introduction to Financial Statements Balance Sheet Income Statement Cash Flow Statement	743-752 <i>prepare exercise A.1</i>
	Chapter 1: Business Forms Overview Sole Proprietorship Partnership Limited Liability Partnership Limited Liability Company	3-29

Number	Topic	Assignment
	Corporations Key concepts	
2.	Chapter 2: Agency Law Creation of the Agency Relationship When Is A Principal Bound To A Contract? <i>Key statutes:</i> Restatement (Third) of Agency §§1.01, 1.04, 2.01, 2.02, 3.01, 4.01,6.10 Restatement (Second) of Agency, §§ 1, 7, 8A, 26, 27, 35, 140, 320 RUPA 1997 §§ 301, 303(e); RUPA 2014	31-47 <u>Frawley</u> <u>H.H. Taylor</u>
3.	When Is A Principal Bound to A Contract? <i>Key statutes (and other materials):</i> Restatement (Third) of Agency §§ 8.01-8.04 Delaware General Corporation Law ("DGCL") § 142 (browse Subchapters IV and V) Minimal coverage of torts	47-60 You can skip the Northlake case on pg. 51-54. Skim 60-71
4.	Chapter 3: Choice of Form Considerations Liability Exposure <i>Key statutes:</i> DLLCA § 18-703(d),(e) DGCL § 102(b)(6) N.Y.B.C.L. § 630(a), (c) California Corporations Code § 17703.04(b)	90-118
5.	Taxation (light coverage) <i>Note: Replacement problem 3.1 simplifies an overly complicated problem in the book by removing tax brackets and instead simply focusing on the entity vs. individual level taxation.</i> Replace problem 3.1 in the book with the following: A) A business has \$100K of income this year and wants to distribute all of its income after taxes to investors. The corporate tax rate is 20 percent. The qualified dividend tax rate is 20 percent. The individual ordinary income tax rate is 37 percent. Explain how taxes for the business entity and the individual owner will differ depending on whether the firm elects to be taxed as a C-Corp or an S-corp. Ignore all taxes other than federal income taxes, (i.e., ignore payroll taxes). Please assume that all investors are taxable individuals (i.e., no investors are partnerships or corporations or pensions or non-profits).	73-85 (Skim)

Number	Topic	Assignment
	B) Assume the same facts as in A above, except that the business makes no distributions to its investors this year. Explain the tax liability this year for the business and for investors. When will investors be taxed on the income in the company in their individual capacity?	
6.	Attractiveness to Investors Other Considerations	118-126
7.	<p>Chapter 4: Partnerships and LLPs Partnerships</p> <p><i>Key statutes (and other materials):</i> Revised Uniform Partnership Act §§ 202, 101, 103(a),(b), 106, 401(c),(f),(i),(j), 306, 307(d), 502, 503, 603(b), 803(a), 801, 601,</p> <p>Note: Focus on RUPA 1997.</p>	129-149
8.	<p>Partnerships Limited Liability Partnerships (light coverage)</p> <p><i>Key statutes:</i> Revised Uniform Partnership Act §§ 306 (plus list above) Del. Code Ann. tit. 6, §§ 15-207(b), 15-401(l) Cal Corp Code §§ 16954, 16955</p>	149-165
9.	<p>Chapter 5. Limited Partnerships & LLLPs Limited Partnerships Limited Liability Limited Partnerships 26 USC § 7704 <i>(As always, read the statutes cited in the chapter)</i> skip exercise 5.4.2 and 5.5</p>	167-192
10.	<p>Chapter 6. Limited Liability Companies Formation Governing Law Operating Agreement Management Fiduciary Duties Obligation of Good Faith and Fair Dealing</p> <p><i>Key statutes (and other materials):</i> Delaware Limited Liability Company Act §§ 18-201, 18-301 to 304, 402, 702, 703(d), 1101, 1104 California Corporations Code §§ 17704.10, 17708.08</p>	193-207; Skip 6.2.3.
11.	<p>Liability Shield (light coverage) Transfer of LLC Interests Allocation of Profits and Losses; Distributions Dissolution</p>	207-244
12.	<p>Chapter 7. The Incorporation Process (light coverage in class) Pre-Incorporation Activities</p>	247-265

Number	Topic	Assignment
	Jurisdiction of Incorporation Incorporation Mechanics Defective Incorporation Ethical Issues <i>Key statutes (and other materials):</i> http://corp.delaware.gov/Aug09feesch.pdf DGCL §§ 101-03, 106, 109, 121, 122, 124, 211, 131(a), 132(a), 141(a) (c),(f), 201, 242, 271, 204, 205 Exercise 7.1—Answers will be provided in slides, but we will not spend much time on this exercise.	265-281
13.	Chapter 8. Corporate Finance Debt	283-291
14.	Debt Equity	292-302
15.	Internally Generated Funds Capital Structure Introduction to Federal Securities Regulation	352-373
16.	Chapter 9. Corporate Governance Shareholders Directors	375-407
17.	Officers Bylaws <i>Key statutes (and other materials):</i> DGCL §§ 102(f), 109, 115, 242 California Corporation Code § 211 The exercises in Chapter 9 ask you to work with articles and bylaws for a corporation governed under the MBCA. Please focus on how the exercises would come out if it were governed under Delaware Instead. Recommended supplemental (optional) reading: Mark Twain, The Curious Republic of Gondour , 1875, only the first short story.	408-427
18.	Chapter 10. Fiduciary Duties Fiduciary Duties of Directors <i>Key statutes (and other materials):</i> California Corporation Code § 309(b) New York Banking Law §7015	429-448
19.	Fiduciary Duties of Directors	448-467
20.	Fiduciary Duties of Directors	468-493
21.	Fiduciary Duties of Directors Fiduciary Duties of Officers Fiduciary Duties of Controlling Shareholders <i>Key statutes (and other materials):</i>	493-520

Number	Topic	Assignment
	http://goo.gl/NuM5hs MBCA §§ 1.43(a)(3); 2.02(b)(4), (6); 7.42; 8.31; 8.60, 8.61; 8.62; 8.63; 8.70 Skip problem 10.6	
22.	Executive Compensation Indemnification and Insurance <i>Key statutes (and other materials):</i> Cal. Corp. Code § 317 <i>NOTE: Skipping Chapter 11.</i>	520-537
23.	Chapter 12. Minority Shareholder Protections Negotiated Protections	571-587
24.	Immutable Statutory Protections Heightened Fiduciary Duties Buy-Sell Agreements	587-608
25.	(Time permitting) Chapter 14. Mergers and Acquisitions Friendly acquisitions DGCL §§ 271(a), 275(a),(b), 251 (subparts a, b, c, and f), 262(a),(b), 259(a), 271	681-705
26.	Hostile Acquisitions Williams Act ('34 Act §§ 13 and 14) DGCL §§ 141	705-738
Last class	Review Session	

Note: Given the challenging nature of the material, I anticipate that we may not have sufficient time to finish all of the material above. However, if we have additional time, we will cover Chapter 13, at least through p. 640. In the *unlikely* event there is additional time after that, we will either cover Chapter 11 briefly or cover the portion of Chapter 8 that we skipped (pg. 302-352), which deals with Preferred Equity and Warrants.

Class recordings

Class recordings will be available during the semester to students who miss class because of illness, mandatory quarantines, death of a family member or other serious family emergencies, or a job interview that could not be scheduled to avoid missing class. If one of these situations arises, to request the recording please email me and David Dinh in IT (ddinh@law.usc.edu) with the name of the class, the room number, day and times, and the reason for the absence. Class recordings will be made available to all students during the last week of class to be used for exam review purposes.

Letters of Recommendation Requests

I do not provide letters of recommendation to students based solely on having taken my class, because I believe that a student's letter grade conveys sufficient information to employers or LLM programs about class performance. Letters of recommendation should come from employers. I provide letters of

recommendation only to students who work for me as research assistants. When a student works for me, I can provide additional information about their work ethic, professionalism, self-management, etc. If you wish to work for me as a research assistant, review some of my recent manuscripts on SSRN or publications and reach out to set up a time to discuss your interest in serving as an RA.

Sharing of course materials outside of the learning environment

USC has a policy that prohibits sharing of any course content outside of the learning environment.

SCampus Section 11.12(B)

Distribution or use of notes or recordings based on university classes or lectures without the express permission of the instructor for purposes other than individual or group study is a violation of the USC Student Conduct Code. This includes, but is not limited to, providing materials for distribution by services publishing class notes. This restriction on unauthorized use also applies to all information, which had been distributed to students or in any way had been displayed for use in relationship to the class, whether obtained in class, via email, on the Internet or via any other media. (See Section C.1 Class Notes Policy).

Thank you very much. I look forward to a great semester together!

USC Statement on Academic Conduct and Support Systems

Plagiarism – presenting someone else’s ideas as your own, either verbatim or recast in your own words – is a serious academic offense with serious consequences. Please familiarize yourself with the discussion of plagiarism in *SCampus* in Part B, Section 11, “Behavior Violating University Standards” <https://policy.usc.edu/scampus-part-b/>. Other forms of academic dishonesty are equally unacceptable. See additional information in *SCampus* and university policies on scientific misconduct, <http://policy.usc.edu/scientific-misconduct>.

Support Systems:

Student Counseling Services (SCS) - (213) 740-7711 – 24/7 on call

Free and confidential mental health treatment for students, including short-term psychotherapy, group counseling, stress fitness workshops, and crisis intervention. <https://engemannshc.usc.edu/counseling/>

National Suicide Prevention Lifeline - 1-800-273-8255

Provides free and confidential emotional support to people in suicidal crisis or emotional distress 24 hours a day, 7 days a week. <http://www.suicidepreventionlifeline.org>

Relationship & Sexual Violence Prevention Services (RSVP) - (213) 740-4900 - 24/7 on call

Free and confidential therapy services, workshops, and training for situations related to gender-based harm. <https://engemannshc.usc.edu/rsvp/>

Sexual Assault Resource Center

For more information about how to get help or help a survivor, rights, reporting options, and additional resources, visit the website: <http://sarc.usc.edu/>

Office of Equity and Diversity (OED)/Title IX compliance – (213) 740-5086

Works with faculty, staff, visitors, applicants, and students around issues of protected class.
<https://equity.usc.edu/>

Bias Assessment Response and Support

Incidents of bias, hate crimes and microaggressions need to be reported allowing for appropriate investigation and response. <https://studentaffairs.usc.edu/bias-assessment-response-support/>

Student Support & Advocacy – (213) 821-4710

Assists students and families in resolving complex issues adversely affecting their success as a student
EX: personal, financial, and academic. <https://studentaffairs.usc.edu/ssa/>

Diversity at USC – <https://diversity.usc.edu/> Tabs for Events, Programs and Training, Task Force (including representatives for each school), Chronology, Participate, Resources for Students