Professor Barbara Ann White
University of Baltimore School of Law
Fall 2011

Class Assignments
Please Read Carefully!!!

Please Note: Class will begin at 5:50 and end at 7:30

You MUST register for this course on TWEN and you MUST use your UBALT address as your TWEN e-mail address as per University Policy. You are responsible for all information posted on or disseminated from TWEN.

All e-mail communications with the Professor MUST be from your Ubalt.edu account as per University of Baltimore policy. If you have not received an e-mail with the password for the Business Organizations 2011 TWEN site, you may request it by sending an e-mail to Professor White’s Administrative Assistant, Shavaun O’Brien at sobrien@ubalt.edu.

遏制 You must come to the first day of class with your books and materials and with the first assignment prepared. Class Participation counts 20% towards your final grade and begins on the first day!

Please Note the following policies:

1. No Laptops, PDA’s, Cell Phones or any electronic communications devices are permitted in class except with prior permission of the instructor and only under exceptional circumstances.

2. You must bring with you all the assigned books and have them out and open on your desk for each class, otherwise you will be considered unprepared for class. You may bring any prepared notes, case briefs, etc. but only in non-digital format. You may bring any non-digital writing materials such as notebooks, paper, pens, pencils, etc. you wish to use during class.

3. There will be numerical calculations both during the semester and on the Final exam. You may bring to class and to the Final Exam a simple calculator that has no other function than to calculate numbers. The calculator may not have the capacity to be a communication device, a recording device -- visual or auditory-- or store any information. The UB Bookstore carries such devices: the Sharp EL-233S which is battery-powered for $2.98 or the Sharp EL-243S which is solar-powered for $4.98.

Violations may be treated as violations of the honor code and/or serve as grounds for not being allowed to sit for the final exam and/or to be dropped from the course.

Books assigned:


You are responsible only for the assigned reading and the all sections of the code from the Model, Uniform and Maryland Codes as well as the Federal statutes corresponding to the assigned readings. You are not responsible for the entire codes; they have been provided for your convenience and future use.

You must prepare each case and code assignment for each class equally carefully as it is through the preparation process that you do the bulk of your learning.

You are responsible for all cases and code sections in your assigned readings for the Final Exam, regardless of the extent and depth of coverage in class. Coverage in class for each case and code section will vary depending on what other cases and code are taught with it and the nature and/or difficulty of the material it introduces. Differences in depth of treatment in class does not imply that some cases or code sections are more or less important than others. It merely indicates that some of concepts contained therein have already been addressed or are not as difficult to master as others. Assigned material not covered in class, you are to learn on your own.

However, please be sure to raise any unaddressed questions you still have after class, or during my office hours (M & W: 4:30-5:30) or by appointment, or through e-mail: bwhite@ubmail.ubalt.edu or by phone: 410-837-4536. As we will be actively using TWEN to address and discuss issues students raise outside of class, posting your query on TWEN will serve a very useful contribution. I will be monitoring and responding to queries on TWEN on a regular basis.

Occasionally readings will be listed as either recommended (REC:) or for your information (FYI:) to deepen one’s understanding or that might be of interest. They are not covered by the final exam.

遏制 You must look-up and read every section of the codes that is mentioned in the readings and/or in the assigned notes. It is critical that you *read the assigned notes for each class* as that is where most of the sections of the codes you are responsible for are listed and discussed.

遏制 It is critical that you refer to the Code Outline contained in White, Business Organizations Fall 2011 Supplement for corresponding sections of the Maryland Codes to the Uniform and Model Code sections in the readings and that you read the Maryland versions of the code as well as the Uniform & Model Code sections assigned in your casebook in your preparation for each class.

✓ Be sure to read all footnotes in assigned readings! ✓
The schedule below is approximate and subject to some adjustments as the semester proceeds.

Please note that the MBCA and MBCA 1984 are used in the text interchangeably and are the same model code. Many of the sections are similar to the Maryland Code today. The MBCA (1969), however, is a different and earlier model code that also has sections comparable to Maryland’s code today. Why this is the case will be discussed in class.

****Read the cases and statutes in the order that they are assigned. Read the code sections as they come up in your readings. Do not save them to read all at once after you have read the other assigned readings. The order of the readings and code sections is the order in which they will maximize your understanding and retention as well as the order to be covered in class.

√ Be sure to read all footnotes in assigned readings! √

Read the following two pages for important instructions in preparing your assigned readings.
A. Read carefully Introduction to the Supplement in White, Business Associations, (White Supplement) and locate each section described there in your supplement.
B. Read carefully the introduction to this Assignments section (previous page) to be sure to understand how to do the assignments properly.
C. Read each assigned section fully unless page or note limitations indicate otherwise.
D. Be sure to read each section of codes, etc and the corresponding MD codes as they arise in your readings

REMEMBER: Class participation counts 20% of your final grade and it begins on the first day of class.

Week of August 22

I. Chapter One: Introduction
   A. The Subject in General
   B. An Introduction to Business Forms (Read Chapter Sixteen sections below concurrently with Limited Partnership part of this section.) (We will be going into more detail about Partnerships, Corporations and Limited Liability Companies later in the course.)

XVI. Chapter Sixteen: The Limited Partnership
   A. Introduction
   B. Formation (Note 1)
   C. Management and Operation
   F. Limited Liability
      1. The Control Rule (Read introductory text and Note on the Statutory Evolution of the Control Rule only)
      2. Control of the Entity
   B. Formation (continued) (Note 8 (Master Limited Partnerships))

I. Chapter One: Introduction (continued)
C. The Statutes
   {D. Federal Income Taxation: Basic Principles (reserved until later in the course.)

II. Chapter Two: Agency
   A. Introduction
   B. The Creation of the Agency Relationship
   C. Liability from the Agency Relationship
      1. Tort Liability From the Agency Relationship (Notes 1, 3, 4)
      2. Contract Liability from the Agency Relationship
         a. Liability of the Principal to the Third Party
            (1) Actual Authority
            (2) Apparent Authority (Notes 1-4)
            (3) Inherent Authority (Notes 1-2)
            (4) Ratification (Notes 1-3)
         b. Liability of the Third Party to the Principal
         c. Liability of the Agent to the Third Party (Note)
   D. Duties of the Agent and the Principal to Each Other
1. The Agent’s Duties to the Principal
2. The Principal’s Duties to the Agent

E. Termination of the Agent

Week of August 29

III. Chapter Three: Partnerships
A. Introduction
B. Formation
   1. Definition of Partnership
      Martin v. Peyton (Notes 1, 4)
   2. Partnership Agreement
   3. Entity v. Aggregate Views (Notes 1, 3, 4)
   4. Partnership By Estoppel
      Smith v. Kelley (Notes 1-3)
C. Management and Operation
   Summers v. Dooley (Notes 1, 2, 3,)
   National Biscuit Co. v. Stroud (Notes 1, 2, 4, 5, 6, 7)
D. Financial Rights and Obligations
   1. Partnership Accounting (Notes 1-3) ← Prepare carefully – First Encounter with Business Numbers!

Week of September 5 (No Class Monday, September 5 - Labor Day)

2. Sharing of Profits and Losses
   Kessler v. Antinora (Notes 1-3)
3. Liability to Third Parties
   a. Liability of Partnership
   b. Liability of Partners
      Problem
      Roach v. Mead (Notes 1, 3, 6)
E. Fiduciary Duties
   1. Common Law
      Meinhard v. Salmon (This is a difficult and important case; be sure to work out the details for class) (Notes 1-3)

Week of September 12

2. Statutory Developments and the Role of Contract
   a. Duty of Loyalty
      Enea v. Superior Court (Note 1)
   b. Duty of Care
      Bane v. Ferguson (Notes 1, 2, 4, 5)
   c. Contractual Limitations
      Singer v. Singer (Notes 1, 2)
3. Duties When Leaving A Partnership
   Meehan v. Shaughnessy (Notes 1-3)
F. Ownership Interests and Transferability
   Rapoport v. 55 Perry Co. (Notes 1-5)
G. Dissociation and Dissolution
   1. Dissolution Under UPA (Notes 1, 2)
      Collins v. Lewis (Notes 1-4)
      Bohatch v. Butler & Binion (Read On Your Own)
   2. Dissociation and Dissolution Under RUPA
Week of September 19

I. Chapter One: Introduction (continued)

IV Chapter Four: Development of Corporation Law (Read On Your Own)

V Chapter Five: The Formation of a Closely Held Corporation
   A. Where to Incorporate
   B. How to Incorporate
      Articles of Incorporation (Notes 1-10 (Prepare notes for class carefully)
      MD Title 7 §§ 7-101– 7-305 (Prepare carefully)
      Text Following Notes 1-10 (Read on your own)
   C. The Decline of the Doctrine of Ultra Vires
      [711 Kings Highway Corp. v. F.I.M.’s Marine Repair Serv., Inc. – Exclude Case]
      Notes 1, 2
      [Sullivan v. Hammer – Exclude Case]
      Theodora Holding Corp. v. Henderson (in White, Business Organizations Fall 2011 Supplement)
   D. Premature Commencement of Business
      1. Promoters
         Text
         Notes 1-4 (note 3(c) in particular) (We will be covering the details of 10(b)5 when we cover Insider Trading at the end of the course)
         Stanley J. How & Assoc., Inc. v. Boss
         Notes 1-3, 5, 6, 7 (<– pay particular attention to the last line in note 6)

Week of September 26 (No Class Wednesday, September 28 - Rosh Hashanah)

   2. Defective Incorporation
      Robertson v. Levy
      MBCA 1950 § 50 (See Code Outline in White, Business Organizations Fall 2011 Supplement)
      MBCA 1984 §§ 2.03, 2.04
      Notes 1, 4, 5, 7 (Prepare 7 in conjunction with excerpt of Cranson v. IBM in (See case in White, Business Organizations Fall 2011 Supplement). What reason would you give for why the court in Cranson followed a different line of reasoning than the court in Robertson?)
      [Frontier Refining Company v. Kunkel’s Inc. – Exclude]

Week of October 3

Problem Review Session: Tax Problem Set (Wednesday, October 6)
Evening Section: 4:45-5:45, Rm TBA

VI. Chapter Six: Disregard of the Corporate Entity
   A. The Common Law Doctrine of Piercing the Corporate Veil
      Bartle v. Home Owners Co-op.
      DeWitt Truck Brokers v. W. Ray Flemming Fruit Co.
      Notes 1-3
   [B. Should the Piercing Doctrine Be Abolished? – Exclude]
   [C. The Piercing Doctrine in Federal/State Relations– Exclude]
   D. “Reverse” Piercing
      [Cargill, Inc. v. Hedge - Exclude]
      Pepper v. Litton
      Notes 1-3
   E. Successor Liability
      Nissen Corp v. Miller (Notes 1-4)
Week of October 10

VII. Chapter Seven: Financial Matters and the Corporation — Prepare whole chapter very carefully.
Third Encounter with Business Numbers Issues and the most difficult part of the course.

A. Debt and Equity Capital
   Debt & Equity Handout in White, Business Organizations Fall 2011 Supplement

B. Types of Equity Securities
   1. Shares Generally
   2. Common and Preferred Shares
   3. Special Rights of Publicly Traded Preferred Shares
   4. Classes of Common Shares and following text

C. Issuance of Shares: Herein of Subscriptions, Par Value and Watered Stock
   1. Share Subscriptions and Agreements to Purchase Securities
   2. Authorization and Issuance of Common Shares Under the MBCA
   3. Par Value and Stated Capital
      (Be sure to prepare the Hospes v. Northwestern Mfg. & Car Co. case in text carefully as a full case. Be sure to diagram it out.) (Notes 1, 2)
      Hanewald v. Bryan’s, Inc. (Notes 1, 2 – Be sure to prepare notes carefully)
   4. Eligible and Ineligible Consideration for Shares
      Notes 1-4
   5. Par Value in Modern Practice — Prepare carefully! Pay particular attention to Balance Sheet analysis
      Re-read Balance Sheet analysis in Chapter Three, Section D, Part 1: Partnership Accounting
      Fiflis, Kripke, & Foster, Accounting for Business Lawyers (Notes 1-3)
      Torres v. Speiser (Note)

Week of October 17

D. Debt Financing (prepare all these materials carefully)
   1. The Concept of Leverage
   2. Tax Treatment of Debt (Notes 1,3)
   3. Debt as a Planning Device
      Obre v. Alban Tractor Co. (please prepare carefully as a regular case)
      Notes 1,3
   (E. REC: Planning the Capital Structure for the Closely Held Corporation)
   [F. Excluded - Public Offerings]

G. Issuance of Shares by a Going Concern: Preemptive Rights, Dilution & Recapitalizations
   (Prepare Balance Sheets for the following two cases:
   *** Be sure to look-up any terms you do not know and be prepared to be called on in class to define them
   Stokes v. Continental Trust Co. of City of New York (Notes 1-3)
   Katzowitz v. Sidler (Notes 1,2)
   [Exclude – Lacos Land Company v. Arden Group, Inc.]
   [H. Distributions By a Closely Held Corporation--Excluded]
   (I. REC: Legal Restrictions on Distributions)
   [J. Non-Model Act Statutes – Excluded]

Week of October 24

VIII. Chapter Eight: Management and Control of Corporation

A. The Traditional Roles of Shareholders and Directors
   McQuade v. Stoneham (Notes 2, 3 (pay attention closely to Clark v. Dodge and Long Park v. Trenton-New Brunswick Theaters))
   Galler v. Galler (Notes 1, 2, 3(a), (c), 4 (why do you think the court reached the result it did in Galler? Would that happen in Maryland?)
   Compare with Maryland Title 4
   {Zion v. Kurtz - Exclude}
Week of October 31

Problem Review Session: Balance Sheet Problem Set Part I (Wednesday, November 2)
Evening Section: 4:45-5:45, Rm TBA

Cumulative vs. Straight Voting
Humphrys v. Winous Co. (Notes 1-4)
Ringling Bros.-Barnum & Bailey Combined Shows v. Ringling
Notes 1, 3
(Note)

Note 1, 5

REC: Brown v. McLanahan
Notes 1-3
REC: Lehrman v. Cohen
REC: Ling and Co. v. Trinity Sav. and Loan Assn.
Notes 1, 2
REC: Douglas K. Moll, Minority Oppression & The Limited Liability Company

C. Deadlocks
Gearing v. Kelly (Note)
In Re Radom & Neidorff, Inc. (Notes 1, 3)

D. REC: Modern Remedies for Oppression, Dissension or Deadlock

Week of November 7

Problem Review Session: Balance Sheet Problem Set Part II (Wednesday, November 9)
Evening Section: 4:45-5:45, Rm TBA

E. Action by Directors and Officers (continued) (note that most of the cases for this section are in White, Business Organizations Fall 2011 Supplement

Directors:
Baldwin v. Canfield (See case in White, Business Organizations Fall 2011 Supplement)
Mickshaw v. Coca Cola Bottling Co. (See case in White, Business Organizations Fall 2011 Supplement)
MBCA 8.20. Meetings
MBCA 8.21. Action Without Meeting
MBCA 8.24. Quorum and Voting

Officers:
Black v. Harrison Home Co. (See case in White, Business Organizations Fall 2009 Supplement)
(Note that the next two assigned cases are to be read in reverse order than as printed in the casebook.)
Lee v. Jenkins Bros. (Notes 1, 2, 4)
In The Matter of Drive-In Dev. Corp. (Notes 1, 2)

Week of November 14

IX. Chapter Nine: Control and Management in the Publicly Held Corporation – Exclude

X. Chapter Ten: Duty of Care and the Business Judgment Rule
Litwin v. Allen (Note)
XI. Chapter Eleven: Duty of Loyalty and Conflict of Interest

A. Self-Dealing

Marciano v. Nakash (Be sure to read all footnotes!!)
Notes: 1-8, 10 (Be sure to read all footnotes!!)
Heller v. Boylan (Be sure to note and compare Rogers v. Hill discussed in main case)
{REC: Brehm v. Eisner I & II}
{Notes: Rec 1-7}
{Sinclair Oil v. Levien – Exclude}
{Weinberger v. UOP, Inc – Exclude}

B. Corporate Opportunity
Northwest Harbor Golf Club, Inc. v. Harris (Notes 1, 3)

Week of November 21 (Monday Class Only) (Note! — Final Exam will be discussed on Monday)

XII. Chapter Twelve: Transactions in Shares: Rule 10b-5, Insider Trading and Securities Fraud

A. The Development of a Federal Remedy: Rule 10b-5

Introductory paragraph
Securities Exchange Act of 1934 §10b
Rule 10b-5: Employment of Manipulative and Deceptive Devices
Notes 1, 3, 4
Text: introductory paragraph following notes only.
{REC: In Re Enron Corporation Securities, Derivative & ERISA Litigation and Notes 1-3}

B. Insider Trading

Securities and Exchange Comm’n v. Texas Gulf Sulphur Co. (Notes 1, 2)
Carlton & Fischel, The Regulation of Insider Trading (Notes 1-6)
Chiarella v. United States (Notes 1-4, 6 (pay particular attention to the case Carpenter v. US and the analysis in Note 3 & 4–note the number of S. Ct. Justices deciding.)

O’Hagan New York Times (see article in White, Business Organizations Fall 2011 Supplement).
United States v. O’Hagan (Notes 1-6)
Dirks v. SEC (Notes 1-4)
Exclude subsequent material until Statutory section, below.
Securities Exchange Act of 1934—§16 Directors, Officers, and Principal Stockholders
Notes 1-9 (pay particular attention to the numbers in note 5)

Wednesday Class

XVII. Chapter Seventeen: The Limited Liability Partnership

A. Introduction

B. Formation (No Notes)

C. Limited Liability – Exclude

D. The Limited Liability Partnership (Notes 1, 3, 4)

What is available in Maryland for Limited Partnerships who want limited liability for everyone?
XVIII. The Limited Liability Company
For all the below readings – what are the rules in Maryland? See and read through Maryland Corporations and Associations, Title 4A §§ 101 - 607

A. Introduction
   Susan Pace Hamill, The Limited Liability Company
   Notes 1-6

B. Formation
   Notes 1, 2, 3, 11, 12

C. Management and Operation
   1. General Governance
      Notes 1, 4, 6
   2. Authority
      {Taghipour v. Jerez – Exclude}
      Notes 7, 8, 9 – What is the situation in Maryland?
      {3. Inspection and Information Rights – Exclude}

D. Financial Rights and Obligations
   Note 5

{E. Entity Status – Exclude}

F. Limited Liability
   {1. The Scope of Limited Liability – Exclude}
   2. Piercing the Veil
      {Kaycee Land & Livestock v. Flahive – Exclude}
      Notes 1, 2

G. Fiduciary Duty
   1. The Basic Duties
      {VGS, Inc. v. Castiel – Exclude}
      Notes 4-8
   2. The Role of Contract – Exclude

H. Ownership Interests and Transferability
   Notes 1-3

I. Dissociation and Dissolution
   Douglas Moll, Minority Oppression & The Limited Liability Company
   {Lieberman v. Wyoming.Com LLC – Exclude}
   Notes 5-8

{J. The Nature of the LLC: Regulatory Issues – Exclude}

K. A Final Look