

Business Organizations
Prof. Daniel Greenwood
Introductory Information

Spring '08
Tu 6:10-8:00 pm & Th 8:10-10:00 pm

A. Required:

1. WILLIAM A. KLEIN, J. MARK RAMSEYER & STEPHEN M. BAINBRIDGE, BUSINESS ASSOCIATIONS: CASES AND MATERIALS ON AGENCY, PARTNERSHIPS, AND CORPORATIONS, Foundation Press. (2006 Sixth Edition ISBN-13: 978-1-59941-042-5).
2. KLEIN, RAMSEYER & BAINBRIDGE, BUSINESS ASSOCIATIONS: 2007 STATUTES AND RULES (ISBN-13: 9781599412870).
3. Supplemental readings available on TWEN from time to time.
4. WILLIAM STRUNK & E.B. WHITE, THE ELEMENTS OF STYLE (Fourth Edition ISBN-13: 978-0-20531-342-6, but earlier editions are fine too). You are expected to have read and internalized this book by the exam; there will be no specific assignments.

B. Recommended reading:

Study Aids & Hornbooks:

1. Materials available on my website, <http://law.hofstra.edu/greenwood> , especially under -> Supplemental Course Materials -> Business Organizations.
2. WILLIAM A. KLEIN & JOHN C. COFFEE, JR. BUSINESS ORGANIZATION AND FINANCE: LEGAL AND ECONOMIC PRINCIPLES, Foundation Press (Tenth Edition 2007: ISBN 978-1-59941-232-0). A succinct summary of most of the analytic concepts covered in the class from an economic perspective (plus some basic finance theory). **HIGHLY RECOMMENDED**. This book parallels and supplements the case book.
3. SOLOMON & PALMITER, CORPORATIONS, EXAMPLES AND EXPLANATIONS, Little, Brown & Co. A useful review of the basic concepts covered in the course.
4. HAMILTON, FUNDAMENTALS OF MODERN BUSINESS, Little, Brown & Co. Particularly recommended for students with limited prior background in business issues.
5. R. C. CLARK, CORPORATE LAW, Little, Brown & Co. A sophisticated, if somewhat old, theoretical treatise that attempts to tie together all of the law of business organizations into a grand synthesis. Particularly recommended for students who want a greater depth from a mainstream non-“Law and Economics” perspective.

6. HAMILTON, CORPORATIONS, West. A "nutshell" style review of the black letter law and basic concepts.

More Scholarly or Theoretical Treatments:

7. A.A. BERLE & GARDINER C. MEANS, THE MODERN CORPORATION AND PRIVATE PROPERTY (1932) (Transaction Paperback: ISBN-13: 978-0887388873). The classic essay on the modern corporation. Virtually every modern theory is either an attack on or extension of this book. The source of the "separation of ownership and control" confusion and the inspiration for the '33 and '34 Securities Acts.

8. OLIVER E. WILLIAMSON, THE ECONOMIC INSTITUTIONS OF CAPITALISM (Free Press 1998 ISBN-13: 978-0684863740). A thoughtful example of the institutional economics approach.

9. REINER KRAAKMAN ET AL, THE ANATOMY OF CORPORATE LAW: A COMPARATIVE AND FUNCTIONAL APPROACH (Oxford U Press 2004 ISBN-13: 978-0199260638). A concise restatement of the now-dominant law and economics approach.

10. LAWRENCE MITCHELL, CORPORATE IRRESPONSIBILITY: AMERICA'S NEWEST EXPORT (Yale U Press 2001 ISBN-13: 978-0300090239). A readable critique from a "communitarian" perspective, emphasizing the importance of trust.

11. KENT GREENFIELD, THE FAILURE OF CORPORATE LAW: FUNDAMENTAL FLAWS AND PROGRESSIVE POSSIBILITIES (Chicago U Press 2007 ISBN-13: 978-0226306933). The best statement of the "stakeholder" view.

12. THOMAS W. JOO (ed.), CORPORATE GOVERNANCE: LAW THEORY AND POLICY (Carolina Academic Press 2004 ISBN-10: 0-89089-570-8, ISBN-13: 978-0-89089-570-2). A collection of excerpts from useful articles on the topics in the course.

II. Exams:

There will be a closed-book final exam during the exam period consisting of several essays and possibly some short answer questions.

The final exam will cover the entire course and will include questions involving issues that might arise in litigation, business planning and law reform. This exam will require you to apply, critique and understand the law you have learned in complex situations – not merely to regurgitate case holdings or statutory language.. **I recommend consulting the copies of prior exams that are posted on TWEN early and regularly.**

You are strongly encouraged to type your exam.

III. Participation:

I reserve the right to increase grades based on the quality and quantity of class

participation. Only in-class substantive discussions and comments on TWEN will be considered.

IV. The West Education Network (TWEN):

Every student is **required** to sign up for TWEN and its e-mail discussion list within the first week of class. We will use the list to continue class discussion, distribute information and assignments and so on. Students who do not sign up or provide a functioning email address in a timely fashion will be penalized.

V. Webpage:

Web pages for the course are on TWEN and at <http://law.hofstra.edu/greenwood> -> Supplemental Course Materials -> Business Organizations. The pages (which differ slightly) include the syllabus, handouts that I have written, and back exams, among other materials. Any suggestions for ways to make these pages more useful are welcome.

VI. Study Groups and Study Aids:

This course contains a large quantity of factual and doctrinal material that will be new to most students. I urge you to take advantage of various methods of achieving mastery, including commercial study aids, study groups, and working through old exams. Several old midterms are available together with explanations of the right and wrong answers.

The factual and doctrinal material is the foundation on which the course is built, but it is only the foundation. Lawyers must understand the reasons behind the precedents and the intellectual structures that drive them in order to effectively advise, plan or litigate. Much of business planning involves manipulating the legal structures. Accordingly, merely knowing them is never enough: you must be able to play with them, and you must understand when the doctrines are flexible and when they are brittle, when you can stretch the rules and when you must respect them as rigid, when they are likely to shift and when they are stable. This involves understanding the various theories that justify the rules as well as the interplay between the theories.

The only way I've found to understand the theories of the law and their interplay is to work with them. You should volunteer in class, form a study group and debate the issues, and in general attempt to apply the different legal theories to different problems in as many circumstances as possible. Writing out and discussing answers to the old exams is also highly recommended.

VII. Assignments:

Assignments from the text are listed on TWEN under "Syllabus." Although I do not assign them, your understanding will be deepened if you read the parallel section of Klein & Coffee. You are also required to read the Wall Street Journal daily. To subscribe at student rates, follow the link on the course home page.

You **MUST** read, carefully, all the relevant statutory provisions. You are responsible for knowing the Uniform Partnership Act (UPA) and the Revised Model Business Corporations Act (RMBCA).

N.B.:

Partnerships are generally regulated by the partnership law of their home state. Most states have adopted the UPA verbatim except for section numbers (a few have shifted to its successor, the RUPA, which follows similar principles although often in different terminology).

In contrast, a corporation generally may be organized under the law of any state (including foreign states) virtually without regard to where it actually does business. Moreover, reorganization under a different state's law is often quite easy. Thus, all corporate lawyers are necessarily national lawyers, potentially affected by the law of any state.

Fortunately for students and lawyers who might be overwhelmed by this overflowing cornucopia of law, all American corporations statutes follow essentially the same basic principles, which are set out relatively clearly in the RMBCA. Thus, if you understand the RMBCA, you are well equipped to understand the issues in any American corporate law statute.

Less fortunately for students, few states have adopted the RMBCA verbatim and neither New York nor Delaware's corporation statutes are based on the RMBCA at all. Accordingly, it is important to be aware where states, and especially Delaware, are likely to differ from the RMBCA in terminology or substance. While the issues remain the same, occasionally states resolve them differently.

VIII. Hofstra Attendance Guidelines:

"The rules of the New York State Court of Appeals, the American Bar Association, and the Law School all require law students to be in good and regular attendance in the courses for which they are registered. To comply with these rules, you must attend at least 85% of your regularly-scheduled classes. Thus, you may miss no more than 8 hours (4 sessions) of this class.

"Sign-in sheets for each regularly-scheduled class will be provided, which shall be the dispositive evidence regarding your absence from a given class. Each student is responsible for signing in. Falsification of sign-in sheets is a violation of the Code of Academic Conduct.

"If you exceed the permitted absences by failing to sign in, you will be administratively withdrawn from the course. No prior notice may be given, and you will receive notification from the Office of Academic Records indicating the withdrawal. Any such withdrawal may have serious ramifications for your financial aid, academic standing, and date of graduation. If you are excessively absent from several classes, you may face additional sanctions, including but not limited to denial of certification of good and regular attendance to the New York State Board of Law Examiners, or other state bar examiners.

"If you believe you must be absent from class for more than the permitted number of hours, you should speak with the [Assistant Dean of Student Affairs (Dean Arias)] in Room 244 as soon as possible. The [Assistant Dean of Student Affairs] may make accommodations for students who must be absent for religious reasons and in cases of truly compelling hardship."

IX. Greenwood Attendance Guidelines.

Requests for accommodation under the College policy must be made to the Dean, not Prof. Greenwood.

Students who miss class tend not to do well on the exam; beyond that, I do not penalize for absences beyond the College guidelines.

If you have a good reason to be absent, please request that the Photocopy Room tape the class in question. They require 48 hours notice. My assistant, Teri Caruso, can help if you need assistance in making arrangements.

X. Plagiarism and Cheating:

All suspected cheating, including unattributed use of another's work (or your own prior work), will be referred to the College of Law Disciplinary Committee for investigation and, if appropriate, disciplinary action. Disciplinary action may include expulsion from the College of Law or reports to the Bar which could result in the Bar refusing admission. In addition, cheaters will receive a failing grade in the course.