Corporations
NYU Law School
Spring Semester 2018
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Books

Required
- Business Associations by William Klein, Mark Ramseyer and Stephen Bainbridge (Foundation 9th ed. 2015) [abbreviated "KRB" below]. This will be our primary textbook.

- Statutes and Regulations: You may use Foundation’s statutory supplement, any other publisher’s statutory supplement, or you may simply find assigned statutes and regulations rules on the web. In the syllabus below “DGCL” refers to the Delaware General Corporation Law and MBCA refers to the Model Business Corporations Act. I expect that nearly all assigned sections will be in any of the publishers’ supplements, but to the extent they are not, you can find them on the web.

- Handouts and problem sets posted on NYU Classes. Most are listed in the syllabus but I may add more along the way.

Course Rules and Grading

There will be a final exam and problem sets. Grades will be based on the following: final exam (60%); class participation (20%) and exercises (20%). Class participation credit will be given based on quality, not quantity. Exercises, where indicated on the syllabus, should be handed in as hard copy at class on the date they are due. I will announce when they are due.

On-Call Panels

I will use a panel system for calling on students in class. If you cannot be in class when you are on call, please let me know in advance and I can move you to another panel.
Syllabus

To a large extent the course follows the order of the KRB book. I have, however, modified the order to create what I believe is a more logical structure. I may add or subtract material as the course proceeds, depending on time available. Assignments for each week will be announced by email through NYU Classes. As I modify the reading, I will post an updated syllabus.

I. Introduction

- KRB Preface pp. iii – iv (its funny)
- Exercise #1 (not to be handed in): The Flamboyant Chef: Investment in a Restaurant.

II. Quick Overview of Agency and Partnership Law

A. Agency
   1. Existence of an Agency Relationship and Authority of an Agent
      - Restatement (3rd) Agency: §§1.01-1.04, 2.01-2.06
      - KRB pp. 1-14
   2. Ratification by a Principal
      - Restatement §§4.01, 4.02
      - KRB pp. 22-25
   3. Liability in Contract and Tort
      - Restatement §§6.01-6.04, 7.01-7.04
      - KRB pp. 52-54
   4. Fiduciary Liability of Agents
      - Restatement 8.01-8.08
      - KRB pp. 69-72

B. Partnership
   - Uniform Partnership Act of 1997: Sections 101(6) and (7), 103(a), 106, 201(a), 202(a), 202(c)(3), 203, 204, 301, 305(a), 306(a) and (b), 401, 404.
   - KRB pp. 89-96 (Meinhard v. Salmon—fiduciary duty in partnership context). Be prepared to answer the questions under Analysis and under Policy and Planning up to Question 5(a).

III. The Corporation

A. Formation
   - Handout: Introduction to Corporate Structure and Corporate Securities (pp. 11-16, 24-27)
• DGCL §§ 101, 102(a), 102(b)(1)-(6), 103(a)(1), 106-109, 121, 122, 131, 132(a), 141(a), 141(b), 141(d), 141(e) to (i), 141(k)(1), 151(a), 161, 173, 211(a)(1), 211(b), 212(a) to (c), 214, 216, 228(a), 242(a). (You may ignore any references to “nonstock corporations.” These are nonprofit corporations and will not be covered in this course. On other other hand, if you are interested, note that they operate under a largely similar legal structure with respect to their governance.)
• Exercise #1: A Walk Through The DGCL
• Zynga’s Certificate of Incorporation and bylaws (no need to read, just take a quick look to be familiar with what is generally covered)

B. Limited Liability: Relationships with Creditors
• KRB pp. 179-89, 190-96 (be prepared to answers the questions following Walkovsky and Sea Land)
• Handout: Sea-Land II (read after reading Sea-Land I in KRB)
• Handout: Policy Analysis of Limited Liability [A-B]

C. Purpose of the Corporation
• KRB pp. 242-258 (be prepared to answer questions and problems between A.P. Smith and Dodge and after Shlensky) [A-B]

IV. Relationship between shareholders and the board of directors

Note: This section of the course—shareholders suits against management, shareholder voting, and mergers and acquisitions—covers the core of corporate law, doctrinally and conceptually. The focus is on the respective rights and obligations of shareholders and managers (more specifically, the board of directors). Conceptually, this part of the course covers the three mechanisms by which the law attempts to align the interests of management (agents) with those of shareholders (principals).

A. Corporate Governance: Overview and Conceptual Foundation

• Handout: Excerpt from Jensen & Meckling, Theory of the Firm: Managerial Behavior, Agency Costs, and Ownership Structure, 3 J. Fin. Econ. 305 (1976) [C-D]

B. Lawsuits against The board of directors

1. Duty of care

   • KRB pp. 299-312, 314-316 (skip the note on Cinerama, be prepared to answer questions #1, 2 and 3 following Kamin and questions #1 and 2 following Van Gorkom, and read the note on pp. 315-16) [C-D]
   • KRB 316-322 (be prepared to answer the questions following Fancis). In
reading *Francis*, you can ignore the fact that the case involved a duty to creditors. Imagine the creditors as shareholders bringing a claim for breach of fiduciary duty. [C-D]

- DGCL §102(b)(7) [C-D]
- Exercise #3: The Business Judgment Rule and the Duty of Care [E-G]

2. Duty of loyalty

- KRB pp. 322-332 (interested directors) [E-G]
- DGCL §144 [E-G]
- KRB pp. 332-339 (corporate opportunities) (be prepared to answer the questions following *Broz*) [H-J]
- KRB pp. 342-345 (dominant shareholder) (be prepared to answer the questions following *Sinclair*) [K-J]
- KRB pp. 351-358 (ratification) (be prepared to answer the questions under Analysis and Problems following *Wheelabrator*) [K-L]
- Exercise #4: Interested Director Transactions and Corporate Opportunities [K-L]

3. Good faith

- KRB pp. 358-373 (*Disney* case) [M-R]

4. Oversight

- KRB pp. 374-380 (be prepared to answer questions 2, 4, 5, 6, and 8) [S]

5. Derivative suits – shareholder litigation process

- F.R.C.P. 23.1 [T-Z]
- KRB pp. 208-221 (demand requirement) (be prepared to answer question #5 following *Grimes* and problems 1, 2, and 3 following *Marx*) [T-Z]
- KRB pp. 221-233 (Special litigation committees) (be prepared to answer the questions following *Zapata*) [A-B]
- DGCL §145(a),(b),(c),(d),(g) [A-B]
- Handout: Conceptual Analysis of Derivative Suits [A-B]

C. Shareholder Voting

1. Proxy fights

- DGCL §§211(a)(1), (b), (d), (e), 212(a) and (b), 214, 216, 222(a) and (b), 223, 228(a), 141(d) and (k) [C-D]
- Exercise #5: Shareholder Voting for the Board [C-D]

2. Shareholder proposals (and the proxy access battle)

- Securities and Exchange Act § 14(a) [E-G]
• Securities and Exchange Act Regulations Rule 14a-8 [E-G]
• KRB pp. 527-543 (be prepared to discuss the problems following each of these cases) [E-G]

3. Shareholder inspection rights

 • DGCL §§ 219, 220
 • KRB pp. 546-552, 557-558

D. Mergers and acquisitions

1. Sales of control block

 • KRB pp. 653 (just Zetlin) [H-J]

2. Forms of combination and the de facto merger doctrine

 • Handout on structure of mergers and acquisitions [H-J]
 • DGCL §§251(a)-(f), 259, 271, 275 [H-J]
 • KRB pp. 667-677 [H-J]

3. Freeze-out mergers

 • DGCL §§253, 262 [K-L]
 • Exercise #6: The Appraisal Statute [K-L]
 • KRB pp. 677-697 (be prepared to answer the questions following Weinberger and Kahn v. M&F Worldwide) [K-L]

4. Suits against management for rejecting takeover attempts (the "enhanced business judgment rule")

 • KRB pp. 724-733 (Unocal) [M-R]
 • KRB pp. 733-742 (Revlon) [S]
 • KRB pp. 744-751 (Time) [T-Z]
 • KRB pp. 752-61 (QVC) [All]

 • Securities Statutes and Regulations: [These relate to entire section]
   Securities Exchange Act of 1934 §13(d)(1)
   Securities and Exchange Act Regs, Rule 13d-1(a), Schedule 13D
   Securities and Exchange Act §§14(a), 14(d)(1), (6), (7)
   SEA Regs, Rules 14d-1, 14d-6, 14d-7, 14d-8, 14d-10, 14e-1, 14e-2, 14e-5(a)
 • DGCL §203

VI. Insider Trading

 • Securities and Exchange Act §10(b), SEA Rule 10-b-5 [All]
- KRB pp. 455-465 [All]
- KRB pp. 465-472 [All]
- KRB pp. 472-480 [All]