Corporations I Course Syllabus (Fall 2015)

Professor Lynn Bai
Room: 427
Office Phone: 513-556-0194
Email: lin.bai@uc.edu

Requirements

1) **TWEN Registration**: I have created a TWEN page for this course. Please register so that you can receive course materials and emails from me.

2) **Assignments**: At the end of each lecture, I will assign reading for the next lecture. You are expected to complete the assignment for the class and, if time allows, read one assignment in advance in case we are able to finish assigned materials early. The syllabus is an aid for planning and I will follow it as much as possible, but I also reserve the right to change it from time to time as I think appropriate.

3) **In-class Group Discussion**: Students are expected to engage in group discussions on many issues that we cover in class. For this purpose, I ask you to form co-counsel teams of 3 or 4 students each. Co-counsels work together in discussing cases and answering questions. It is advisable for students in the same team to sit close to each other in class.

4) **Examination**: There will be a 3-hour, closed-book exam at the end of the semester, covering materials we have discussed in class.

5) **Grade Adjustments**: Repeated lack of class preparation or absence from class, or failure to turn in homework on a timely basis may result in the lowering of your final grade by one level. On the other hand, active participation in discussions may move your grade up by one level if your grade is at the borderline of two levels.
Syllabus (Textbook: Business Organizations, Cases and Materials (Eisenberg and Cox, 11th Ed, Foundation Press))

1) The Sole proprietorship (page 1 - 2)

2) Agency
   a) Definition of agency relationship (pages 2 – 3)

   b) Formation of agency relationship (pages 13 – 17, 22 - 23)

   c) Liabilities of the principal and the agent
      i) Liability for contracts entered by the agent (pages 5 – 13, 17 – 20, 3 - 5)
      ii) Liability for the agent’s torts (pages 20 – 21)
      iii) Imputation of agent’s knowledge to the principal (pages 29 – 31)

   d) Agent’s duty of loyalty (pages 24 – 29)

3) Partnership
   a) A note on the applicable law (page 73)

   b) The creation of a partnership (pages 73 - 81)

   c) Management of partnership affairs
      i) The legal nature of a partnership: association v. entity theory (pages 82 – 84)
      ii) Conflict of laws in managing partnership affairs (page 89)
      iii) Voting and a partner’s right to participate in the management (pages 84 – 89)
      iv) The authority of a partner (pages 95 – 101)
      v) Distribution, remuneration and capital contribution (pages 89 – 94)
      vi) Partnership property and assignment of partnership interests (pages 103 – 113)
      vii) Partnership dissolution, winding up, and expulsion of a partner (pages 124 – 159)

   d) Liability of partners (pages 101 – 103)

   e) A partner’s duty of loyalty (pages 114 – 124)

   f) Limited partnership
      i) Liability of limited partners (pages 159 – 167)
      ii) Corporate general partners (pages 167 – 172)
      iii) Fiduciary obligations (pages 174 – 181)

   g) Limited liability partnership (pages 181 – 191)

4) Corporations
   a) Regulatory structure (pages 192 – 193)
b) Characteristics of a corporation
   i) Introduction (pages 191 – 192)
   ii) Limited liability: justifications and exceptions (pages 397 – 414, 418 - 421)

c) The formation of a corporation
   i) Incorporation process
      (1) Finding a domicile for the corporation (pages 205 – 211)
      (2) Filing articles of incorporation (sample Delaware Certificate of Incorporation, Ohio Articles of Incorporation, on TWEN)
      (3) Liability for pre-incorporation transactions by promoters (pages 391 – 393)
   ii) Consequences of defective incorporation (pages 393 – 397)

d) Organizing a corporation (pages 211 – 213)

e) Financing a corporation
   i) The basic types of financial securities (pages 214 – 217)
   ii) Equitable subordination of shareholder claims (pages 222 – 226)

f) Conflict of law problem (pages 193 – 205)

g) Formalities for valid board actions, shareholder actions, and officer actions
   i) Board actions (pages 226 – 232)
      ii) Shareholder actions
         (1) Requisites for valid shareholder actions (pages 232 – 234)
         (2) Weighted voting (pages 294 – 296)
         (3) Empty voting (pages 296 – 299)
         (4) Election and removal of directors (pages 234 – 243)
   iii) Corporate officer actions (pages 244 – 248)
   iv) The classical ultra vires doctrine (pages 248 – 252)

h) Proxy rules
   i) The proxy distribution and voting process (pages 343-350)
   ii) Contents and filing requirements (pages 355 – 362)
   iii) Misleading proxies materials (pages 370– 391)
   iv) The broad definition of proxy: Studebaker Corp. v. Gittlin, 360 F.2d 692 (2d Cir. 1966), Long Island Lighting Co. v. Barbash, 779 F.2d 793 (2d Cir. 1985)
   v) Funding proxy contests (pages 321 – 328)
   vi) Dissident’s access, shareholder proposal rule, shareholder nomination rule (pages 362 – 370)
   vii) Vote buying (pages 315 – 321)

i) The powers and duties of the board
   i) The power to manage corporate affairs (pages 269 – 282)
ii) The role of articles of incorporation and bylaws in the allocation of power between
the board and shareholders (pages 282 – 291)

iii) The business judgment rule
   (1) Court’s deference to the board’s business decision (pages 618 – 622)
   (2) Gross negligence as a basis for invalidating board’s business decisions (pages 627 – 643)
   (3) Lack of good faith as a basis for invalidating board’s business decisions (pages 687 – 694)
   (4) Equitable limits to the board’s business decisions
      (a) Issuance of shares without adequate consideration for the purpose of
          preventing takeover: Condec Corp. v. Lunkenheimer Co., 230 A.2d 769 (Del. Ch. 1967)
      (b) Business decisions solely for the purpose of entrenching office (pages 273 – 275)
      (c) Interference in shareholders’ exercise of voting rights (pages 275 – 282)

iv) Duties of directors and officers
   (1) The maximization of shareholder wealth (pages 252 – 267)

   (2) The duty to monitor, compliance programs and internal controls
      (a) Duty to monitor (pages 603 – 618)
      (b) Duty to establish compliance program and internal control procedures (pages 643 – 664)

   (3) Duty of loyalty
      (b) Corporate opportunities (pages 759 – 781)

   (4) The duty to act in good faith (pages 672 – 679)
   (5) The duty to act lawfully (pages 679 – 686)
   (6) Liability shields and insurance (pages 664 – 671)
   (7) Compensation (pages 730 – 756)

j) Shareholder rights and duties
   i) Shareholder information rights & record of ownership
      (1) Shareholders’ right to inspect books and records (pages 336 – 343, 350)
      (2) Periodic reporting under state and federal law (pages 351 – 355)

ii) Duties of controlling shareholders
    (1) Regulating the exercise of control (pages 781 – 807)
    (2) Class wars (pages 807 – 835)
    (3) Sale of control (pages 836 – 858)
iii) Distributions to shareholders
   (1) Elements of the dividend policy (pages 1317 – 1322, skim read)
   (2) Judicial review of dividend policy (pages 1322 -1329)
   (3) Limitations on dividends under creditors’ rights law (pages 1329 – 1332)
   (4) Limitations on dividends under corporate statutes (pages 1332 – 1341)
   (5) Limitations by contract on dividends (pages 1342 – 1343)
   (6) Liability of directors for improper dividends (pages 1344 – 1345)
   (7) Liability of shareholders for improper dividends (pages 1349 – 1352)
   (8) Liability for watered stock and related issues (pages 1358 – 1362)
   (9) Repurchase by a corporation of its own stock (pages 1352 – 1356)

k) Close corporations
   i) Introduction (pages 437 –441)
   ii) Voting arrangements at the shareholder level
       (1) Shareholder voting agreements (pages 441 – 452)
       (2) Voting trusts (pages 453 – 454)
       (3) Classified stock (pages 454– 456)
       (4) Directors’ voting agreements (pages 456 – 468)
       (5) Supermajority voting and quorum requirements (pages 468– 471)
       (6) Restriction on the transferability of shares, and mandatory sale provisions (pages 493 – 505)
       (7) Judicial review of dividend policy of close corporations (pages 1327 – 1329)
       (8) Dissolution and associated remedies (pages 515 – 546)

5) Limited liability company (pages 547 – 597)