**SYLLABUS**

**LAW 6062 UNINCORPORATED BUSINESS ENTERPRISES (Fall 2016)**

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CLASSROOM: Room 285B

CLASS TIME: Monday: 4:00 PM to 5:15 PM

Wednesday: 4:00 PM to 5:15 PM

OFFICE HOURS: Wednesday: 11:00 AM to 12:00

Friday: 11:00 AM to 12:00

FINAL EXAM: Wednesday, May 9, 8:30 AM

**COURSE DESCRIPTION**

Unincorporated Business Enterprises is an upper level business law course that explores law and governance issues associated with general partnerships (GPs), limited partnerships (LPs), and limited liability companies (LLCs). Due to the development of LLC law in particular, UBEs have now eclipsed corporations in business formations in the United States. This course examines the formation, governance, and winding up of UBEs with particular attention paid to the uniform acts which are the model for state codes governing UBEs.

**COURSE GOAL**

No modern general business lawyer, practicing in both advisory and litigation capacities, can properly practice business law without understanding the various forms of unincorporated business entities, and particularly the LLC, which is the newest and fastest growing business entity. At the end of this course, students will have a conceptual understanding of the three major non-corporate business forms and their statutory default rules: GPs, LPs, and LLCs. Students will understand the important similarities and differences among these entities. This understanding will provide the basic knowledge to draft governance documents, provide transactional advice in business settings, and litigate business claims arising from the activities of non-corporate business entities.

**TEXTBOOK**

Larry Ribstein, Jeffrey Lipshaw, Elizabeth Miller, and Joshua Fershee, *Unincorporated Business Entities* (5th edition, LexisNexis 2013)

**COURSE WORKLOAD**

Unincorporated Business Enterprises is a 3-credit course. ABA Standard 310 requires that students devote 120 minutes to out-of-class preparation for every “classroom hour” of in-class instruction. UBE has 3 “classroom hours” of in-class instruction each week, requiring at least 6 hours of preparation outside of class. Accordingly, you will have about 60 pages of reading each week. Because the course includes statutory and regulatory excerpts that require careful reading, as well as discussion problems that require thoughtful advance preparation, you should spend at least one hour on every 10-15 pages of reading.

**UNIVERSITY POLICY ON ACCOMODATING STUDENTS WITH DISABILITIES**

Students requesting accommodation for disabilities must first register with the Dean of Students Office (<http://www.dso.ufl.edu/drc/>). The Dean of Students Office will provide documentation to the student who must then provide this documentation to Dean Inman in the College of Law Student Affairs Office when requesting accommodation. You must submit this documentation prior to submitting assignments or taking the quizzes or exams. Accommodations are not retroactive, therefore, students should contact the office as soon as possible in the term for which they are seeking accommodations.

**COURSE GRADING**

Your grade will be based on a final exam only. The final exam will be an in-class exam. Exam grades are done on a blind basis. All grades are final. There will be no regrading or revisions from me, except to correct any mathematical or clerical errors in computing the final score. The instructor will adhere to the College of Law’s grade distribution policy in preparing final grades for this course.

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| **Letter Grade** | **Point Equivalent** |
| A (Excellent) | 4.0 |
| A- | 3.67 |
| B+ | 3.33 |
| B | 3.0 |
| B- | 2.67 |
| C+ | 2.33 |
| C (Satisfactory) | 2.0 |
| C- | 1.67 |
| D+ | 1.33 |
| D (Poor) | 1.0 |
| D- | 0.67 |
| F (Failure) | 0.0 |

**FINAL EXAM FORMAT**

**The final exam will be open casebook**. There are no restrictions on what you can write into the book. You will also be allowed to bring in an outline or notes with the following restrictions: **10 pages on 8x11 sheets of paper, front and back permitted, handwritten or typed notes permitted, no margin or font restrictions**. If a problem on the exam requires statutes, they will be provided in the exam.

The final exam may have essay, short answer, and multiple choice questions. Short answer and multiple choice questions are fairly self-explanatory. Essay questions will be an issue-spotting, analysis, or problem-solving format typically seen in most law school exams. The issues and topics for exam questions will come from the course readings and class discussions. The exam will fairly reflect the work that is done in the course. This means that the best way to prepare for the exam is to do the class readings and to attend class.

**UNIVERSITY POLICY ON ACADEMIC MISCONDUCT**

Academic honesty and integrity are fundamental values of the University community. Students should be sure that they understand the UF Student Honor Code at <http://www.dso.ufl.edu/students.php>.

**STUDENT LEARNING OUTCOMES**

Unincorporated Business Enterprises is an introductory course covering legal and governance issues in partnerships, limited partnerships, and limited liability companies. Students will be expected to:

* Understand how the different UBEs are formed.
* Understand the doctrine of fiduciary duties and how they apply in the UBE context.
* Understand the statutory framework the different UBEs exist in.
* Understand the principle of limited liability, and when it does and does not apply in the UBE context.
* Understand the difference between double taxation and flow-through taxation, and which method of taxation (almost always) applies to UBEs.
* Understand the rules that apply when a UBE terminates business operations.
* Gain insight into why UBEs, and particularly the LLC, are the fastest-growing type of businesses in the United States.
* Understand how the discipline of economics has been applied to the study of business law.

**ACRONYM KEY**

The following are the acronyms and shorthand references for the various materials in the appendices of the textbook.

**Statute Guide**

* Memnership Agreement: Appendix 1
* RTA: Appendix 2
* UPA: Appendix 3
* **RUPA: Appendix 4 (principally studied in course)**
* RULPA: Appendix 5
* **ULPA (2001): Appendix 6 (principally studied in course)**
* ULLCA: Appendix 7
* **RULLCA: Appendix 8 (principally studied in course)**
* Delaware LLCA: Appendix 9

**Entities**

* GP: General partnership
* LP: Limited partnership
* LLP: Limited liability partnership
* LLLP: Limited liability limited partnership
* LLC: Limited liability company

**Helpful tip:** We will continuously refer to the statutes in the appendices. It is a good idea to place tabs or markers in at least these three statutes: RUPA, ULPA (2001), and RULLCA. The Restatement of Agency is a short appendix, and we will occasionally review provisions in RULPA (Appendix 5) and Delaware LLCA (Appendix 9).

**Note to students:** Many of the statutory provisions for the different UBE forms are identical to each other or very similar. This aspect of the readings should **not** be considered duplicative or redundant. UBEs share many common or similar attributes due to their genealogical roots in general partnership law. However, UBEs also fundamentally differ from each other. It is important to understand both the convergence and divergence of important aspects of business entities to get a holistic understanding of each UBE.

**ASSIGNMENTS**

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| **Class #** | **Date** | **Topics, Issues, and Cases** | **Text**  **pages** | **Statute assignment** |
| 1 | Mon.  Jan. 8 | * Importance of unincorporated business entities (UBEs) * Overview of UBEs and limited liability entities (LLEs) * Why so many business entities? * Statutory frameworks of UBEs * Limited liability * Role of statutes and agreements * Lawyer’s role in business planning | 1-10 | *Review table of contents*   * RUPA, ULPA (2001), RULLCA   *Law applicable to internal affairs*   * RUPA § 106 * ULPA (2001) § 106 * RULLCA § 106   *Partnership and operating agreements*   * RUPA § 101(7), § 103 * ULPA (2001) § 102(13), § 110 * RULLCA § 102(13), § 110(a)-(b) |
| 2 | Wed.  Jan. 10 | * Comparison of UBEs to corporations * Double taxation vs. flow-through taxation | 11-21 | None |
| 3 | Wed.  Jan. 17 | * What is a GP? * How is a GP formed?   *In re Marriage of Hassiepen*  *Martin v. Peyton*  *Minute Maid Corp. v. United Foods, Inc.* | 23-47 | *Definition of partnership:*   * RUPA § 101(6)   *Forming partnership:*   * RUPA § 202 |
| 4 | Mon.  Jan. 22 | * Introduction to LP * Introduction to LLCs * Organizing LLCs * Operating agreements | 53-68 | *LP attributes*   * Limited liability: ULPA (2001) § 303, § 404 * Financial rights: ULPA (2001) § 503, § 111(9) * Limited partner passivity: ULPA (2001) § 302 * Fiduciary duties: ULPA (2001) § 305 * Withdrawal: ULPA (2001) § 505; RULPA § 604   *Linked and delinked difference between RULPA and ULPA (2001)*   * RULPA §1105 * ULPA (2001) § 1206(b)   *LLC attributes*   * Formation: RULLCA §201 * Limited liability: RULLCA § 304 * Management: RULLCA § 407(a) * Operating agreement: RULLCA § 110(a)-(b) |
| 5 | Wed.  Jan. 24 | * Introduction to agency * Apparent and actual authority   *Gay Jensen Farms Co. v. Cargill, Inc.*  *Essco Geometric v. Harvard Industries* | 93-115 | *Agency and forms of authority*   * RTA § 1.01, § 2.01, § 2.02, § 2.03, § 2.05, § 4.01, § 6.01, § 6.02, § 6.03   *Agency rules in UBEs*   * RUPA § 301 * ULPA (2001) §302, § 402 * RULLCA § 301 |
| 6 | Mon.  Jan. 29 | * Undisclosed principal * Management rights and agency authority in GPs   *Morris Oil, Inc. v. Rainbow Oilfield Truck*  *Patel v. Patel*  *Bailey v. Fish & Neave* | 119-138 | *Liability of undisclosed principal*   * RTA § 2.06   *Management of GP*   * RUPA § 401(f), (j) * RUPA §303 |
| 7 | Wed.  Jan. 31 | * Management rights and agency authority in LPs   *Luddington v. Bodenvest Ltd.*  *Fox v. I-10, Ltd.*  *In re Nantucket Island Associates, Ltd.*  *Gast v. Petsinger* | 138-159 | *Management of LP*   * ULPA (2001) § 406   *Liability for capital contribution*   * ULPA (2001) § 502   *Limited liability of limited partners*   * RULPA § 303 * ULPA (2001) § 303 |
| 8 | Mon.  Feb. 5 | * Management rights and agency authority in LLCs * Responsibility for wrongful acts   *Gottsacker v. Monnier* | 159-171 | *Management of LLC*   * RULLCA § 301, § 302, § 407 |
| 9 | Wed. Feb. 7 | * Responsibility for wrongful acts   *Jackson v. Righter*  *Mains v. II Morrow, Inc.*  *Millan v. Dean Witter Reynolds, Inc.*  *Anderson v. Marathon Petroleum Co.* | 172-193 | *Employee’s scope of employment*   * RTA § 7.07 |
| 10 | Mon.  Feb. 12 | * GP financial rights * LP financial rights * LLC financial rights   *Starr v. Fordham* | 201-217 | *GP’s property rights*   * RUPA § 203, §204   *Financial rights*   * RUPA § 401(b), (d), (h)   *Financial rights*   * ULPA (2001) § 501, § 503, §504 * RULLCA § 402, § 404 |
| 11 | Wed.  Feb. 14 | * Financial accounting | 217-224 | *Capital accounts*   * RUPA § 401(a) |
| 12 | Mon.  Feb. 19 | *Darr v. D.R.S. Investments*  *Kessler v. Antinora* | 224-235 | (Same) |
| 13 | Wed.  Feb. 21 | * GP and LP liability issues   *Thompson v. Wayne Smith Constr. Co.*  *Gildon v. Simon Property Group, Inc.* | 239-250 | *Limited liability in partnerships*   * RUPA § 306, § 307 |
| 14 | Mon.  Feb. 26 | * GP and LP liability issues   *Henkels & McCoy, Inc. v. Adochio* | 239-264 | *Liability for contribution*   * ULPA (2001) § 502 * RULLCA § 403   *Liability for improper distribution*   * ULPA (2001) § 508, §509 * RULLCA § 405, §406 |
| 15 | Wed.  Feb. 28 | * Indemnification and contribution * LLC liability issues * Veil piercing     *Kaycee Land and Livestock v. Flahive* | 264-271 | *Indemnification*   * RUPA §401(c) * ULPA (2001) §406(c) * RULLCA § 408(a) |
| 16 | Mon.  Mar. 12 | * Creditors’ contracts with owners   *Regional Federal Savings Bank v. Margolis*  *Commons West Office Condos, Ltd. v. RTC*   * Property rights in GPs and LPs   *Sunshine Cellular v. Vanguard Cellular*  *Northeast Comm’n of Wis. v. Centurytel* | 271-277  then read  70-72 (“Series LLCs”)  281-292 | *Limited liability in LLCs*   * RULLCA § 304   *Series LLCs*   * Delaware LLCA § 18-215(a), (b)   *Transferable interest*   * RUPA § 502, 503 * ULPA (2001) § 701, § 702 * RULLCA § 501, 502 |
| 17 | Wed.  Mar. 14 | * Property rights in LLCs   *Achaian, Inc. v. Leemon Family, LLC*   * Creditor and third-party rights   *Hellman v. Anderson*  *Baybank v. Catamount Construction, Inc.* | 292-299  300-317 | *Charging order*   * RUPA §504 * RULPA 703 * ULPA (2001) § 703 * RULLCA § 503 |
| 18 | Mon.  Mar. 19 | * Fiduciary duty in GP   *Meinhard v. Salmon*  *Walter v. Holiday Inns, Inc.*  *Appletree Square I L.P. v. Investmark*   * Fiduciary duty in GP * Duties of active and passive owners (GPs and LPs)   *Labovitz v. Dolan* | 321-342  342-355 | *Fiduciary duties in GP*  RUPA § 404  *Fiduciary duties in LPs*   * ULPA (2001) § 305, § 408 * RULPA § 403 |
| 19 | Wed.  Mar. 21 | * Duties of members and managers in   *Auriga Capital v. Gatz Properties, LLC*  *Pappas v. Tzolis* | 355-377 | *Fiduciary duties in LLCs*   * RULLCA § 409 |
| 20 | Mon.  Mar. 26 | * Private ordering of fiduciary duty * Delaware approach   *Fisk Ventures, LLC v. Segal*  *Kelly v. Blum*   * Remedies | 377-402  402-409 | *Contracting fiduciary duties*   * RUPA § 103(a), (b)(2)-(5) * ULPA (2001) § 110(a), (b)(5)-(7) * RULLCA § 110(a), (b), (c)(4)-(5), (d), (e), (f), (g)   *Remedies and actions*   * RUPA § 405 * ULPA (2001) § 1001, § 1002, § 1003, § 1004, § 1005 * RULLCA § 901, § 902, § 903, § 904, § 905, § 906 |
| 21 | Wed.  Mar. 28 | * Direct and derivative actions   *Anglo-American Security Fund v. S.R. Global Int’l Fund* | 409-421 | (Same) |
| 22 | Mon.  Apr. 2 | * Dissociation and dissolution in GPs   *Page v. Page* | 431-452 | *Dissociation and dissolution*   * RUPA, Articles 6, 7, and 8 |
| 23 | Wed.  Apr. 4 | * Liabilities of dissolved and continuing firms * Buyouts and continuations   *Spayd v. Turner, Granzow & Hollenkamp*  *Starr v. Fordham*  *Cadwalader, Wickersham & Taft v. Beasley* | 452-468 | None |
| 24 | Mon.  Apr. 9 | * Post-dissolution work-in-progress and competition * Withdrawal compensation and ethical rules   *Meehan v. Shaughnessy*  *Howard v. Babcock* | 468-491 | None |
| 25 | Wed.  Apr. 11 | * Dissociation and dissolution in LPs * Mergers and conversions in LPs   *Crowe Irvine v. Winthrop Cal. Investors*  *In re Midnight Star Enterprises, L.P.*  *Welch v. Via Christi Health Partners, Inc.* | 491-507 | *Financial rights in dissociation*   * Compare RULPA § 604 with ULPA (2001) § 505   *Dissociation and dissolution*   * RULPA § 602, § 603 * ULPA (2001), Article 6, Article 8 (§ 801 through § 808 only)   *Mergers and conversions*   * ULPA (2001), Article 11 (§ 1102 through § 1109 only) |
| 27 | Mon.  Apr. 16 | * Dissociation in LLCs   *Holdeman v. Epperson*  *Valinote v. Ballis*  *CCD, L.C. v. Millsap* | 515-532 | *Dissociation*   * RULLCA § 601, § 602, § 603 |
| 28 | Wed.  Apr. 18 | * Dissolution in LLCs * Mergers and conversions   *Lola Cars Int’l Ltd. V. Krohn Racing, LLC*  *In re 1545 Ocean Ave. LLC*  *In re Superior Vending, LLC* | 533-551 | *Dissolution*   * RULLCA § 701, § 702, § 703, § 704, § 708 |
| 29 | Mon.  Apr.23 | OVERFLOW/REVIEW DAY |  |  |
| **FINAL EXAM: Wednesday, May 9, 2018, 8:30AM** | | | | |