

Course Syllabus

Business Enterprises Survey
Fall Semester 2018

Professor Sokol
Office: 332
sokold@law.ufl.edu

July 27, 2018 Version

Course Website:

TWEN

Required Text:

D. Gordon Smith & Cynthia A. Williams, *Business Organizations: Cases, Problems & Case Studies* (3rd Edition, Aspen 2012) (“S&W”)

Supplement for code: *Moll's Corporations and Other Business Associations, Statutes, Rules, and Forms*, 2017

We are waiting for some updates (free for you) from the not yet published 4th edition. Once I have those updates, the syllabus may be changed further.

A website for the course has been created on The West Education Network (TWEN): <http://lawschool.westlaw.com/twen/>. The website will host an increasing number of PowerPoint slides and other course materials as the semester progresses.

Prerequisite Knowledge and Skills:

This class requires no basic business law knowledge. We will build that knowledge with basics of accounting, finance, accounting and strategy surrounding issues of entity choice and governance as well as issues that emerge under federal law.

Purpose of Course:

This course combines much of the existing coverage in both business organizations and corporations into a single course. This combined course will cover the general themes of business organizations (agency, partnership, LLCs, LLPs). It will also cover various issues in corporations (organization and structure of a corporation, financial rights of shareholders, closed corporations, control in publicly held firms, duties or care and loyalty, litigation to enforce directors' duties, mergers and acquisitions, and the regulation of disclosure, fraud and insider trading). Much of our time will be devoted to the complex web of fiduciary obligations created by courts to regulate these organizations.

We will also cover some securities related issues that do not get covered in the securities class.

Course Goals and/or Objectives:

Students who successfully complete this course will be able to:

- Synthesize the forces – both legal and non-legal – that motivate the behavior of parties in business relationships;
- Interpret, analyze, and assess legal cases with business issues;
- Recognize how law impacts entity choice and governance; and
- Evaluate the regulation of business enterprises.

How This Course Relates to the Student Learning Outcomes in the College of Law:

This course builds core competencies in the business law curriculum with regard to particular types of business entities. We will address issues of formation, governance, and exit. These issues emerge in more advanced courses in the business law curriculum.

Course Policies:

Attendance Policy: Any student that misses more than six (6) classes for the course may be dropped from the class. I use *may* rather than *shall* because health issues will be treated differently from other absences (so long as you email me in advance). Habitual tardiness to class will be treated the same as absence from the class. I take attendance in the beginning of each class. I take this policy seriously because in the real world, absenteeism and tardiness are punished. You need to start thinking and acting like a professional while in school. I can give you lots of war stories of people who do not hit the ground running in practice and were tainted with a bad reputation from Day 1. Do not let it happen to you.

I may need to reschedule some classes during the course of the semester. My preference is to front load these make-up dates so as to provide for some cushion later on in the class to go over old exams and general questions.

Finally, let me address a subject that has agitated a great many electrons on the law professor blogs and listservs: the use of laptop computers in class for things other than taking notes or looking at the statutes. I think it is anachronistic and honestly, beneath me, to do anything so draconian as to force students to write instead of type (I work almost exclusively on a keyboard). I am going to work very, very hard to teach this complex material in a way that makes sense and highlights the theory and practice in a digestible way. I hope you reciprocate by using (i.e. not using) your electronic window to the world and others responsibly while in class.

Exam Policy: The exam is to be taken at the assigned time. If you have some other conflict, we can create an accommodation for you.

Make-up Policy: Make up policy will be designed on an individualized basis based on the particular issues a student may have.

Assignment Policy: I will assign ungraded hypotheticals on a regular basis. These will be due before class. I will assign this on a group basis (I choose the group for you).

Course Technology: We will use TWEN. Please join the TWEN site.

UF Policies:

University Policy on Accommodating 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 the instructor 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.

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>.

Netiquette: Communication Courtesy: All members of the class are expected to follow rules of common courtesy in all email messages, threaded discussions and chats. See <http://teach.ufl.edu/docs/NetiquetteGuideforOnlineCourses.pdf>

Getting Help:

For issues with technical difficulties for E-learning in Sakai, please contact the UF Help Desk at:

- Learning-support@ufl.edu
- (352) 392-HELP - select option 2
- <https://lss.at.ufl.edu/help.shtml>

** Any requests for make-ups due to technical issues MUST be accompanied by the ticket number received from LSS when the problem was reported to them. The ticket number will document the time and date of the problem. You MUST e-mail your instructor within 24 hours of the technical difficulty if you wish to request a make-up. Other resources are available at <http://www.distance.ufl.edu/getting-help> for:

- Counseling and Wellness resources
- Disability resources
- Resources for handling student concerns and complaints

- Library Help Desk support

Should you have any complaints with your experience in this course please visit <http://www.distance.ufl.edu/student-complaints> to submit a complaint.

Statement related to workload/ABA Standard 310:

· Students should expect to spend, on average, approximately two hours preparing for every hour of class.

Out of Class:

I am almost always available by phone or e-mail or in my office, but formal office hours will be Tuesday from 2-3pm.

Policies:

See generally <http://www.registrar.ufl.edu/catalog/policies/regulationgrades.html>. Grading is based on the final exam. I will award 5 points total for class participation that will count towards the final raw score. Three points (three students) total will be awarded by me. Two points (two students) total will be awarded by the class based on blind voting.

Makeups:

I will have a series of makeups during the semester. We will discuss make-up days the first day of class.

Disability Syllabus Statement

The University of Florida is committed to providing equal educational access to students with disabilities. As you are developing and/or updating your syllabi for the spring semester, please take a moment to review the university's "[Policy on Course Syllabi](#)" which specifies the inclusion of the following recommended statement related to accommodations for students with disabilities:

“Students with disabilities requesting accommodations should first register with the Disability Resource Center (352-392-8565, www.dso.ufl.edu/drc/) by providing appropriate documentation. Once registered, students will receive an accommodation letter which must be presented to the instructor when requesting accommodations. Students with disabilities should follow this procedure as early as possible in the semester.”

A disability syllabus statement serves to open the lines of communication between an instructor and a student by making the student feel included when approaching an instructor regarding accommodation needs and/or disability-related concerns.

Additional resources for faculty can be found on the Disability Resource Center's Instructor Resources webpage (<https://www.dso.ufl.edu/drc/faculty/resources-for-instructors>). Please contact the Disability Resource Center at 352-392-8565 or via e-mail at accessuf@dso.ufl.edu if you have any questions.

Other Issues:

I want to see how carefully you are reading this syllabus. During the first day of class I will mention that you need to certify that you have read this syllabus and ask you to sign a piece of paper. Because we deal with corporate governance and oversight, I want to run an experiment of how closely you read. If you have read this, email me by the end of the first week of class with the subject line "I got it." Then, in the body include your name.

Reading Assignments:

Below is a list of reading assignments. Some assignments may require more than one session and some assignments will be covered in less than a session. I will give specific assignments at the end of each class of what to read. Pace will become clearer once I get a feel for the particular make-up and abilities in our class.

The case law has changed since the book came out and rather than make you pay a lot for a new book, I have decided to substitute more modern cases. I am waiting for a free supplement to send all of you that will have pdfs of the changes to the book. In the meantime, my changes approximate the changes in the book. In case the authors have made any new revisions I will note this in an updated syllabus. See below where such cases are added.

I. Agency

Creation of the Agency Relationship, S&W pp. 1-7

Nears v. Holiday Hospitality Franchising, Inc.

Problem 1-1

Agent's Fiduciary Duties to Principal, S&W pp. 7-12

Food Lion, Inc. v. Capital Cities/ABC, Inc.

Problem 1-2

Actual Authority, S&W pp. 12-19

Castillo v. Case Farms of Ohio, Inc.

Apparent Authority and Estoppel, S&W pp. 19-27

Bethany Pharmacal Co. v. QVC, Inc.

Problem 1-3

II. Partnerships

Formation, S&W pp. 29-42

Holmes v. Lerner

Problem 2-1

Management, S&W pp. 42-46

Vecchitto v. Vecchitto

Fiduciary Duties, S&W pp. 47-62

Meinhard v. Salmon

Gibbs v. Breed, Abbott & Morgan

Financial Attributes 62-68

Partnership Accounting

Kovacik v. Reed

Liability of Partners to Third Parties, S&W pp. 68-74

In Re Keck, Mahin & Cate

Problem 2-4

Limited Liability Partnerships, S&W pp. 74-82

FRODE JENSEN & PILLSBURY WINTHROP, LLP: A CASE STUDY

Dissociation and Dissolution, S&W pp. 82-92

Fischer v. Fischer

Problem 2-5

III. Limited Liability Companies

Birth and Development of LLCs S&W pp. 93-102

Formation

Stone v. Jetmar Properties, LLC

Problem 3-1

Management, S&W pp. 103-115

Gottsacker v. Monnier

Problem 3-2

Taghipour v. Jerez

Limited Liability, S&W pp. 115-124

Netjets Aviation, Inc. v. LHC Communications, LLC

Problem 3-4

Fiduciary Duties, S&W pp. 124-149

Auriga Capital Corporation v. Gatz Properties LLC

Tzolis v. Wolff

Dissolution, S&W pp. 149-161

Valinote v. Ballis

Haley v. Talcott

NEOCLONE BIOTECHNOLOGY INTERNATIONAL LLC: A CASE STUDY, S&W

pp. 161-172

IV. Organization & Structure of a Corporation

Incorporation, S&W pp. 173-189

Grant v. Mitchell

Capital Structure S&W pp. 190-197

Grimes v. Alteon Inc

Directors & Shareholders, S&W pp. 197-214
Adlerstein v. Wertheimer

Dividends and Distributions, S&W pp. 214-220
Klang v. Smith's Food & Drug Centers, Inc

Limited Liability, Piercing the Corporate Veil, S&W pp. 220-227
Soerries v. Dancause

V. Control of the Closely Held Firm

Shareholder Agreements S&W pp. 229-234
Ronnen v. Ajax Electric Motor Corp.

Transfer Restrictions, S&W pp. 235-243
Capital Group Companies, Inc. v. Armour

Voting Trusts 244-253
Warehime v. Warehime

Cumulative voting, Supermajority Requirements and Classified Shares, S&W pp. 253-265
Benchmark Capital Partners IV, L.P. v. Vague

Preemptive Rights, S&W pp. 266-274
Kimberlin v. Ciena Corporation

Oppression of Minority Shareholder, S&W pp. 283-295
Leslie v. Boston Software Collaborative, Inc.

FACEBOOK, INC.: A CASE STUDY, S&W pp. 295-305

VI. Shareholder Voting in the Publicly Held Firm

Introduction & Corporate Federalism, S&W pp. 307-327
Enron Corporation and Sarbanes Oxley Case Study
Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010
Federal Proxy Regulation

Some of the issues in this chapter relating to bylaws have been resolved by statute. Delaware now allows forum selection bylaws, but prohibits fee-shifting bylaws. *CA, Inc. v. AFSCME* is still good law. We will add *Trinity Wall Street v. Wal-Mart Stores, Inc.*, 792 F.3d 323 (3rd Cir. 2015) as a social proposal case.

Shareholders' Efforts to Amend the Bylaws: Conflicts Between DGCL §§ 109 and 141(A), S&W pp. 334-345

CA, Inc. v. Afscome Employees Pension Plan

Shareholders' Efforts to Change the Procedures for the Nomination of Directors, S&W pp. 346-353

American Federation of State, County & Municipal Employees v. American International Group, Inc

VII. Duty of Care

Directors' Duty of Care, S&W pp. 361-366

Gagliardi v. TriFoods International, Inc.

The Decision-making Context, S&W pp. 366-380

Smith v. Van Gorkom

Problem 7-2

The Waste Standard, S&W pp. 380-383

Problem 7-3

The Shareholder Primacy Norm, S&W pp. 384-393

Kahn v. Sullivan

VIII. Duty of Loyalty

The Oversight Context and Good Faith, S&W pp. 401-408

In Re Caremark International Inc. Derivative Litigation

The Duty of Good Faith, S&W pp. 409-430

In Re The Walt Disney Company Derivative Litigation

Stone v. Ritter

Conflict-of-Interest Transactions Generally, S&W pp. 430-431

Majority or Controlling Shareholders

Replace *Cox Communications* with *Dweck v. Nasser*, 2012 WL 161590 (Del. Ch.). I have removed *Wheelabrator* and *Gantler*. We will use *Espinoza v. Zuckerberg*, 124 A.3d 47 (Del. Ch. 2015) to explain shareholder ratification.

IX. Litigation to Enforce Directors' Duties

Introduction; The Demand Requirement, S&W pp. 463-476

Beam ex rel. Martha Stewart Living Omnimedia, Inc. v. Stewart

Direct Versus Derivative, S&W pp. 476-482

Tooley v. Donaldson, Lufkin, & Jenrette, Inc.

Special Litigation Committees, S&W pp. 482-500
In re. Oracle Corp. Derivative Litigation
Problem 9-3

Statutory Exculpation From Liability, S&W pp. 500-501
Replace *Goldman Sachs* with *In re Cornerstone Therapeutics Inc, Stockholder Litigation*, 115 A.3d 1173 (Del. 2015). I also am adding a case on disclosure-only settlements, *In re Trulia, Inc. Stockholder Litigation*, 2016 WL 325008 (Del. Ch. Jan. 22, 2015).

Insurance and Indemnification, S&W pp. 514-516

DOW CHEMICAL COMPANY: A CASE STUDY 517-527

XII. Friendly Mergers and Acquisitions

Introduction; Structuring an Acquisition, S&W pp.529-542
Daimler-Chrysler: A Case Study

Fiduciary Duties in Friendly Transactions, S&W pp. 542-553
The Entire Fairness Standard

The Independent Board Committees, S&W p. 554

Replace *Weinberger* and *Lynch* with *In re Dole Food Co., Inc. Stockholder Litigation*, 2015 WL 5052214 and *Kahn v. M&F Worldwide*, 88 A.3d 635 (Del. 2014).

“Majority of the Minority” Provisions, S&W pp. 565-568
In Re PNB Holding Co. Shareholders Litigation

The Appraisal Remedy, S&W pp. 584-595
Pueblo Bancorporation v. Lindoe, Inc.

XI Defending Against Hostile Takeovers

Introduction; Brief History of Hostile Takeovers, S&W pp. 597-611
Intermediate Scrutiny
Unocal v. Mesa

Poison Pills, S&W pp. 612-623
Versata Enterprises, Inc. v. Selectica, Inc.

Change of Control Transactions, S&W p. 624

Replace *Revlon* with *C & J Energy Services, Inc. v. City of Miami General Employees*, 107 A.3d 1049 (Del. 2014) and *RBC Capital Markets, LLC v. Jervis*, 2015 WL 7721882 (Del. Nov. 30, 2015)

The Evolving Standards, S&W pp. 632-645
Air Products and Chemicals, Inc. v. Airgas, Inc.

XII Regulation of Disclosure, Fraud and Insider Trading

Misstatements and Omissions, S&W pp. 647-653
Gallagher v. Abbott Labs

Materiality and Reliance
Replace *Basic* with *Halliburton Co. v. Erica P. John Fund, Inc.*, 134 S.Ct. 2398 (2014).

Scienter, S&W pp. 664-673
Tellabs v. Makor

In Connection With, S&W pp. 674-677
SEC v. Zandford

Causation, S&W pp. 678-682
Dura Pharmaceuticals v. Broudo

Insider Trading - The Classical Theory, S&W pp. 682-690
United States v. Smith
Add *U.S. v. Newman*, 773 F.3d 438 (2nd Cir. 2014).

The Misappropriation Theory, S&W pp. 690-699
United States v. O'Hagan
Problem 12-3

Regulation FD, S&W pp. 699-706
Securities And Exchange Commission v. Siebel Systems, Inc.