

**Corporations (Law 6063, Class 16499)**  
**Professor Kettering**  
**M Tu 7:00 pm – 8:15 pm**

**Spring 2019**  
**Three Credits**  
**Room HH 285B**

## **SYLLABUS**

**Textbook.** The required textbook for this course is JEFFREY D. BAUMAN, RUSSELL B. STEVENSON, JR. & ROBERT J. RHEE, BUSINESS ORGANIZATIONS LAW AND POLICY (9th edition 2017) (West Academic Publishing, ISBN 9781634605946).

The full Model Business Corporation Act (2016 revision) will be posted on the course website.

### **General Course Requirements**

**Assignments.** At the end of this syllabus is a table showing the assigned readings for each class. Unless otherwise directed, we will not cover any of the “Problems” included in the textbook (and so you need not read them if they happen to fall within the page limits specified for the assignments). I may alter the assignments by notice in class or via the course website (on Canvas).

**Class Attendance and Readings.** This is not a course in which you can afford to fall behind in readings or to miss classes. Many students may not be familiar with business practices, economics, finance, or accounting, but the body of legal doctrine we will study requires some knowledge of those disciplines. That knowledge will be imparted in the readings and class discussion.

**Significance of Statutes.** Statutes play an important role in the body of law we will study (though they are by no means the only important source of law). You must read the statutory provisions that are referred to or copied in the readings. Reading a statute is a specialized skill; a statute cannot be read like fiction, or a newspaper. You must consider the purpose and possible meanings of every word. As a lawyer you must develop that skill. (You probably have not done so already unless you are a poetry critic or a computer programmer.)

**Grading.** Grades will be based on the final examination, with class participation taken into account. The examination will be in-class, open book (but not open internet), and will be graded on a blind basis. The exam will consist of problems requiring analytic response (i.e., do not expect plain multiple-choice questions). There are no prior exams to review.

### **Communication Outside of Class**

**Contact Information.** My email address is kennethkettering@law.ufl.edu and my mobile phone is 973-412-6727. I prefer email to phone calls, but don’t be shy about calling if there’s a reason why email won’t suffice. As of this writing I have not been assigned an office phone number; I will announce it when I get it, and after that please use my office number unless it is necessary to use my mobile.

**Office Hours.** By appointment. In general, I expect to be available in the afternoons of days on which classes are held, and most other weekdays. As of this writing I do not have my office address; I will announce it when I get it.

**Course Website.** I will use a website for this course on the school’s Canvas system, and may make announcements through that system.

### **Required Statements**

**Academic honesty.** 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>.

**Attendance.** Per ABA requirements, please attend all classes, unless you e-mail me in advance with a legitimate excuse. Requirements for class attendance and make-up exams, assignments, and other work in this course are consistent with university policies that can be found at: <https://catalog.ufl.edu/ugrad/current/regulations/info/attendance.aspx>.

**Further information about grading.** The Levin College of Law's mean and mandatory distributions are posted on the College's website and this class adheres to that posted grading policy. The following chart describes the specific letter grade/grade point equivalent in place:

| 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             |
| E (Failure)      | 0.0              |

The law school grading policy is available at: <http://www.law.ufl.edu/student-affairs/current-students/academic-policies#9>.

**Accommodations.** Students requesting accommodation for disabilities must first register with the Disability Resource Center (<http://www.dso.ufl.edu/drc/>). Once registered, students will receive an accommodation letter which must be presented to the Assistant Dean for Student Affairs (Dean Mitchell) when requesting accommodation. Students with disabilities should follow this procedure as early as possible in the semester.

**Preparation estimate.** Students should expect to spend, on average, approximately two hours preparing for every hour of class. This is an estimate, not a warranty.

**Learning outcomes.** After completing this course, students should:

- Understand the concept of the business corporation and the basic concepts relating to corporate governance.
- Understand the basics concepts of the fiduciary duty owed by directors and officer of a corporation.
- Understand various fundamental business transactions relating to corporations, including mergers, acquisitions, and issuance of securities.
- Have the basic knowledge necessary to understand fundamental documentation employed by business corporations, such as the certificate of incorporation, bylaws, proxies, and annual reports.

## ASSIGNMENTS

(Unless otherwise directed, omit all problems printed in the Casebook)

| Class        | Topics and Cases  | Text   | Statutes   |
|--------------|---|--|--|
| #1<br>[1/7]  | CHAPTER 2<br>1. Taxonomy of business organizations<br>2. Agency principles<br>3. Agency authority in corporations <ul style="list-style-type: none"> <li>▪ <i>Summit Properties, Inc. v. New Tech. Elec. Contr's., Inc.</i></li> <li>▪ <i>Menard, Inc. v. Dago-MTI, Inc.</i></li> </ul>   | 19-23<br>26-29<br>37-52  |  |
| #2<br>[1/8]  | 1. Basic legal attributes of firms<br>2. Basic terms and concepts of business entities <ul style="list-style-type: none"> <li>▪ <i>Bayer v. Beran</i></li> <li>▪ <i>Schnell v. Chris-Craft Industries, Inc.</i></li> <li>▪ <i>Bove v. Community Hotel Corp</i></li> </ul>   | 52-59<br>61-79   |  |
| #3<br>[1/14] | CHAPTER 3<br>1. Tort creditors <ul style="list-style-type: none"> <li>▪ <i>Walkovszky v. Carlton</i></li> <li>▪ <i>Radaszewski v. Telecom Corp.</i></li> </ul> 2. Contract creditors <ul style="list-style-type: none"> <li>▪ <i>Kinney Shoe Corp. Polan</i></li> </ul> 3. Parent-subsidiary corporations <ul style="list-style-type: none"> <li>▪ <i>OTR Associates v. IBC Services, Inc.</i></li> </ul> | 81-88<br>88-100<br>107-11<br>115-18                                  | MBCA<br>§ 6.22   |
| #4<br>[1/15] | CHAPTER 9<br>1. Financial accounting  | 359-82   |  |
| #5<br>[1/22] | 1. Valuation  | 385-98   |  |
| #6<br>[1/28] | CHAPTER 10<br>1. Corporate securities<br>2. Corporate capital structure<br>3. Legal capital<br>4. Limitation on distributions <ul style="list-style-type: none"> <li>▪ <i>Klang v. Smith's Food &amp; Drug Centers, Inc.</i></li> </ul>   | 399-408<br>410-24  |  |
| #7<br>[1/29] | CHAPTER 11<br>1. Advising the entity <ul style="list-style-type: none"> <li>▪ <i>Jesse by Reinecke v. Danforth</i></li> </ul> 2. Choice of entity and formation   | 433-50<br>460-66   | MBCA<br>§ 2.02<br>§ 2.06<br>§ 6.27<br>§ 7.21<br>§ 8.01 |
| #8<br>[2/4]  | 1. Creating the corporation<br>2. Alphabet Inc., a Delaware corporation, operates Google. Review its Investor Relations site, <a href="https://abc.xyz/investor/">https://abc.xyz/investor/</a><br>3. Read Alphabet Inc.'s Amended and Restated Certificate of Incorporation<br>4. Read Alphabet Inc.'s Bylaws  | Certificate<br>of Incorp.<br>and Bylaws<br>to be posted<br>on Canvas | MBCA<br>§ 2.03   |

|               |  |  |   |
|---------------|--|--|---|
| #9<br>[2/5]   | CHAPTER 12<br>1. Models of corporate governance<br>2. The choice of state of incorporation<br>▪ <i>Louis K. Liggett Co. v. Lee</i><br>3. The future shape of state corporate law   | 471-86<br>494-507  |   |
| #10<br>[2/11] | CHAPTER 13<br>1. The role of corporate director<br>2. Formalities of board action<br>3. Governance in the modern board<br>4. What kind of a board?   | 509-37   |   |
| #11<br>[2/12] | CHAPTER 14<br>1. Mechanics of shareholder meetings<br>2. Election and removal of directors<br>3. Inspection of books and records<br>4. Dynamics of shareholder voting<br>5. Federal proxy regulation<br>▪ <i>Long Island Railroad Co. v. Barbash</i>   | 539-71   |   |
| #12<br>[2/18] | Read the 2016 Proxy Statement of Alphabet Inc.<br><br>1. Shareholder nomination of directors and bylaw amendments<br>▪ <i>American Federation v. A.I.G., Inc.</i><br>▪ <i>CA, Inc. v. AFSCME Employees Pension Plan</i><br>2. Role of shareholders in executive pay  | Proxy<br>Statement<br>to be posted<br>on Canvas<br><br>596-619 | MBCA<br>§ 2.06<br>§ 10.01<br>§ 10.03<br>§ 10.20<br>§ 10.21<br>§ 10.22 |
| #13<br>[2/19] | CHAPTER 15<br>1. Implied federal private action for proxy fraud<br>2. Materiality<br>▪ <i>TSC Industries, Inc. v. Northway, Inc.</i><br>▪ <i>Basic, Inc. v. Levinson</i><br>▪ <i>Gantler v. Stephens</i><br>3. Causation<br>▪ <i>Mills v. Electric Auto-Lite Co.</i><br>▪ <i>Virginia Bankshares, Inc. v. Sandberg</i><br>4. Culpability in proxy fraud action | 621-51   |   |
| #14<br>[2/25] | CHAPTER 16<br>1. Who qualifies as a plaintiff?<br>▪ <i>Tooley v. Donaldson, Lufkin &amp; Jeanrette, Inc.</i><br>▪ <i>In re Fuqua Industries, Inc. Shareholder Litigation</i><br>2. The demand requirement<br>▪ <i>Aronson v. Lewis</i><br>▪ <i>Rales v. Blashband</i><br>▪ <i>Einhorn v. Culea</i>   | 663-66<br>670-98   | MBCA<br>§ 7.41 to<br>§ 7.46   |

|               |  |                                       |                                       |
|---------------|--|---------------------------------------|---------------------------------------|
| #15<br>[2/26] | <ol style="list-style-type: none"> <li>1. Inspection of books and records <ul style="list-style-type: none"> <li>▪ <i>Saito v. McKesson HBOC, Inc.</i></li> <li>▪ <i>Seinfeld v. Verizon Communications, Inc.</i></li> </ul> </li> <li>2. Bylaws dealing with derivative litigation</li> <li>3. Termination when demand is excused</li> <li>4. On the independence of directors <ul style="list-style-type: none"> <li>▪ <i>Orman v. Cullman</i></li> <li>▪ <i>In re eBay, Inc. Shareholder Litigation</i></li> </ul> </li> <li>5. Settlement and attorneys' fees</li> </ol> | 698-713<br>713-15<br>738-45           | DGCL<br>§ 220<br>§ 102(f)<br>§ 109(b) |
| #16<br>[3/11] | <p>CHAPTER 17</p> <ol style="list-style-type: none"> <li>1. Fiduciary duties and standard of care</li> <li>2. Business judgment rule <ul style="list-style-type: none"> <li>▪ <i>Shlensky v. Wrigley</i></li> <li>▪ <i>In re Walt Disney Derivative Litigation</i></li> </ul> </li> </ol>  | 748-68                                | MBCA<br>§ 8.30<br>§ 8.31              |
| #17<br>[3/12] | <ol style="list-style-type: none"> <li>1. Duty of oversight <ul style="list-style-type: none"> <li>▪ <i>Francis v. United Jersey Bank</i></li> <li>▪ <i>In re Caremark Int'l Inc. Derivative Litigation</i></li> <li>▪ <i>In re Citigroup Inc. Shareholder Derivative Litigation</i></li> </ul> </li> </ol>  | 769-98                                |                                       |
| #18<br>[3/18] | <ol style="list-style-type: none"> <li>1. Duty to become informed <ul style="list-style-type: none"> <li>▪ <i>Smith v. Van Gorkom</i></li> </ul> </li> <li>2. Avoidance of liability</li> </ol>  | 799-828<br>829-31<br>832-39<br>839-42 |                                       |
| #19<br>[3/19] | <p>CHAPTER 18</p> <ol style="list-style-type: none"> <li>1. Director self-dealing and conflict of interest <ul style="list-style-type: none"> <li>▪ <i>Remillard Brick Co. v. Remillard-Dandini Co.</i></li> <li>▪ <i>Benihana of Tokyo, Inc. v. Benihana, Inc.</i></li> <li>▪ <i>Lewis v. Vogelstein</i></li> </ul> </li> </ol>   | 843<br>846-72                         | DGCL<br>§ 144                         |
| #20<br>[3/25] | <ol style="list-style-type: none"> <li>1. Director self-dealing and conflict of interest (cont'd) <ul style="list-style-type: none"> <li>▪ <i>Harbor Finance Partners v. Huizenga</i></li> <li>▪ <i>Gantler v. Stephens</i></li> </ul> </li> <li>2. The evolution of "good faith" <ul style="list-style-type: none"> <li>▪ <i>In re Walt Disney Co. Derivative Litigation</i></li> <li>▪ <i>Stone v. Ritter</i></li> <li>▪ <i>ATR-Kim Eng Financial Corp. v. Araneta</i></li> <li>▪ <i>McPadden v. Sidhu</i></li> </ul> </li> </ol>  | 872-99                                |                                       |
| #21<br>[3/26] | <p>CHAPTER 19</p> <ol style="list-style-type: none"> <li>1. Transactions within corporate groups <ul style="list-style-type: none"> <li>▪ <i>Sinclair Oil Corp. v. Levien</i></li> </ul> </li> <li>2. Cash-out transactions <ul style="list-style-type: none"> <li>▪ <i>Weinberger v. UOP, Inc.</i></li> </ul> </li> </ol>   | 921-53                                |                                       |
| #22<br>[4/1]  | <ol style="list-style-type: none"> <li>1. Cash-out transactions (cont'd) <ul style="list-style-type: none"> <li>▪ <i>Kahn v. Lynch Comm'n Sys. (Lynch I)</i></li> <li>▪ <i>Kahn v. Lynch Comm'n Sys. (Lynch II)</i></li> <li>▪ <i>Kahn v. M &amp; F Worldwide Corp.</i></li> <li>▪ <i>In re Pure Resources, Inc.</i></li> </ul> </li> </ol>  | 954-80                                |                                       |
| #23<br>[4/2]  | <p>CHAPTER 20</p> <ol style="list-style-type: none"> <li>1. Structuring corporation combinations</li> <li>2. Tax aspects of corporate reorganizations</li> <li>3. De facto merger doctrine <ul style="list-style-type: none"> <li>▪ <i>Hariton v. Arco Electronics, Inc.</i></li> </ul> </li> </ol>  | 999-1018                              | DGCL<br>§ 251<br>§ 253<br>§ 259       |

|               |  |                    |  |
|---------------|--|--------------------|--|
| #24<br>[4/8]  | 1. Sale of all or substantially all of assets <ul style="list-style-type: none"> <li>▪ <i>Gimbel v. Signal Companies, Inc.</i></li> </ul><br>CHAPTER 21 <ol style="list-style-type: none"> <li>1. The policy debate, and contests for control</li> <li>2. The regulatory framework</li> <li>3. Judicial review of takeover defenses <ul style="list-style-type: none"> <li>▪ <i>Cheff v. Mathes</i></li> </ul> </li> </ol>     | 1018-23<br>1025-46 |  |
| #25<br>[4/9]  | <ol style="list-style-type: none"> <li>1. Judicial review of takeover defenses (cont'd) <ul style="list-style-type: none"> <li>▪ <i>Unocal Corp. v. Mesa Petroleum Co.</i></li> </ul> </li> <li>2. Statutory limitations</li> <li>3. When the corporation is “for sale” <ul style="list-style-type: none"> <li>▪ <i>Revlon, Inc. v. MacAndrews &amp; Forbes</i></li> </ul> </li> </ol>   | 1046-74            |  |
| #26<br>[4/15] | <ol style="list-style-type: none"> <li>1. When the corporation is “for sale” (cont'd) <ul style="list-style-type: none"> <li>▪ <i>Paramount v. Time</i></li> <li>▪ <i>Paramount v. QVC</i></li> </ul> </li> <li>2. Proxy contests and tender offers</li> <li>3. Limits on protecting negotiated acquisitions <ul style="list-style-type: none"> <li>▪ <i>Omnicare, Inc. v. NCS Healthcare, Inc.</i></li> </ul> </li> </ol>     | 1074-93            |  |
| #27<br>[4/16] | CHAPTER 22 <ol style="list-style-type: none"> <li>1. What is wrong with insider trading</li> <li>2. Materiality</li> <li>3. Insider trading: state corporate law <ul style="list-style-type: none"> <li>▪ <i>Goodwin v. Agassiz</i></li> <li>▪ <i>Diamond v Oreamuno</i></li> </ul> </li> <li>4. Insider trading: Rule 10b-5 <ul style="list-style-type: none"> <li>▪ <i>Chiarella v. United States</i></li> </ul> </li> </ol> | 1095-1115          |  |
| #28<br>[4/22] | <ol style="list-style-type: none"> <li>1. Insider trading: Rule 10b-5 (cont'd) <ul style="list-style-type: none"> <li>▪ <i>Dirks v. SEC</i></li> <li>▪ <i>United States v. O’Hagan</i></li> <li>▪ <i>Salman v. United States</i></li> </ul> </li> <li>2. Remedies for insider trading violations</li> <li>3. Disgorgement liability: section 16</li> </ol>   | 1116-31<br>1134-36 |  |