**SYLLABUS**

**UNINCORPORATED BUSINESS ENTERPRISES (Spring 2019)**

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CLASSROOM: Room 285B

CLASS TIME: Monday: 5:30 PM to 6:45 PM

Tuesday: 5:30 PM to 6:45 PM

OFFICE HOURS: Mon., Tues.: 11:00 AM to 12:00 PM

FINAL EXAM: Tuesday, May 7, 8:30 AM to 12:30 PM (4 hours)

**TEXTBOOKS**

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

**COURSE GOAL**

No modern general business law practitioner, practicing in both advisory and litigation capacities, can properly practice business law without understanding the various forms of unincorporated business entities, and particularly the limited liability company, 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: general partnerships, limited partnerships, and limited liability companies. 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.

After completing this course, students should be able to:

1. Know and analyze the legal rules and doctrines on unincorporated business entities in general.
2. Consider issues related to advising the managers and owners of issues related to the formation, management, maintenance, and dissolution of unincorporated business entities.
3. Know and apply basic business concepts in related to the understanding of unincorporated business entities.
4. Read and analyze essential documents, or portions thereof, such as partnership and operating agreements.
5. Work with structuring noncorporate entities including drafting charter agreements.

**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.

**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 restrictions. If a problem on the exam requires statutes, they will be provided in the exam.

The final exam will have essay, short answer, and multiple choice questions. The exam will contain each form of question. 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. There are no prior exams.

## **GRADING INFORMATION**

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) | 4.00 |
| A- | 3.67 |
| B+ | 3.33 |
| B | 3.00 |
| B- | 2.67 |
| C+ | 2.33 |
| C (Satisfactory) | 2.00 |
| C- | 1.67 |
| D+ | 1.33 |
| D (Poor) | 1.00 |
| D- | 0.67 |
| E (Failure) | 0.00 |

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

**WORKLOAD AND CLASS PREPARATION**

It is anticipated that you will spend approximately 2 hours out of class reading and/or preparing for in class assignments for every 1 hour in class.

**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>.

Many students find that this course is difficult. Some legal concepts require background knowledge in business, economics, finance, and accounting, which will be foreign to many students. These concepts will be explained and discussed in class. Class attendance and preparation will be important to doing well in the course. The single best thing that a student can do to maximize the possibility of doing well in the course in terms of a grade is to keep up with the class reading assignments and to attend class regularly. The final exam will draw from the work done in course and the class discussion.

**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.

Also, with prior notification to the professor, students are entitled to be excused from class or other scheduled academic activity to observe a religious holy day of their faith. Students are entitled to have a reasonable amount of time to make up the material or activities covered in their absence. Students will not be penalized due to absence from class or other scheduled academic activity because of religious observances.

**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>.

**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 genealogical roots in general partnership law. However, UBEs also fundamentally differ with 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 #** | **Topics, Issues, and Cases** | **Text**  **pages** | **Statute assignment** |
| 1 | * Importance of unincorporated business entities (UBEs) * Overview of UBEs and limited liability entities (LLEs) * Comparison of UBEs to corporations * Why so many business entities? * Statutory frameworks of UBEs * Limited liability * Role of statutes and agreements * Lawyer’s role in business planning and entity formation | 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 | * 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 |
| 3 | * 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) |
| 4 | * 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 |
| 5 | **NOTE: This class will be held on Friday, Jan. 18 (rather than the regular Tuesday, Jan. 22 and no class on Tuesday, Jan. 22)**   * 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 |
| 6 | * 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 |
| 7 | * Management rights and agency authority in LLCs * Responsibility for wrongful acts   *Gottsacker v. Monnier* | 159-171 | *Management of LLC*   * RULLCA § 301, § 302, § 407   *Employee’s scope of employment*   * RTA § 7.07 |
| 8 | * 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 | None |
| 9 | * 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) * ULPA (2001) § 501, § 503, §504 * RULLCA § 402, § 404 |
| 10 | * Financial accounting   *Darr v. D.R.S. Investments*  *Kessler v. Antinora* | 217-235 | *Capital accounts*   * RUPA § 401(a) |
| 11 | * GP and LP liability issues   *Thompson v. Wayne Smith Constr. Co.*  *Gildon v. Simon Property Group, Inc.*  *Henkels & McCoy, Inc. v. Adochio* | 239-262 | *Limited liability in partnerships*   * RUPA § 306, § 307   *Liability for contribution*   * ULPA (2001) § 502 * RULLCA § 403   *Liability for improper distribution*   * ULPA (2001) § 508, §509 * RULLCA § 405, §406 |
| 12 | * Indemnification and contribution * LLC liability issues * Veil piercing * Creditors’ contracts with owners   *Kaycee Land and Livestock v. Flahive*  *Regional Federal Savings Bank v. Margolis*  *Commons West Office Condos, Ltd. v. RTC* | 262-277  then read  70-72 (“Series LLCs”) | *Indemnification*   * RUPA §401(c) * ULPA (2001) §406(c) * RULLCA § 408(a)   *Limited liability in LLCs*   * RULLCA § 304   *Series LLCs*   * Delaware LLCA § 18-215(a), (b) |
| 13 | * Property rights in GPs and LPs * Property rights in LLCs   *Sunshine Cellular v. Vanguard Cellular*  *Northeast Comm’n of Wis. v. Centurytel*  *Achaian, Inc. v. Leemon Family, LLC* | 281-299 | *Transferable interest*   * RUPA § 502, 503 * ULPA (2001) § 701, § 702 * RULLCA § 501, 502 |
| 14 | * Creditor and third-party rights   *Hellman v. Anderson*  *Baybank v. Catamount Construction, Inc.* | 300-317 | *Charging order*   * RUPA §504 * RULPA 703 * ULPA (2001) § 703 * RULLCA § 503 |
| 15 | * Fiduciary duty in GP   *Meinhard v. Salmon*  *Walter v. Holiday Inns, Inc.*  *Appletree Square I L.P. v. Investmark* | 321-342 | *Fiduciary duties in GP*   * RUPA § 404 |
| 16 | * Fiduciary duty in GP * Duties of active and passive owners (GPs and LPs)   *Labovitz v. Dolan* | 342-355 | *Fiduciary duties in LPs*   * ULPA (2001) § 305, § 408 * RULPA § 403 |
| 17 | * Duties of members and managers in   *Auriga Capital v. Gatz Properties, LLC*  *Pappas v. Tzolis* | 355-377 | *Fiduciary duties in LLCs*   * RULLCA § 409 |
| 18 | * Private ordering of fiduciary duty * Delaware approach   *Fisk Ventures, LLC v. Segal*  *Kelly v. Blum* | 377-402 | 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) |
| 19 | * Remedies * Direct and derivative actions   *Sertich v. Moorman*  *Anglo-American Security Fund v. S.R. Global Int’l Fund* | 402-421 | *Remedies and actions*   * RUPA § 405 * ULPA (2001) § 1001, § 1002, § 1003, § 1004, § 1005 * RULLCA § 901, § 902, § 903, § 904, § 905, § 906 |
| 20 | * Dissociation and dissolution in GPs   *Page v. Page* | 431-442 | *Dissociation and dissolution*   * RUPA, Articles 6, 7, and 8 |
| 21 | * Liabilities of dissolved and continuing firms * Buyouts and continuations   *Spayd v. Turner, Granzow & Hollenkamp*  *Starr v. Fordham*  *Cadwalader, Wickersham & Taft v. Beasley* | 442-468 | None |
| 22 | * Post-dissolution work-in-progress and competition * Withdrawal compensation and ethical rules   *Meehan v. Shaughnessy*  *Howard v. Babcock* | 468-491 | None |
| 23 | * 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) |
| 24 | * Dissociation in LLCs   *Holdeman v. Epperson*  *Valinote v. Ballis*  *CCD, L.C. v. Millsap* | 515-532 | *Dissociation*   * RULLCA § 601, § 602, § 603 |
| 25 | * 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 |
| 26 | * LLPs * LLLPs * Foreign limited liability entities | 557-578 | *LLP*   * RUPA § 106, §306(c), § 1001, § 1002, § 1003,   *LLLP*   * ULPA (2001) § 404(c)   *Foreign limited liability entities*   * RUPA § 1101, § 1102, § 1103, § 1104 |
| 27 | OPEN |  | None |
| 28 | OPEN |  | None |
| **FINAL EXAM: Tuesday, May 7, 8:30 AM to 12:30 PM** | | | |