

# ***Business Associations/Corporations***

## ***FALL 2009 SYLLABUS***

***Professor John H. Matheson***

### **A. COURSE DESCRIPTION**

Business Associations/Corporations addresses the general law of multi-person unincorporated business organizations, principally partnerships, limited partnerships, limited liability partnerships, and limited liability companies, and the law of corporations. Issues such as formation, distribution of powers, and fiduciary obligations will be discussed. We will spend most of our time discussing and analyzing court decisions and asking how the relevant legislative materials apply to those cases and new fact situations.

You are encouraged to participate in class. I do pre-assign specific individuals to certain portions of the material to be prepared for a given day. On the “ASSIGNMENTS” that begin on the next page, pre-assigned individuals are listed in parentheses after a particular case or portion of the material for a given day. The person(s) assigned must be present, prepared and actively participate. If you will not be able to present the material for your assigned day, it is your responsibility to arrange a substitute and inform me in advance of the substitution. See “Evaluations” below. The purpose of pre-assignment is not to stifle questions or general discussion but to ensure that someone is superbly prepared to help the class through the material for the day. This approach assumes that the remainder of the class has read the material and is able to follow the discussion at a high level of discourse. I encourage you to participate at any time and raise questions in or out of class. Even though you may not be assigned to present material on a given day, you should read the material in advance. I will at times call on people “cold.” Much of your learning about business and business associations comes from reading the cases and learning what it is that people do in business situations. Our class discussion will talk about why they did it that way, what went wrong (leading to a lawsuit), and how those problems could be avoided by you in representing business clients.

### **B. READINGS**

The reading assignments primarily will be from Hamilton and Macey, Corporations (10th ed. 2007)(“Hamilton”), with some readings from the Supplemental Materials (“Supplement”). Remember, however, that this is primarily a statutory course and the statutes that we must learn are in the West Minnesota Corporation, Limited Liability Company, and Partnership Laws -- 2009 Special Pamphlet. All reading references are to the Hamilton casebook unless otherwise noted.

### **C. EVALUATIONS**

There is one examination for this course. The examination will be open book. The exam will be objective in nature. In addition, there may be several written assignments throughout the semester. Failure to turn in any assignment on time or failure to be present and prepared to discuss material assigned to you for class presentation (or to arrange a substitute), as discussed above, will result in a reduction of your final grade one level (e.g., from B to B-) for each such failure.

### **D. MISCELLANEOUS**

My office is Room n222, the phone number is 612-625-3879, and my e-mail is mathe001@umn.edu. My office hours are 12:30 – 2:30 p.m. Tuesday and Thursday, or by appointment. I am also in my office at many other times will be happy to see you at any time except the hour just before class. I will also stay after each class to answer any questions you may have.

# ASSIGNMENTS

## **INTRODUCTION: AGENCY AND BUSINESS ORGANIZATION TYPES**

- Asgmt. 1 First seven pages in Supplement; pages 1 through 15 (middle) (ignore the statutory references on page 3 and the Questions on page 7). Read one-page article at <http://www.courts.state.mn.us/lprb/fc05/fc120505.html>

## **PARTNERSHIPS AND UNINCORPORATED VARIATIONS**

### **CHAPTER 2: THE PARTNERSHIP**

#### **Formation of a Partnership**

- Asgmt. 2 Prepare pages 25 through 26 (top), 117-118 (first two paragraphs of “J. Inadvertent Partnerships”) and 121 (middle) through 122 in Hamilton; pages 8 through 10 in Supplement. See Chapter 323A of the Minnesota Statutes, the Uniform Partnership Act of 1994 (“UPA”) reproduced in West's Minnesota Corporation, Limited Liability Company and Partnership Laws, 2009 Special Pamphlet, sections 323A.0101, subd. 8, 323A.0202 and 323A.0308. The UPA should be referred to specifically in preparation for the next several class periods. Thorud (Hurm); Smith (Smith).

#### **Management and Control; Liability**

- Asgmt. 3 Pages 52 (from “National”) through 56 and 60 through 64 in Hamilton; pages 11 through 12 in Supplement. See sections 323A.0103, 323A.0301, 323A.0305 and 323A.0306, 323A.0307 and 323A.0401(f) and (j) of the UPA. National (Lange); Smith (Brandis); Roach (Wingrove); Moren (Super).

#### **Sharing of Profits and Losses; Fiduciary Duties**

- Asgmt. 4 Pages 26 through 29 in Hamilton; pages 13 through 16 in Supplement; pages 64 (bottom) through 71 in Hamilton; see sections 323A.0103(b)(3), (4) and (5), 323A.0401, 323A.0404 of the UPA.; Schymanski (Englander); Meinhard (Kinsella).

#### **Partnership Dissolution/Dissociation**

- Asgmt. 5 Pages 81 (middle) through 86 in Hamilton; Problem 1, page 22 in Supplement; see sections 323A.0401, 323A.0404(f), 323A.0601, 323A.0602, 323A.0603, 323A.0701, 323A..0801 and 323A.0807 of the UPA. Collins (Dworak); Problem 1 (Adams).

## **LIMITED LIABILITY PARTNERSHIPS; SUBCHAPTER S CORPORATIONS**

Asgmt. 6 Pages 49 through 52 in Hamilton; see sections 323A.0306, 323A.1001, 323A.1002 and 323A.1003 of the UPA; pages 128 (middle) through 135 and 146 through 147.

### **CHAPTER 3: LIMITED PARTNERSHIPS**

Asgmt. 7 Pages 135 through 138 and 145 (begin at note 5 at bottom) through 150 (top) in Hamilton; Byfield v. Twin City, pages 23 through 25 in Supplement; read sections 321.0102, .0201, .0303, .0306 and .0404 of the Uniform Limited Partnership Act of 2001, Chapter 321, reproduced in the 2009 West Special Pamphlet. Byfield (Pappas).

### **CHAPTER 4: LIMITED LIABILITY COMPANIES**

Asgmt. 8 Pages 154 through 159, 189 (bottom) through 191 and 197 through 201 in Hamilton; pages 27-31 in Supplement. Skim the following sections of the Minnesota Limited Liability Act, reproduced in the 2009 West Special Pamphlet--Sections 322B.01, 322B.115, subd. 1, 322B.18, .303, .326 and .606. Weber (Twiggs).

#### **Law Firm Partnerships**

Asgmt. 9 Pages 34 through 48 and the following sections of the Professional Firms Act: Sections 319B.01 and “Historical Background” notes following that Section, Sections 319B.02, 319B.03 and 319B.06, Subd. 3. Bane (Bergan).

### **REVIEW**

Asgmt. 10 Midland v. Perranoski, Minnesota Bar Examination -- Question 3, pages 32 through 39 in Supplement. Midland (Mooty); Question 3 (Webster). Suggested outside reading: Choice of Organizational Form for the Start-Up Business, at [http://www.centerforbusinesslaw.org/journal/v1n2/john\\_matheson.html](http://www.centerforbusinesslaw.org/journal/v1n2/john_matheson.html)

## **CORPORATIONS**

### **CHAPTER 5 and 6: THE FORMATION OF A CORPORATION**

#### **Whether, Where and How to Incorporate**

Asgmt. 11 Pages 212 through 228 in Hamilton; then read Sec. 302A.101, .111, .115, .117, .121, .151, .153, and .155 of Minnesota Business Corporation Act (hereafter MBCA), 2009 West Special Pamphlet to see how incorporation takes place in Minnesota. Prepare Onvoy v. SHAL, pages 40 through 43 in Supplement. Onvoy (Ojala-Barbour).

### **Premature Commencement of Business**

- Asgmt. 12 Pages 236 (bottom) 249 in Hamilton. How (Hamsher); Robertson (Stoklasa)
- Asgmt. 13 Stone v. Jetmar and Arbo v. Aidan, Minnesota Bar Examination -- Question 3, pages 44 through 51 in Supplement. Stone (Taubel); Arbo (Akbar); Question 3 (Anderson).

### **CHAPTER 7: DISREGARD OF THE CORPORATE ENTITY**

- Asgmt. 14 Almac v. JRH Development and Tom Thumb v. TLH, pages 52 through 58 in Supplement; pages 264 (from "Notes") through 272 (top) in Hamilton; Almac (Zahn); Tom Thumb (Williams); Baatz (Westra).
- Asgmt. 15 Pierce Article and Minnesota Bar Examination—Question 1, pages 59 through 71 in Supplement. Pages 302 through 305 in Hamilton. Question 1 (Montgomery); Cargill (Meyer).

### **CHAPTER 8: FINANCIAL MATTERS AND THE CORPORATION**

#### **Types of Equity Securities; Issuance of Common Shares;**

- Asgmt. 16 Pages 314 through 344 in Hamilton; Sec. 302A. 401-405, .413, .417, .425, .429 in MBCA. Hanewald (Ge); Torres (Kalanick).

#### **Preemptive Rights**

- Asgmt. 17 Pages 369 through 378 (top) in Hamilton; Sec. 302A.401, .405 and .413 in MBCA. Stokes (Jackson); Katzowitz (Karan).

### **CHAPTER 9: MANAGEMENT AND CONTROL OF THE CORPORATION**

#### **Traditional Roles of Shareholders and Directors**

- Asgmt. 18 Pages 419 through 424 and 433 through 439 in Hamilton; Pages 72 through 81 in Supplement; Sec. 302A.201, .455 and .457 in MBCA. McQuade (Kedzuf); CA, Inc. (Kaplan).

#### **Shareholders Meeting and Voting**

- Asgmt. 19 Pages 439 (middle) through 446 (top) in Hamilton; Pages 82 through 86 in Supplement. Sec. 302A.135-.137; .181 and .431-.443 in MBCA. Auer (Abraham); Fisher (Applebaum).

- Asgmt. 20 Pages 450 through 452 and 457 through 465 (top) in Hamilton; Sec. 302A.215, .449, .453-.457 in MBCA. Ringling (Rissman).
- Asgmt. 21 Pages 472 through 477 and 484 through 491 in Hamilton; Sec. 302A.429 in MBCA.. Brown (Berglund); Ling (Klink).

### **Directors and Officers**

- Asgmt. 22 Baldwin v. Canfield, pages 87 through 88 in Supplement; pages 511 through 519 (top) in Hamilton; Sec. 302A.231 through .241 and Sec. 302A.301 through .361 in MBCA. Baldwin (Armistead); Drive-In Development (Bovee), Lee (Bennett).

### **REVIEW**

- Asgmt. 23 Minnesota Bar Examination–Question 8, Minnesota Bar Examination--Question 6 and Minnesota Bar Examination -- Question 8, Pages 89 through 92 in Supplement. Question 8 (Segni); Question 6 (Sargent); Question 8 (Harvey).

### **CHAPTER 11: DUTY OF CARE AND THE BUSINESS JUDGMENT RULE**

- Asgmt. 24 Pages 659 through 674 (top) in Hamilton; Secs. 302A.251 and 302A.521 in MBCA. Litwin(Sedor); Schlensky (Matheson);
- Asgmt. 25 Pages 674 through 690 in Hamilton. Smith (Gutzman).

### **CHAPTER 12: DUTY OF LOYALTY AND CANDOR**

#### **Self-Dealing:**

- Asgmt. 26 Pages 756 through 762 in 767 through 772 in Hamilton; Sec. 302A.255 in MBCA. Marciano (Morrison); Brehm (Welo).

#### **Corporate Opportunity**

- Asgmt. 27 Miller v. Miller, Triple Five v. Simon and Question 2 (Minnesota Bar Exam), pages 93 through 102 in Supplement. Miller (Miller); Triple Five (Ni); Question 2 (Norris).

### **SHAREHOLDER LITIGATION; DUTIES OF SHAREHOLDERS**

- Asgmt. 28 Wessin v. Archives and In re Patterson Companies, Inc., pages 103 through 113 in Supplement; section 302A.241 in MBCA. Wessin (Weigelt); In Re Patterson Companies, Inc.(Park).
- Asgmt. 29 Pages 119 through 141 in Supplement; Section 302A.751 in MBCA. UnitedHealth (Chen); Haley (Kahn).

## **CHAPTER 16: CORPORATE BOOKS AND RECORDS**

Asgmt. 30 Pages 1054 through 1063 in Hamilton; Sec. 302A.461 in MBCA. Thomas (Elsasser).

## **CHAPTER 10: THE PUBLICLY HELD CORPORATION**

### **Section D: Federal Proxy Regulations**

Asgmt. 31 Pages 589 through 592, 595 through 602, 609 (bottom) through 610, and 614 (from “Notes”) through 619 in Hamilton.

Asgmt. 32 Pages 619 through 638 (top) in Hamilton. TSC (Purushotham); Virginia (Tomczik).

Asgmt. 33 Pages 638 through 653 in Hamilton. Rauchman (Hou).

## **CHAPTER 13: SECURITIES FRAUD AND INSIDER TRADING**

### **Section A: Introduction**

Asgmt. 34 Pages 813 through 824 (to Note 3) and 829 through 841 in Hamilton. Enron (Fatehi).

### **Section B: Insider Trading; Securities Fraud**

Asgmt. 35 Pages 841 through 857 in Hamilton. Texas Gulf (Van Vliet).

Asgmt. 36 Pages 857 through 881 in Hamilton. Chiarella (Ceronsky); O’Hagan (Swedberg).

Asgmt. 37 Pages 881 through 891, 901 (bottom) through 909 (top), and 655 through 658 in Hamilton. Dirks (Bullard)

Asgmt. 38 Pages 915 through 932 (to Note 5) in Hamilton; pages 142 through 145 in Supplement. Basic (Brennan); Dura (Bruso).

### **Exchange Act Section 16**

Asgmt. 39 Pages 909 through 915 in Hamilton.