

Unincorporated Business Associations

Fall 2009

Professor McDonnell

This course surveys the law governing unincorporated business associations, such as partnerships, limited partnerships (LPs), limited liability companies (LLCs), and limited liability partnerships (LLPs). These forms of business associations are widely-used in many different kinds of settings, from neighborhood businesses to high-tech start-up companies to sophisticated hedge funds.

Class materials. Our casebook is LARRY E. RIBSTEIN AND JEFFREY M. LIPSHAW, UNINCORPORATED BUSINESS ENTITIES (4th ed. 2009).

Grades. Your grade will be based on three elements, each equally weighted so that each contributes to one third of your grade. One element will be a take-home final exam due at the end of the exam period. A second element will be three group problems. You will work in groups of three or four persons, rotating groups for each problem. The problems mimic elements of the work of transactional lawyers. The problems will be due by the beginning of class on the relevant days; in the class schedule below they are due on days 11, 22, and 34, but those days could shift—the final due dates will be announced in class and on the course TWEN site. The third grade element will be in-class participation.

Contacting me. My office is in room 424 of the Law Building. My phone number is 625-1373, and my e-mail address is bhm@umn.edu. My office hours will be Tuesdays from 1:30 to 2:30 p.m. and Wednesdays from 11:00 a.m to 12:00 noon. I also encourage you to ask questions via the discussion section of this course's TWEN site, for which you should register right away. Please feel free to contact me if you have any questions, or if you simply want to discuss any issues which arise in the course.

Assignments. Below are the assignments for the course. Page numbers refer to pages in the casebook.

You should have several goals in this course. One, of course, is to learn the black-letter law. Beyond that, though, you must be able to apply this law in a variety of factual situations. Spotting issues and then relating the law to those issues is a task which you have now started to learn. To those of you who go on to become corporate lawyers, though, these somewhat abstract and rarefied tasks will become the everyday acts of helping to identify and solve your clients' problems. This course attempts to expose you to the tasks and skills of a transactional lawyer more than most law school courses. It does this through the graded problems, through discussion of other problems and questions in the casebook that focus on business planning issues, and through a template for a "Membership Agreement" included in the casebook, which we will analyze and discuss at various points in the course.

We start the course with the law of agency. This is an old area of the law, and forms the groundwork for much of the law of business associations (it is also important in other areas as well, including professional responsibility). When one or more person acts on behalf of other persons, questions arise both in the relationship between the two and in their interaction with the outside world. Agency law addresses those questions.

The second section, roughly half of the course, looks at the law of partnerships, which we will sometimes call general partnerships. Partnerships can be thought of as the opposite of corporations in a variety of ways. They are more informal, less hierarchical, and they lack limited liability. We will look at the formation of partnerships, the financial rights of partners, management, the liabilities of partners, the fiduciary duties of partners, and the dissolution of partnerships.

The final section of the course considers the most important examples of other sorts of unincorporated business associations, namely limited partnerships, limited liability companies, and limited liability partnerships. These legal forms combine features of partnerships with features of corporations. They have become increasingly popular in recent years, as investors look for ways to combine the limited liability of corporations with the flexibility and tax advantages of partnerships.

The numbered items should take about one class period to cover, but there may be some slippage. I will inform you at the end of each class as to what material to cover for the next class. This syllabus should not be taken as a warranty that we will cover all of the listed topics. The calendar section of the TWEN site will be updated daily to show the next day's assignment.

I anticipate having to cancel class on Friday, October 9, and it is possible that the need for other class cancellations may arise as well during the semester. I will announce the make-up times for any missed class during the semester.

I. Introduction

1. Introduction, 1-7.
2. Agency I, 9-35, 39-45.
3. Agency II, 45-66.

II. Partnerships

4. Existence of partnerships, 67-90.
5. Existence of partnerships—other law, 90-102.
6. Partner contributions, 103-13.

7. Partnership accounting, 113-30.
8. Partnership authority, 131-41.
9. Management and voting, 141-49.
10. Group work on Problem 5-2.
11. Problem 5-2 due by beginning of class; discuss Problem 5-2.
12. Vicarious liability, 151-69.
13. Property rights, 171-86.
14. Nature of duties, and disclosure, 187-209.
15. Loyalty, care, and good faith, 209-20.
16. Waiver and remedies, 220-40.
17. Dissociation, 241-53.
18. Continuation and buyout, 253-64.
19. Successor liability and continuation agreements, 264-86.
20. More on continuation agreements, 286-308.
21. Group work on Problem 9-7.
22. Problem 9-7 due by beginning of class; discuss Problem 9-7.

III. Limited Liability Associations

23. Search for the incorporated partnership, 309-19.
24. LPs—formation and financial rights, 321-39.
25. LPs—management, 340-60.
26. LPs—property rights, 360-72.
27. LPs—fiduciary duties, 372-91.
28. LPs—dissociation, merger, 391-409.
29. LLCs—introduction, 411-21.
30. LLCs—operating agreements and management, 422-42.

31. LLCs—financial rights, transfers, limited liability, 443-56.
32. LLCs—fiduciary duty, 456-78.
33. Group work on Problems 12-7(2) and 12-11.
34. Problems 12-7(2) and 12-11 due by beginning of class; discuss Problems.
35. LLCs—dissociation, 478-502.
36. LLCs—special issues, 502-13.
37. LLPs—creation and limited liability, 515-28.
38. LLPs—other issues, 528-38.
39. Conclusion.