

Required Text: Eisenberg, *Corporations and Other Business Associations* (9th ed. unabridged) (“casebook”).

The principal corporation statute we will use is the Ohio General Corporation Law (ORC), which is available at <http://codes.ohio.gov/orc/1701>. We will also occasionally use the Delaware General Corporation Law, which is available at http://delcode.delaware.gov/title8/c001/index.shtml#P-1_0.

The federal securities laws and regulations are available at The Securities Lawyer’s Deskbook at <http://www.law.uc.edu/CCL/>.

Supplemental materials are included on the syllabus. The cases can be retrieved through Westlaw or Lexis; others will be distributed in class. Additional readings may be assigned from time to time.

Students are responsible for all assignments whether or not they are discussed in class. You should be prepared to discuss the materials, including the Problems, in class.

Students may earn an increase in their final grade through attendance and excellence in class discussions.

Accounting for Lawyers

A basic understanding of accounting principles is important to an understanding of business law. If you wish to improve your understanding, I suggest the following materials:

A straightforward and readable explanation of financial statements, How to Read a Financial Report, is available at http://www.library.cornell.edu/jgsm/downloads/ML_Financial_Stmt.pdf.

The Casebook contains an *Introduction to Financial Statements* at 25-30. If you read and work through the examples carefully, it will further your understanding.

If there is interest from enough students, we could arrange an informal session to review these materials. In addition, the Business School will offer, in its winter quarter, an introductory course that may be helpful; please see Dean Oliver for further information.

Additional Readings.

Two textbooks provide basic business and finance information and are good resources throughout the semester: Klein and Coffee, Business Organization and Finance (10th ed.) and Hamilton and Booth, Business Basics for Law Students (4th ed.) Both are on reserve in the law library.

Finally, if you are not in the habit of regularly reading the business section of the New York Times and the Wall. St. Journal, I encourage you to do so. Many of our class discussions and even, perhaps, an exam question or two, may be “ripped from today’s headlines.” Student subscriptions at a reduced price are available for the Wall St. Journal. You can find information about them at its website: www.wsjstudent.com.

Class Attendance Policy

Regular and punctual attendance is required for all class sessions; the class starts promptly at 9 a.m., so please make every effort to arrive on time. If you miss more than six classes, for any reason, you may not be allowed to sit for the exam. You do not have to provide me with an excuse for your absence. You must keep track of your absences.

Open Door Policy

My office is room 422. I encourage you to stop by at any time if you have questions, or you may email me to make an appointment.

ASSIGNMENTS

Basic Concepts

1. *Agency.*

Ms. Smith sells fruit pies from the back steps of her rural home. She buys the fruit from local farmers and bakes the pies one day a week, and those lucky enough to know about it show up and buy them, first come, first served. What do we call this business, and what laws apply?

Assume now that Ms. Smith hires part-time help to deliver pies on “special orders” and to prepare her taxes.

Assume now that Ms. Smith opens a store in her home and hires Sally to manage it, take phone orders, do the billing and other office functions. She also hires a second baker. Does any of this change our previous analysis?

Casebook 1-2, 7-19, 24
Blackburn v. Witter, 201 Cal. App. 2d 518 (1962)
Restatement 2d Agency §§ 1, 7, 8, 8A, 26, 27, 140, 161 (available on
Westlaw and Lexis)

2. *Characteristics of the Corporate Form; Organizing the Corporation*

Sally turns out to be a real go-getter and, with Ms. Smith’s permission, expands the business to include catering. She also has some money to invest in the business, so Ms.

Smith and Sally agree that Sally should become a part owner. How does this change their relationship? Specifically, Ms. Smith wonders if any steps should be taken to formalize their relationship.

Casebook 106
Casebook 107-114, 200 (beginning with “Note”)-206
ORC §§ 1701.04, .05, .08, .10, .11, .14
Initial Articles of Incorporation, available at
<http://www.sos.state.oh.us/SOS/Upload/business/forms/532.pdf>
Sample regulations (handout)

3. *The Corporation as a Device to Allocate Risk*

Ms. Smith and Sally incorporated their business some time ago. At a recent event they catered, several people became seriously ill with food-poisoning, requiring hospitalization. In addition, the business has experienced a cash-flow shortage because of increased costs and has not been able to pay some of its suppliers. Can any of those persons successfully sue Ms. Smith and Sally? Ms. Smith is married to a wealthy investment banker, and Sally inherited money from her mother.

Casebook 227-232
Additional readings on New York taxi industry (handout)
Belvedere Condominium Unit Owners’ Assn. v. R.E. Roark Cos., 617 N.E.2d 1075 (Ohio 1993) (read syllabus and Part III of majority opinion only)
Dombroski v. WellPoint, Inc., 119 Ohio St. 3d 506 (2008)
Minno v. Pro-Fab, Inc., 121 Ohio St. 3d 464 (2009)
Casebook 234-239, 248 (“Note on an empirical analysis of piercing cases”)

4. *Objectives and Conduct of the Corporation; Ultra Vires*

In the aftermath of the 9/11 terrorist attacks, General Motors, a once-mighty company that watched its prestige and influence dwindle along with its market share, announced an interest-free financing program for all its vehicles under the slogan: “Keep America Rolling,” a move that analysts saw as extremely risky for the company’s profitability. CEO Rick Wagoner was quoted as saying: “I don’t view frankly that we’re carrying on a crusade of social responsibility that is not good for our shareholders. We’re trying to put the two together.” Did GM investors have grounds to complain about GM’s response to a national crisis? (In 2009 GM went through a government-mandated bankruptcy; the U.S. Government is now its majority shareholder.)

Casebook 132-133, 137-143
ORC § 1701.03
ALI, Principles of Corporate Governance § 2.01 (handout)

Corporate Structure

1. *Allocation of Power Within the Corporation*

Henry, an environmental activist, owns 15% of the common shares of Timber Corp., a corporation incorporated in Ohio. He is concerned about the rate at which Timber is cutting trees on its property. He thinks that the overcutting has detrimental effects on the environment and that the corporation cannot profitably sustain this level of cutting. In addition, Henry has heard that Timber plans to move its banking business from a locally owned and operated bank to a New York-based mega-bank with no ties to the community and fears this will have a negative impact on the local economy.

Assume that Timber's articles of incorporation and regulations (bylaws) are substantially similar to those we previously reviewed. May Henry submit the following resolutions for a vote of the shareholders at Timber's next annual shareholders' meeting?

RESOLVED, that

1. the articles or regulations be amended to require that the corporation conduct its principal banking business at local banks.
2. the shareholders urge the board of directors to consider the impact on the community of any decision to change banks.
3. the articles or regulations be amended to require that the purpose of the corporation is to conduct all lawful business for a profit, with due consideration for ensuring that forests are managed to maximize longterm profitability.
4. the articles or regulations be amended to create the office of vice president for the environment, with the responsibility to monitor the corporation's timber-cutting and report to the shareholders as to its long- and short-term economic and environmental effects.
5. the corporation pay an annual dividend of \$5 per share.
6. the corporation merge with another timber corporation whose environmental and economic policies are highly regarded by both environmental activists and business leaders.
7. the corporation be dissolved and its remaining assets, after paying off all creditors, be distributed to the shareholders, since (in Henry's view) Timber cannot continue to operate profitably.

Casebook 162-164

ORC §§ 1701.11, .59, .64, .69, .70, .71, .74, .78, .81, .76, .86

2. *Shareholders' Voting Rights*

Casebook 215-217, 266-269

ORC §§ 1701.39, .40, .54, .41, .45, .51, .52

3. *Cumulative Voting; Staggered Boards; Shareholder Classes; Weighted Voting*

Acme Auto Parts Co., incorporated in Ohio, has six million outstanding shares. Vulture Inc., a private equity firm, owns two million of the shares; the remaining four million are held by about 2,000 shareholders, none of whom owns as much as one percent. Acme's articles of incorporation provide for cumulative voting, and at its forthcoming annual meeting the entire board of directors, consisting of nine directors, will be elected. Vulture has nominated its own slate of nine individuals to challenge current management's slate of nine nominees, but does not plan to solicit votes from the other shareholders. If Vulture votes cumulatively, what is the maximum number of directors it can be assured of electing if:

- (a) All the four million shares not owned by Vulture are voted in favor of management's nominees?
- (b) Three million shares not owned by Vulture are voted in favor of management, and the remaining one million shares are not voted?
- (c) Assume the same facts as (a) but Acme's directors have staggered terms and only three are up for election?

Casebook 217-220, 178-180, 357-358

ORC § 1701.55 .56, .57

Straight Ballot, Cumulative Voting, and Staggered Boards (handout)

4. *Shareholders' Power to Remove Directors*

Casebook 165

Adlerstein v. Wertheimer, 2002 WL 205684 (Del. Ch. 2002)

ORC § 1701.58

5. *Management's Interference with Shareholders' Voting Rights*

Casebook 166-175, 180-187

6. *The Board of Directors*

Casebook 198-200, 206-210

ALI, Principles of Corporate Governance §§ 3.01-3.05 (handout)

ORC §§ 1701.59, .61, .62, .63, .54

7. *The Authority of Corporate Officers*

Casebook 211-215

In re Walt Disney Co. Deriv. Litig., 906 A.2d 27 (Del. 2006) (read introduction and Part IV.B.1, "Was action by the New Board required to terminate Ovitz as the President of Disney," only)

ORC § 1701.64

Closely Held Corporations

1. *Introduction*
2. Casebook 325-341
3. *Voting Agreements about Shareholders' Decisions*

Jack, Mary, Betsy and Sam form an Ohio corporation for the purpose of designing and distributing video games. Each contributes \$5 million and receives one-fourth of the shares. Although all the shareholders want input in the business, because Jack, Mary, and Betsy have high-powered full-time positions at major corporations, the plan is for Sam to be in charge of the business. Accordingly, the parties agree to vote their shares as follows: all of them (and only them) will be directors; Sam will be the CEO; Sam will have a salary of at least \$150,000; any major business decisions require unanimous consent. The agreement also provides that a shareholder can only sell his or her shares to another shareholder or the corporation at their book value.

Is this agreement enforceable? What if Jack does not agree?

Casebook 348-353

4. *Voting Trusts*
Casebook 354-356
ORC § 1701.49
5. *Agreements Controlling Matters Within the Board's Discretion*
Casebook 358-369
ORC §§ 1701.591, .48(C), (D)
6. *Restrictions on Transferability of Shares*
Casebook 411-425
ORC § 1701.25
7. *Shareholders' Fiduciary Obligations; Dissolution*

Jack, Mary, Betsy and Sam never did get around to formalizing their agreement, in part because the business took off and achieved some immediate success with a very popular video game. For a variety of reasons, however, a rift developed between Sam and the other shareholders, which culminated with the termination of Sam's employment by the other three. Because all the profits are being reinvested in the business, the corporation does not plan to pay dividends for the foreseeable future, and the other shareholders have refused Sam's request to purchase his shares. Does Sam have any remedies?

Casebook 375-387, 437- 455

ORC §§ 1701.86, .91, .911

8. *Limited Liability Companies – A Better Alternative*

Casebook 494-499

Shareholder Informational Rights and Proxy Voting

1. *Informational Rights under State Law*

Casebook 263-266, 269-270

Danziger v. Luse, 815 N.E.2d 658 (Ohio 2004)

ORC §§ 1701.37, .38

2. *Informational Rights under Federal Law*

Casebook 270-275

3. *Proxy Rules*

Casebook 275-281

Securities Exchange Act (SEA) § 14(a) (statute and regulations available at <http://www.law.uc.edu/CCL/>)

Regulation 14A: Rules 14a-1(f), (g), (l); 14a-3; 14a-4; 14a-5; 14a-16

SEC v. Bank of America Corp., 653 F. Supp.2d 507 (S.D.N.Y. 2009);

subsequent opinion, 2010 WL 624581 (S.D.N.Y. Feb. 22, 2010)

4. *Shareholder Proposals*

Mircke, Inc. is a pharmaceutical company that is listed on the NYSE and is incorporated in Ohio. It has a policy of making contributions to nonprofit organizations, mostly medical schools and hospitals. The contributions, in total, never exceed one percent of Mircke's annual income. Recently, a shareholder submitted the following proposal for inclusion in the upcoming shareholders' annual meeting:

Resolved, the shareholders request that the corporation refrain from making contributions to organizations that perform abortions.

Can the management exclude this proposal from the proxy statement?

Casebook 303-315

Regulation 14A: Rule 14a-8

5. *Election-Related Proposals*

Casebook 315-322
CA, Inc. v. AFSCME Employee Pension Plan, 953 A.2d 227 (Del. 2008)
American Federation of State, County & Municipal Employees v.
American Int'l Group, 462 F.3d 121 (2d Cir. 2006)
Dodd-Frank Wall St. Reform Act § 971
SEC Proxy Access Rule

Directors' Duty of Care

1. *The Business Judgment Rule*

Nicke Inc., an Ohio corporation, manufactures athletic clothing and footwear, and all its manufacturing facilities are located in underdeveloped countries. For years, the company has been criticized for taking advantage of its overseas workers, even though Nicke has conducted investigations and released reports showing that all its operations comply with local law both with respect to safety and wages. Nicke's board has now decided that it will relocate all its manufacturing operations in the United States, which will require the expenditure of at least \$100 million to construct manufacturing facilities that comply with American safety standards. In addition, training and paying U.S. workers at least U.S. minimum wages will add an annual cost of at least \$200 million to the company's bottom line. In announcing these decisions, the CEO stated that the board expected that these decisions would have a significant negative impact on corporate earnings, at least in the short-term. The market price of Nicke's stock experienced a sharp drop after this announcement.

Nicke's board of directors has been sued by angry shareholders. Is the decision protected by the business judgment rule?

Casebook 134-136, 531-535
Shlensky v. Wrigley, 237 N.E.2d 776 (Ill. App. 1968)
ORC § 1701.59(A), (E)
ALI, Principles of Corporate Governance § 4.01(c) (handout)

2. *The Duty of Care*

Casebook 515-531
ORC § 1701.59(B), (C)
ALI, Principles of Corporate Governance § 4.01(a)

3. *The Duty of Care in Directors' Decision-Making*

Casebook 544-562

Directors' Duty of Loyalty

1. *The Duty to Maintain Effective Internal Controls*

Stone v. Ritter, 911 A.2d 362 (Del. 2006) (do not read “Demand Futility and Director Independence”)

2. *Self-Interested Transactions*

Casebook 606-09

Gries Sports Enterprises v. Cleveland Browns Football Co., 496 N.E.2d 959 (Ohio 1986)

Casebook 628-639

ORC § 1701.60

3. *Corporate Opportunity Doctrine*

Casebook 654-677

ALI, Principles of Corporate Governance § 5.05

Shareholders Litigation

1. *Liability Shields*

Del. § 102(b)(7)

ORC § 1701.59(D)

Lyondell Chemical Co. v. Ryan, 970 A.2d 235 (Del. 2009)

Gantler v. Stephens, 965 A.2d 695 (Del. 2009) – read text at and notes 34-37 only (officers’ duties of care and loyalty)

2. *The Nature of A Derivative Suit*

Casebook 912-914, 919-925

3. *The Demand Requirement*

Casebook 949-959, 974-75

Beam v. Stewart, 845 A.2d 1040 (Del. 2004)

In re Citigroup Inc. Shareholder Deriv. Litig., 964 A.2d 106 (Del. Ch. 2009) (do not read parts II; III.B2; III.C)

Ohio Civil Rule § 23.1

4. *Demand Excused and the Special Litigation Committee*

Casebook 959-973

5. *Strike Suit or Social Good?*

Casebook 1033-1039

Executive Compensation: Waste and the Duty of Good Faith

In re Walt Disney Co. Deriv. Litig., 906 A.2d 27 (Del. 2006) (do not read Part III of opinion)

Citigroup, 964 A.2d 106 (Del. Ch. 2009) (read part III.C)

Dodd-Frank Wall St. Reform Act §§ 951-956

Corporate Obligations When Communicating to Investors

Mirke, a pharmaceutical company whose stock is traded on the NYSE, has a new drug under development that is expected to provide significant benefits in the treatment of certain types of age-related disabilities. It expects that, when the drug is marketed, its sales will account for 25% of the company's annual revenues. Mirke, however, has just received informal word from the Food and Drug Administration that the drug will not receive agency clearance as soon as expected and indeed may never obtain FDA approval. Does Mirke have to disclose this information?

1. *Fraud on the Market*

Casebook 785-800, 857-860

SEA § 10(b), Rule 10b-5

2. *Elements of the Private Rule 10b-5 Remedy*

Casebook 756-760, 800-804

Dura Pharmaceuticals, Inc. v. Broudo, 544 U.S. 336 (2005)

Casebook 849-855

Stoneridge Inv. Partners, LLC v. Scientific-Atlanta, 128 S. Ct. 761 (2008)
(majority opinion only)

3. *Private Actions under the Proxy Rules*

Casebook 281-282, 288-290, 300-302

Shaev v. Saper, 320 F.3d 373 (3d Cir. 2003)

Rule 14a-9

Insider Trading

When Sam, Mirke's CEO, heard the disappointing news from the FDA, he promptly called his daughter, Anne, and told her to sell her Mirke shares, and Anne (asking no questions) did so immediately through her broker, Jack. Although Anne did not give Jack any reason for her sale, Jack knew that Anne was Sam's daughter and, suspecting something might be wrong, called several of his wealthiest customers and told them to sell their Mirke shares, which they (also asking no questions) promptly did. Did anyone do anything illegal?

1. *Common Law Background*

Casebook 748-751

2. *Rule 10b-5 Again*

Casebook 817-826

3. *Tippee Liability*

Casebook 826-837

4. *Misappropriation*

Casebook 837-848

SEC v. Cuban, 634 F. Supp. 2d 713 (N.D. Tex. 2009)