I. Legal and Judicial Construction of the modern “Corporation”

1. Early America: Pre-revolutionary attitudes towards corporations

1. long-held negative attitudes, indenture servants, working people and poor.

2. significant factor in American revolution: British East India Company

3. post-revolution goal: establish control and subordinate them to society

1. Pre-Civil War control on corporations

1. chartered by state in which they operated

2. activity: single one and socially necessary

3. size

4. location

5. performance criteria

6. profits

a. limited

b. required buyback

7. public privilege

8. shareholder restrictions

9. shareholder liability

10. *ultra vires*

C. From subordinate institution to dominant institution: the modern “corporation.”

1. Judicial creation of corporate constitutional rights

a. *Santa Clara v Southern Pacific* (1886)

i. persons within the meaning of the 14th Amendment

ii. guarantee equal protection of life, liberty and property

b. *Chicago, Milwaukee and St. Paul Railway v Minnesota* (1890)

i. persons within the meaning of the 14th Amendment

ii. guarantee due process

c. *Noble v Union Logging Railroad Company* (1893)

i. persons within the meaning of the 5th Amendment

ii. guarantee due process

d. Various cases yielded decision giving rights under Fourth, Fifth,

Sixth, and Seventh Amendments (1906 to 1970)

i. as persons

ii. trial by jury, freedom from unreasonable searches, compensation for

government takings

e. *Virginia Board of Pharmacy v Virginia Citizens Consumer Council* (1976)

i. advertising is speech

ii. protected under the First Amendment

f. *First National Bank of Boston v Bellotti* (1978)

i. corporate political ads opposing state initiatives, or propositions,

are free speech and a necessary voice in democracy

ii. limiting amount of money spent violates corporate “persons”

First Amendment rights

g. *Citizens United v Federal Election Commission* (2010)

i. corporations and unions can spend money on political advertising, but

not directly on candidates

ii. political spending is a form of protected speech under First Amendment

iii. donations go to SuperPacs, 501©4 groups, and U.S. Chamber of Commerce

2. Legislative creation of modern corporation

a. revision of statutes on liability which limited, or eliminated

shareholder liability (1820-1900)

b. legislation that allowed for general charters of incorporation (late 1800s)

i. perpetual existence

ii. elimination of control of activities

c. legislation that allowed for virtual location (1889)

i. chartered in N.J.

ii. operate anywhere

d. legislation allowing corporations “shape shift” (1889)

e. legal obligation of corporations to make a profit

*Dodge v Ford* (1919) There should be no confusion . . . .

A business corporation is organized and carried on primarily for the profit of the

shareholders. The powers of the directors are to be employed for that end. The

discretion of the directors is to be exercised in the choice of means to attain that end, and does

not extend to . . . other purposes.

*Katz v. Oak Industries* (1986)that “[i]t is the obligation

of directors to attempt, within the law, to maximize the long-run interests of

the corporation’s stockholders . . . .”