



## Employment Law and Business Entities

### Educational Objectives

After learning the content of this assignment, you should be able to:

1. Describe the employment-at-will doctrine and its exceptions.
2. Summarize the laws prohibiting discrimination on the basis of each of the following:
  - Age
  - Sex, race, color, religion, or national origin
  - Disability
  - Other factors
3. Summarize the laws governing labor-management relations in terms of the following:
  - Collective-bargaining relationships
  - Collective-bargaining process
  - Economic pressures
4. Summarize the laws that protect employees' rights in the following areas:
  - Employee safety and health
  - Employee wages and hours
  - Family medical leave
  - Employee benefits
  - Employee privacy
5. When contemplating incorporation, explain how each of the following would factor into the decision:
  - Advantages of incorporation
  - Federal and state regulation of corporations



# 9

## Educational Objectives, continued

- Foreign corporations
  - Incorporation process
  - Corporate ownership
6. Explain the rights, duties, powers, obligations, and liabilities of a corporation and the corporation's directors, officers, and stockholders.
  7. Describe the procedures by which corporate existence can terminate through merger, dissolution, and reorganization.
  8. Describe the characteristics, purposes, and functions of the following:
    - Partnerships
    - Limited partnerships
    - Limited liability partnerships
    - Limited liability companies
  9. Describe the characteristics, purpose, and functions of unincorporated associations.

## Outline

### ► Employment at Will

- A. Employment-at-Will Doctrine
- B. Public Policy Exception
- C. Implied-Contract Exception
- D. Covenant-of-Good-Faith Exception
- E. Statutory Exception

### ► Antidiscrimination Laws

- A. Discrimination Based on Age
  - 1. Age Discrimination in Employment Act (ADEA)
  - 2. Older Workers Benefit Protection Act (OWBPA)
- B. Discrimination Based on Sex, Race, Color, Religion, or National Origin
  - 1. Civil Rights Acts of 1866 and 1871
  - 2. Civil Rights Act of 1964
  - 3. Civil Rights Act of 1991
  - 4. Executive Order 11246
  - 5. Equal Pay Act
  - 6. Immigration Reform and Control Act of 1986
- C. Discrimination Based on Disability
  - 1. Rehabilitation Act of 1973
  - 2. Americans With Disabilities Act
- D. Discrimination Based on Other Factors

### ► Labor-Management Relations

- A. Collective-Bargaining Relationships
  - 1. Norris-LaGuardia Act of 1932 and National Labor Relations Act (NLRA) of 1935
  - 2. Exclusive Bargaining Agent
- B. Collective-Bargaining Process
- C. Economic Pressure
  - 1. Union Economic Tactics
  - 2. Employer Economic Tactics

### ► Employee Welfare Laws

- A. Regulation of Employee Safety and Health
- B. Regulation of Employee Wages and Hours
- C. Family Medical Leave Act
- D. Regulation of Employee Benefits
  - 1. Employee Retirement Income Security Act (ERISA)

- 2. Consolidated Omnibus Budget Reconciliation Act (COBRA)
- 3. Health Care and Education Reconciliation Act of 2010

### E. Employee Privacy

- 1. Privacy Statutes
- 2. Health Insurance Portability and Accountability Act (HIPAA)

### ► Corporations: Formation

- A. Advantages of Incorporation
- B. Federal and State Laws and Regulations
- C. Foreign Corporations
- D. Incorporation Process
- E. Corporate Ownership
  - 1. Stock
  - 2. Board of Directors

### ► Corporations: Duties and Obligations

- A. Corporate Powers
- B. Liability for Torts and Crimes
- C. Duties of Directors and Officers
  - 1. Duties of Care and Loyalty
  - 2. Transactions With the Corporation
  - 3. Appropriation of a Corporate Business Opportunity
- D. Stockholders' Powers and Duties
  - 1. Stockholders' Meetings
  - 2. Stockholders' Actions
- E. Dividends

### ► Corporations: Mergers, Dissolution, and Reorganization

- A. Merger
  - 1. Share Exchange and De Facto Mergers
  - 2. Takeovers and Tender Offers
- B. Dissolution
- C. Reorganization

### ► Partnerships

- A. Partnership Formation
- B. Partnership Liability



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## Outline

- C. Partners' Relationships to One Another
  - 1. Financial Relationship
  - 2. Fiduciary Relationship
  - 3. Partnerships' Books and Property
  - 4. Assignment of Partner's Interest in Partnership
- D. Relationships of Partners to Third Parties
  - 1. Apparent Authority (Estoppel) of Partners
  - 2. Acts Outside the Usual Scope of Business
  - 3. Ability to Convey Real Property
- E. Dissolution, Winding Up, and Termination
  - 1. Rightful and Wrongful Dissolution
  - 2. Winding Up the Partnership Business
  - 3. Effect of Dissolution on Third Parties
- F. Limited Partnerships and Limited Liability Partnerships
- G. Limited Liability Companies
- **Unincorporated Associations**
  - A. Characteristics of Unincorporated Associations
    - 1. State Regulation
    - 2. Types of Associations
  - B. Formation and Financing
    - 1. Articles of Association and Bylaws
    - 2. Rights of Members in Association Property
    - 3. Directors or Trustees
  - C. Liability of Members to Third Parties
  - D. Dissolution and Winding Up



For each assignment, you should define or describe each of the Key Words and Phrases and answer each of the Review and Application Questions.

## **Educational Objective 1**

**Describe the employment-at-will doctrine and its exceptions.**

### **Key Words and Phrases**

Wrongful discharge

Common-law system

### **Review Questions**

1-1. Describe the employment-at-will doctrine.

1-2. Explain the implied-contract exception to employment at will.



1-3. Explain the covenant-of-good-faith exception to employment at will.

## Educational Objective 2

Summarize the laws prohibiting discrimination on the basis of each of the following:

- Age
- Sex, race, color, religion, or national origin
- Disability
- Other factors

## Key Words and Phrases

Employment at will

Bona fide occupational qualification (BFOQ)

Disparate treatment theory

Disparate impact theory

Quid pro quo sexual harassment

Hostile work environment



Affirmative action plan

## Review Questions

- 2-1. Compare how the Age Discrimination in Employment Act (ADEA) and the Older Workers Benefit Protection Act (OWBPA) protect workers from age discrimination.
  
  
  
  
  
  
  
  
  
  
- 2-2. Describe the bases for discrimination covered by the Civil Rights Act of 1964 and employment discrimination actions protected under Title VII of the act.
  
  
  
  
  
  
  
  
  
  
- 2-3. Explain how the Americans with Disabilities Act (ADA) defines the employees who are protected by the act.



## Educational Objective 3

Summarize the laws governing labor-management relations in terms of the following:

- Collective-bargaining relationships
- Collective-bargaining process
- Economic pressures

## Key Words and Phrases

Collective bargaining

Arbitration

## Review Questions

3-1. Describe the two purposes of the National Labor Relations Board (NLRB).

3-2. Explain when collective bargaining is mandatory.





- 3-3. Compare tactics of economic pressure an employer or a union can use if there is no agreement on a contract after good-faith bargaining.

## Educational Objective 4

Summarize the laws that protect employees' rights in the following areas:

- Employee safety and health
- Employee wages and hours
- Family medical leave
- Employee benefits
- Employee privacy

## Key Words and Phrases

Occupational Safety and Health Act of 1970 (OSH Act)

Nonexempt employee

Exempt employee



## Review Questions

- 4-1. Describe the purpose and role of the Occupational Safety and Health Administration (OSHA).
  
- 4-2. Explain the criteria for employers and employees to be covered by the Family Medical Leave Act (FMLA).
  
- 4-3. Describe requirements for insurers under the Health Insurance Portability and Accountability Act (HIPAA).

### Educational Objective 5

When contemplating incorporation, explain how each of the following would factor into the decision:

- Advantages of incorporation
- Federal and state regulation of corporations
- Foreign corporations
- Incorporation process
- Corporate ownership

## Key Words and Phrases

Pierce the corporate veil



Bond

Common stock

Preferred stock

Par value

Treasury stock

Inside director

Outside director

## Review Questions

5-1. Discuss the advantages of incorporation.



5-2. Explain how corporations raise funds.

5-3. Compare corporate board of director decisions that require stockholder approval with those that do not require stockholder approval.

5-4. Describe how a corporation reacquires issued securities and reasons a corporation might choose to repurchase stock.

## **Educational Objective 6**

**Explain the rights, duties, powers, obligations, and liabilities of a corporation and the corporation's directors, officers, and stockholders.**

## **Key Words and Phrases**

Ultra vires

Derivative suit



## Review Questions

- 6-1. Explain the duties imposed on corporate officers and directors by the Employee Retirement Income Security Act (ERISA).
  
  
  
  
  
  
  
  
  
  
- 6-2. Compare the three types of civil lawsuits stockholders may file to pursue complaints.
  
  
  
  
  
  
  
  
  
  
- 6-3. Describe the different types of dividends that can be paid to stockholders by a corporation.

### **Educational Objective 7**

**Describe the procedures by which corporate existence can terminate through merger, dissolution, and reorganization.**

## Key Words and Phrases

Takeover

Tender offer



## Review Questions

- 7-1. Describe a corporate merger.
- 7-2. Compare share exchange and *de facto* mergers.
- 7-3. Explain how one corporation may take over another corporation that does not wish to merge.
- 7-4. Contrast voluntary and involuntary corporate dissolution.



## Educational Objective 8

Describe the characteristics, purposes, and functions of the following:

- Partnerships
- Limited partnerships
- Limited liability partnerships
- Limited liability companies

## Key Words and Phrases

Partnership

Common name statute

Limited partnership

Limited liability partnership

Limited liability company (LLC)



## Review Questions

8-1. Describe how partnerships form and an advantage to forming a partnership.

8-2. Explain partnership by estoppel.

8-3. Contrast rightful and wrongful dissolution of a partnership.

## Application Question

- 8-4. Assume that Jose and Miguel form a partnership with start-up capital of \$100,000. Jose contributes \$80,000 in cash, and Miguel contributes \$20,000. Miguel has advanced skills in computer systems that are essential to the business.
- In the first year of business, the partnership makes a \$20,000 profit. How much are Jose and Miguel each entitled to? There are no special provisions in the partnership agreement.





- b. During the third year of business, Jose and Miguel decide to dissolve the partnership. A sum of \$80,000 remains after all liabilities have been paid. How much would Jose and Miguel each receive?

## Educational Objective 9

**Describe the characteristics, purpose, and functions of unincorporated associations.**

### Key Word or Phrase

Unincorporated association

### Review Questions

- 9-1. Describe unincorporated associations.
  - a. Compare associations with corporations.
  - b. Compare associations with partnerships.



9-2. Describe the six major types of unincorporated associations.

9-3. Describe the liability of association members to third parties.

- a. Contrast the liability for contracts made by for-profit associations with those made by not-for-profit associations.
- b. Contrast the liability of association members for actions of employees and the actions of those performing voluntary services.

9-4. Describe how associations can be dissolved.

