
TABLE OF CONTENTS

PREFACE	iii
EDITORIAL NOTE AND ACKNOWLEDGMENT	v
TABLE OF CASES	xxiii
CHAPTER 1 Agency	1
Sec.	
1. Who Is an Agent?	1
<i>Gorton v. Doty</i>	1
Analysis	6
Introductory Note	6
<i>A. Gay Jensen Farms Co. v. Cargill, Inc.</i>	7
Note	12
Analysis	12
Planning	13
2. Liability of Principal to Third Parties in Contract	14
A. The Agent's Authority	14
<i>Mill Street Church of Christ v. Hogan</i>	14
Analysis and Problems	16
<i>Dweck v. Nasser</i>	16
Analysis	22
<i>Three-Seventy Leasing Corporation v. Ampex Corporation</i>	23
Analysis	26
Planning and Economic Efficiency	26
Question	26
<i>Watteau v. Fenwick</i>	26
Note	29
Analysis	30
Review Problems	30
B. Ratification	31
<i>Botticello v. Stefanovicz</i>	31
Analysis and Problems	34
C. Estoppel	35
<i>Hoddeson v. Koos Bros.</i>	35
Analysis	38
D. Agent's Liability on the Contract	38
<i>Atlantic Salmon A/S v. Curran</i>	38
Analysis	41
3. Liability of Principal to Third Parties in Tort	42
A. Servant Versus Independent Contractor	42
<i>Humble Oil & Refining Co. v. Martin</i>	43
<i>Hoover v. Sun Oil Company</i>	45
Analysis	47
Planning	48
Policy Questions	48
<i>Murphy v. Holiday Inns, Inc.</i>	48
Analysis and Planning	52

Sec.		
3. Liability of Principal to Third Parties in Tort—Continued		
B. Tort Liability and Apparent Agency		54
<i>Miller v. McDonald’s Corp.</i>		54
Analysis		58
Problem		58
C. Scope of Employment		59
<i>Ira S. Bushey & Sons, Inc. v. United States</i>		59
Note		62
Analysis		63
<i>Manning v. Grimsley</i>		64
Analysis		66
D. Statutory Claims		66
<i>Arguello v. Conoco, Inc.</i>		66
Analysis		71
E. Liability for Torts of Independent Contractors		71
<i>Majestic Realty Associates, Inc. v. Toti Contracting Co.</i>		71
Analysis		75
4. Fiduciary Obligation of Agents		76
A. Duties During Agency		76
<i>Reading v. Regem</i>		76
Analysis		78
Problems		78
<i>General Automotive Manufacturing Co. v. Singer</i>		79
Analysis		83
B. Duties During and After Termination of Agency: Herein of “Grabbing and Leaving”		83
<i>Town & Country House & Home Service, Inc. v. Newbery</i>		83
Analysis		86
CHAPTER 2 Partnerships		87
Sec.		
1. What Is a Partnership? And Who Are the Partners?		87
A. Partners Compared With Employees		87
<i>Fenwick v. Unemployment Compensation Commission</i>		87
Analysis		91
B. Partners Compared With Lenders		92
<i>Martin v. Peyton</i>		92
Notes		95
Analysis		96
Planning		97
C. Partnership Versus Contract		97
<i>Southex Exhibitions, Inc. v. Rhode Island Builders Association, Inc.</i>		97
Analysis		101
D. Partnership by Estoppel		101
<i>Young v. Jones</i>		101
Analysis		104
2. The Fiduciary Obligations of Partners		105
A. Introduction		105
<i>Meinhard v. Salmon</i>		105

Sec.	
2. The Fiduciary Obligations of Partners—Continued	
Analysis	110
Planning and Policy	110
B. Opting Out of Fiduciary Duties	111
<i>Perretta v. Prometheus Development Company, Inc.</i>	111
Note	116
Analysis	117
C. Grabbing and Leaving	117
<i>Meehan v. Shaughnessy</i>	117
Analysis	124
Problem	125
D. Expulsion	125
<i>Lawlis v. Kightlinger & Gray</i>	125
Analysis	131
3. Partnership Property	132
<i>Putnam v. Shoaf</i>	132
Analysis	135
4. Raising Additional Capital	136
Problem	136
5. The Rights of Partners In Management	140
<i>National Biscuit Company v. Stroud</i>	140
Analysis	142
Planning	142
<i>Summers v. Dooley</i>	142
Analysis	144
Problem	144
<i>Day v. Sidley & Austin</i>	144
Note	148
Analysis	148
6. Partnership Dissolution	150
A. The Right to Dissolve	150
<i>Owen v. Cohen</i>	150
Legal Analysis	153
Note and Question	153
<i>Collins v. Lewis</i>	153
Note	158
Analysis	158
Planning	158
<i>Page v. Page</i>	158
Problems	161
B. The Consequences of Dissolution	161
<i>Prentiss v. Sheffel</i>	161
Analysis and Planning	163
<i>Pav-Saver Corporation v. Vasso Corporation</i>	164
Analysis and Planning	169
Note	170
C. The Sharing of Losses	170
<i>Kovacik v. Reed</i>	170
Notes and Questions	172

Sec.	
6. Partnership Dissolution—Continued	
D. Buyout Agreements	173
<i>G & S Investments v. Belman</i>	174
Planning	178
7. Limited Partnerships	179
<i>Holzman v. De Escamilla</i>	179
Question	180
CHAPTER 3 The Nature of the Corporation	182
Sec.	
1. Promoters and the Corporate Entity	182
<i>Southern–Gulf Marine Co. No. 9, Inc. v. Camcraft, Inc.</i>	184
Analysis	187
Planning	187
2. The Corporate Entity and Limited Liability	189
<i>Walkovszky v. Carlton</i>	189
Analysis	194
Planning and Policy	194
<i>Sea–Land Services, Inc. v. Pepper Source</i>	194
Note	200
Questions	200
<i>Roman Catholic Archbishop of San Francisco v. Sheffield</i>	200
Analysis	203
Introductory Note	203
<i>In re Silicone Gel Breast Implants Products Liability Litigation</i>	204
Questions	210
Introductory Note	211
<i>Frigidaire Sales Corporation v. Union Properties, Inc.</i>	211
Analysis	213
3. Shareholder Derivative Actions	214
A. Introduction	214
<i>Cohen v. Beneficial Industrial Loan Corp.</i>	214
Analysis	218
<i>Eisenberg v. Flying Tiger Line, Inc.</i>	218
Analysis	221
Note on Settlements and Attorney Fees	222
Note and Question on Individual Recovery in a Derivative Action	223
B. The Requirement of Demand on the Directors	223
<i>Grimes v. Donald</i>	223
Analysis	231
<i>Marx v. Akers</i>	232
Analysis	237
Problems	237
C. The Role of Special Committees	238
<i>Auerbach v. Bennett</i>	238
Analysis	243
<i>Zapata Corp. v. Maldonado</i>	243
Analysis	251
<i>In re Oracle Corp. Derivative Litigation</i>	251

Sec.	
3. Shareholder Derivative Actions—Continued	
Analysis	262
Subsequent Developments	262
4. The Role and Purposes of Corporations	264
<i>A.P. Smith Mfg. Co. v. Barlow</i>	264
Analysis	268
Note	268
Problem	269
Planning	270
<i>Dodge v. Ford Motor Co.</i>	270
<i>Shlensky v. Wrigley</i>	275
Analysis	279
Note	279
Problems	280

CHAPTER 4 The Limited Liability Company 281

Sec.	
1. Formation	282
<i>Water, Waste & Land, Inc. d/b/a Westec v. Lanham</i>	282
Analysis	286
2. The Operating Agreement	287
<i>Elf Atochem North America, Inc. v. Jaffari</i>	287
Analysis	293
3. Piercing the “LLC” Veil	294
<i>Kaycee Land and Livestock v. Flahive</i>	294
Analysis	296
Problem	297
4. Fiduciary Obligation	299
<i>McConnell v. Hunt Sports Enterprises</i>	299
Analysis	304
5. Dissolution	305
<i>New Horizons Supply Cooperative v. Haack</i>	305
Analysis	309

CHAPTER 5 The Duties of Officers, Directors, and Other Insiders 310

Sec.	
1. The Obligations of Control: Duty of Care	310
<i>Kamin v. American Express Company</i>	310
Analysis	313
<i>Smith v. Van Gorkom</i>	314
Aftermath	324
Note on Cinerama, Inc. v. Technicolor, Inc.	324
Analysis	326
Note on Legislative Response	328
<i>Francis v. United Jersey Bank</i>	328
Problem	334
Problems	334

Sec.		
2. Duty of Loyalty	-----	336
A. Directors and Managers	-----	336
<i>Bayer v. Beran</i>	-----	336
Note	-----	341
<i>Benihana of Tokyo, Inc. v. Benihana, Inc.</i>	-----	341
Analysis	-----	345
Problems	-----	346
B. Corporate Opportunities	-----	347
<i>Broz v. Cellular Information Systems, Inc.</i>	-----	347
Analysis	-----	351
<i>In re eBay, Inc. Shareholders Litigation</i>	-----	352
Analysis	-----	354
Problems	-----	356
C. Dominant Shareholders	-----	357
<i>Sinclair Oil Corp. v. Levien</i>	-----	357
Analysis	-----	361
<i>Zahn v. Transamerica Corporation</i>	-----	361
Aftermath	-----	365
Analysis	-----	367
D. Ratification	-----	367
<i>Fliegler v. Lawrence</i>	-----	367
Analysis	-----	370
<i>In re Wheelabrator Technologies, Inc. Shareholders Litigation</i>	-----	370
Analysis	-----	374
Problems	-----	374
3. The Obligation of Good Faith	-----	375
A. Compensation	-----	376
<i>In re The Walt Disney Co. Derivative Litigation</i>	-----	376
Analysis	-----	391
<i>Jones v. Harris Associates L.P.</i>	-----	392
Analysis	-----	395
B. Oversight	-----	395
<i>Stone v. Ritter</i>	-----	396
Analysis	-----	402
4. Disclosure and Fairness	-----	404
A. Definition of a Security	-----	405
<i>Robinson v. Glynn</i>	-----	406
Analysis	-----	411
B. The Registration Process	-----	412
<i>Doran v. Petroleum Management Corp.</i>	-----	413
Note on Other Exemptions	-----	418
Note on Securities Act Civil Liabilities	-----	419
<i>Escott v. BarChris Construction Corp.</i>	-----	421
Questions	-----	434
Problem	-----	435
Note on Integrated Disclosure and Exchange Act Disclosures	-----	435
C. Rule 10b-5	-----	438
<i>Basic Inc. v. Levinson</i>	-----	438
Questions	-----	450
Problem	-----	451
<i>West v. Prudential Securities, Inc.</i>	-----	452

Sec.	
4. Disclosure and Fairness—Continue	
Analysis	455
Note on Judicial Limitations on Actions Under Rule 10b-5.....	456
<i>Santa Fe Industries, Inc. v. Green</i>	457
Note	462
Analysis	462
<i>Deutschman v. Beneficial Corp.</i>	462
Problems	465
5. Inside Information	467
<i>Goodwin v. Agassiz</i>	467
Problems	470
<i>Securities and Exchange Commission v. Texas Gulf Sulphur Co.</i>	471
Notes and Questions	480
Introductory Note on Current Law	482
<i>Dirks v. Securities & Exchange Commission</i>	483
Analysis	489
<i>United States v. O'Hagan</i>	490
Notes and Questions	496
6. Short-Swing Profits	499
<i>Reliance Electric Co. v. Emerson Electric Co.</i>	499
<i>Foremost-McKesson, Inc. v. Provident Securities Company</i>	502
Notes on § 16(b).....	504
Problems	507
7. Indemnification and Insurance	508
<i>Waltuch v. Conticommodity Services, Inc.</i>	509
Analysis	516
<i>Citadel Holding Corporation v. Roven</i>	517
Aftermath.....	520
Analysis	520
Planning.....	520
Note on Insurance	520
CHAPTER 6 Problems of Control	521
Sec.	
1. Proxy Fights	521
A. Strategic Use of Proxies.....	523
<i>Levin v. Metro-Goldwyn-Mayer, Inc.</i>	523
Problem	525
B. Reimbursement of Costs	525
<i>Rosenfeld v. Fairchild Engine & Airplane Corp.</i>	525
Notes on the Regulation of Proxy Fights	529
Questions	531
Problem	531
C. Private Actions for Proxy Rule Violations.....	532
<i>J.I. Case Co. v. Borak</i>	532
Analysis	535
<i>Mills v. Electric Auto-Lite Co.</i>	535
Analysis	542
Problem	542
<i>Seinfeld v. Bartz</i>	543
Analysis	546

Sec.		
1.	Proxy Fights—Continued	
	D. Shareholder Proposals	547
	<i>Lovenheim v. Iroquois Brands, Ltd.</i>	547
	Note	550
	Analysis	551
	<i>AFSCME v. AIG, Inc.</i>	551
	Analysis	555
	Problems	555
	E. Shareholder Inspection Rights	556
	<i>Crane Co. v. Anaconda Co.</i>	557
	<i>State ex rel. Pillsbury v. Honeywell, Inc.</i>	560
	Questions	562
	<i>Sadler v. NCR Corporation</i>	563
	Aftermath	568
	Problems	568
2.	Shareholder Voting Control	570
	<i>Stroh v. Blackhawk Holding Corp.</i>	570
	Analysis	573
	Note and Questions	574
	Problem	574
3.	Control in Closely Held Corporations	576
	<i>Ringling Bros.—Barnum & Bailey Combined Shows v. Ringling</i>	576
	Analysis	583
	<i>McQuade v. Stoneham</i>	583
	<i>Clark v. Dodge</i>	588
	Analysis and Planning	590
	Corporate Planning by Use of Employment Contracts	592
	Note on Shareholder Agreements, Voting Trusts, Statutory Close Corporations, and Involuntary Dissolution	593
	<i>Galler v. Galler</i>	595
	Analysis	600
	<i>Ramos v. Estrada</i>	600
	Analysis	604
	Note on the Law in Other States	605
	Problem	605
	Note and Questions on Limited Liability Companies	605
4.	Abuse of Control	607
	<i>Wilkes v. Springside Nursing Home, Inc.</i>	607
	Analysis	613
	<i>Ingle v. Glamore Motor Sales, Inc.</i>	614
	Analysis	619
	<i>Brodie v. Jordan</i>	619
	Analysis	622
	<i>Smith v. Atlantic Properties, Inc.</i>	623
	Analysis	626
	Planning	627
	Notes and Questions	627
	<i>Jordan v. Duff and Phelps, Inc.</i>	628
	Analysis	639
5.	Control, Duration, and Statutory Dissolution	640
	<i>Alaska Plastics, Inc. v. Coppock</i>	640

Sec.	
5. Control, Duration, and Statutory Dissolution—Continued	
Aftermath	646
Note on <i>Meiselman v. Meiselman</i>	647
Analysis and Planning	648
Note and Question on Limited Liability Companies	648
<i>Haley v. Talcott</i>	649
Analysis	656
Planning	657
<i>Pedro v. Pedro</i>	657
Analysis	662
Planning Issue	663
<i>Stuparich v. Harbor Furniture Mfg., Inc.</i>	663
Analysis	668
6. Transfer of Control	669
<i>Frandsen v. Jensen–Sundquist Agency, Inc.</i>	669
<i>Zetlin v. Hanson Holdings, Inc.</i>	673
Note and Questions on Control Premiums	674
Planning Problem	676
<i>Perlman v. Feldmann</i>	676
Analysis	680
<i>Essex Universal Corporation v. Yates</i>	680
Note on What Is a Control Block of Shares	684
Analysis	685
Problems	687
CHAPTER 7 Mergers, Acquisitions, and Takeovers	689
Sec.	
1. Mergers and Acquisitions	689
A. The De Facto Merger Doctrine	689
Introductory Note	689
<i>Farris v. Glen Alden Corporation</i>	691
Aftermath	697
Analysis	697
<i>Hariton v. Arco Electronics, Inc.</i>	698
Analysis	699
Problem	699
B. Freeze-Out Mergers	700
<i>Weinberger v. UOP, Inc.</i>	700
Analysis	710
Note	710
<i>Coggins v. New England Patriots Football Club, Inc.</i>	712
Note	717
Analysis	717
<i>Rabkin v. Philip A. Hunt Chemical Corporation</i>	718
Aftermath	722
Analysis	722
C. De Facto Non-Merger	723
<i>Rauch v. RCA Corporation</i>	723
Analysis	725
Problem	726

Sec.	
1. Mergers and Acquisitions—Continued	
D. LLC Mergers	727
<i>VGS, Inc. v. Castiel</i>	727
Analysis	732
2. Takeovers	733
A. Introduction	733
<i>Cheff v. Mathes</i>	733
Other Facts	741
Note: “Greenmail”	742
Analysis	742
Problem	743
B. Development	743
Introductory Note	743
<i>Unocal Corporation v. Mesa Petroleum Co.</i>	745
Note on Sec Reaction and Poison Pills	753
Note on “Junk” Bonds as the Back End Consideration	754
Analysis	755
<i>Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc.</i>	755
Sidelights	764
Analysis	765
<i>Paramount Communications, Inc. v. Time Incorporated</i>	766
Note	775
Analysis	775
<i>Paramount Communications Inc. v. QVC Network Inc.</i>	776
Aftermath	788
Analysis	789
Note on Subsequent Delaware Developments	790
C. Extension of the <i>Unocal/Revlon</i> Framework to Negotiated Acquisitions	793
<i>Omnicare, Inc. v. NCS Healthcare, Inc.</i>	793
Analysis	811
D. Extension of the <i>Unocal/Revlon</i> Framework to Shareholder Disenfranchisement	811
<i>Hilton Hotels Corp. v. ITT Corp.</i>	811
Aftermath	822
Analysis	822
E. State and Federal Legislation	823
<i>CTS Corporation v. Dynamics Corporation of America</i>	823
Analysis	833
Notes and Questions on Other State Anti-Takeover Legislation	834
CHAPTER 8 Corporate Debt	837
Sec.	
1. Introduction	837
2. Debtor’s Sale of Substantially All Its Assets	839
<i>Sharon Steel Corporation v. Chase Manhattan Bank, N.A.</i>	839
Analysis	843
Planning	844
3. Incurrence of Additional Debt	845
<i>Metropolitan Life Insurance Company v. RJR Nabisco, Inc.</i>	845
Aftermath	856

Sec.	
3. Incurrence of Additional Debt—Continued	
Analysis	856
Negative Pledge Covenant and Cure Period	858
4. Exchange Offers	860
Background Note	860
<i>Katz v. Oak Industries, Inc.</i>	860
Problem	866
Analysis	867
5. Redemption and Call Protection	868
<i>Morgan Stanley & Co. v. Archer Daniels Midland Company</i>	868
Aftermath	875
Problem	875
Planning	875
INDEX	877