

Caroline Bradley
Room 381 Law Building.
Telephone: 305 284 2082.
cbradley@law.miami.edu

Fall Semester 2009
Faculty Assistant: Adoracion Carrillo
Telephone 305 284 4210

BUSINESS ASSOCIATIONS: Tuesday, Wednesday, Thursday 2.00 pm, Room F109.

COURSE BOOKS: William A Klein, J Mark Ramseyer & Stephen M Bainbridge, BUSINESS ASSOCIATIONS, 7th. Edition (2009); **AND** accompanying Statutes Book. There is a weblog for this class at <http://blenderlaw.umlaw.net/business-associations/> . I will post details of assignments for class on this weblog to supplement this syllabus. I will also post questions for discussion and links to useful resources. You should check the weblog at least once each week during the semester.

ASSESSMENT AND ATTENDANCE: Your performance in this course will be assessed by means of a three-hour, in-class, **closed book** examination. Last year's exam is attached to this handout. Please note that the Casebook for last year's class was different from the Casebook we will use this semester.

I will take attendance. You are entitled to three **unexplained** absences from class during the semester. This is not a policy which requires the Dean of Students' office to certify that your absence was "justified" in order for the absence to count as explained. In order to explain your absence you may visit the Dean of Students' office and fill out the form or you may send me an email. I reserve the right to lower the grade of anyone who misses more than three classes without informing me of the reason for their absence. If you miss a class please do ask me if you have any questions about the material you missed.

Consistent **and useful** participation in class may raise your grade. Class participation includes participation through the weblog.

GENERAL COMMENTS:

This is an introductory business associations class that will provide a basis for advanced classes in the future. There are no prerequisites. However, if you are unfamiliar with business terminology you may find it useful to look at a book such as Klein & Coffee, BUSINESS ORGANIZATION AND FINANCE. **Ask me if you have questions.** You can see me by appointment (I prefer to set appointments by email), catch me before or after class, email me with your questions or submit them through the class

weblog. Reading the newspaper (New York Times, Wall Street Journal) will help to develop comfort with some of the terminology. I will refer to business news stories on the class weblog.

BA is a statutory course. The casebook includes many interesting cases, but please remember that the statutes are extremely important. The Casebook and/or an outline are not a substitute for reading the statutes. You will notice that some of the statutes we will look at are more detailed than others. I would like you to familiarize yourself with UPA, RUPA, the RMBCA, the Delaware General Corporation Law, some provisions of the Securities Exchange Act of 1934, and some provisions of the ALI's Principles of Corporate Governance during the semester. I will provide a list of what specific provisions you will be responsible for in the exam.

While we will often study rules in model or uniform statutes, obviously the states have their own statutes which may include modifications to the model/uniform act.

While it may seem important now to learn what the rules are **now**, bear in mind that there is a lot of scope for variations in rules between jurisdictions, and that whatever the rules may be in a particular jurisdiction today, the rules may be quite different tomorrow or next year.

In the course we will be focusing in particular on some of the legal issues that arise out of particular legal relationships: agency, partnership and corporations. We will in addition focus more briefly on limited liability partnerships (LLPs), limited partnerships (LPs), limited liability limited partnerships (LLLLPs), and limited liability companies (LLCs). The terminology can be quite confusing. This is unavoidable, but it is worth spending the time to distinguish between the different legal forms.

In reading the cases, try to think about litigation issues and planning issues: what are the better arguments in a particular case, and how could the parties have avoided the litigation by advance planning.

Many of the cases we will be looking at involve distinctions between **form** and **substance**. Such distinctions are understandable, but problematic. You are probably familiar with his distinction as applied in other contexts. Think about whether it is particularly significant in the context of business organization law.

In many of the cases, particularly at the beginning of the semester, it will be important to distinguish between (1) disputes among participants in a business organization and (2) disputes between a third party (an outsider) and the business organization or any participant(s) in the organization.

SEMESTER PLAN:

Note: Please read the questions in the book (although we will not discuss all of the questions in class). I will use the weblog to raise additional questions about the material. I will also provide more details about class assignments on the blog. What follows is an approximate outline for the semester.

Week 1: CB pp 1-38 (and Littleton v McNeely (8th Cir. 2009)).

Week 2 CB pp 38-75.

Week 3 CB pp 76-117.

Week 4 CB pp 117-149.

Week 5 CB pp 150-188.

Week 6 CB pp 189-232

Week 7 CB pp 232-280.

Week 8 CB pp 281-309.

Week 9 CB pp 310-341.

Week 10 CB pp 341-403

Week 11 CB pp 404-451.

Week 12 CB pp 451-490.

Week 13 CB pp 490-520.

Week 14,15 To be assigned.

BUSINESS ASSOCIATIONS

THREE HOURS.

THIS IS A CLOSED-BOOK EXAM.

Try to show thought and critical analysis of the materials and issues dealt with in the course.

DO read the question carefully and think about your answers before beginning to write.

DO refer to statutory provisions, cases and other materials where appropriate. If you make general statements, try to back them up with specific references.

DO NOT use abbreviations unless you explain what you are using them to stand for.

DO NOT make assumptions in answering the hypothetical.

DO explain what further information you might need in order to answer the question properly.

DO write legibly and clearly.

You will get credit for following these instructions, and may be penalized for failing to do so.

Greenthink Inc. is a corporation incorporated in Delaware which invests in and promotes environmentally friendly technologies and products. Greenthink's shares are traded on a stock exchange in the US (you do not need to know which one). Greenthink publishes each year, in addition to its annual report, a "Sustainability Report" which emphasizes that Greenthink puts environmental considerations first, all the time.

Sharon Rose is Greenthink's President, Tom White is the CEO, Olive Brown is the Chief Financial Officer, and Bill Grey is the Vice President for Marketing. These officers of Greenthink all have employment contracts with generous remuneration packages and which require them to dedicate all of their time and attention to working for Greenthink. Rose, White, Brown and Grey are all members of Greenthink's Board of directors. In addition, there are five outside or non-management directors who are all successful and very experienced business people who have a lot of confidence in Rose and her management team and do not tend to want to monitor them very closely.

Grey has been unhappy at Greenthink for a while because he feels that the rest of the management team does not appreciate him, and he thinks that he is underpaid for his hard work. A few months ago he announced that he would be taking a 2 week vacation beginning just before Thanksgiving. On the Wednesday before Thanksgiving after almost everyone had left the building, Grey downloaded a lot of data (program files and documents) from Greenthink's computer system, and saved them to CDs he discovered in the supply closet near to his office. He took the CDs with him when he left the building.

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The data Grey downloads include:

A. A research co-operation agreement between Greenthink and Global Green Solutions LLC (GGS), an Arcadian LLC of which Brown is one of the two managing members. GGS has been in business for six months and has a very small budget and a very small, and not very experienced, research team. The co-operation agreement provides that Greenthink and GGS will collaborate on a number of research projects for a period of 5 years, that they will have equal rights to make decisions about the management of their collaboration and that they will share equally any profits generated as a result of the co-operation. The agreement is signed by Brown on behalf of Greenthink. Grey does not think that this agreement was ever approved by Greenthink's Board of Directors;

B. A carbon footprint calculator that Greenthink has developed and tested and plans to roll out in the summer of 2009 (Grey has been involved in developing the marketing strategy for this program);

C. Personnel files on the members of Greenthink's research teams;

D. A file on some litigation Grey has not heard about before, where the Ruritanian Environment Regulator (RER) is suing Greenthink for the equivalent of 500 million US dollars for environmental contamination allegedly caused by a factory in Ruritania (a country in Europe) in which Greenthink invested some years ago. The litigation was commenced in Ruritania over a year ago, and the RER is arguing that Greenthink's failure to have an appropriate environmental standards compliance system with respect to its activities in Ruritania should justify the very high level of damages the RER is seeking from Greenthink in the litigation. As far as Grey can tell from the file he has, Rose and White have been trying to keep the litigation quiet in the hopes that they can avoid damage to Greenthink's reputation.

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Answer the following 5 questions, explaining what further facts you would need to know and giving reasons for your answers:

1. [25 points] Analyze the legal issues raised by the research co-operation agreement. In your answer please specify what the relevant people should have done to minimize any risk of liability.

2. [20 points] If Grey meets an executive at a competitor of Greenthink while he is on vacation and begins to negotiate a possible move to the competitor, what are the implications of giving to the competitor information Grey has about Greenthink and its business? If Grey accepts a position with the competitor but goes back to work for a while at Greenthink after his vacation, is he required to tell anyone at Greenthink about his intention to change jobs?

3. [20 points] What liability might Grey risk incurring if he tells his wife about any of the information he downloaded from Greenthink's computer system? Under what circumstances is giving information to his wife different from or similar to giving information to Greenthink's competitor?

4. [25 points] If the information about the litigation in Ruritania leaks out to the market and the leak is followed by a dramatic fall in the market price of Greenthink's shares so that Greenthink's shareholders are unhappy, what legal claims can the shareholders bring? Does it make a difference whether the shareholders held their shares all through the events described in the question, or bought shares based on Greenthink's most recent Sustainability Report?

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5. [10 points] Write a short essay critiquing **one** of the following:

- i. Veil piercing
- ii. The following provision from the Krispy Kreme Franchise Agreement included at page 51 of the case book:

You and we understand and agree that this Agreement does not create a fiduciary relationship between you and us, that we and you are and will be independent contractors and that nothing in this Agreement is intended to make either you or us a general or special agent, joint venturer, partner or employee of the other for any purpose.....
- iii. Benchmark Capital Partners IV LP v Vague (Del. Ch, 2002).