

AGENCY, PARTNERSHIPS, AND LIMITED LIABILITY ENTITIES

CASES AND MATERIALS ON
UNINCORPORATED
BUSINESS ASSOCIATIONS

THIRD EDITION

WILLIAM A. KLEIN

J. MARK RAMSEYER

STEPHEN M. BAINBRIDGE



FOUNDATION PRESS

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FOUNDATION PRESS

2012



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1 New York Plaza, 34th Floor

New York, NY 10004

Phone Toll Free 1-877-888-1330

Fax 646-424-5201

foundation-press.com

Printed in the United States of America

ISBN 978-1-59941-497-3

Mat #40709126

PREFACE

Phonographs and fountain pens, agency and partnership, bowling alleys and polyester. What goes around, comes around—sometimes. The retro boom retrieved fountain pens. The demand for “technical” apparel even brought back polyester. Yet phonographs seem gone for good, and bowling leagues consigned forever to the un-chic world of tuna melts and sitcom re-runs.

What of agency and partnership? Back when John Houseman played Professor Kingsfield (or maybe a decade or two before), agency was a required course. Even we have no hope of retrieving it for the first year. But if we were never any better at hitting the ten pin than we were eager to replace phonograph cartridges at \$250 a pop, we are delighted to find students interested in agency and partnership—and now limited liability companies.

It is not as if those who buried the course had spotless judgment, after all. If the idiocy that men and women do lives after them, the good is oft interred with their bones: the group that dethroned agency and partnership is also the group that brought us sex and drugs and rock-and-roll, that ratcheted the median law school grade from a gentleman’s C to a B+ or even A-, that prosecuted IBM for monopolizing the computer market, and that sued Kellogs for selling too many kinds of cereal. We leave it to personal preference which were the strikes in that litany and which the hits—but we doubt many readers will think them all home runs.

Time was, big corporate clients seemed the future of lucrative legal practice. But those times are gone. With a Nobel Prize for Ronald Coase between then and now, we know that transactions within one large firm are not necessarily cheaper than transactions between several smaller ones. We know that vertical integration is not the wave of the future. We know that the best clients are not always the biggest. And we know—or ought to know—that agency law structures transactions even at the very largest multinationals anyway.

Given the large fees small firms pay, those who would thrive in the legal services market need to know how to organize production through them. That involves the law of partnership. Given that people everywhere work through others, those who would survive need to know when one person can speak for another. That involves the law of agency. Given the impact of tax and liability considerations, those who would avoid malpractice need to know how to account for both. That involves the law of limited liability companies. Agency and partnership is important once again. But maybe—just maybe—the generation that tried to bury it with bowling should themselves have studied it too.

We edit the cases that follow by the same principles we used in our casebook on corporate law. We pick only cases that at least one of us enjoys teaching. Given the right material, this is a course that is fun both to teach and to study. Unless at least one of us thinks a case fun, we leave it out.

Where necessary, we follow the cases with notes, problems, and questions that clarify the points we think need to be made.

In this field, we consider planning crucial. Accordingly, we structure those notes, problems, and questions with an eye to how a good lawyer might have mitigated the risk of litigation after-the-fact with better planning up-front.

And we edit the cases mercilessly. One iteration of the law is enough, as Holmes might have said but didn't. If a panel seems to lack the guts to say something once and stop, we stop the opinion for them.

We like teaching this subject, and detest repetitious text. We have tried to embody those preferences in this book: Lean, we hope you find it, but not mean.

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Fall 2011

EDITORIAL NOTE AND ACKNOWLEDGMENTS

Footnote numbers in cases are as in the original, with no renumbering to take account of omitted footnotes. The numbering of editorial footnotes, which are indicated by asterisk, restarts on each page.

Citations in cases are generally omitted, except where the authority cited might be familiar to the student, provides the source of quoted language, or otherwise seemed noteworthy.

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