

ASPEN STUDENT TREATISE SERIES

BUSINESS ORGANIZATIONS

SECOND EDITION



J. Mark Ramseyer



Wolters Kluwer

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BUSINESS ORGANIZATIONS

Second Edition

J. MARK RAMSEYER
Harvard Law School



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*Dedicated to the kind soul in the UCLA law school class of 1988
who wrote on her (his?) teaching evaluation,
"Ramseyer seems like a nice guy. He obviously tries really hard.
Maybe someday he'll be a good teacher.
I'm just sorry I had to be part of the learning experience."*

Preface

Consider this a simple guide to the simple course on corporate law—designed to be read during the course of the semester. It is not an exam-prep book. There are plenty of those, and they help you prepare for the exam at the last minute much better than this one. If you face your corporate law exam next week, don't buy this book.

Instead, this book is written to help you through the course of the semester. It explains the mostly straightforward doctrine that judges apply to the only superficially subtle disputes they face. It explains the relatively few principles that tie together the only-deceptively disparate opinions in the books. It summarizes cases. It applies statutes. It states the law. And it explains why judges say what they say and do what they do.

Organizationally, the book tracks two of the principal texts on the market: William A. Klein, J. Mark Ramseyer, and Stephen M. Bainbridge, *Business Associations: Cases and Materials on Agency, Partnerships, and Corporations* (9th ed., Foundation Press 2015); and William T. Allen, Reinier Kraakman, and Guhan Subramanian, *Commentaries and Cases on the Law of Business Organizations* (4th ed., Wolters Kluwer 2012). At least for the former, it explains why the editors included the cases they did and what they intended the cases to show. It closes with a set of review questions, and some suggested answers.

The book approaches the field with a modest rule that any decent lawyer would understand instinctively: Judges are people too. To predict the outcome of a case, a lawyer needs to know the law, but he or she needs to know a good bit more besides. Decades into legal realism, this is hardly news. But it does imply several points relevant here. First, some cases make sense only in light of facts not in the opinion. As necessary (and feasible), this book adds the excluded facts that help explain why a judge did what he or she did. Those excluded facts will not help you study for your exam; they will help you practice the law in a few years.

Second, some cases are wrong. A casebook is not an encyclopedia, and neither is this book. A casebook is a pedagogical tool, and this is a book to explain that pedagogical strategy. Some of the cases in the corporate law casebooks are wrong,

and—more important—sometimes the editors included them precisely *because* they are wrong. Some are wrong on the law, some are wrong on the welfare analysis, and some are wrong on the logic. The editors included them because they thought a discussion about how the judges went wrong might promote classroom learning. As appropriate, this book discusses why, where, and how the opinions are wrong.

Last, the law is (mostly) simple. At root, the principles that govern complex transactions at firms listed on the New York Stock Exchange stem from the principles that govern the simple transactions in Chapter 1. One person has some spare cash but does not know what to do with it; another person has some ideas about how to get rich but lacks the money needed to indulge them. The law that governs corporate affairs is the law that structures the relations between these two. It is the law that facilitates arrangements where one person advances the funds and the other person uses the funds to make money for both of them.

And all the classic movie and comic book references in the book? Look, this is a book to *read*. It was not written to be a source that you can consult a week before the final. There are plenty of books that do that well, but let me be honest: this is not one of them, and was not written to compete with them. This was written to help you through the course of the semester, *during* the semester. The resurrected movie characters and plots and comic book characters are there to help you slog through the law. If classic movies aren't your thing, ignore the references. It will not matter. But do read the book.

J. Mark Ramseyer
Harvard University
Fall 2016

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Business Organizations

Summary of Contents

<i>Contents</i>	<i>xi</i>
<i>Preface</i>	<i>xxiii</i>
<i>Acknowledgments</i>	<i>xxv</i>
CHAPTER 1 Agency	1
CHAPTER 2 Partnership	31
CHAPTER 3 Implications of the Corporate Form	81
CHAPTER 4 Corporate Fiduciary Duties	137
CHAPTER 5 Insider Trading	191
CHAPTER 6 Corporate Control (I)	245
CHAPTER 7 Corporate Control (II)	289
CHAPTER 8 Mergers and Acquisitions	339
Appendix Self-Study	391
<i>Table of Cases</i>	<i>417</i>
<i>Index</i>	<i>423</i>

Contents

<i>Preface</i>	<i>xxiii</i>
<i>Acknowledgments</i>	<i>xxv</i>

CHAPTER 1

Agency

I. Agents	2
A. Simple Cases	2
1. Introduction	2
2. Agents and Non-agents	3
3. Servants and Independent Contractors	4
4. Non-agent Independent Contractors	5
B. Not-So-Simple Cases	6
II. Authority	7
A. Introduction	7
B. Actual Authority	8
1. Actual Express	8
2. Actual Implied	8
C. Apparent Authority	8
D. Examples	9
E. Mill Street	10
F. Inherent Agency Power	11
G. Ratification	14
1. Some Examples	14
2. The Law	15

H. Estoppel	16
1. Introduction	16
2. Some Examples	16
III. Tort Liability	18
A. Introduction	18
B. Respondeat Superior	18
C. Who Is a Servant?	19
1. A Simple Example	19
2. Contrasting Gas Stations	19
D. The Franchise Puzzle	21
1. Why Control?	21
2. Why Franchise?	22
E. Scope of the Employment	24
1. The Law	24
2. Hard Cases	24
IV. Fiduciary Duties	26
A. Introduction	26
B. The Law	27
C. Further Examples	27
V. Conclusion	30

CHAPTER 2

Partnership

I. Were They Partners?	32
A. Introduction	32
B. Partner or Employee?	33
C. Partner or Creditor?	36
D. Apparent Partner?	37
1. The Law	37
2. An Illustration	38
II. Liability	40
A. The Law	40
1. The Principles	40
2. Their Significance	41
B. Examples	42
1. To Third Parties	42
2. As Among Partners	43

Contents

III. Transfers	45
A. The Law	45
B. Examples	46
1. Ringling	46
2. <i>Putnam v. Shoaf</i>	47
C. Significance	49
IV. Fiduciary Duties	50
A. Introduction	50
B. <i>Meinhard v. Salmon</i>	51
1. The Case	51
2. Its Reach	54
3. Its Cost	55
4. A Modern Analogue	55
C. <i>Meehan v. Shaughnessy</i>	56
D. <i>Lawlis v. Kightlinger & Gray</i>	57
1. The Case	57
2. Alcoholism	58
E. El Paso Pipeline	59
V. Management	60
A. The Law	60
B. Simple Partnerships	60
C. Law Firm Partnerships	62
VI. Dissolution	66
A. When Can Partners Dissolve?	66
1. Introduction	66
2. An Example	66
B. When Is Dissolution Wrongful?	67
1. Introduction	67
2. Examples	68
C. What Is the Result of Dissolution?	69
1. Dissolution and Windup	69
2. Wrongful Dissolution	70
3. Examples	71
VII. Conclusion	74
Appendix. Other Organization Forms	75
A. Introduction	75
B. Modest Individual and Corporate Rates	75
C. High Individual but Modest Corporate Rates	76
D. Tax Shelters	76
1. The Shelter	76
2. Limited Partnerships	77
3. Limited Liability Limited Partnerships	77
4. S Corporations	78
E. Limited Liability Companies	78
F. Limited Liability Partnerships	79

CHAPTER 3

Implications of the Corporate Form

I.	Introduction	85
A.	Clarity and Ambiguity	85
B.	Preliminary Legal Consequences	86
C.	Implications	87
II.	Shareholders and Litigation	87
A.	The Authority of the Board	87
B.	The Business Judgment Rule	88
1.	The Decision to Sue	88
2.	The Rule	89
3.	Litigation	90
C.	Derivative Suit	91
1.	Preliminary Requirements	91
2.	Demand	93
3.	The Legal Standard	94
D.	Special Litigation Committees	96
1.	The Practice	96
2.	Independence	98
E.	Derivative versus Direct	99
1.	The Distinction	99
2.	An Example	100
3.	Why It Matters	102
III.	Shareholders and Corporate Purpose	103
A.	Introduction	103
B.	Charitable Giving	105
1.	Introduction	105
2.	Giving and Social Class	105
3.	<i>A. P. Smith</i>	107
C.	Corporate Purpose	108
1.	The Ford Litigation	108
2.	The Opinion	109
3.	Complications	111
4.	The Proud CEO	112
5.	Why They Sued	113
6.	Why Dividends Mattered	114
D.	Using Corporations to Promote Religious Beliefs	115
IV.	Shareholders and Corporate Liability	116
A.	Introduction	116
B.	In Tort	117
1.	<i>Walkovszky</i>	117
2.	Fraud and Capitalization	118