

CHIAPPINELLI

Cases and Materials on
BUSINESS ENTITIES

ASPEN
PUBLISHERS



Cases and Materials on Business Entities

Eric A. Chiappinelli

Associate Dean for Alumni and Professional Relations

Professor of Law

Seattle University School of Law

ASPEN
PUBLISHERS

76 Ninth Avenue, New York, NY 10011
<http://lawschool.aspenpublishers.com>

© 2006 Aspen Publishers, Inc.
a Wolters Kluwer business
<http://lawschool.aspenpublishers.com>

All rights reserved. No part of this publication may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopy, recording, or any information storage and retrieval system, without permission in writing from the publisher. Requests for permission to make copies of any part of this publication should be mailed to:

Aspen Publishers
Attn: Permissions Department
76 Ninth Avenue, 7th Floor
New York, NY 10011-5201

Printed in the United States of America

1 2 3 4 5 6 7 8 9 0

ISBN 0-7355-2614-1

Library of Congress Cataloging-in-Publication Data

Chiappinelli, Eric A., 1953-

Cases and materials on business entities / Eric A. Chiappinelli.
p. cm.

ISBN 0-7355-2614-1 (alk. paper)

1. Corporation law—United States—Cases. 2. Business enterprises—Law and legislation—United States—Cases. I. Title.

KF1413.C485 2006
346.73'066—dc22

2006003929

About Aspen Publishers

Aspen Publishers, headquartered in New York City, is a leading information provider for attorneys, business professionals, and law students. Written by preeminent authorities, our products consist of analytical and practical information covering both U.S. and international topics. We publish in the full range of formats, including updated manuals, books, periodicals, CDs, and online products.

Our proprietary content is complemented by 2,500 legal databases, containing over 11 million documents, available through our Loislaw division. Aspen Publishers also offers a wide range of topical legal and business databases linked to Loislaw's primary material. Our mission is to provide accurate, timely, and authoritative content in easily accessible formats, supported by unmatched customer care.

To order any Aspen Publishers title, go to <http://lawschool.aspenpublishers.com> or call 1-800-638-8437.

To reinstate your manual update service, call 1-800-638-8437.

For more information on Loislaw products, go to www.loislaw.com or call 1-800-364-2512.

For Customer Care issues, e-mail CustomerCare@aspenpublishers.com; call 1-800-234-1660; or fax 1-800-901-9075.

Aspen Publishers
a Wolters Kluwer business



Dedication

I've always thought that dedicating a book to family is more than a little propitiatory. While some books might actually atone to the author's loved ones for the time spent away from them, certainly few casebooks fall into that category. I have no illusions that this book is any compensation to my son, Peter, for the hours and hours I spent writing it. I have thanked him, and do so again here, for his willingness to put up with all the time I spent away from him while I was writing. But, in fact, although he was largely cheerful about all of this, he really had no choice. I was the one who decided to write this book and I was the one who decided how much time to spend on it. So this dedication is more in the way of apology than propitiation. I hope it will remind all parents that sometimes the professional choices they make for themselves affect their children in ways that can be rationalized but can't really be remedied.

This book is dedicated to my son, Peter, who is the most wonderful person and who was the most wonderful child. I am sorry that I spent so much time away from you to write it. Thank you, Peter, for sharing so much of your life with me and for letting me be your father. I am grateful to you for far more than you can ever imagine. I love you any time, every time, all the time.



Preface

You have already encountered business entities, even if you are just beginning your second year of law school. Some entities, such as corporations, were parties in cases you read (or were supposed to have read). In other instances the litigants may have been employed by, or dealt with, a business entity, though the entity was not a party. This course is different from the other courses in which you've encountered business entities because it deals with the internal working of business entities. Among other topics, we will look at the ways in which business entities are formed, how they get money from owners and lenders, and how they are governed.

A. HOW TO APPROACH THE COURSE

Your professor will doubtless suggest to you the way in which he or she wants you to think about the course. However, it may be useful to give you my own view as well, in part because I suspect most professors share most of my views in this regard, and in part because sharing my view may help you to understand this casebook better. If there is one big idea that runs through the law of business entities it is *capital formation*. That is, the process of collecting money from more than one person for the purpose of engaging in an enterprise.

The process of capital formation leads, in turn, to three key legal questions. First, what are the economic rights between the money providers? That is, how do the providers share profits? Equally? Proportionally to their investment? Do some providers (e.g., lenders) get paid before others (e.g., owners)? Second, what are the management rights between the money providers? Does each provider have an equal say? Do some providers have no say at all? Finally, what are the rights of outsiders against the business entity and its owners? Obviously contract and tort law provide the answer in many instances. But business entities law also provides answers in many settings. Are the owners liable with the entity? Are the owners liable only after the entity's assets are exhausted? Are the owners not liable at all, even if the entity's assets are gone?

I also want to give you two suggestions for approaching business entities as a law student. First, as you read the cases you should spend the necessary time to understand the transactions and the underlying motivations. Some students find a temptation to ignore those elements (especially if they're not initially interested in the subject) and they resolve to learn only the legal rules. This is a mistake for both

high-road and low-road reasons. On the high road, the legal rules are not immutable laws of physics. They're developed in response to business transactions and the motivations behind them. So you can't come to any informed judgment about the propriety of business entities law until you understand the milieu that generates that law. Second, on the low road, it's pretty nearly impossible to succeed in a business entities class simply by trying to learn only the legal rules. There are just too many rules of law in this course and you probably haven't got enough memory to learn them all without knowing the business context that generated those rules. So understanding the transactions will be a way for you to remember and understand more rules and how they relate to one another.

My second suggestion is to pay attention to the *text* of the statutes. For many law students, business entities is their first exposure to an area of law in which the rules are primarily statutory rather than judge-made. You will be repaid many times over for the time you put into reading the statutes.

B. THE PLAN OF THIS CASEBOOK

This casebook is organized into five parts. Part I is about practicing business law. Chapter 1 describes the various practice settings in which business lawyers work. Chapter 2 talks about business itself, and does so largely apart from the question of business entities. Chapter 3 talks about a few of the most central economic concepts that business entities face and also explores the rudiments of accounting. Every lawyer, and especially every business lawyer, needs an exposure to some economic ideas. This exposure is necessary if for no other reasons than that your clients will have this knowledge and you need to be conversant with the basics, at least.

Part II consists of a single chapter. Chapter 4 deals with the law of agency. Agency is not an entity but rather it is a system of relationships and consequences that exist when one person acts for another. Agency problems pervade business entities and other private law areas, as well.

Part III takes up the majority of the book. It deals with the law of corporations, which is the principal business entity. Chapter 5 deals with creating corporations and the difficulties that can be encountered in doing so. Chapters 6, 7, and 8 focus on the "dough-ray-mi," that is, the financial aspects of corporate law. Chapter 6 is about getting money from investors into the corporation; Chapter 7 is about getting it out to them. Chapter 8 is concerned with the ability of creditors to get paid when the entity does not have enough money.

Chapter 9 is about the power of the board of directors to govern a corporation. Chapters 10 through 14 talk about constraints on the board's power to govern. As you intuit, those constraints constitute a significant part of the law of business entities. Chapter 10 looks at external constraints on the board's power. Chapters 11, 12, and 13 are concerned with the directors' duties of loyalty and care, called their fiduciary duties. Finally, Chapter 14 assesses whether the constraints are effective.

Chapters 15 and 16 explore shareholder rights. Chapter 15 mostly concerns publicly held corporations, and Chapter 16 is more focused on privately held companies. Chapter 17 is about changing control of corporations. That subject is typically a separate course in most law schools, so this chapter is primarily an introduction.

Part IV comprises two chapters, and its focus is on business entities other than corporations. They are much briefer than the discussion of corporate law, not because they are less important, but because much of corporate law carries over to these other entities. Chapter 18 looks at partnerships, including limited partnerships. This is an important business entity in large part because it is the default entity. That is, when more than one person owns a business, those owners are usually partners of a partnership unless they've taken specific action to form another entity instead. Chapter 19 involves limited liability companies (LLCs). This is perhaps the most frequently selected business entity for new businesses. From a legal standpoint, LLCs are essentially a blend of corporate law and partnership law. Thus, if you've paid attention from Chapter 5 through Chapter 18, Chapter 19 will be quite easy.

Finally, Part V, Chapter 20, is a look at the way in which lawyers and their clients go about choosing the appropriate entity for a particular business. The placement of this chapter at the end of the book may seem paradoxical, because choosing the appropriate entity is one of the first decisions planners usually make. However, as a student you won't be able to make real sense of Chapter 20 unless you have a detailed knowledge of the business entities from which to select. Hence its placement at the end.

A large number of the chapters have sections entitled "Background and Context" and "The Current Setting." Background and Context material is designed to put the law into some social or historical milieu. These sections provide a richer understanding of the material, but some professors may omit all of them and most professors will omit at least some of them. I've set these sections out separately to make it easier for professors to assign the material and to make the divisions within the material clearer to you. "The Current Setting" is meant to signal to you, and your professor, that the material is not background and context. That is, it focuses mainly on legal, rather than historical or social, ideas and primarily on the law as it exists in the United States currently.

One of the most useful features of this casebook is the way in which the "Notes and Questions" sections are organized. I have divided the notes and questions into five types, labeled each, and set them out in the same order throughout the book. Not every "Notes and Questions" section will have each type. The first type is called, believe it or not, *Notes*. This has factual information, usually about the preceding case, the kind of transaction, or the applicable law. The second type is called *Reality Check*. These questions are designed to make sure you understand the transaction, the dispute, and the resolution. They should be of particular value before class and at the end of the course, when you're preparing for the final exam. The third type is called *Suppose*. These questions ask you to be a bit flexible in your thinking. They ask you to imagine that the facts or the law were slightly different from the actual case. One of a lawyer's most frequent tasks is to analogize or distinguish one set of facts from another. The *Suppose* questions give you practice in doing that. The fourth type is *What Do You Think?* These are policy and theory questions. They ask you for your view of the case's result on the parties, the social effect of the rule in the case, or a more general theoretical question. These may seem a bit divorced from reality at first, but I think law students tend to underestimate the power of theory on the world in which they live.

Finally, some of the "Notes and Questions" sections end with a *You Draft It* exercise. These are, as you see by the name, opportunities to hone your drafting skills. My pedagogical view is that drafting exercises that are simply made up by the

professor are not nearly as valuable as those drawn from actual legal practice. Moreover, many drafting assignments that law students undertake require them to draft whole documents or at least extended sections of documents. These are, of course, valuable skills. However, I believe that an underappreciated writing skill is the talent to draft small, very focused, pieces. These pieces are often absolutely critical to the success or failure of a transaction. So, based on those two premises, I have created the *You Draft It* sections. In every instance, the assignment is based on actual language that was important in the case just discussed. Frequently I will ask you to redraft language that was at the center of the case so that first one party and then the other would clearly prevail. Sometimes the drafting involves a statute. In any event, your professors might not assign these exercises (and certainly won't assign all of them to be turned in and evaluated!) but they are quite useful nonetheless. You might find it particularly useful to swap your draft with that of another student in the course to critique one another's work. Another approach is to have the members of a study group take turns so that only one student's draft is critiqued. This approach, incidentally, would replicate a frequent practice setting. That is, a legal issue has arisen, sometimes without warning, and one member of a legal team is given the task of drafting language that solves the problem. The other members then critique that draft as a group.

There's one more element of this casebook that I think sets it apart from other books and that, I'm hoping, will make it more useful to students and their professors. At the end of each chapter is a list of *Terms of Art in This Chapter*. Each term of art is one that is first discussed more than tangentially in the chapter. The term of art is also italicized at its first principal appearance. You might want to preview the chapter by looking at the list before you read the chapter. I think that becoming aware of important terms and then finding the definitions within the chapter context is vital to learning. For that reason I have not placed the definitions with the terms of art at each chapter's end. However, I have assembled them in a glossary at the back along with definitions. So, if you need a quick refresher on a particular term, you can look in the glossary for help. Let me say a word about the footnote conventions in this casebook. Footnotes in my own text are sequentially numbered in each chapter. Footnotes in cases and in other extracts retain their original numbers. Footnotes that I have inserted in a case or extract are indicated both by an asterisk and by ED. at the end of the footnote.

I hope you enjoy using this casebook. It seems to me that students often don't reflect on the book they're using unless it's so problematic that it's a hindrance to their learning. I sincerely hope that this book helps you rather than hinders you as you learn the law of business entities. I also hope you like it.

Eric A. Chiappinelli

February 2006



Acknowledgments

This book would not exist if Lynn Churchill, acquisitions editor at Aspen, hadn't asked me to write it. She first suggested that I might enjoy, and be good at, writing a casebook on business entities. She also shepherded me through the process of submitting a book proposal. As she suspected, I have very much enjoyed writing this book. Thank you, Lynn.

My development editor was Susan Boulanger. Actually, Susan and I have only communicated by e-mail. It is entirely possible that "Susan Boulanger" is someone's *nom de crayon bleu* or that she is a collective person, like Carolyn Keene. Nonetheless, I believe she exists. I had no idea what a development editor was until Susan introduced herself. It turns out that a development editor is sort of a personal coach. She gave me tips for dividing the writing into manageable parts. She also tried to keep me on deadlines that I, myself, had blithely agreed to meet. Nonetheless, I missed (often by a significant margin) every single deadline. She took my drafts and sent them to anonymous reviewers, collected their comments, synthesized them, and helped me to accept and understand them. More than anything else, though, Susan provided enormous support to me during the long writing and rewriting process. That support has been of incalculable help. I am deeply thankful for your help, Susan.

This casebook has been improved a great deal by the anonymous reviewers. I was astonished at the care with which they read the manuscript. They had insights and perspectives that I never would have considered. Thank you, for engaging so thoroughly with me. Lauren Arnest copy edited the manuscript and improved its readability significantly. Thanks, Lauren. The unforgettable Laurel Ibey was the manuscript editor. She answered many of my questions (and posed many more) and ensured that the book sailed through the production process. I appreciate all you've done, Laurel.

A number of my colleagues have helped in this effort. John B. "Jack" Kirkwood used drafts of this book in several of his classes and provided me with much valuable feedback. He also provided a fair bit of help with the economics portions of the text. He was very generous with his time, as well, amounting to hours of conversation on topics large and small. Thank you, Jack. Russell Powell also used this casebook in two of his classes and also gave me his reaction to it. I know the book is much better than it would have been without their help. Annette Clark helped to convince me to accept Lynn Churchill's suggestion that I write this casebook and also provided support during the periods when I was particularly discouraged. My deans, Rudy Hasl and Kellye Testy, provided financial support during the summers, when much of the manuscript was written and edited. I appreciate their support. Finally, my secretary, Laurie Sleeper, coordinated endless details, answered questions from students and colleagues, and obtained all the permissions. Thank you very much, Laurie.

I'm also quite thankful to the Starbucks Corporation and Caffè Ladro in Seattle, Washington. The vast majority of the text was written in their fine establishments and I highly recommend them to other authors and coffee drinkers.

Throughout the entire process of producing this tome one person has been uppermost in my thoughts as the person whose intellect and cast of mind most resemble my own. He is the Reverend Edward Casaubon. I do not blush to say that I have followed his example in the way of pigeonholes. If my small book bears even the faintest resemblance to his book,¹ then I shall have acquitted myself well, indeed.

Finally, I would like to thank the authors, publishers, and copyright holders for their permission to reproduce materials from their publications.

Allen, William T. *Our Schizophrenic Conception of the Business Corporation*. 14 *Cardozo Law Review* 261 (1992). Reprinted with permission of the Cardozo Law Review.

Alsop, Ronald. *Right and Wrong*. *The Wall Street Journal*, September 17, 2003, at R9. Reprinted with permission of Dow Jones & Company, Inc., conveyed through Copyright Clearance Center, Inc.

American Bar Association. *Model Business Corporation Act*. 1984. Reprinted by permission of the American Bar Association.

Arnold, M. Thomas. *Shareholder Duties Under State Law*. 28 *Tulsa Law Journal* 213, 242-257 (1992). Reprinted with permission of the University of Tulsa College of Law, conveyed through Copyright Clearance Center, Inc.

Bainbridge, Stephen M. *The Board of Directors as Nexus of Contracts*. 88 *Iowa Law Review* 1, 5-6, 9-11 (2002). Reprinted with permission of the Iowa Law Review, conveyed through Copyright Clearance Center, Inc.

Bart, Peter. *The Studios' Plethora of Presidents*. *Variety*, March 2, 2003. Reprinted with permission of Reed Business Information, conveyed through Copyright Clearance Center, Inc.

Berle, Adolf A., Jr., and Gardiner C. Means. *The Modern Corporation and Private Property*. 333-338, 343, 353-356 (1933). Reprinted with permission of Commerce Clearing House, conveyed through Copyright Clearance Center, Inc.

Booth, Richard. *Form and Function in Business Organizations*. 58 *Business Lawyer* 1433 (2003). Reprinted with permission of the American Bar Association.

Branson, Douglas M. *The Very Uncertain Prospect of "Global" Convergence in Corporate Governance*. 34 *Cornell International Law Journal* 321, 323-327 (2001). Reprinted with permission of the Cornell University International Law Journal, conveyed through Copyright Clearance Center, Inc.

Browning, E. S. *Burst Bubbles Often Expose Cooked Books and Trigger SEC Probes, Bankruptcy Filings*. *The Wall Street Journal*, February 11, 2002, at C1. Reprinted with permission of Dow Jones & Company, Inc., conveyed through Copyright Clearance Center, Inc.

Chandler, Alfred D. *The Visible Hand: The Managerial Revolution in American Business*. 9-10, 28, 36-37, 50-51, 76-78, 82-86, 87, 497-498 (1977). Reprinted by permission of The Belknap Press of Harvard University Press.

1. Edward Casaubon, *The Key to All Mythologies* (forthcoming).

DeBaise, Colleen. *Corporate-Governance Law Is the Rage*. The Wall Street Journal, September 1, 2004, at B7. Reprinted with permission of Dow Jones & Company, Inc., conveyed through Copyright Clearance Center, Inc.

Fitting In: In Bow to Retailers' New Clout, Levi Strauss Makes Alterations. The Wall Street Journal, June 17, 2004, at A1. Reprinted with permission of Dow Jones & Company, Inc., conveyed through Copyright Clearance Center, Inc.

Gilson, Ronald J. *Globalizing Corporate Governance: Convergence of Form or Function*. 49 American Journal of Comparative Law 329, 329-334 (2001). Reprinted with permission of the American Association for the Comparative Study of Law, conveyed through Copyright Clearance Center, Inc.

Hamill, Susan Pace. *The Origins Behind the Limited Liability Company*. 59 Ohio State Law Journal 1459 (1998). Reprinted with the permission of the Ohio State Law Journal.

Haynsworth, Harry J. *The Unified Business Organizations Code: The Next Generation*. 29 Delaware Journal of Corporate Law 83 (2004). Reprinted with permission of the Delaware Journal of Corporate Law, conveyed through Copyright Clearance Center, Inc.

Klein, Alec. *Borrowers Find System Open to Conflicts, Manipulation*. The Washington Post, November 22, 2004, at A01. Reprinted with permission of the Washington Post Writers Group, conveyed through Copyright Clearance Center, Inc.

Koniak, Susan P. *Who Gave Lawyers a Pass? We Haven't Blamed the Real Culprits in Corporate Scandals*. Forbes, August 12, 2002, at 58. Reprinted by permission of Forbes Magazine, Inc.

Murdock, Charles W. *The Evolution of Effective Remedies for Minority Shareholders and Its Impact upon Valuation of Minority Shares*. 65 Notre Dame Law Review 425, 452-470 (1990). Reprinted with permission of the Notre Dame Law Review, conveyed through Copyright Clearance Center, Inc. (The publisher bears responsibility for any errors that have occurred in reprinting or editing.)

Nocera, Joseph, et al. *System Failure*. Fortune, June 24, 2002, at 62. Copyright Time Inc. All rights reserved.

Plitch, Phyllis. *When Market Scandals Erupt, Regulation Can Come in a Flood*. The Wall Street Journal, January 15, 2003. Reprinted with permission of Dow Jones & Company, Inc., conveyed through Copyright Clearance Center, Inc.

Restatement (Second) of Conflict of Law. 1971. Reprinted with permission of the American Law Institute. All rights reserved.

Restatement (Third) of Agency. 2006. Reprinted with permission of the American Law Institute.

Shmukler, Evelina. *Back to School*. The Wall Street Journal, February 24, 2003, at R6. Reprinted with permission of Dow Jones & Company, Inc., conveyed through Copyright Clearance Center, Inc.

Smith, Randall, et al. *Wall Street Firms to Pay \$1.4 Billion to End Inquiry-Record Payment Settles Conflict-of-Interest Charges*. The Wall Street Journal, April 29, 2003, at A1. Reprinted with permission of Dow Jones & Company, Inc., conveyed through Copyright Clearance Center, Inc.

Solomon, Deborah, and Cassell Bryan-Low. *Companies Complain About Cost of Corporate-Governance Rules*. The Wall Street Journal, February 10, 2004, at A1. Reprinted with permission of Dow Jones & Company, Inc., conveyed through Copyright Clearance Center, Inc.

Stout, Lynn A. *On the Proper Motives of Corporate Directors (Or, Why You Don't Want to Invite Homo Economicus to Join Your Board)*. 28 Delaware Journal of Corporate Law 1 (2003). Reprinted with permission of the Delaware Journal of Corporate Law, conveyed through Copyright Clearance Center, Inc.

Weil, Jonathan. *Missing Numbers-Behind Wave of Corporate Fraud: A Change in How Auditors Work*. The Wall Street Journal, March 25, 2004, at A1. Reprinted with permission of Dow Jones & Company, Inc., conveyed through Copyright Clearance Center, Inc.

Wells, C. A. Harwell. *The Cycles of Corporate Social Responsibility: An Historical Retrospective for the Twenty-First Century*. 51 University of Kansas Law Review 77 (2002). Reprinted with permission of the Kansas Law Review, conveyed through Copyright Clearance Center, Inc.



Summary of Contents

<i>Contents</i>	<i>xi</i>
<i>Preface</i>	<i>xxix</i>
<i>Acknowledgments</i>	<i>xxxiii</i>
Part I. THE PRACTICE OF BUSINESS LAW	1
Chapter 1. Practicing Corporate Law	3
Chapter 2. Business and Businesses	19
Chapter 3. Economics	43
Part II. AGENCY	83
Chapter 4. Agency	85
Part III. CORPORATIONS	113
A. Creation	
Chapter 5. The Incorporation Process	115
B. The Corporation and Its Finances	
Chapter 6. Capital Formation	151
Chapter 7. Cashing Out: Distributing Money to Shareholders	205
Chapter 8. Getting Money to Creditors When the Corporation Can't Pay	275
C. Board Power to Govern the Corporation	
Chapter 9. How Corporations Take Actions	313
D. Restrictions on the Board's Power	
Chapter 10. Restrictions on the Board's Power	357
Chapter 11. The Duty of Loyalty of Directors (and Officers)	379
Chapter 12. The Duty of Care of Directors (and Officers)	403
Chapter 13. Standards of Review of Board Actions	425
Chapter 14. Do the Restrictions Work?	491

E. Shareholder Power in Public and Private Corporations	
Chapter 15. Shareholder Governance Powers: Paradigms and Public Companies	543
Chapter 16. Shareholder Governance Questions Most Often Seen in the Privately Held Corporation	593
F. Change of Control	
Chapter 17. Change of Control	639
Part IV. UNINCORPORATED ENTITIES	685
Chapter 18. Partnerships	687
Chapter 19. Limited Liability Companies	739
Part V. CHOICE OF FORM	771
Chapter 20. Choice of Entity	773
<i>Glossary</i>	793
<i>Table of Cases</i>	809
<i>Index</i>	813



Contents

<i>Preface</i>	xxix
<i>Acknowledgments</i>	xxxiii
Part I. THE PRACTICE OF BUSINESS LAW	1
Chapter 1. Practicing Corporate Law	3
A. What Do Corporate Lawyers Do?	3
1. A Different Paradigm from Litigators	3
2. The Typical Roles of the Corporate Lawyer	5
<i>Notes and Questions</i>	8
B. Where Do Corporate Lawyers Work?	10
1. Private Practice	10
2. Corporations (In-House Lawyers)	11
3. Other Practice Settings	13
4. Who Practices Corporate Law?	13
<i>Notes and Questions</i>	15
C. What Do Corporate Lawyers Need to Know?	15
1. Core Areas of Knowledge	15
2. Secondary Areas of Knowledge	16
<i>Notes and Questions</i>	17
D. Federal Securities Regulation	17
E. Terms of Art in This Chapter	18
Chapter 2. Business and Businesses	19
A. What Is a “Business”?	19
1. Why Businesses Vary in Size	19
a. Background and Context—An Example	21
<i>Fitting In: In Bow to Retailers’ New Clout,</i>	
<i>Levi Strauss Makes Alterations</i>	21
<i>Notes and Questions</i>	24
B. The Development of Big Business in America	25
Alfred D. Chandler, Jr., <i>The Visible Hand: The Managerial</i>	
<i>Revolution in American Business</i>	25
<i>Notes and Questions</i>	28
1. Management Patterns in Large Corporations	28

	Alfred D. Chandler, Jr., <i>The Visible Hand: The Managerial Revolution in American Business</i>	29
	<i>Notes and Questions</i>	31
C.	Form Follows Function — Entities for Businesses	32
	1. The Current Setting — From Partnerships to Corporations	32
	Alfred D. Chandler, Jr., <i>The Visible Hand: The Managerial Revolution in American Business</i>	32
	Margaret M. Blair, <i>Locking in Capital: What Corporate Law Achieved for Business Organizers in the Nineteenth Century</i>	33
	<i>Notes and Questions</i>	34
	2. Background and Context — A Vignette	34
	Margaret M. Blair, <i>Locking in Capital: What Corporate Law Achieved for Business Organizers in the Nineteenth Century</i>	35
	<i>Notes and Questions</i>	36
	3. Which State’s Law? — The Rise of Delaware	36
	William E. Kirk, III, <i>A Case Study in Legislative Opportunism: How Delaware Used the Federal-State System to Attain Corporate Pre-Eminence</i>	37
	<i>Notes and Questions</i>	38
	4. Which Nation’s Law? — Globalization and Corporation Law	39
	Ronald J. Gilson, <i>Globalizing Corporate Governance: Convergence of Form or Function</i>	39
	Douglas M. Branson, <i>The Very Uncertain Prospect of “Global” Convergence in Corporate Governance</i>	40
	<i>Notes and Questions</i>	41
D.	Terms of Art in This Chapter	42
Chapter 3.	Economics	43
A.	Risk	43
	<i>Notes and Questions</i>	47
B.	Valuation	48
	1. Value as Discounted Cash Flow	49
	a. “I’ll Gladly Pay You Tuesday, For a Hamburger Today” — The Time Value of Money	49
	b. Discounting to Present Value	50
	c. An Example	51
	<i>Notes and Questions</i>	53
	2. A Practical Illustration	54
	Doft & Co. v. Travelocity.Com Inc.	55
	<i>Notes and Questions</i>	59
	3. Background and Context: Options and How to Value Them	59
C.	Making Economic Decisions	61
	1. Rational Self-Interest: The Classical Paradigm	61
	2. The Myth of Rational Self-Interest: How Humans Actually Make Economic Decisions	62