

Business Law and Organizations for Paralegals

Business Law and Organizations for Paralegals

Emily Lynch Morissette

CAROLINA ACADEMIC PRESS
Durham, North Carolina

Copyright © 2013
Emily Lynch Morissette
All Rights Reserved

Library of Congress Cataloging-in-Publication Data

Morissette, Emily Lynch.

Business law and organizations for paralegals / Emily Lynch Morissette.

p. cm.

ISBN 978-1-59460-884-1 (alk. paper)

1. Corporation law--United States. 2. Business enterprises--Law and legislation--United States. 3. Legal assistants--United States. I. Title.

KF1414.85.M67 2012

346.73'066--dc23

2012010137

Carolina Academic Press
700 Kent Street
Durham, North Carolina 27701
Telephone (919) 489-7486
Fax (919) 493-5668
www.cap-press.com

Printed in the United States of America

*To my husband, Gregg, who believes in and
supports my writing career.*

Contents

Table of Cases	xix
Introduction	xxi
Section I: Agency and Employment	
Chapter 1 • Agency	3
Chapter Outline	3
Chapter Objectives	3
1.1 Introduction to Agency	4
Rhode Island Statutory Form Durable Power of Attorney for Health Care	5
1.2 Formation of a Principal-Agent Relationship	9
1.3 An Agent's Authorities	9
a. Actual Authority or Agreement	9
b. Apparent Authority	9
c. Ratified Authority	10
d. Estoppel	10
1.4 Duties Agents and Principals Owe Each Other	11
a. Agent's Duties	11
1. Performance	11
2. Notification	11
3. Loyalty	11
4. Accounting	12
b. Principal's Duties	12
1. Compensation	12
2. Reimbursement	12
3. Indemnification	12
4. Cooperation	13
1.5 Liability of Principal and Agents to Third Parties	13
<i>Warner v. Southwest Desert Images</i>	13
1.6 Termination of Agency	15
Chapter Summary	15
Key Terms	16
Review Questions	16
Web Links	17
Exercises	17
Chapter 2 • Employment	19
Chapter Outline	19
Chapter Objectives	19

2.1 Introduction to Employment	20
2.2 Formation of an Employer-Employee Relationship	20
2.3 Duties of Employers	21
2.4 Fair Labor Standards Act	21
a. Minimum Wage	22
b. Overtime	23
2.5 Employee Benefit Plans	23
a. Qualified Plans	23
b. Qualified Pension Plans	23
2.6 Family and Medical Leave Act	24
<i>Nevada Department of Human Resources v. Hibbs</i>	24
2.7 Employment-at-Will	26
<i>Wendeln v. Beatrice Manor</i>	27
2.8 Employment Agreements	31
a. Drafting	31
Sample Employment Agreement	31
2.9 Workers' Compensation	32
a. Injuries Covered by Workers' Compensation	33
1. The Injury Occurred within the Employment Relationship	33
2. There Was a Contract	33
3. The Employer Controlled How the Work Was Accomplished	33
b. Compensable Injuries	33
c. Proximate Cause	33
d. Course and Scope of Employment	34
e. Exclusions to Workers' Compensation	34
f. Exclusive Remedy	34
2.10 Differences between Employees and Independent Contractors	35
2.11 Health and Safety in the Workplace	36
2.12 Immigration Laws Related to Employment	37
Chapter Summary	37
Key Terms	38
Review Questions	38
Web Links	39
Exercises	39

Section II: Business Documents

Chapter 3 • Documents Common to Almost Any Business Entity	43
Chapter Outline	43
Chapter Objectives	43
3.1 Introduction to Documents Common to Almost Any Business Entity	44
3.2 Professional Licensing	45
3.3 Registration of Intellectual Property	45
a. Patents	46
1. The America Invents Act	47
b. Trademarks	48
<i>Menashe v. V. Secret Catalogue, Inc.</i>	51
c. Copyrights	56
d. Trade Secrets	58
3.4 Fictitious Business Name Statement	59

a. When Is One Necessary?	59
3.5 Sales Tax	59
3.6 Business License	60
3.7 Workers' Compensation Insurance	60
3.8 Unemployment Insurance	60
3.9 Social Security	60
3.10 Federal Employer Identification Number (FEIN)	61
Chapter Summary	61
Key Terms	63
Review Questions	63
Web Links	64
Exercises	64
Chapter 4 • Contracts	65
Chapter Outline	65
Chapter Objectives	65
4.1 Introduction to Contracts	66
Express Contract	66
4.2 Contract Law Sources	67
4.3 Requirements to Find a Contract	68
4.4 Negotiation	69
4.5 Written Contracts	70
4.6 Performance	70
4.7 Common Business Contracts	70
a. Sales	70
b. Equipment Purchase/Leasing	71
c. Office Leasing	71
d. Real Estate	71
4.8 E-Contracts	71
<i>Feldman v. Google, Inc.</i>	72
4.9 The Uniform Electronic Transactions Act (UETA)	76
Chapter Summary	77
Key Terms	77
Review Questions	78
Web Links	78
Exercises	79
Section III: Non-Corporate Business Entities	
Chapter 5 • Sole Proprietorships	83
Chapter Outline	83
Chapter Objectives	83
5.1 Introduction to Sole Proprietorships	84
5.2 Formation and Financing	84
a. Public Document: Business License	84
b. Private Document: An "Agreement"	84
c. Financing	84
5.3 Management	85
a. A Double-Edged Sword	85
5.4 Liability	85

5.5 Continued Existence of Business and Transferability	86
5.6 Profits and Losses	86
5.7 Taxation	86
5.8 Termination	87
5.9 Franchises	87
<i>Kerl v. Dennis Rasmussen, Inc.</i>	87
a. Franchise Agreement	90
Chapter Summary	90
Key Terms	91
Review Questions	92
Web Links	92
Exercises	92
Chapter 6 • General Partnerships	93
Chapter Outline	93
Chapter Objectives	93
6.1 Introduction to General Partnerships	94
6.2 Formation and Financing	95
a. Public Document	95
b. Private Document: Partnership Agreements	95
c. Financing: Contributions to the General Partnership and Property Rights	96
6.3 Management	96
a. Partner Authority	96
6.4 Liability	97
6.5 Continued Existence of Business and Transferability	98
6.6 Profits and Losses	98
a. Sharing in the Profits	98
b. Partner's Interest in Partnership Property	100
c. Contributing to Losses	100
6.7 Taxation	101
6.8 Termination	101
a. Dissociation	101
b. Dissolution of the Partnership	101
c. Winding Up and Termination	102
6.9 Joint Ventures	102
Chapter Summary	102
Key Terms	103
Review Questions	103
Web Links	104
Exercises	104
Chapter 7 • Limited Partnerships	105
Chapter Outline	105
Chapter Objectives	105
7.1 Introduction to Limited Partnerships	105
7.2 Formation and Financing	106
a. Public Document: Certificate of Limited Partnership	106
b. Private Document: Partnership Agreement	107
c. Financing	107

7.3 Management	108
7.4 Liability	108
a. Unlimited Liability for General Partners	108
b. Limited Liability for Limited Partners	108
7.5 Continued Existence of Business and Transferability	109
7.6 Profits and Losses	109
7.7 Taxation	109
Case Study: Movies	110
7.8 Termination	110
<i>In re Dissolution of Midnight Star Enterprises, L.P.</i>	111
Chapter Summary	114
Key Terms	115
Review Questions	115
Web Links	116
Exercises	116
Chapter 8 • Limited Liability Partnership	117
Chapter Outline	117
Chapter Objectives	117
8.1 Introduction to Limited Liability Partnerships	118
8.2 Formation and Financing	118
a. Public Document: Registered Limited Liability Partnership Registration	118
b. Private Document: Partnership Agreement	118
c. Financing	119
8.3 Management	119
8.4 Liability	119
a. Partial Shield versus Full Shield States	120
b. Examples of Full versus Partial Shield States	120
1. The Legal LLP	120
2. The Accountancy LLP	120
c. Example of Arthur Anderson	121
Enron	121
8.5 Continued Existence of Business and Transferability	122
8.6 Profits and Losses	122
8.7 Taxation	122
8.8 Termination	122
Chapter Summary	123
Key Terms	123
Review Questions	123
Web Links	124
Exercises	124
Chapter 9 • Limited Liability Companies	125
Chapter Outline	125
Chapter Objectives	125
9.1 Introduction to Limited Liability Companies	126
9.2 Governing Laws of LLCs	126
9.3 Formation and Financing	127
a. Public Document: Articles of Organization	127

b. Private Document: Operating Agreement	127
c. Financing	127
Limited Liability Company Abuse	128
9.4 One-Person LLCs	128
9.5 Management	128
a. Flexible and Full Management	128
b. Member-Managed or Manager-Managed?	129
9.6 Liability	129
Think the Next Time You Get on That Rollercoaster!	129
9.7 Continued Existence of Business and Transferability	130
9.8 Profits and Losses	130
9.9 Taxation	130
9.10 Termination	130
9.11 Case	131
<i>Mixon v. Iberia Surgical, L.L.C.</i>	131
Chapter Summary	136
Key Terms	137
Review Questions	137
Web Links	137
Exercises	137

Section IV: The Corporation

Chapter 10 • For Profit Corporations	141
Chapter Outline	141
Chapter Objectives	141
10.1 Introduction to For Profit Corporations	142
10.2 Preincorporation	142
a. Liability of Promoters for Contracts and Expenses	143
b. Where to Incorporate?	143
1. Delaware: The Gold Standard	143
10.3 Formation and Financing	143
a. Name Availability and Reservation	144
b. Organizational Meeting and Incorporators	144
c. Public Document: Articles of Incorporation	144
1. Preemptive Rights	145
d. A Study in Contrasts: Close Corporations	146
1. The Friends and/or Family Plan	146
2. Formation of Close Corporations	146
3. Operation of a Close Corporation	147
e. Private Document: Bylaws	147
Sample Bylaws of _____, Inc.	148
f. Capitalization	151
1. Issuance of Stock	151
2. Consideration for Stock	151
3. Par Value	151
4. Stock Certificate	151
5. Transferring Stock	152
6. Classes of Stock	152

7. Types of Stock	152
g. Debt Financing	152
1. Unsecured Debt	153
2. Secured Debt	153
h. Benefits of Equity Capital versus Debt Capital	153
i. Case	153
<i>Brown v. WP Media, Inc.</i>	154
Chapter Summary	157
Key Terms	158
Review Questions	159
Web Links	159
Exercises	160
Chapter 11 • Investing	161
Chapter Outline	161
Chapter Objectives	161
11.1 Introduction to Investing	161
Some Issues to Consider When Purchasing Stock	163
11.2 Stock Options	163
11.3 Dividends	163
How to Read a Stock Market Quote	164
a. Declaring	164
b. Paying	165
c. Taxing	165
11.4 Stock Splits	165
11.5 Securities Act of 1933	165
11.6 Securities Exchange Act of 1934	166
<i>Stoneridge Investment Partners, LLC v. Scientific-Atlanta, Inc.</i>	167
11.7 Investor Protection	170
a. Insider Trading	170
b. State Securities Laws	170
Chapter Summary	171
Key Terms	172
Review Questions	172
Web Links	172
Exercises	172
Chapter 12 • Directors and Officers	175
Chapter Outline	175
Chapter Objectives	175
12.1 Introduction to Directors and Officers	175
12.2 Role	176
11.3 Election and Appointment	176
a. Term	177
b. Vacancies	177
c. Removal	177
11.4 BOD Meetings	177
Minutes of Annual Meeting of Board of Directors of _____ , Inc.	178
a. Action without Meeting	179

12.5 Duties	179
<i>Guth v. Loft, Inc.</i>	180
12.6 Compensation and Indemnification	185
12.7 Liability	186
12.8 Delegation to Officers	186
Chapter Summary	187
Key Terms	187
Review Questions	188
Web Links	188
Exercises	188
Chapter 13 • Shareholders	189
Chapter Outline	189
Chapter Objectives	189
13.1 Role	189
13.2 Rights	190
a. Inspecting	190
b. Voting	190
c. Actions	191
1. Direct	191
2. Derivative	191
13.3 Liability	192
a. Piercing the Corporate Veil	192
13.4 Meetings	193
a. Notices and/or Written Consents	193
b. Proxies	193
c. Minutes Book, Stock Book and Seal	194
Corporate Minutes Questionnaire	194
Minutes of Annual Meeting of Shareholders of _____ , Inc.	195
d. Action without a Meeting	196
Chapter Summary	196
Key Terms	197
Review Questions	198
Web Links	198
Exercises	198
Chapter 14 • Remaining Issues Related to For Profit Corporations	199
Chapter Outline	199
Chapter Objectives	200
14.1 Introduction to the Remaining Issues Related to For Profit Corporations	200
14.2 Taxation	200
a. Double	201
b. State	201
c. S Corporations: A Specially Taxed Type of Corporation	201
1. Formation of S Corporations	202
2. Taxation of S Corporations	202
3. Termination of S Corporation	203

d. Nonprofit Corporations: A Corporation That Has to Qualify in Order Not to Be Taxed	203
1. Formation of Nonprofits	203
2. Operation of Nonprofits	203
3. Taxation of Nonprofits	203
14.3 Amending the Articles of Incorporation	203
a. Must Amend If Any Changes to Stock	204
b. Other Reasons	204
14.4 Corporate Combinations	204
a. Merger	205
<i>Williams v. Stanford</i>	205
Mega Mergers	212
b. Share Exchanges	212
c. Consolidation	212
d. Purchase of Assets	213
e. Purchase of Stock	213
f. Hostile Takeovers	214
14.5 Termination	215
a. Voluntary Dissolution	215
b. Administrative Dissolution	216
c. Involuntary Dissolution	216
<i>Sartori v. S & S Trucking, Inc.</i>	216
d. Articles of Dissolution	219
e. Liquidation	219
1. Judicial	219
2. Nonjudicial	220
3. What Does the Company Do About Potential Claims?	220
14.6 Qualification in Foreign Jurisdictions	220
a. When Required	220
1. Requirements	221
b. What Constitutes Transacting Business?	221
c. Rights	221
d. Maintaining Good Standing as a Foreign Corporation	222
1. Negative Effects of Failing to Maintain Good Standing	222
e. Withdrawal as a Foreign Corporation	222
Chapter Summary	222
Key Terms	223
Review Questions	224
Web Links	225
Exercises	225

Section V: The Business Entity as a Litigant

Chapter 15 • The Business Entity as Defendant	229
Chapter Outline	229
Chapter Objectives	229
15.1 Introduction to the Business Entity as Defendant	230
15.2 Negligence	230
a. Duty	230

b. Breach	230
c. Causation	231
d. Damages	231
e. Defenses	231
15.3 Products Liability	232
a. The Parties	233
b. Recovery Theories	233
c. Breach of Warranty	233
d. Restatement 3rd of Torts	234
e. Defenses	234
15.4 Employment Discrimination	234
a. Disparate-Treatment Discrimination	235
b. Disparate-Impact Discrimination	235
c. Federal Laws Prohibiting Age and Disability Discrimination	236
<i>Cash Distributing Co. v. Neely</i>	236
d. Defenses to Employment Discrimination	243
e. Affirmative Action	243
f. State Laws Prohibiting Discrimination	244
15.5 Antitrust Law	244
a. Monopoly	244
b. Activities Prohibited by the Sherman Act and Clayton Act	245
<i>Weyerhaeuser Co. v. Ross-Simmons Hardwood Lumber Co.</i>	246
c. Federal Agencies Enforcing Antitrust Laws	250
Chapter Summary	250
Key Terms	252
Review Questions	253
Web Links	253
Exercises	253
Chapter 16 • The Business Entity as Plaintiff	255
Chapter Outline	255
Chapter Objectives	255
16.1 Introduction to the Business Entity as Plaintiff	255
16.2 Suretyship and Guaranty	256
<i>JSV, Inc. v. Hene Meat Co, Inc.</i>	256
16.3 Creditors' Remedies/Collecting Debts	257
<i>Indiana Surgical Specialists v. Griffin</i>	258
16.4 Secured Transactions in Personal Property	259
16.5 Bankruptcy	260
a. Priority Disputes among Creditors	260
b. Debtor Protection	261
c. Steps in a Bankruptcy Proceeding	261
d. Liquidation Proceedings	262
<i>Hebbring v. U.S. Trustee</i>	262
e. Reorganizations	266
16.6 Business Torts	266
a. Misrepresentation	266
b. Interference with Contract	266
c. Unfair Competition	267
Chapter Summary	267

Key Terms	268
Review Questions	268
Web Links	269
Exercises	269
Appendix • Further Cases for Ethics Review	271
Unethical Acts of Financial Institutes	271
<i>Fog Cutter Capital Group, Inc. v. Securities and Exchange Commission</i>	271
Review Questions	274
<i>U.S. v. Skilling</i>	275
Review Questions	279
Glossary	281
Index	295

Table of Cases

<i>Brown v. WP Media, Inc.</i> (2009), 17 So.3d 1167 (2009)	154
<i>Cash Distributing Co. v. Neely</i> , 947 So.2d 286 (2007)	236
<i>Feldman v. Google, Inc.</i> , 513 F.Supp.2d 229 (2007)	72
<i>Guth v. Loft, Inc.</i> , 5 A.2d 503, 23 Del. Ch. 255 (1939)	180
<i>Hebbring v. U.S. Trustee</i> , 463 F.3d 902 (2006)	262
<i>In re Dissolution of Midnight Star Enterprises, L.P.</i> , 2006 SD 98,12, 724 N.W.2d 334, 337	111
<i>Indiana Surgical Specialists v. Griffin</i> , 867 N.E.2d 260 (2007)	258
<i>JSV, Inc. v. Hene Meat Co., Inc.</i> , 794 N.E.2d 555 (2003)	256
<i>Kerl v. Dennis Rasmussen, Inc.</i> , 004 WI 86, 273 Wis. 2d 106, 682 N.W.2d 328	87
<i>Menashe v. V. Secret Catalogue, Inc.</i> , 409 F. Supp.2d 412 (2006)	51
<i>Mixon v. Iberia Surgical, L.L.C.</i> , 956 So.2d 76 (2007)	131
<i>Nevada Department of Human Resources v. Hibbs</i> , 538 U.S. 721 (2003)	24
<i>Sartori v. S & S Trucking, Inc.</i> , 2006 MT 164 (2006)	216
<i>Stoneridge Investment Partners, LLC v. Scientific-Atlanta, Inc.</i> , 552 U.S. 148 (2008)	167
<i>Warner v. Southwest Desert Images</i> , 218 Ariz. 121, 180 P.3d 986 (2008)	13
<i>Wendeln v. Beatrice Manor</i> , 271 Neb. 373, 712 N.W.2d 226 (2006)	27
<i>Weyerhaeuser Co. v. Ross-Simmons Hardwood Lumber Co.</i> , 127 S.Ct. 1069 (2007)	246
<i>Williams v. Stanford</i> , 977 So.2d 722 (1st. Dist. 2008)	205

Introduction

The first section of this book addresses the foundation of business entities, which is agency law. Employment, which is a subsection of agency law, is also addressed here, and covers employment-at-will, employment agreements, workers' compensation, wages, and benefits.

The second section of the book addresses corporate documents that are common to almost any business entity. These include professional licensing, registration of intellectual property, fictitious business name statements, sales tax, business licenses, workers' compensation insurance, unemployment insurance, social security, and employer identification numbers. As intellectual property is one of the fastest growing sectors of the economy, it is heavily addressed in this chapter.

The third section of this book goes into the major business entities: sole proprietorships, general partnerships, limited partnerships, limited liability partnerships, limited liability companies, and corporations, including close corporations, non-profit corporations, publicly traded corporations, and S corporations. Investing has a chapter devoted to it, as this is information any student can appreciate, whether they obtain a career in corporate law or not.

The fourth section of the book looks at the business entity as a litigant, be it either as a plaintiff or as a defendant. This litigation is not just "business litigation." As a defendant, common lawsuits are negligence, employment discrimination, and business torts. As a plaintiff, common lawsuits are bankruptcy and business torts. As many paralegal schools do not offer all these additional subjects, a brief look at these additional areas of litigation that businesses are heavily involved in provides the student with a better understanding of the role businesses play in law.

The appendix and teacher's manual additionally focus on business and legal ethics.

Within the chapters, the student will find outlines, objectives, cases, sample legal documents, chapter summaries, key terms, review questions, web links, and exercises. A glossary has been placed at the end of the book.