

**Business Enterprises:
Legal Structures, Governance,
and Policy**

Business Enterprises: Legal Structures, Governance, and Policy

Cases, Materials, and Problems

FOURTH EDITION

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CAROLINA ACADEMIC PRESS

Durham, North Carolina

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ISBN 978-1-5310-1544-2
eISBN 978-1-5310-1545-9
LCCN 2020936879

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

Printed in the United States of America

Douglas M. Branson

I dedicate this book to my co-authors, who remained of good cheer throughout, and to my wife, Elizabeth Hurtt.

Joan MacLeod Heminway

I dedicate this book to Merrit, Helen, and Lou, who afforded me the time and knowledge I needed to accomplish this.

Mark J. Loewenstein

I dedicate this book to Louis Rosen, who took me under his wing when I first entered the practice of law and whose teachings I carry with me to this day.

Marc I. Steinberg

I dedicate this book to my wonderful family — my daughter Alexandra (Alex) and my sons Avram (Avi) and Phillip (Bear) — with all of my love.

Manning Gilbert Warren III

I dedicate this book to my former law partners at Ritchie, Rediker & Warren, Thomas A. Ritchie and J. Michael Rediker, for their creativity, their pragmatism and their professionalism in the practice of corporate law.

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Acknowledgments

I would like to acknowledge the support and understanding of my spouse, Elizabeth Hurtt.—Douglas Branson

I wish to acknowledge the more-than-capable research assistance of Rachel Kuipers Bates, Richard McDermott, Todd Skelton, Garrett Franklyn, Katherine Smalley, and Peyton Carr, in helping to construct and edit my chapters and others in the first four editions. Thanks also are due to The University of Tennessee College of Law (which has supported this project with research funding), to my coauthors (who have taught me so very much), and to my amazing administrative assistant, Sean Cary von Gunter (who manages to make me and my work look good regardless of the circumstances). And, finally, my family, especially Merrit, Scott, and Kate, deserves credit for putting up with my unavailability and moodiness when I work on intense projects like this. Without the assistance and support of all of these folks, I would not have been able to complete my work on this book. — Joan MacLeod Heminway

I thank my colleague, Professor Emeritus J. Dennis Hynes, who graciously allowed me to draw on our co-authored casebook for the materials in Chapters 2 and 3 of this book; my research assistants on this project, Jessica Lynn Broderick and Jennifer Kim, for their excellent work; the University of Colorado Law School for its financial support; and to my wonderful coauthors, who made this project a delightful one.—Mark J. Loewenstein

I thank the SMU Dedman School of Law for supporting this project. My gratitude is expressed to Deans Jennifer Collins and John B. Attanasio, my former research assistant Mr. Aaron Rigby, and my administrative assistants Ms. Carolyn Yates and Ms. Jan Spann. The strong support I receive from this superb law school is truly appreciated by me. I also wish to thank my coauthors for their friendship, support, diligence, and courtesy.—Marc I. Steinberg

I would like to acknowledge the outstanding work of my former administrative assistant, Janet Gribbins Sullivan, in all aspects of this effort, including her critical review of the final drafts. I also would like to express special appreciation to my wife, Judith, and the three of my children still at home during my work on the first edition, my sons Marnix, Sebrand, and Marc, for their constant inspiration. — Manning Gilbert Warren III

Preface

In this book, five law professors from across the country have assembled cases, problems, and other materials for use in an introductory Business Associations, Business Organizations, Corporations, or similar law school course. Each author brings to the book his or her individual experience in the teaching and practice of the subject matter and his or her own voice.

This teaching and learning resource is designed to provide comprehensive coverage of state and federal law and policy governing the legal structures through which business is conducted in the United States, principally including unincorporated and incorporated business entities (as opposed to sole proprietorships). The authors generally anchor this law and policy in relevant theory and practice. In carrying out its objectives, the book covers foundational issues relating to agency and entity formation, corporate finance, internal governance, and legal liability to third parties. Moreover, the text covers fundamental state and federal rules governing corporate transactions and litigation and, in its final chapter, touchstone issues relating to the role of legal counsel in representing business enterprises. Importantly, the book focuses on privately held entities and also provides comprehensive coverage of the basics of public company theory, policy, law, and practice.

Each chapter begins with a title and a narrative that covers an introductory point or otherwise sets the stage for the materials that follow. Consideration is given to both legal analysis and practice issues. A number of chapters include significant descriptions of applicable theory and policy as framing devices for the chapter contents.

The materials in each chapter have been selected to afford adequate coverage of business law basics (including, for example, fundamental corporate finance and takeover nomenclature and other information necessary to an understanding of transactional business law). Law review articles, glossaries, charts, and textual citations to statutes and other materials supplement the standard fare of case law. Moreover, in key areas of study, the text allows for a comparison of laws and practices in other countries with those of the United States. These parts of the book are especially important, since more and more students must handle international contracts, transactions, or cases in the early years of their practice. To reinforce key principles and analysis, the book includes notes and problems that permit the integration of concepts and foster applied skills.

In short, this text allows for coverage of law, underlying theory and policy, and practice skills. In one volume, the book contains material sufficient to educate an emerging lawyer to function in general business law practice in a transactional or advocacy-oriented setting. In creating this resource, the five authors, all of whom

have extensive academic and practical credentials, seek to create a comprehensive, introductory resource for students regardless whether they will subsequently practice in small, medium or large-sized firms here in the United States or abroad. In our increasingly electronic and global world, these students need wide-ranging, inclusive, applied knowledge of the legal aspects of business enterprises — structures, governance, and policy—and this book is designed to foster that knowledge.