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Business Associations

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*Multiple-Choice and Short-Answer
Questions and Answers*

THIRD EDITION

Douglas M. Branson

W. EDWARD SELL CHAIR IN BUSINESS LAW EMERITUS
UNIVERSITY OF PITTSBURGH SCHOOL OF LAW

Seth C. Oranburg

ASSOCIATE PROFESSOR
UNIVERSITY OF NEW HAMPSHIRE
FRANKLIN PIERCE SCHOOL OF LAW

John Towers Rice

ASSISTANT PROFESSOR OF LAW
LINCOLN MEMORIAL UNIVERSITY
DUNCAN SCHOOL OF LAW



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*To all who use this text to advance their understanding of the
law of Business Associations, thank you.*

To Clare, Annie, and Elizabeth

—DMB

To Talia

—SCO

To JPS

—JTR

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Foreword

We are excited to share this third edition of the *Q&A: Business Associations* for use by those exploring this fascinating but complex area of law. We appreciate your allowing us to assist you in your academic development.

We are pleased to expand upon our colleague Douglas Branson's rich work in the first two editions of the text. Among other revisions, this third edition adds a section on the law of agency and expands, clarifies, modernizes, and simplifies questions on partnership, limited liability companies, and corporations. For agency, we have focused on the Restatement (Third) of Agency. For unincorporated entities, we have focused on the Revised Uniform Partnership Act and the Revised Uniform Limited Liability Company Act. As it pertains to the law of corporations, we wanted to emphasize both the Model Business Corporation Act (as amended in 2016) and the Delaware General Corporation Law.

We have attempted to tailor coverage to reflect the content of a typical survey course in business associations. This is a bit of a challenge because opinions range greatly about what should be included in the course, but nevertheless, we persist in the mission. It is possible that we will cover material that is not included in your course or that we will not cover material that is included in your course. This is not to suggest that our text defines what is "typical" or that your professor is aberrant in including other topics. Our coverage of what might be considered more specialized topics like insurance, mergers and acquisitions, securities regulation, corporate finance, and business taxation is limited. We have also carefully reviewed the subject matter outline prepared by the National Conference of Bar Examiners for the forthcoming NextGen Bar Exam, and have been careful to ensure that we have included questions reflecting that scope. Accordingly, students studying for the bar exam may find this text a useful tool.

Importantly, this text is designed to be used by students as a formative assessment tool to engage with the subject matter; it is not a treatise on the law. Of course, not every issue lends itself well to this type of formative assessment and, instead, requires much deeper analysis in a different forum (i.e., a law review article). Other resources undertake the task of providing a thorough explanation of the law, history, policy, and nuance. Accordingly, we cannot — and will not — attempt to provide a complete, in-depth explanation of every legal issue. There will always be more to say than what we offer you. Instead, we have attempted to revise questions for clarity and explanations of answers for conciseness. We believe that every multiple-choice question should have a "best" answer and that we should be able to explain to you our analysis in a paragraph. If we can't do that, then how could we expect you to do the analysis in the time you would have on an exam?

Of course, answering the questions — whether right or wrong — is the easy part. The real work comes when you look at our answers and explanations for why we answered the way we did. The time you spend reviewing our explanation of the answer, focusing both on why the best answer choice is best and why incorrect answers are incorrect, is time well spent. Certainly, the most valuable achievement is not to simply answer the question correctly but to understand the *why* behind the questions. You may just find that you learn more (both in terms of the substantive law and in test-taking strategies) from understanding why the wrong answers are wrong than why the best answers are correct.

Again, we thank you for including this text in your academic development. We hope you will find these questions and our analysis useful. We wish you all the best.

About the Authors

Douglas M. Branson has occupied the W. Edward Sell Chair in Business Law at the University of Pittsburgh since 1996. Prior to 1996, he was a Professor of Law at the Seattle University (1973 to 1996). He also regularly visits the University of Alabama School of Law, where he has twice held the Charles Tweedy Professorship. He also holds the rank of Permanent Fellow at the University of Melbourne (Australia) where each year he has taught (with Professor J. Farrar) the corporate governance class to Master of Law students. He has been a visiting professor at Arizona State University, Cornell University, the University of Oregon, Washington University (St. Louis), and the University of Washington (where he was the Condon-Falknor Distinguished Professor), among others. He has taught the basic course in business organization law for over 30 years.

Professor Branson has also taught in New Zealand, South Africa, Malaysia, Hong Kong, Indonesia, Ireland, Spain, France, and England. He has been a Fulbright-sponsored lecturer at University of Ghent (Belgium) and a U.S. State Department-sponsored lecturer at several universities in the Ukraine. He has been a USAID-sponsored consultant to the Republic of Indonesia on matters of corporate law, corporate governance, and capital markets law. He has worked on similar projects for Macedonia and Afghanistan, endeavoring to aid those countries in modernizing their economic laws.

He is the author of over 70 law review articles and more than a dozen books. His books include the leading treatise *Corporate Governance* (1993) (with annual supplements); *Problems in Corporate Governance* (1997); *Understanding Corporate Law* (1999; 2d ed. 2004; 3d ed. 2009) (with Arthur Pinto); *No Seat at the Table: How Law and Governance Keep Women Out of the Board Room* (2007); *Business Enterprises: Legal Structures, Governance and Policy* (with Joan Heminway et al., 2009); *The Last Male Bastion: Gender and the CEO Suite at America's Public Corporations* (2010); *The Russell Sage Handbook of Corporate Governance* (Thomas Clarke & Douglas Branson eds., 2011); and *Tastes of Nuoc Mam: Service in the Brown Water Navy and Visits to Vietnam* (2011).

Seth C. Oranburg teaches Contracts Law, Business Law, Trade Secret Law, and Transactional Legal Practice at the University of New Hampshire Franklin Pierce School of Law. He previously taught Contracts, Business Associations, Corporations, Securities Regulation, Corporate Finance, and Venture Capital Law at Duquesne University in Pittsburgh, PA, where he earned tenure and promotion to Associate Professor before moving to UNH to help build the next generation of online education via its Hybrid JD program. He recently published a casebook on Contract Law and is currently writing a casebook on Business Associations.

Professor Oranburg also writes scholarship on business law topics and co-directs the Program on Business, Organization, and Markets at the Classical Liberal Institute at NYU School of Law. In

this capacity, Oranburg produces academic symposia, and the resulting papers were published in leading law reviews and journals.

John Towers Rice is an Assistant Professor of Law at the Lincoln Memorial University Duncan School of Law. Rice teaches and writes about the legal environment of business and social change, civil procedure, professional responsibility, and legislation. He is devoted to excellence in teaching and endeavors to provide students with training in legal theory, practice skills, and professionalism. Additionally, he has spoken nationally about Corporate Social Responsibility, corporate governance, legal ethics, and anti-discrimination laws, and his scholarship has been published in the *Northeastern University Law Review* and the *FIU Law Review*.

Prior to entering law school teaching, Rice served as a judicial clerk for the Supreme Court of Tennessee and practiced civil litigation in Knoxville. He is a member of the Tennessee and South Carolina Bars, and he is admitted to practice in the United States Court of Appeals for the Sixth Circuit. He has a distinguished record of service with the American Association of Law Schools and the American, Tennessee, and Knoxville Bar Associations, and he is a Fellow of the American Bar Foundation.

A native of Greenville, South Carolina, Rice graduated from Clemson University and then earned his law degree from the University of Tennessee College of Law. While in law school, Rice served as the President of the Student Bar Association and the Vice Chair of the Moot Court Board, competed in the Dean Jerome Memorial Evidence Moot Court Competition at Brooklyn Law School, and was honored with the Order of the Barrister and the ALI-ABA Scholarship and Leadership award.