

# INTRODUCTION TO BUSINESS ORGANIZATIONS

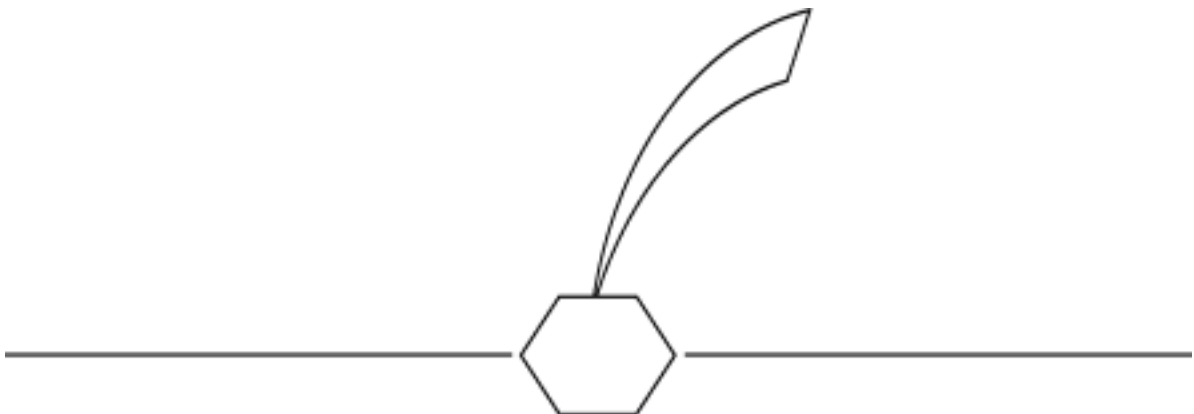
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Second Edition  
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Instructor's Manual

ISBN: 0-929563-52-2



Dear Instructor:

We're going to talk our way through the student's textbook and giving you our thinking behind what we wrote. If you want to use our ideas, we hope they work for you.

If you have comments or suggestions, please send them to us at Pearson Publications Company, 9614 Greenville Avenue, Dallas, Texas 75243, or e-mail at [pearsonpub@aol.com](mailto:pearsonpub@aol.com). We want to know how you use the textbook and if your students like it.

Thank you for selecting this book for your course.

Diane Baldwin and Frances Whiteside

**STUDYING THE LAW OF  
BUSINESS ORGANIZATIONS**

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**Pages 1-3**

Be sure your students know where to find the appropriate statutes. Instead of telling them, assign the questions in “Getting Ready” on pages 2 and 3. Depending upon your enrollment, you may want to spread the questions around the class.

Find out with which business organizations the students are familiar, at least by name. Most will have heard of “doing business as” and “corporations.” They may know about sole proprietorships and partnerships. The limited liability company may be a new idea to some. The professional corporation, professional association, and nonprofit corporation may also be new to them. Introduce all the terms.

Have your students look for examples of business organizations and report on their findings. Possible sources: letterheads, billboards, advertisements, their families, their employers.

If you like to give many brief quizzes, give an open-book pop quiz asking the students to give the precise names of your state’s applicable statutes. Include your state’s general and limited partnership acts, the LLC act, the assumed name act, and the various corporation acts.

We also urge you to find out what your state government has placed on the Internet. In Texas, we can direct our students to our Secretary of State and Comptroller of Public Accounts.<sup>1</sup> An excellent starting home page is [www.paralegals.org](http://www.paralegals.org), which offers links to a host of useful pages.

A useful link to every secretary of state that is on-line is the home page of the National Association of Secretaries of State, [www.nass.org](http://www.nass.org).

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<sup>1</sup> For those of you who teach in Texas, the URLs are:

[www.sos.state.tx.us](http://www.sos.state.tx.us)

[www.cpa.state.tx.us](http://www.cpa.state.tx.us)

**THE BASIC CONCEPT  
OF AGENCY**

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**Pages 5-10**

This chapter and Chapter Two contain basic concepts. If your slower students don't grasp the contents of Chapters One and Two, they will be confused all semester. Take as long as you need to drill these basics. Review at the beginning of every class.

Ask your students for simple examples of agency relationships in their lives, from asking a child to do an errand for the parent to executing documents on behalf of a business organization. Stress that a written agency agreement is not required for an agency to exist.

We didn't dwell on the Statute of Frauds because it's discussed in our *Introduction to Contracts*. (If you don't have a copy, request a review copy from Pearson Publications.) Have your students locate the Statute of Frauds in your state's statutes, either in hard copy or on-line.

Another open-book pop quiz: list the elements in your state's Statute of Frauds. Simple if they did their homework -- very difficult if they didn't. (Might encourage some of them to start doing their homework.)

**MORE BASIC CONCEPTS  
OF AGENCY**

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**Pages 11-21**

We advise you not to make it a do-or-die situation to separate actual authority from ostensible authority from inherent authority. The student needs to learn to recognize when the issue *is* authority.

Because many people work for temporary placement agencies at some point in their careers, it is important that students learn the difference between a general agent and a special agent. They may find themselves assigned to a project as special agents.

The concept of liability is important. Your students who have already studied torts or contracts will have more to contribute to a discussion.

This chapter is a good place to introduce signature blocks: the concept of the natural person/agent signing a document on behalf of the statutory person/principal. As:

WONDERFUL CORPORATION	WONDERFUL PARTNERS, L.P.
by: _____	by: _____
I. M. Someone	I. M. Someone
President	General Partner

as opposed to

\_\_\_\_\_  
I.M. Someone, as an individual

What constitutes an independent contractor is an issue that concerns many persons in business. We urge you to stress the material on pages 18-19 to assist your students within their workplaces.

Stress ratification. The issue of whether a principal ratified will figure into a person's work in a variety of areas.

Here are some questions that you may wish to use for a quiz over the first two chapters:

**Fill in the blank.**

An example of a principal/agent relationship is (many answers possible -- you judge the accuracy of the student's choice.)

(Actual) authority exists where the agent is really employed by the principal.

(Apparent/Ostensible) authority is created by the act of parties deduced from proof or other facts.

A (general agent) is a person who is continuously employed to conduct a series of transactions.

An agency may be either (general), in which the agent is delegated to do all acts connected with a particular trade, business or employment, or (special), in which the agent is authorized to conduct a single transaction or a series of transactions not involving continuity of service.

(A servant/An employee) is an agent who agrees to devote time to the principal's business and affairs and whose physical conduct, during the performance of such employment, is subject to the control of the agent's principal.

For a principal to be held responsible for the act of an agent, the agent must be performing duties within his or her (scope of employment).

When an agent does not have either actual authority or apparent authority, the agent's principal could, nevertheless, confirm the agent's actions by (ratifying) a transaction negotiated by the agent.

**True/False.**

The law of agency creates a fiduciary obligation between the principal and the agent. (T)

An example of an independent contractor is a freelance paralegal retained by a law firm. (T)

With respect to the liability of an agent's principal for damages resulting from an accident in which an agent is involved, there is no difference between an accident that occurs during an agent's detour and an accident that occurs during an agent's frolic. (F)

An agency is a voluntary relationship between two persons in which one person is granted authority to act on behalf of the other. (T)

By nature of the employer/employee relationship, an employee is usually considered an agent of his or her employer. (T)

Granting of authority is a formal transaction that must be in writing to be valid. (F)

When a person asks another person to perform a task on his or her behalf, an agency relationship may be created. (T)

A special agent does not owe his or her principal a duty of loyalty. (F)

A general agent owes his or her principal a duty of accounting for the principal's money the agent has handled. (T)

## Short Essay

Define “ratification.” Briefly explain what the term means in agency law, giving an example.

List [two/three] categories of authority, explaining each.

Explain the difference between a general agent and special agent.

Under what circumstances might a principal be liable for contracts entered into by the principal’s agent?

Under what circumstances might an agent be liable for contracts entered into by the agent on behalf of a principal?

Explain the meaning of the term “*respondeat superior*” in the context of agency law.

How may an agency relationship be terminated?

What elements of a relationship identify it as fiduciary?

## *Chapter Three*

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### **TYPES OF BUSINESS ORGANIZATIONS**

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## Pages 23-25

The purpose of this chapter is to acquaint your student with the issues an attorney and client will examine when deciding what form of business would be best for the client. It’s mainly a vocabulary lesson. To make it more interesting, have the students produce scenarios in which a corporation would be best or a limited liability company would be best.

For example, if a small business wanted to seek corporate investors, it would be better off as a limited partnership or a limited liability company rather than a Subchapter S corporation. Corporate investors would invalidate the Subchapter S status.

If an investor wanted to take an active part in management, a corporation or an LLC would be better. As a limited partner, it could not participate in management. In a corporation, the

investor could make naming a director or directors part of the conditions of the investment. As an LLC member, the investor could participate in management.

If people want to go into business for a short time to develop a specific project, a general partnership/joint venture might be the most appropriate form.

## *Chapter Four*

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### **THE SOLE PROPRIETORSHIP**

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#### **Pages 27-31**

All of your students probably know at least one sole proprietor. Some of them probably *are*, or have been, sole proprietors. If they are not in real life, let them so become in your class. Each student can set up a mythical sole proprietorship for whatever lawful purpose he or she chooses.

Depending on the nature of goods or services offered, the student should prepare or list the necessary documents for the student's sole proprietorship. For example:

A Form SS-4, furnished by you or downloaded from [www.irs.gov](http://www.irs.gov) (or, if accessible, obtained from a local IRS office). Every sole proprietor/ student should know how to complete an FF-4 and know where to send it for filing.

An assumed name certificate -- filed at the county? state? both?

Sales tax permit

License

If your state requires publication, the sole proprietor/student should prepare the text of the notice.

If you want to give a library or Internet assignment, have students find and read I.R.C. § 351.

Point out the advantages and disadvantages of doing business as a sole proprietor. If you are using this book in a paralegal studies course, point out to your students that a paralegal probably will encounter a sole proprietor as a client at the point the sole proprietor wishes to investigate another form of doing business.

**THE GENERAL PARTNERSHIP**

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**Pages 33-41**

Tell your class of sole proprietors that each of them has to take in at least one partner. Why? Because you said so, and you are the teacher! Well . . . perhaps they can come up with better ideas, such as the need for capitalization, or the need for more expertise, or the need to share the responsibilities of running the business.

Ask the student who he or she intends to take as a partner. If it's anyone but Mom, point out the liability to which one is exposed when choosing a partner.

Throughout this chapter pound on the danger of having one's partner able to bind the partnership and all the partners -- as in "Take my money; spend it."

What elements does the student want to write into the general partnership agreement? In group discussion, list some specific clauses that ought to be in such an agreement.

If you didn't have your students complete Forms SS-4 or assumed name certificates for their sole proprietorships, do so now for their general partnerships.

Teaching the partnership opportunity doctrine offers an opportunity to illustrate an ethics situation.

How does the student/partner plan to divide the profits from the general partnership?

Distinguish between winding up and termination.

If you have enough time and enough students, let the students form two or three general partnerships. If an out-of-class assignment is practical for your students, have the partners meet out of class and produce a short agreement.

"Joint and several liability" is a term your students may have encountered in other classes. Make sure they understand its meaning.

Use your state's general partnership statute to teach this chapter.

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**THE LIMITED PARTNERSHIP**

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**Pages 43-48**

“Now,” you advise your students, “We are getting more formal.”

Start a chart on the board with three columns: sole proprietorship, general partnership, and limited partnership. Fill in the first two concerning issues such as personal liability, personal investment, personal control, and paperwork involved. Then fill in the same issues concerning the limited partnership.

Refer frequently to your state’s limited partnership statute.

Review the document that is required for filing in your state.

Have the students compare your state’s statutes on distribution of assets upon termination with the list on page 47. Same? Different? How so?

If you haven’t given a test yet, it’s about time you did so. (The students will be getting nervous.) Here are some sole proprietorship/partnership questions you might use:

**Fill in the blank.**

The simplest form of doing business is that of the (sole proprietorship).

If the sole proprietor intends to operate under any name but his or her own, he or she should file an (assumed name certificate).

A disadvantage of the sole proprietorship is its unlimited (personal liability).

The law of partnership is closely related to the law of (agency).

The (general partner) of a limited partnership manages its business.

A limited partnership formed under the laws of another state and having as partners one or more general partners and one or more limited partners is called a (foreign limited partnership).

To preserve the limited liability status of limited partners, all management and control over the affairs of a limited partnership are vested in (the general partner).

**Multiple Choice**

In [your state] a Form SS-4 is filed with: (c)

- (a) the clerk of the applicable county or counties
- (b) the Secretary of State of [your state]
- (c) the Internal Revenue Service

The liability of a limited partner in a limited partnership is limited by: (c)

- (a) the extent to which the limited partner manages the business
- (b) the extent of personal assets owned by the limited partner
- (c) the amount of the limited partner's investment in the business

When a general partnership winds up, by [your state] statute the first creditors to be paid are: [usually (c), but go by your statute]

- (a) partners, with respect to their capital contribution(s)
- (b) partners, with respect to their share of the profits
- (c) nonpartners, with respect to money owed

“*Respondeat superior*” means: (c)

- (a) “The thing speaks for itself”
- (b) “Only the best will survive”
- (c) “Let the master answer”

A major difference between a general partnership and a limited partnership is: (c)

- (a) a limited partnership must have only limited partners, while a general partnership must have only general partners
- (b) a limited partnership must have only one general partner, while a general partnership must have two or more general partners
- (c) a general partnership must have at least two general partners, while a limited partnership must have at least one general partner and one limited partner

**True/False.**

A business entity that does not file a Form SS-4 will not have a federal employer identification number. (T)

One person may form a partnership. (F)

Unless the partnership agreement states to the contrary and within the provisions of the applicable statute, the act of any general partner may bind the general partnership. (T)

A sole proprietor has limited liability with respect to his or her creditors. (F)

There is no difference in the liability of a general partner in a limited partnership and the liability of a limited partner in that same limited partnership. (F)

There is no difference in the authority of a general partner in a limited partnership and the authority of a limited partner in that same limited partnership. (F)

Allocation of profits and losses in a general partnership must be made in the same percentages as the general partners' original capital contributions to the general partnership. (F)

When a partner assigns his, her or its partnership interest in a general partnership, the assignee becomes a partner in the partnership. (F)

An assignment by a general partner of his, her or its interest in a general partnership does not in and of itself dissolve the partnership. (T)

Dissolution technically terminates a general partnership, although it may immediately re-form and continue its business. (T)

Dissolution actually terminates a general partnership; therefore it must wind up its business immediately upon dissolution. (F)

Two persons may join together to form a sole proprietorship. (F)

By nature of a limited partnership, its limited partners are protected from full individual liability. (T)

A sole proprietor may appoint an agent or agents. (T)

A [your state] limited partnership comes into existence by filing a certificate of limited partnership with the clerk of the county in which its principal office is located. (F)

Under Section 351 of the Internal Revenue Code, the change by an unincorporated business or professional service to an incorporated entity may be, if structured properly, a tax-free event. (T)

Due to the solitary nature of the sole proprietorship, a sole proprietor will never have an agent or agents. (F)

If a partnership agreement so provides, profits of a general partnership may lawfully be accumulated as capital. (T)

For taxation purposes, the profits and losses of a sole proprietorship are reported on the personal tax return of the sole proprietor. (T)

For taxation purposes, the profits and losses of a general partnership are reported on the personal tax returns of the partners. (T)

For taxation purposes, the profits and losses of a limited partnership are reported on the personal tax returns of the partners. (T)

**Brief essay**

Discuss the concept of liability as it relates to each of the sole proprietorship, the general partnership, and the limited partnership.

Explain the advantages and disadvantages of doing business as a general partnership.

*Chapter Seven*

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**THE REGISTERED LIMITED  
LIABILITY PARTNERSHIP**

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**Pages 49-53**

If your state doesn't have this status, skip the chapter or simply educate your students concerning use of the term.

If your state does have this status, use the statute as your guide in teaching the chapter.

The limited liability partnership concept was developed by lawyers for lawyers, particularly those in large firms that operate as general partnerships. We have seen firms with as few as two partners register, because the status is a safety net for the innocent partner.

*Chapter Eight*

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**THE CORPORATION**

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## **Pages 55-61**

The form of doing business that your students will encounter most frequently in the workplace is the corporation.

Make sure the students know where to find the statutes -- business corporation, close corporation, nonprofit corporation, professional corporation -- and whatever forms are available in your state.

Have your students find out what professions may form a professional association or corporation in your state.

Put on the whiteboard or chalkboard for several class sessions:

SHAREHOLDERS (or STOCKHOLDERS, if that is the term your statute uses)  
ELECT THE BOARD OF DIRECTORS  
WHO ELECT THE OFFICERS

The advantages of the corporate form listed on page 59 are important concepts for your students to retain.

## *Chapter Nine*

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### **CREATION OF THE CORPORATION**

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## **Pages 63-71**

Ask your students to locate the precise statute on forming a corporation in your state. Have them list what is absolutely required and what is optional.

Explain that articles of incorporation are a matter of public record and are subject to inspection by any interested party. In the case of paralegal students, the student's future employer will probably have a form for articles of incorporation that will be used over and over with variation only in the name of the corporation and similar variables.

We recommend you go into great detail concerning name availability procedures in your state. May a reservation be made over the phone? What is the appropriate fee? Is there a distinction between “similar” and “deceptively similar”?

Stress how important it is to check name availability regardless of whether one is specifically instructed to do so.

Have the students track your lecture information on name reservation and name registration in the statutes. If your state publishes a filing guide, this is an appropriate time to introduce it.

Consider a scenario in which a name can be used only with a letter of consent. How does one go about obtaining information for this project? (Get the registered agent and registered office of the target entity from the secretary of state.)

Point out (if true in your state) that name availability procedures encompass names of limited partnerships and limited liability companies as well as corporations.

If your state requires a written reservation, have your students prepare such a letter. Point out the options of using service companies, going on-line, or making prior debit arrangements with a secretary of state to pay the fee for faxed documents.

*Chapter Ten*

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**CREATION OF THE  
CORPORATION, II**

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**Pages 73-76**

Decide on the name of a corporation that the class is going to form. As you work through this chapter, have each student construct his or her own articles of incorporation.

Or, alternatively, let each student form his or her own corporation and choose an appropriate name. The easiest way is to take the student’s sole proprietorship and have the student contribute its assets as consideration for shares in the new corporation.

Using this method lets you review assumed names (surrender of assumed name by the sole proprietorship and assumption of the assumed name by the new corporation). It also allows a review of the 351 filing publication procedures, if those apply in your state. Third, it gives

you a chance to stress that consideration is not always cash but can be assets, labor done, or a promissory note -- whatever is lawful in your state as consideration for shares.

Name. “Garbage in, garbage out.” The name must be absolutely correct in every detail. If the client wants “Corp” or “Corp.,” it is not the place of the incorporator to substitute “Corporation.”

Duration. Review continuity of existence as an accepted corporate characteristic.

Purpose. Teaching this will depend on whether your state allows a broad purpose or insists that a specific purpose must be stated. If the broad purpose is allowed, point out to the student how “any and all business for which corporations may be incorporated” gives the new entity full powers to buy, sell, hire, fire, and so on. Point out that certain purposes, while lawful, but not applicable to the business corporation act. (Insurance is a good example.)

Capitalization. Your state may not require a minimum capitalization. Even if it does not, this is a good place to review the concept of consideration and how it may be an act (tendering money for shares) or a promise to act (tendering a promissory note for shares).

Authorized Shares. If your state requires a statement of par value, explain how it *must* be included, even if the shares are of no par value. Some states base taxation on stated capital. You may wish to explain that possibility as a motivation to keep the number of authorized shares low and name a low par value: as 1,000 shares, penny par.

Denial of Preemptive Rights. Does your state automatically grant preemptive rights unless denied? Or do your statutes require preemptive rights, if desired, to be specifically claimed in the charter document?

Registered Agent and Registered Office. Who does your state permit to be a registered agent? Explain how the registered office “follows” the registered agent: when he, she, or it changes address, the registered office changes as well. Distinguish between a principal place of business and a registered office.

Initial Board of Directors. Must at least one initial director be named in the charter document in your state? If so, your statute probably provides that all authority flows to this individual. Have your students locate the appropriate statute. Or, if an initial director’s name is not required in the charter document, explain how the incorporator will name the initial director(s) in a written consent. Point out that the liability of the incorporator is greater when the initial director is not named in the charter document.

If your state requires more than one incorporator, the student will need a colleague to “co-incorporate” the charter document he or she has prepared. Otherwise, the student can be the sole incorporator.

Point out, if some student hasn’t already asked, that neither shareholders nor officers are named in a charter document.

By now you should be close to mid-term. Here are some questions you might adapt to your class. The depth and detail you require will depend on whether you permit a take-home exam, give an open book exam in class, or give a closed book (memorization) exam in class.

### **Drafting Documents**

The following are six scenarios that call for you to prepare documents. Use the date of [date] for any documents that require a date.

In the upper left-hand corner of each document, indicate:

1. With what agency the document is to be filed
2. What filing fee is required to accompany the document

Sam Solo has been in business for some time and wonders if he should continue as a sole proprietorship or incorporate. Sam has limited assets and no interest in expanding his small business. He has no children to inherit the business. In two years he would like to quit and travel. Summarize the advantages and disadvantages of Sam’s staying as he is or incorporating. You are to include the issues of taxation, fees, formalities, and liability. (xx possible points)

Your employers Ace Attorney, Bobbie Barrister and Lee Lawyer have decided to change their form of business from a [your state] professional corporation to a [your state] registered limited liability partnership. They have applied for a federal tax ID number for the LLP but not yet received the number. The firm’s office is located at 1600 Tallest Building, [your city], [your state], [your ZIP Code]. You are directed to draft an application for them to execute and file with the [your state] Secretary of State. (xx possible points)

Chris Client and Kit Kelly have entered into a joint venture that they intend to call "See Kay." Prepare an assumed name certificate for the joint venture to file with the [Clerk/Recorder] of [your county] County. (xx possible points)

You work for the firm of Grate & Grand, Ten Pompous Place, [your city]. [your state] [your ZIP Code]. Prepare articles of incorporation for a [your state] corporation with yourself as the incorporator. The corporation will be named [name]. It will have perpetual existence and will be authorized to issue one thousand shares of common stock, \$1.00 par value per share.

The initial directors will be [name] and [name], who live at [address], [your city], [your state], [your ZIP Code]. [Name] will be the registered agent, and the registered office will be [name]'s home. Preemptive rights will be denied, and cumulative voting will be prohibited. [Name] and [name], as directors, wish to be indemnified. (xx possible points)

[Corporation formed above] is to be the general partner of a [your state] limited partnership to be named [name]. As does the corporation, the limited partnership will use [name] and [name]'s residence as its principal place of business and its registered office. It is [name]'s turn to be registered agent. Prepare the certificate of limited partnership. (xx possible points)

Select any entity above and prepare a Form SS-4 for it to file with the IRS. A blank Form SS-4 is attached hereto. (xx possible points)

### **Brief Essay**

Discuss the concept of the registered limited liability partnership in [your state]. Some points you should cover are:

- a. What is the statutory authority? Photocopy the relevant statute and attach it to your answer.
- b. Who may register?
- c. What is the advantage of registration?

(xx points)

Thoroughly discuss the issue of liability as it affects the sole partnership, the general partnership, the limited partnership, and the corporation. (xx points)

Explain the procedures for reserving a name in [your state], including the problem of name availability. (xx points)

*Chapter Eleven*

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## **GETTING UNDERWAY**

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### **Pages 77-85**

This is the housekeeping chapter to help your students learn how to draft all initial documents and set up a minute book.

We don't recommend drafting bylaws in class because (a) they're so verbose and (b) the student's future employer is likely to have a form anyway. Your students, however, should know generally what is contained in bylaws. Make it clear that this document is internal and confidential, not filed in the public record as the charter document is.

Stress the importance of a clear paper trail in preparing or maintaining a minute book.

Explain that the organizational meeting required by statutes is rarely held. In its place, one prepares a written consent in lieu of organizational meeting that the initial directors then execute.

Does your state require, or simply permit, a corporate seal? Have the students find the answer in the statute.

Display a standard book of pre-printed share certificates from a vendor in your area. Stress that the pieces of paper only represent the abstract shares. The shares are the true personal property of the shareholder.

What is the minimum number of directors required in your state for a general business corporation? If the answer is "one," explain how a single individual can lawfully be the incorporator, registered agent, initial director, president, secretary, shareholder, and employee of a corporation.

What is the minimum number of officers required in your state for a general business corporation? Are there specific titles required? May the same individual hold all offices? Have the students locate the applicable statute.

Point out that the statute gives the board of directors power to "do what needs to be done" to get the corporation underway, *i.e.*, elect and compensate officers, issue shares of stock, select a bank, provide for payment of organizational expenses, authorize the officers to enter into transactions, and so on.

If Subchapter S is an option, make sure the students realize that the directors only authorize the election of Subchapter S status. Each shareholder and his or her spouse must consent, and a Form 2553 must be filed in order to bring the election about.

Send for sample software to control and maintain records of business entities. Make it available to your students in a computer room, and use it in class.

Give out a list of URLs you have found useful for corporations, partnerships, and LLCs. Devise a "treasure hunt" quiz for extra credit -- the students have to surf the Internet and find the answers. Don't use this, however, if every student doesn't have equal access to the

Internet through your program. Otherwise such a project would favor those who can afford a home computer.

Worse, it might encourage a student to use an employer's Internet access without permission or at the expense of the employer. Reminder . . . are you teaching ethics as you go in the class? Please don't miss an opportunity to intersperse ethical concepts!

*Chapter Twelve*

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**SHAREHOLDERS AND SHARES**

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**Pages 87-101**

If appropriate to your state's statute, use the terms "stockholders" and "stock."

Overheads of a typical share certificate from your local vendor are useful with this chapter.

Have the students find in the statute what information is required to be on the face of a share certificate. Then add what is not statutorily required but is customarily used in your state, such as execution by authorized officers or sealing with a corporate seal.

Photocopy the legends commonly used in your area and give the students a handout. Review each one; explaining how it gives notice of a way in which transfer of the shares represented by a certificate may be affected.

Explain to the students that there is no legend concerning cumulative voting, because cumulative voting affects election of directors, not transfer of shares.

Explain that the corporation uses a shareholders' agreement to protect itself in the event of a shareholder's death, divorce, dissolution (for shareholders who are not natural persons), termination of employment (if the shareholder is also an employee), or bankruptcy.

Introduce certificate programs now available commercially. You can get demonstration diskettes from these companies. Point out that the electronic office may prepare all of its certificates with a macro instead of ordering them from a print company.



**DIRECTORS AND OFFICERS**

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**Pages 103-111**

You will have already established with the students how many directors and the specific officers (if any) are required of a business corporation in your state. Reinforce this information.

Are there residency requirements for the directors? for the officers?

Point out that outside directors often serve on the compensation committees of large corporations, since the inside directors are frequently compensated officers.

Other committees that the board may form are executive or audit committees -- whatever the corporation needs in order to function effectively and efficiently. Have the students locate the statutory limitations on the power of these committees.

Does your statute permit the sitting directors to appoint directors to fill vacancies on the board between meetings of shareholders? If so, are there limitations on how many vacancies may be filled?

Explain how the business judgment rule protects the director when he or she has acted prudently and the corporation still fails.

Compare the business opportunity rule with the partnership opportunity doctrine discussed on page 37. Use this opportunity to talk about fiduciary duty and ethical obligations.

**OPERATION OF THE  
CORPORATION**

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**Pages 113-118**

Subchapter S: a potential pitfall that affects the owners' pocketbooks.

From your local IRS office, or the IRS' website at [www.irs.gov](http://www.irs.gov), have the students obtain, sample Form 2553 with instructions.

Explain why Sub S is a desirable status for a small business.

Does your state require a state filing for Sub S? If so, cover that document as well.

Point out that if a corporation is formed on January 2, the "drop dead" Sub S date is March 15. If a corporation is formed on January 31, the "drop dead" date is still March 15, but one has lost 30 days to get the necessary signatures. Make your students sensitive to Sub S deadlines.

(We know that in 1997 the IRS "relaxed" its stringent deadlines -- but who wants to take a chance on that? Teach your students to get those Forms 2553 in ASAP!)

If your state is not a community property state, do you still have the spouse execute the Form 2553?

Re certificates, starting on page 117:

What certificates are issued by your state's secretary of state and taxing authority? If you have one that you can redact and display for the students, do so. Explain the difference, if applicable, between your state's "short form" and "long form" certificates.

Explain that the specifics to which the officer will certify are usually taken word-for-word from the document requiring the certification, such as a Purchase and Sale Agreement. Does your state require such a certificate to be notarized or attested by a second individual?

How does your state offer "bringdowns" -- verbally? by fax? by e-mail? Will it give a bringdown as of the close of business *or* as of the opening of business? Getting a "close of business" bringdown on the day before a closing can be helpful if the transaction participants are in different time zones. Warn the students to watch for state holidays when agencies will be closed.

A service company can be very useful in obtaining bringdowns. It may well be more cost-effective to use a service company, depending upon whether one is also managing the closing, how many bringdowns are required, and what time zones are involved.

**DISSOLUTION OF THE  
CORPORATION**

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**Pages 115-123**

Depending upon how old the corporation is, voluntary dissolution can be a puzzling process. Stress to the students that if shareholders can be traced (not always possible in an old corporation), their permission to dissolve must be obtained. The state may require written evidence of such permission, either as minutes of a meeting or as a written consent.

Does your state permit holders of nonvoting shares to vote on major issues such as dissolution?

Review your statute's procedures for rescinding a dissolution or reviving an involuntarily dissolved corporation.

Stress to the students that simple articles of dissolution without evidence of payment of taxes will not be accepted in *any* state. Every state is interested in collecting taxes before it permits an entity to dissolve voluntarily. Outline for the students the procedure in your state.

**THE LIMITED  
LIABILITY COMPANY**

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**Pages 125-137**

Have the class form an LLC by creating articles of organization.

Or, if the class has already formed a Subchapter S corporation, voluntarily dissolve it and assign the assets to the newly formed LLC. Shareholders become members. Have the

students decide if they want members to manage the LLC or if they wish to elect managers from among the members.

Is there a limit on duration of an LLC in your statute?

Go over the vocabulary your state's statute uses for LLC terms.

Appendices Q and R may help the student visualize how an LLC compares to a partnership or to an S corporation.

*Chapter Seventeen*

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**CHANGES IN STRUCTURE**

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**Pages 139-144**

This chapter is a good place to use current events. Require the students to find reports on entities that are merging.

As always, use your state's statutes. Remind the students that the statutes of every involved state must be reviewed to be sure the articles of merger and plan of merger meet the state's requirements.

Have the students find what your state's statutes provide on merger of a subsidiary into a parent, or a parent into a subsidiary. What percentage of ownership is required for a "short form" merger?

Explain that the surviving entity may sometimes take the name of the nonsurviving entity.

If your state does not permit conversion of one form of doing business to another, you may want to use the statute of a state that does so provide in order to explain the concept to your students.

If your state does permit conversion, have the students work together to draft articles of conversion for a corporation to an LLC, or an LLC to a limited partnership.

At this point, you may want to give a quiz. Here are some possible questions:

## **Drafting Resolutions and Completing Forms**

[The following questions are predicated on your giving articles of incorporation as part of the mid-term.]

Since we last saw [corporation the student formed in the mid-term exam] (the “Corporation”), the IRS has assigned it a federal employer identification number: xx-1234567. The home office has a telephone number: (xxx) xxx-xxxx.

As initial directors named in the articles of incorporation of the Corporation, [name] and [name] have authority to elect officers. They elect [name] president and [name] secretary.

In order to qualify for Subchapter S status, the two directors adopt by written consent a resolution changing the fiscal year to December 31. They instruct the officers to prepare and execute the appropriate document to elect Subchapter S status.

The directors also have authority to issue shares in the corporation. They elect to issue 1,000 shares to [name] in return for [type of consideration]. [Shareholder] is currently single. He/She resides at [address], [your city], [your state], [your ZIP Code]. [His/Her] Social Security number is 987-65-4321.

The Corporation’s shares will not be listed with the Securities and Exchange Commission or with any state securities agency. Preemptive rights were denied in the articles. No shareholders’ agreement or other voting agreement exists at [date], the effective date on which shares are to be issued to [Shareholder].

Accomplish the following tasks:

1. Draft a resolution electing [name] as president and [name] as secretary. (xx points)
2. Draft a resolution setting December 31 as the close of the corporation's fiscal year. (xx points)
3. Draft a resolution authorizing issuance of 1,000 shares of common stock, par value \$0.01 per share, to [name]. (xx points)
4. Using the blank provided, prepare a share certificate representing [name]’s 1,000 shares. Include appropriate legends, if any. (xx points)
5. Prepare a Form 2553 electing Subchapter S status. (xx points)

## **Preparing Share/Stock Certificates**

Or, for a different format, provide a list of facts and instruct the students to prepare [share/stock] certificate(s) based on those facts:

Name of corporation	Name of the president
State of domestication	Name of the secretary
Date of incorporation	Name(s) of shareholder(s)
Shares of common stock authorized	Shares held by each shareholder
Par value per share of common stock	Common
Shares of preferred stock authorized	Preferred
Par value per share of preferred stock	

Preemptive rights denied in articles?

Will shares be registered with any federal or state securities agency?

Is there a shareholders' agreement?

If so, between the Corporation and what shareholders?

Is there a voting agreement?

If so, between what shareholders?

Is there an irrevocable proxy?

If so, given by whom to whom?

*Chapter Eighteen*

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**THE CORPORATE PARALEGAL**

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**Pages 145-147**

This chapter is intended for classes in paralegal studies. You may have students who are already working inhouse for a corporation. Perhaps they can share (without breaching confidentiality) some of the duties assigned to the paralegals there.

You might invite an inhouse paralegal to talk to the class about his/her responsibilities.

The main goal is to help the students realize that not all paralegals work in litigation for law firms.