

---

# Contents

---

<i>Preface</i>	xxxiii
<i>Acknowledgments</i>	xxxvii

## 1



---

### Introduction to Business Organizations and Agency Law

---

Chapter Overview	1
A. Types of Business Enterprises	1
1. Sole Proprietorship	1
2. General Partnership	2
3. Limited Partnership	2
4. Limited Liability Partnership	2
5. Limited Liability Company	2
6. Business Corporation	3
7. Professional Corporation	3
8. S Corporation	3
9. Close Corporation	4
B. Considerations in Selection of Business Enterprise	5
1. Ease of Formation	5
2. Management	5



3. Liability and Financial Risk	5
4. Continuity of Existence	6
5. Transferability	6
6. Profits and Losses	6
7. Taxation	6
C. How Business Is Conducted in This Country	8
D. Agency in Business Organizations	8
1. Formation of Agency Relationship	9
2. Authority of Agents	11
3. Duties of Agents and Principals	13
4. Liability for Agent's Torts	15
5. Liability of Agents to Third Parties	16
6. Termination of Agency	17
7. Agency in Business Relationships	17
E. Role of Paralegal	18
Case Illustration: Employee's Drive Home as Outside the Scope of Employment	19
Web Resources	19
Discussion Questions	20
Net Worth	20

## 2




---

### Sole Proprietorships

---

Chapter Overview	21
A. Characteristics of Sole Proprietorships	21
B. Governing Law	22
C. Advantages of Sole Proprietorships	22
D. Disadvantages of Sole Proprietorships	23
1. Unlimited Personal Liability	23



2. Lack of Continuity	24
3. Difficulties in Raising Capital	24
4. Management Difficulties	24
E. Formation of Sole Proprietorships	25
1. Licensing Considerations	25
2. Name Considerations	26
3. Business and Sales Tax Permits	28
F. Taxation of Sole Proprietorships	29
G. Role of Paralegal	33
Case Illustration: Personal Liability of Sole Proprietors	33
Web Resources	34
Discussion Questions	34
Net Worth	35

## 3




---

## General Partnerships

---

Chapter Overview	37
A. Characteristics of General Partnerships	37
B. Governing Law	38
C. Partnership Defined	40
D. Partnership Property	40
1. Property or Services Contributed by Partners or Acquired by Partnership	40
2. Property Rights of Partners	42
E. Advantages of General Partnerships	43
F. Disadvantages of General Partnerships	44
1. Unlimited Personal Liability	44
2. Lack of Continuity	45
3. Difficulty in Transferring Partnership Interest	45



G.	Formation of General Partnerships	46
H.	Operation of General Partnerships	47
	1. Duties and Rights of Partners	47
	2. Management of the Partnership	48
	3. Compensation, Profits, and Accounting	50
I.	The Partnership Agreement	51
	1. Name of the Partnership	52
	2. Names and Addresses of the Partners	52
	3. Recitals	52
	4. Purpose	53
	5. Address	53
	6. Term	53
	7. Financial Provisions	54
	8. Profits and Losses	54
	9. Management and Control	55
	10. Admission of New Partners and Withdrawal of Partners	56
	11. Dissolution	56
	12. Miscellaneous Provisions	57
	13. Signatures and Date	58
J.	Transferability of Partnership Interest	59
K.	Dissolution and Winding Up Under the UPA	60
	1. Dissolution by Acts of Partners	60
	2. Dissolution by Decree of Court	61
	3. Winding Up	61
L.	Dissociation and Dissolution Under the RUPA	62
M.	Conversions and Mergers	65
N.	Taxation of Partnerships	65
O.	Role of Paralegal	67
	Case Illustration: Fiduciary Relationship of Partners	70
	Web Resources	70
	Discussion Questions	70
	Net Worth	71

## 4

---

## Limited Partnerships

---

Chapter Overview	73
A. Characteristics of Limited Partnerships	73
B. Governing Law	74
C. Limited Partnership Defined	75
D. Partners' Rights and Duties	76
1. General Partners	76
2. Limited Partners	77
E. Advantages of Limited Partnerships	78
1. Attracting Capital	78
2. Limited Liability	79
3. Easy Transferability of Partnership Interest	79
4. Continuity of Existence	79
5. Pass-Through Taxation	80
F. Disadvantages of Limited Partnerships	80
1. Lack of Control for Limited Partners	80
2. Unlimited Liability for General Partner	80
3. Formalities and Expenses of Organization	80
G. Formation of Limited Partnerships	81
1. Contents of the Limited Partnership Certificate	81
2. Filing the Certificate of Limited Partnership	84
3. Amendment of the Limited Partnership Certificate	84
4. Foreign Limited Partnerships	86
5. Limited Partnership Agreement	86
H. Transferability of Interest	92
I. Actions by Limited Partners	93
J. Dissolution and Winding Up of Limited Partnerships	93
K. Cancellation of Limited Partnership Certificate	94



L. Taxation of Limited Partnerships	94
M. Family Limited Partnerships	95
N. Master Limited Partnerships	96
O. Limited Liability Limited Partnerships	97
P. Uniform Limited Partnership Act (2001) (Last Amended 2013)	97
1. Introduction	97
2. Comparison of Limited Partnerships Under RULPA and the 2001 Act	100
Q. Role of Paralegal	102
Case Illustration: Giving Advice Is Not Control of a Business	102
Web Resources	104
Discussion Questions	104
Net Worth	105

## 5




---

### Limited Liability Partnerships

---

Chapter Overview	107
A. Characteristics of Limited Liability Partnerships (LLPs)	107
B. Governing Law	109
C. Advantages of LLPs	109
1. Partial Shield States	110
2. Full Shield States	110
D. Disadvantages of LLPs	112
E. Formation of LLPs and Doing Business in Other States	114
1. Formation of LLPs	114
2. Doing Business in Other States	114
F. Operation of LLPs	118
G. Transferability of Interest and Admission of New Members	119
H. Dissolution and Liquidation of LLPs	119
I. Taxation of LLPs	120



J. Growth and Trends in LLPs	120
K. Role of Paralegal	122
Case Illustration: Exception to LLP Liability Shield for Partner's Own Misconduct	122
Web Resources	123
Discussion Questions	123
Net Worth	124

## 6



---

## Limited Liability Companies

---

Chapter Overview	125
A. Characteristics of Limited Liability Companies (LLCs)	126
1. Introduction to LLCs	126
2. Distinguishing LLCs from LLPs	126
B. Governing Law	127
C. Advantages of LLCs	129
1. Pass-Through Tax Status	129
2. Limited Liability and Full Management	129
3. One-Person LLCs	130
4. International Recognition	130
D. Disadvantages of LLCs	130
E. Formation of LLCs	131
1. Articles of Organization	131
2. Operating Agreement	132
F. Transferability of Interest	138
G. Doing Business in Other States	138
H. Actions by LLC Members	140
I. Dissociation and Dissolution of LLCs	142
1. Events Causing Dissociation	142
2. Events Causing Dissolution and Winding Up	142



J. Conversions, Mergers, and Domestications	143
K. Taxation of LLCs	143
L. LLC Variations	146
M. Growth and Trends in LLCs	148
1. Growth	148
2. The Commission's Harmonized Business Code	148
3. LLCs Versus Other Business Structures	149
4. Outstanding Issues	150
N. Role of Paralegal	151
Case Illustration: No Governance Rights for LLC Assignees	152
Web Resources	152
Discussion Questions	153
Net Worth	153

## 7




---

## Other Unincorporated Organizations

---

Chapter Overview	155
A. Joint Ventures	155
B. Mining Partnerships	157
C. Joint Stock Companies	158
1. Comparison to Corporations and Partnerships	158
2. Modern Application	159
D. Business Trusts	159
1. Comparison to Corporations and Partnerships	159
2. Modern Application	160
E. Real Estate Investment Trusts	162
1. Types of REITs	162
2. Advantages of REITs	163
3. Conclusion	163



F. Cooperative Associations	163
G. Role of Paralegal	166
Case Illustration: Liability of Joint Venturers	166
Web Resources	167
Discussion Questions	167
Net Worth	168

## 8



---

## Introduction to Corporations

---

Chapter Overview	169
A. Characteristics of Corporations	170
B. History and Governing Law	170
1. History	170
2. Governing Law	171
C. The Corporation as a Person	173
D. Corporate Powers and Purposes	174
1. Corporate Powers	174
2. The <i>Ultra Vires</i> Doctrine	175
3. Inroads on the Shareholder Primacy Doctrine	175
E. Types of Corporations	176
1. Domestic Corporations	176
2. Foreign Corporations	176
3. Federal or State Corporations	177
4. Public Corporations	177
5. Privately Held Corporations	177
6. Nonprofit Corporations	178
7. Benefit Corporations	178
8. Close Corporations	178
9. Professional Corporations	178



10. S Corporations	178
11. Parent and Subsidiary Corporations	179
F. Advantages and Disadvantages of Incorporation	179
1. Advantages	179
2. Disadvantages	180
G. Role of Paralegal	187
Case Illustration: Corporations Exist Independently of Their Stockholders	187
Web Resources	188
Discussion Questions	188
Net Worth	189

## 9




---

## Formation of Corporations

---

Chapter Overview	191
A. Preincorporation Activities by Promoters	191
1. Duties of Promoters	191
2. Preincorporation Transactions	192
3. Preincorporation Share Subscriptions	194
B. Selection of Jurisdiction in Which to Incorporate	195
1. Delaware Incorporation	195
2. Factors in Selecting a Jurisdiction	196
C. The Corporate Name	197
1. Selection	198
2. Availability	199
3. Reservation	200
4. Registration	200
5. Assumed Names	200
D. Articles of Incorporation	202
1. Elements of Articles of Incorporation	202



2. Optional Provisions in Articles of Incorporation	208
3. Preemptive Rights	208
4. Filing of Articles of Incorporation	209
E. Postincorporation Activities	210
1. Bylaws	212
2. Corporate Supplies	214
3. Organizational Meeting	215
4. Annual Report	221
F. Defects in Incorporation Process	221
G. Role of Paralegal	223
Case Illustration: The Internal Affairs Doctrine	224
Web Resources	225
Discussion Questions	226
Net Worth	226

# 10



---

## Corporate Finances

---

Chapter Overview	229
A. Introduction to Securities	229
B. Equity Securities	231
1. Introduction	231
2. Par Value and No Par Value Stock	233
3. Consideration for Shares	235
4. Stock Certificates and Stock Issuance	235
5. Classes of Stock	238
C. Debt Securities	249
1. Introduction	249
2. Unsecured Debt	251
3. Secured Debt	252



4. Common Features of Debt Securities	254
5. Impact Investing	257
6. Junk Bonds	258
D. Taxation of Corporations	258
1. Introduction	258
2. Double Taxation	259
3. A Cure for Corporate Inversions?	262
4. Accumulated Earnings Tax	263
5. Repeal and Revival of the Corporate Alternative Minimum Tax	265
6. State and Other Taxes	266
E. Role of Paralegal	267
Case Illustration: Preferred Stockholders' Rights Are Contractual in Nature	268
Web Resources	269
Discussion Questions	269
Net Worth	270

# 11




---

## Corporate Management

---

Chapter Overview	273
A. Shareholders' Rights and Responsibilities	274
1. Introduction	274
2. Rights to Information	274
3. Voting Rights	275
4. Shareholder Meetings	278
5. Shareholder Action Without a Meeting	291
6. Modern Trends	293
7. Right to Transfer Shares and Shareholder Agreements	295
8. Shareholder Actions	296
9. Other Rights of Shareholders	300



10. Shareholders' Responsibilities	302
11. Piercing the Corporate Veil	302
B. Directors' Rights and Responsibilities	304
1. Introduction	304
2. Number and Qualifications of Directors	304
3. Functions of Directors	305
4. Election, Term, Vacancies, and Removal of Directors	305
5. Directors' Meetings	308
6. Directors' Action Without a Meeting	310
7. Compensation of Directors	310
8. Rights of Directors to Information	313
9. Directors' Standards of Conduct, Liability, and Indemnification	313
10. Delegation of Authority	319
C. Governance Guidelines and Trends	320
1. Governance Guidelines	320
2. The Evolving Landscape of Environmental, Social, and Governance ("ESG") Issues	321
3. Trends in Governance	322
4. Election of Directors: Types of Voting	325
D. Corporate Scandals, Reform, and the Sarbanes-Oxley and Dodd-Frank Acts	326
1. Introduction	326
2. The Fallout	327
3. Reform and the Sarbanes-Oxley Act	327
4. The Dodd-Frank Act	328
E. Rights and Duties of Officers	329
1. Introduction	329
2. Qualifications, Appointment, and Tenure	329
3. Officers' Functions	330
4. Titles of Officers	331
5. Authority of Officers	332
6. Officers' Standard of Conduct, Liability, and Indemnification	332
F. Role of Paralegal	333



Case Illustration: Piercing the Corporate Veil	334
Web Resources	334
Discussion Questions	335
Net Worth	336

# 12




---

## Corporate Dividends

---

Chapter Overview	339
A. Introduction to Dividends	339
B. Restrictions Relating to Dividends	341
1. The MBCA Approach: Equity Insolvency and Balance Sheet Tests	341
2. Other Tests for Distributions	342
3. Contractual Limitations	342
4. Preferences	343
5. Classes of Shares	343
C. Effect of Illegal Dividends	343
D. Procedure for Declaring and Paying Dividends	344
E. Right to Dividends	346
F. Tax Considerations	347
1. Cash Dividends	347
2. Property Dividends	348
3. Share Dividends	348
4. Encouraging Dividends	348
5. Avoiding Double Taxation	349
6. Modern Trends in Dividend Payments	349
G. Stock Splits	349
H. Purchase by a Corporation of Its Own Shares	351
I. Role of Paralegal	353

Case Illustration: Directors Have Exclusive Power to Declare Dividends	354
Web Resources	355
Discussion Questions	355
Net Worth	356

## 13

---

### Securities Regulation and the Stock Exchanges

---

Chapter Overview	357
A. Introduction to Investor Protection	357
B. Going Public	358
1. Overview of the IPO Process	358
2. Alternatives to Traditional IPOs: Direct Listings and SPACs	359
3. IPOs Using Up-C Structures	360
4. Going Private and Private Equity	360
C. Securities Act of 1933	361
1. Introduction	361
2. Registration Requirements	362
3. Exemptions from Registration	363
4. Antifraud Provisions of 1933 Act	366
5. Penalties for Violations of 1933 Act	367
D. Securities Exchange Act of 1934	367
1. Introduction	367
2. Periodic and Event-Driven Reporting Requirements	368
3. Insider Trading: Rule 10b-5	369
4. Remedies and Penalties for Violation of 1934 Act	371
5. Short-Swing Profits: Section 16(b)	372
6. Proxy Regulation	373
E. EDGAR	373
F. The Jumpstart Our Business Startups Act	374



G. State Securities Regulation	374
H. The Securities Markets: Where Do Stocks Trade?	376
1. Introduction	376
2. The New York Stock Exchange	377
3. Nasdaq	378
4. Governance Standards, Delisting, Margin Rules, Settlement, and Circuit Breakers	379
5. Alternative Trading Systems and High-Frequency Trading	380
6. The Over-the-Counter Market, Pink Sheets, and Penny Stocks	381
7. Understanding the Newspaper and Internet Reports of Stock Trading	382
I. Trading in Cyberspace	383
J. Hot Topics in Securities	384
K. Alternative Investments and Crypto Assets	387
L. Stock Market Indexes	388
1. Dow Jones Averages	389
2. Other Indexes	389
M. Glossary of Financial Terms	390
N. Role of Paralegal	392
Case Illustration: Substance over Form: Determining What Constitutes a Security	393
Web Resources	393
Discussion Questions	394
Net Worth	395

## 14




---

### Changes in the Corporate Structure and Corporate Combinations

---

Chapter Overview	397
A. Amending the Articles of Incorporation	398
1. Reasons for Amending Articles	398
2. Procedure for Amending Articles	398



3. Articles of Amendment	399
B. Restating the Articles of Incorporation	400
C. Amending the Bylaws of the Corporation	402
D. Corporate Combinations	402
1. Mergers and Consolidations	403
2. Share Exchanges	414
3. Purchase of Assets	414
4. Purchase of Stock	416
5. Hostile Takeovers	418
6. Limitation of Shareholder Remedies	426
7. De Facto Merger Doctrine and Freeze-Outs	427
8. Leveraged Buyouts and Share Repurchases	427
9. Governmental Regulation	428
10. Shareholder Challenges to Corporate Combinations	429
E. Domestication and Entity Conversion	430
1. Domestication	430
2. Entity Conversion	430
3. Processes of Domestication and Conversion	431
F. Role of Paralegal	432
Case Illustration: Appraisal Rights May Be Waived by Agreement	432
Web Resources	433
Discussion Questions	434
Net Worth	434

# 15




---

## Qualification of Foreign Corporations

---

Chapter Overview	437
A. Basis for Qualification	437
B. Transacting Business	438



C.	Procedures in Registration or Qualification	439
D.	Effects of Qualifying	442
E.	Effects of Failure to Qualify	442
F.	Effect of Changes to Domestic Corporation	443
G.	Withdrawal of Foreign Qualification	444
H.	Revocation of Qualification by State	444
I.	Role of Paralegal	446
	Case Illustration: Foreign Registration May Constitute Consent to General Jurisdiction	447
	Web Resources	447
	Discussion Questions	448
	Net Worth	448

# 16




---

## Termination of Corporate Existence

---

	Chapter Overview	451
A.	Dissolution	451
	1. Introduction	451
	2. Voluntary Dissolution	452
	3. Administrative Dissolution	455
	4. Involuntary or Judicial Dissolution	456
B.	Liquidation	459
	1. Introduction	459
	2. Nonjudicial Liquidation	459
	3. Judicial Liquidation	459
	4. Claims Against the Corporation	460
C.	Distributions to Shareholders	461
D.	Directors' Duties to Minority Shareholders	461



E. Corporate Bankruptcy	462
F. Role of Paralegal	463
Case Illustration: Dissolved Corporation Can Conduct Business Only for Purpose of Winding Up	463
Web Resources	464
Discussion Questions	464
Net Worth	465

# 17



---

## Corporate Variations

---

Chapter Overview	467
A. Close Corporations	468
1. Introduction to Close Corporations	468
2. Characteristics of Close Corporations	468
3. Formation of Close Corporations	469
4. Restrictions on Transfer of Shares	470
5. Operation of Close Corporations	472
B. Nonprofit Corporations	473
1. Introduction	473
2. Formation of Nonprofit Corporations	473
3. Operation and Governance of Nonprofit Corporations	475
4. Exemption from Taxation for Nonprofit Corporations	476
C. Benefit Corporations	477
1. Introduction	477
2. Formation and Characteristics of B Corporations	477
D. Parent and Subsidiary Corporations	479
1. Introduction	479
2. Formation and Characteristics of Subsidiary Corporations	479
3. Liability of Parent for Subsidiary's Debts	480



E. Professional Corporations	481
1. Introduction	481
2. Formation, Operation, and Liability of Professional Corporations	481
F. S Corporations	482
1. Introduction	482
2. Formation, Operation, and Termination of S Corporations	484
G. Role of Paralegal	487
Case Illustration: Piercing the Veil of a Parent Corporation	487
Web Resources	488
Discussion Questions	488
Net Worth	489

# 18




---

## Employee Compensation and Employment Agreements

---

Chapter Overview	491
A. Employee Compensation	491
1. Introduction	491
2. Insurance Benefits	492
3. Retirement Plans	494
4. Stock Option Plans	499
5. Other Benefits	500
6. Reimbursement of Expenses	501
B. Employment Agreements	501
1. Introduction	501
2. Terms of Employment Agreements	503
C. Role of Paralegal	510
Case Illustration: Ownership of Works Made for Hire	511
Web Resources	511
Discussion Questions	512
Net Worth	513

## 19

---

**Special Topics in Business Law**

---

Chapter Overview	515
A. Ethics	515
1. Introduction	515
2. Business Ethics	516
3. Ethical Approaches	516
4. Making Decisions	516
5. Legal Duties	517
6. Ethical Codes	518
B. The Purpose of a Corporation: Maximizing Shareholder Value or Improving Society?	519
C. Common Interdisciplinary Issues	520
1. Introduction	520
2. Commercial Transactions and the Sale of Goods	521
3. Franchising	522
4. Leases	524
5. Intellectual Property	526
6. Antitrust Law	529
7. Unfair Competition	532
8. Bankruptcy Law	533
D. Transactional and Business Law Practice	536
1. Introduction	536
2. Private Corporate Law Practice	536
3. In-House Corporate Practice	537
E. Role of Paralegal	539
Case Illustration: Support Obligations Are Not Discharged in Bankruptcy	539
Web Resources	540
Discussion Questions	540
Net Worth	541



Appendix A	Secretaries of State and State Corporations Statutes	543
Appendix B	Uniform Partnership Act (1914) (Selected Provisions)	549
Appendix C	(Revised) Uniform Partnership Act (1997) (Selected Provisions)	555
Appendix D	General Partnership Agreement	569
Appendix E	Revised Uniform Limited Partnership Act (1976) with 1985 Amendments (Selected Provisions)*	573
Appendix F	Model Business Corporation Act (Selected Provisions)	583
Appendix G	Corporate Bylaws	623
Appendix H	Written Consent in Lieu of the Organizational Meeting	631
Appendix I	Research and Resource Guide	635
	<i>Glossary</i>	639
	<i>Index</i>	667

---

\*Some provisions of this Act were changed in 2011 and 2013 as part of the Uniform Law Commission's Harmonization of Business Entity Acts project. Thus, the wording and numbering of some provisions shown in this appendix may vary from the provisions of the Act shown on the Commission's website at [www.uniformlaws.org](http://www.uniformlaws.org).