# Contents

Preface	xxvi
Acknowledgments	XXX

# 1

# Introduction to Business Organizations and Agency Law

A.	Intr	oduction	1
	1.	Sole Proprietorship	1
	2.	General Partnership	1
	3.	Limited Partnership	2
	4.	Limited Liability Partnership	2
	5.	Limited Liability Company	2
	6.	Business Corporation	2
	7.	Professional Corporation	2
	8.	S Corporation	3
	9.	Close Corporation	3
В.	Con	siderations in Selection of Business Enterprise	3
C.	Hov	v Business Is Conducted in This Country	4

xii 🔷	Contents
-------	----------

D.	Age	ency in Business Organizations	5
	1.	Formation of Agency Relationship	5
	2.	Authority of Agents	7
	3.	Duties of Agents and Principals	8
	4.	Liability for Agent's Torts	9
	5.	Termination of Agency	9
	6.	Agency in Business Relationships	9
E.	Ro	le of Paralegal	10
		ustration: Commuting as Outside the Scope loyment	10
Key	Fea	ntures of Agency Relationships	11
Inte	rne	t Resources	11
Key	Ter	ms	12
Dis	cuss	sion Questions	12
Net	Wo	orth	13

# Sole Proprietorships

A.	Introduction	15
В.	Advantages of Sole Proprietorships	15
C.	Disadvantages of Sole Proprietorships	16
D.	Formation of Sole Proprietorships	17
	1. Licensing Considerations	17
	2. Name Considerations	17
	3. Business and Sales Tax Permits and Other Formalities	18
E.	Taxation of Sole Proprietorships	20
F.	Role of Paralegal	20
	se Illustration: Use of a Fictitious Business Name	
Do	es Not Create a Separate Entity	22
Key	y Features of Sole Proprietorships	23
Inte	ernet Resources	23

Contents	<b>♦</b> xiii
----------	---------------

Key Terms	24
Discussion Questions	24
Net Worth	25

## General Partnerships

A.	Introduction	27
В.	Partnership Property	29
	1. Contributions to the Partnership	29
	2. Property Rights of the Partnership and of Partners	29
C.	Advantages of General Partnerships	30
D.	Disadvantages of General Partnerships	31
E.	Formation of General Partnerships	32
F.	Operation of General Partnerships	32
	1. Duties and Rights of Partners	32
	2. Management of the Partnership	33
	3. Compensation, Profits, and Accounting	34
G.	The Partnership Agreement	34
Н.	Transferability of Partnership Interest	38
I.	Dissolution and Winding Up	38
	1. UPA Approach	38
	2. RUPA Approach	39
	3. Winding Up	40
J.	Taxation of Partnerships	40
K.	Joint Ventures	40
L.	Role of Paralegal	41
Cas	e Illustration: A Mere Collaboration Is Not a Partnership	41
Key	Features of General Partnerships	42
Inte	rnet Resources	44

xiv	<b>♦</b>		Contents
-----	----------	--	----------

Key Terms	44
Discussion Questions	44
Net Worth	45

#### \_\_\_\_

## Limited Partnerships

A.	Introduction	47
В.	Rights and Duties of Partners	48
	1. General Partners	48
	2. Limited Partners	49
C.	Advantages of Limited Partnerships	50
D.	Disadvantages of Limited Partnerships	50
E.	Formation of Limited Partnerships	51
	1. Contents of the Limited Partnership Certificate	51
	2. Filing the Certificate of Limited Partnership	53
	3. Amending the Certificate of Limited Partnership	54
	4. Foreign Limited Partnerships	54
F.	Limited Partnership Agreement	54
G.	Transferability of Limited Partnership Interests	56
H.	Dissolution and Winding Up of Limited Partnerships	56
I.	Taxation of Limited Partnerships	57
J.	The 2001 Uniform Partnership Act and Limited Liability Limited Partnerships	57
K.	Role of Paralegal	59
	e Illustration: Liability of Limited Partners imited Partnership	60
Key	Features of Limited Partnerships	60
Inte	rnet Resources	61
Key	Terms	61
Dis	cussion Questions	62
Net	Worth	62



	Limited Liability Partnerships	
A.	Introduction	63
В.	Advantages of LLPs	64
	1. Partial Shield States	65
	2. Full Shield States	65
C.	Disadvantages of LLPs	67
D.	Formation of LLPs and Doing Business in Other States	68
E.	Operation of LLPs	70
F.	Transferability of Interest and Admission of New Partners	70
G.	Dissolution and Liquidation of LLPs	72
Н.	Taxation of LLPs	72
I.	Growth and Trends in LLPs	72
J.	Role of Paralegal	73
Case Illustration: Full Liability Shield for LLP Partners		73
Key	y Features of LLPs	74
Inte	ernet Resources	74
Key	y Terms	75
Dis	scussion Questions	75
Ne	t Worth	75
	6	
	Limited Liability Companies	
Α.	Introduction	77
	1. Characteristics of Limited Liability Companies (LLCs)	77
	2. Distinguishing LLCs from LLPs	78

xvi Contents

В.	Advantages of Limited Liability Companies	79
	1. Limited Liability and Full Management	79
	2. Flexible Management	79
	3. One-Person LLCs	80
	4. Pass-Through Tax Status	80
C.	Disadvantages of LLCs	80
D.	Formation of LLCs	81
	1. Articles of Organization	81
	2. Operating Agreement	81
E.	Transferability of Interest	86
F.	Doing Business in Other States	86
G.	Dissociation and Dissolution of LLCs	86
	1. Events Causing Dissociation	87
	2. Events Causing Dissolution and Winding Up	87
Н.	Conversions, Mergers, and Domestications	88
I.	Taxation of LLCs	88
J.	LLC Variations	88
K.	Growth and Trends in LLCs	89
	1. Popularity of LLCs	89
	2. The Commission's Harmonized Business Code	90
	3. LLCs Versus Other Business Structures	91
L.	Role of Paralegal	92
Cas	se Illustration: Piercing the Veil of an LLC	92
Key	y Features of LLCs	93
Inte	ernet Resources	93
Key	y Terms	94
Dis	scussion Questions	94
Net Worth		

Contents • xvii

# 7

mudaucudh id Combonaudh	Introdu	ction	to	Cor	poration	าร
-------------------------	---------	-------	----	-----	----------	----

	ı ı	
A.	Introduction	97
В.	Corporate Powers and Purposes	98
	1. Corporate Powers	98
	2. The Ultra Vires Doctrine	99
	3. Inroads on the Shareholder Primacy Doctrine	99
C.	Types of Corporations	100
	1. Domestic Corporations	100
	2. Foreign Corporations	100
	3. Federal or State Corporations	101
	4. Public Corporations	101
	5. Privately Held Corporations	101
	6. Nonprofit Corporations	101
	7. Benefit Corporations	101
	8. Close Corporations	102
	9. Professional Corporations	102
	10. S Corporations	102
	11. Parent and Subsidiary Corporations	102
D.	Advantages and Disadvantages of Incorporation	102
	1. Advantages	102
	2. Disadvantages	103
E.	Role of Paralegal	106
Ca	se Illustration: Broad Powers of a Corporation	107
Ke	y Features of Corporations	107
Int	ernet Resources	108
Ke	y Terms	108
Dis	scussion Questions	109
Ne	et Worth	109





### Formation of Corporations

A.	Introduction	111
В.	Preincorporation Activities	111
	1. Activities by Promoters	111
	2. Preincorporation Share Subscriptions	112
C.	Selection of Jurisdiction in Which to Incorporate	112
	1. Delaware Incorporation	113
	2. Factors in Selecting a Jurisdiction	113
D.	The Corporate Name	114
	1. Selection	114
	2. Name Availability, Reservation, and Registration	114
E.	Articles of Incorporation	117
	1. Elements of Articles of Incorporation	117
	2. Optional Provisions in Articles of Incorporation	119
	3. Preemptive Rights	119
	4. Filing of Articles of Incorporation	121
F.	Post-Incorporation Activities	122
	1. Bylaws	122
	2. Corporate Supplies	123
	3. Organizational Meeting	123
	4. Annual Report	125
G.	Defects in Incorporation Process	127
Н.	Role of Paralegal	127
Cas	se Illustration: Preemptive Rights to Purchase Stock	128
Key	y Features in Forming Corporations	129
Inte	ernet Resources	129
Key	y Terms	130
Dis	scussion Questions	130
Ne	t Worth	131

Contents riangle xix

	9	
•		

	Corporate Financial Structure	
		122
Α.	Introduction	133
В.	Equity Securities	134
	1. Introduction	134
	2. Par Value Stock	135
	3. Consideration for Shares	135
	4. Stock Certificates and Stock Issuance	136
	5. Classes of Stock	137
C.	Debt Securities	141
	1. Introduction	141
	2. Unsecured Debt	141
	3. Secured Debt	141
	4. Common Features of Debt Securities	143
	5. Green and Social Bonds	143
D.	Taxation of Corporations	144
	1. Introduction	144
	2. Double Taxation	145
	3. Avoiding Double Taxation	146
	4. State and Other Taxes	150
E.	Role of Paralegal	150
Cas Cla	se Illustration: Corporate Latitude in Creating asses of Stock	150
Key	Features of Corporate Financial Structure	151
Inte	ernet Resources	152
Key	y Terms	152
Dis	scussion Questions	153

154

Net Worth

#### **\* \***

		Corporate Management	
Α.	Sh	areholders' Rights and Responsibilities	155
	1.	Introduction	155
	2.	Inspection Rights	155
	3.	Voting Rights	156
	4.	Shareholders' Meetings	156
	5.	Shareholder Action Without a Meeting	161
	6.	Other Shareholder Rights	162
	7.	Modern Trends	163
	8.	Shareholder Actions	164
	9.	Piercing the Corporate Veil	165
В.	Dia	rectors' Rights and Responsibilities	166
	1.	Introduction	166
	2.	Functions of Directors	167
	3.	Election, Term, Vacancies, and Removal of Directors	167
	4.	Directors' Meetings	168
	5.	Meeting Requirements	168
	6.	Directors' Action Without a Meeting	169
	7.	Compensation and Inspection Rights	169
	8.	Directors' Standards of Conduct, Liability, and Indemnification	169
	9.	Delegation of Authority	172
C.	Go	vernance Guidelines and Trends	172
	1.	Governance Guidelines	172
	2.	Trends in Governance	173
	3.	Environmental, Social, and Governance ("ESG") Issues	174
	4.	Election of Directors: Types of Voting	175
D.		rporate Scandals, the Sarbanes-Oxley and Dodd-Frank ts, Proxy Access, and Proxy Advisors	176
E.	Of	ficers' Rights and Responsibilities	179

Contents		XX
Contents		

	1.	Introduction	179
	2.	Appointment, Tenure, and Functions of Officers	179
	3.	Titles of Officers	180
	4.	Authority of Officers	181
	5.	Officers' Standards of Conduct, Liability, and Indemnification	181
F.	Ro	le of Paralegal	181
Cas	se II	ustration: Piercing the Corporate Veil	182
Кеу	/ Fea	atures of Corporate Management	182
Inte	erne	t Resources	183
Кеу	/ Ter	ms	184
Dis	cus	sion Questions	184
Ne	t Wa	orth	185

# Corporate Dividends

A.	Introduction	187
В.	Restrictions Relating to Dividends	188
	1. MBCA Approach	188
	2. Legally Available Funds	189
	3. Miscellaneous Restrictions	189
C.	Procedure for Declaring and Paying Dividends	190
	1. Procedure	190
	2. Amending the Articles	190
	3. Right to Dividends	191
	4. Effect of Illegal Dividends	191
D.	Tax Considerations	192
E.	Stock Splits	194
F.	Purchase by a Corporation of Its Own Shares	195
G.	Role of Paralegal	195

xxii	Content

Case Illustration: Board's Dividend Decisions Are Protected Under Business Judgment Rule	196
Key Features of Corporate Dividends	197
Internet Resources	197
Key Terms	198
Discussion Questions	198
Net Worth	199

#### **\* \* \***

# Changes in the Corporate Structure and Corporate Combinations

A.	Introduction	201
В.	Amending the Articles of Incorporation	
	1. Reasons for Amending Articles	201
	2. Procedure for Amending Articles	202
	3. Articles of Amendment	202
C.	Restating the Articles of Incorporation	204
D.	Amending the Bylaws of the Corporation	204
E.	Corporate Combinations	204
	1. Introduction	204
	2. Mergers and Consolidations	205
	3. Share Exchanges	208
	4. Purchase of Assets	210
	5. Purchase of Stock	211
	6. Hostile Takeovers	212
	7. Government Regulation	214
F.	Domestication and Entity Conversion	214
	1. Domestication	215
	2. Entity Conversion	215
	3. Process of Domestication and Conversion	215

Contents	◆ xxiii
----------	---------

G. Role of Paralegal	215
Case Illustration: Merger Agreement Can Be Terminated If a Material Adverse Effect Occurs	216
Key Features of Corporate Changes and Combinations	217
Internet Resources	218
Key Terms	218
Discussion Questions	219
Net Worth	220

# Qualification of Foreign Corporations

A.	Introduction	221
В.	Basis for Qualification	221
C.	Transacting Business	222
D.	Procedures in Registration or Qualification	223
E.	Effects of Qualifying	224
F.	Effects of Failure to Qualify	226
G.	Effects of Changes to Domestic Corporation	226
H.	Withdrawal of Foreign Qualification	227
I.	Revocation of Qualification by State	227
J.	Role of Paralegal	227
	se Illustration: Maintaining an Action Does t Constitute Doing Business	229
Key	Features of Foreign Qualification	230
Inte	ernet Resources	230
Key	<sup>7</sup> Terms	231
Discussion Questions		231
Net Worth		231

xxiv Contents

Net Worth

#### 14

	Termination of Corporate Existen	ce
A.	Introduction	233
В.	Dissolution	233
	1. Voluntary Dissolution	233
	2. Articles of Dissolution	234
	3. Revocation of Dissolution	236
	4. One-Step and Two-Step Dissolutions	236
	5. Administrative Dissolution and Reinstatement	236
	6. Involuntary Dissolution	237
C.	Liquidation	239
	1. Introduction	239
	2. Nonjudicial Liquidation	239
	3. Judicial Liquidation	239
	4. Claims Against the Corporation	239
D.	Distributions to Shareholders	240
E.	Role of Paralegal	
	se Illustration: Barring of Claims Against Dissolved	
	orporations	241
Key	y Features of Corporate Dissolution and Liquidatio	n 241
Inte	ernet Resources	242
Key	y Terms	243
Dis	scussion Questions	243

244

xxv

#### Corporate Variations

A.	Introduction	245
В.	Close Corporations	245
	1. Introduction	245
	2. Characteristics of Close Corporations	246
	3. Formation of Close Corporations	246
	4. Operation of Close Corporations	247
C.	Nonprofit Corporations	247
	1. Introduction	247
	2. Formation of Nonprofit Corporations	248
	3. Operation and Governance of Nonprofit Corporations	248
	4. Exemption from Taxation for Nonprofit Corporations	248
D.	Benefit Corporations	249
E.	Parent and Subsidiary Corporations	250
	1. Introduction	250
	2. Formation and Characteristics of Subsidiary Corporations	250
	3. Liability of Parent for Subsidiary's Debts	251
F.	Professional Corporations	251
	1. Introduction	251
	2. Characteristics of Professional Corporations	252
	3. Formation, Operation, and Liability of Professional Corporations	252
G.	S Corporations	253
	1. Introduction	253
	2. Formation, Operation, and Termination of S Corporations	253
Н.	Publicly Traded Corporations	255
	1. Introduction to Investor Protection	255
	2. Securities Act of 1933	255
	3. Securities Exchange Act of 1934	256

xxvi • Contents

		Contents
4. Stat	te Securities Regulation	257
5. The	e Securities Markets	257
6. Sto	ck Market Indexes	258
I. Role of	Paralegal	258
	ation: Personal Liability of Professionals onal Corporations	259
Key Feature	es of Other Forms of Corporations	259
Internet Re	sources	260
Key Terms		261
Discussion	Questions	261
Net Worth		262
Appendix A	Secretaries of State and State Corporations Statutes	265
Appendix B	General Partnership Agreement	271
Appendix C	Corporate Bylaws	275
Glossary		285
Index		303