CONTENTS

Acknowledgments	
Introduction: Trends and Challenges in Business Law	xxi
Chapter 1 The Law of Agency	1
A. Creation of the Agency Relationship	2
Yost v. Wabash College	3
Problem 1-1	6
B. Agent's Fiduciary Duties to Principal	8
Food Lion, Inc. v. Capital Cities/ABC, Inc.	8
Problem 1-2	12
Problem 1-3	12
C. Principles of Attribution	13
1. Actual Authority	14
Castillo v. Case Farms of Ohio, Inc.	15
Problem 1-4	19
2. Apparent Authority	20
Problem 1-5	22
Chapter 2 Partnerships	23
A. Formation	26
Holmes v. Lerner	27
Problem 2-1	35
B. Management	36
Vecchitto v. Vecchitto	37
Problem 2-2	40
C. Fiduciary Duties	41
Meinhard v. Salmon	43
Problem 2-3	48
Gibbs v Breed. Abbott & Morgan	48

xii		Contents
D.	Financial Attributes	57
	1. Partnership Accounting	57
	2. Sharing Profits and Losses Among Partners	61
	Kovacik v. Reed	62
E.	Liability	64
	1. Liability of Partners to Third Parties	64
	In re Keck, Mahin & Cate	65
	Problem 2-4	69
	2. Limited Liability Partnerships	69
	3. Limited Partnerships	70
	4. Limited Liability Limited Partnerships	72
F.	Dissolution	72
	Fischer v. Fischer	74
	Problem 2-5	81
Ch	napter 3 Limited Liability Companies	83
A.	Birth and Development of LLCs	84
В.	Formation	85
	Stone v. Jetmar Properties, LLC	87
	Problem 3-1	91
C.	Management	91
	Gottsacker v. Monnier	92
	Problem 3-2	99
	Taghipour v. Jerez	100
	Problem 3-3	103
D.	Limited Liability	104
	NetJets Aviation, Inc. v. LHC Communications, LLC	105
	Problem 3-4	112
E.	Fiduciary Duties	113
	Miller v. HCP & Company	115
	Problem 3-5	127
F.	Dissolution	127
	Haley v. Talcott	128
	Problem 3-6	135
Ch	napter 4 Organization and Structure of a Corporation	137
A.	Incorporation	140
	Grant v. Mitchell	143
	Problem 4-1	154

Coı	Contents	
В.	Capital Structure	154
	Grimes v. Alteon Inc.	157
	Problem 4-2	162
C.	Directors and Shareholders	162
	Adlerstein v. Wertheimer	169
	Problem 4-3	178
D.	Dividends and Distributions	178
	Klang v. Smith's Food & Drug Centers, Inc.	180
	Problem 4-4	184
E.	Limited Liability, Piercing the Corporate Veil, and Related Doctrines	184
	1. Piercing to Reach an Individual Shareholder	188
	Soerries v. Dancause	188
	Problem 4-5	190
	2. Piercing in the Corporate Group Context	190
	Blair v. Infineon Techs, AG	192
	3. Agency-Based Theories for Parents' Liability	198
	Doe v. Exxon Mobil Corp.	198
Ch	apter 5 Control of the Closely Held Firm	205
A.	Shareholder Agreements	206
	Salamone v. Gorman	207
	Problem 5-1	216
В.	Transfer Restrictions	217
	Henry v. Phixios Holdings, Inc.	218
	Problem 5-2	225
C.	Voting Trusts	225
D.	Cumulative Voting	226
E.	Supermajority Requirements	228
	Problem 5-3	229
F.	Preemptive Rights	229
	Kimberlin v. Ciena Corporation	230
	Problem 5-4	235
G.	Deadlock	236
	Shawe v. Elting	236
Η.	Oppression of Minority Shareholders	245
	Leslie v. Boston Software Collaborative, Inc.	249
	Problem 5-5	257

xiv	Contents
Chapter 6 Shareholder Voting in the Publicly Held Firm	259
A. Introduction	259
B. Corporate Federalism	261
1. Sarbanes-Oxley Act of 2002	262
2. Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010	267
3. Federal Proxy Regulation	269
4. Liability for Misleading Proxy Disclosure	272
Problem 6-1	273
C. Shareholder Voting	274
1. Shareholders' Voting Power Generally	274
2. Proxy Contests	277
Third Point LLC v. Ruprecht	280
3. Shareholder Proposals	300
a. Shareholders' Efforts to Amend the Bylaws: Conflicts Between DGCL §109 and 141(a)	301
CA, Inc. v. AFSCME Employees Pension Plan	303
Problem 6-2	312
Problem 6-3	313
b. Social and Environmental Proposals	313
Problem 6-4	316
Problem 6-5	316
Chapter 7 Duty of Care	319
A. Directors' Duty of Care and the Business Judgment Rule	319
Gagliardi v. Trifoods International, Inc.	321
Problem 7-1	324
B. The Decision-Making Context	325
Smith v. Van Gorkom	325
Problem 7-2	339
C. Substantive Rationality	339
Problem 7-3	342
D. The Shareholder Primacy Norm	343
eBay Domestic Holdings, Inc. v. Newmark	345
Problem 7-4	363
E. Emerging Trends in Corporate Social Relationships	363

366

Problem 7-5

XV

Ch	apter 8	Duty of Loyalty	367
A.	The Ove	ersight Context and Good Faith	368
	1. Over	sight Generally	368
		In re Caremark International Inc. Derivative Litigation	369
		Problem 8-1	374
	2. The l	Duty of Good Faith	375
		In re The Walt Disney Company Derivative Litigation	376
		Stone v. Ritter	385
		Problem 8-2	391
	3. Rece	nt Developments	391
		Marchand v. Barnhill	<i>392</i>
В.	Conflict	of-Interest Transactions Generally	401
		Valeant Pharmaceuticals International v. Jerney	402
	1. Majo	rity or Controlling Shareholders	413
		Problem 8-3	414
	2. Stock	cholder Ratification	414
		Gantler v. Stephens	415
		Espinoza v. Zuckerberg	424
		Problem 8-4	432
C.	Corpora	te Opportunities	433
		Dweck v. Nasser	435
Ch	apter 9	Litigation to Enforce Fiduciary Duties	445
A.	The Der	nand Requirement	445
		Beam ex rel. Martha Stewart Living Omnimedia, Inc. v. Stewart	449
		Problem 9-1	457
В.	Direct V	ersus Derivative Claims	458
		Tooley v. Donaldson, Lufkin, & Jenrette, Inc.	459
		Problem 9-2	464
C.	Special I	Litigation Committees	465
		In re Oracle Corp. Derivative Litigation	468
		Problem 9-3	482
D.	Books as	nd Records Requests	483
		AmerisourceBergen Corp. v. Lebanon County Employees' Retirement Fund	483
E.	Statutor	y Exculpation from Liability	493
		In re Cornerstone Therapeutics Inc. Stockholder Litigation	495
		Problem 9-4	501

χv	i	Contents
F.	Insurance and Indemnification	501
	Problem 9-5	503
Ch	apter 10 Friendly Mergers and Acquisitions	507
Α.	An Overview of Mergers and Acquisitions: Structuring an Acquisition	508
	Fiduciary Duties in Friendly Transactions	512
	Controlling Shareholder Transactions: Mergers	513
	a. The Entire Fairness Standard	513
	In re Dole Food Co., Inc., Stockholder Litigation	515
	Problem 10-1	528
	b. Reasserting Business Judgment Review of Deal Terms	528
	Kahn v. M&F Worldwide Corp.	529
	Problem 10-2	539
	2. Controlling Shareholder Transactions Using Tender Offers	540
	In re Pure Resources, Inc. Shareholders Litigation	541
	Problem 10-3	556
C.	Challenges to the Adequacy of Disclosure	556
	In re Trulia, Inc. Stockholder Litigation	557
D.	The Appraisal Remedy	567
	DFC Global Corp. v. Muirfield Value Partners, L.P.	570
Ch	apter 11 Defending Against Hostile Takeovers	587
A.	A Brief History of Hostile Takeovers	588
В.	Delaware's "Intermediate Scrutiny" of Defensive Measures	593
	Unocal Corp. v. Mesa Petroleum Co.	593
	Problem 11-1	603
C.	Poison Pills	604
	Versata Enterprises, Inc. v. Selectica, Inc.	606
	Problem 11-2	615
D.	Change-of-Control Transactions: Revlon	616
	Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc.	616
	Problem 11-3	622
E.	The Evolving Standards	623
	1. Revlon	623
	C & J Energy Services, Inc. v. City of Miami General	
	Employees' Retirement Trust	626
	Corwin v. KKR Financial Holdings, LLC	637
	2. Unocal	642

Contents	
Air Products and Chemicals, Inc. v. Airgas, Inc.	642
Problem 11-4	654
In re Williams Companies Stockholder Litigation	655
Chapter 12 Regulation of Disclosure, Fraud, and Insider Trading	679
A. Section 10(b) and Rule 10b-5	680
1. Misstatements and Omissions	681
Gallagher v. Abbott Laboratories	682
2. Materiality and Reliance	686
Basic Inc. v. Levinson	686
Problem 12-1	696
3. Scienter	697
Tellabs, Inc. v. Makor Issues & Rights, Ltd.	699
Problem 12-2	706
4. "In Connection With"	707
Securities and Exchange Comm'n v. Zandford	707
5. Causation	711
Dura Pharmaceuticals, Inc. v. Broudo	712
B. Insider Trading	716
1. The Classical Theory	716
United States v. Smith	717
2. The Misappropriation Theory	723
United States v. O'Hagan	725
Problem 12-3	732
C. Tipper/Tippee Liability and Regulation FD	732
1. Selective Disclosure and Regulation FD	733
Problem 12-4	734
2. Applying Dirks	735
United States v. Newman	736
Salman v. United States	746
Problem 12-5	752
D. Fiduciary Duty of Disclosure Under State Law	752
Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Dabit	756
Table of Cases	763
Index	769