Class Attendance and Preparation Policy. Frequent absences or lack of preparation are each inconsistent with the professional standards the Duke Law School expects of its students. A report in class from the person being called upon will require the following to occur on the part of the unprepared student. Within 48 hours of the occurrence the student will deliver a memo to me of not less than 1000 words providing an original (the memo may not contain more than 10 percent attributed quotes from other sources) statutory and case analysis of developments related to the material that the student was unprepared to discuss in class. The memo will be graded by me with a maximum of zero points but a possibility of -10 points that will be taken into consideration in the final exam. However, I can understand that on a limited number of occasions events not entirely within the student’s control may prevent him/her from preparing for the day’s assignment. By informing me of this before class, preferably by dropping by my office, you will be relieved of the obligation to prepare for class and may attend the lecture. This exception, however, is intended to be a very limited one.

No Laptops. I have been gravely disappointed with the dynamics of the classroom since the law school introduced the laptop requirement. I believe it is time for us to enter a grand experiment. Therefore, laptops will not be permitted to be operated during the class. I appreciate your understanding on this and am most willing to discuss this decision with you if you like. But let’s give it a try and see how it works.

Final Examination. The exam will consist of 2-3 essay questions and 25+ objective questions. It will be a closed book exam. You are, however, expected to bring to the exam your copy of the statutory materials that were used in the course. The statutes that accompany you into the final examination should not have more than eight words written on any page containing a statute or rule that is referenced in the course syllabus. Underlining, tabbing and highlighting are permitted. The following are responses to some specific questions that have come up in the past on the eve of the exam (when everyone except you seem to be going crazy):
1. writing only on pages of code sections we have used in course;
2. Limited to 8 words per page per code section;
Thus, if a code spans 2 pages, and you have 13 words on one page and no more on the next page where code continues, this works.
3. I expect to have a clean copy of the syllabus in the exam package.
4. You may tab the code and a FEW words on the tab do not count toward the 8 word limit, but don't take advantage of this!

Office Hours. I can typically be found in my office Monday, Tuesday and Thursday between 11 a.m. and noon. If this is not a convenient time for you, just let me know when you would like to schedule an appointment. You can do this by speaking to me in the classroom or reaching me by Email: cox@law.duke.edu
**Meeting Dates.** Class will not normally meet on Friday, except that we will meet on Friday January 12th and 19th at our regular class time and location. The Class will also meet on January 25 and February 8th.

**Lunch?** One of my growing regrets is the lack of systematic contact between me and my students. We all have to eat lunch; usually I bring one and eat it at my desk while working. If you and at least one other person want to share a sandwich in the blue lounge, let me know and we’ll put our schedules together and have lunch together. I am good for about 30 minutes of lunch, then I start to be a bore. E-mail is generally a good way to work this out.

**Course Assignments**

I. Introduction to Business Organizations and Agency Concepts
   
   CB 1-2
   CB 7-top 24

II. Introduction to the Law of Partnerships
   
   A. Formation
      
      CB 31-top 32
      RUPA §§ 101(6), 203
      *Lupien v. Malsbenden* at 36 *et. seq.*
      CB 39-top mid 40
      CB 59-60
      *Davis v. Loftus* at 61 *et. seq.*

   B. Contextualizing the Partnership
      
      CB mid 40-42

   C. Managing the Partnership
      
      *Paciaroni v. Crane* (handout materials)
      CB 46-48
      RUPA §§ 103, 401(f), (i) (j), 403

   D. Liability of Partners
      
      RUPA §§ 305 & 306
      CB mid 62-63
      *Redman v. Walters* (handout materials)
      RUPA §§ 301, 303(a), (d)(1), (e) & (f)

   E. Partnership Property and Breakups
      
      CB mid 67-mid 71
      *Page v. Page* at 88 *et. seq.*
      CB bottom 99-105
      RUPA §§ 601 (1)- (3), (6) & (7), 602, 603, 701 (a)- (c), (f) & (h), 801 (1) - (3), 802 (a)(b), 803 (a) & 804
      CB 97-99

III. Formation of the Corporation
   
   A. Selecting a Corporate Domicile: Internal Affairs Doctrine
      
      CB 106-116

   B. Drafting the Articles of Incorporation
MBCA § 2.02 (a)
C. Defective Incorporation
   MBCA §§ 203, 204 & 205
   CB 117-124

IV. The Shareholder Primacy Model and Other Constituencies
   Note on *Dodge v. Ford Motor Co.* CB bottom 134 *et. seq.*
   *A.P. Smith Mfg. Co. v. Barlow* at 137 *et. seq.*
   CB 142-mid 145
   MBCA § 3.02(13)
   *Credit Lyonnais Bank Nederland v. Path Comm.* at 145 *et. seq.*

V. Allocation of Power between Owners and Managers
   A. The Institutional Setting
      CB 154-162
   B. The Power of the Board of Directors
      Del. § 141(a)
      MBCA § 8.01
      *Charlestown Boot & Shoe Co. v. Dunsmore* at 162 *et. seq.*
      CB 165
      Del. § 141(k)
      MBCA § 8.08(a)(b) & (d)
   C. Equitable Limitations - Thwarting the Exercise of Shareholders’ Franchise
      *Schnell v. Chris-Craft Ind., Inc.* at 166 *et. seq.*
      *Blasius Ind. Inc. v. Atlas Corp.* at 167 *et. seq.*
      Del. § 109(a)
   D. Supervoting Shares and the Threat to Control
      CB 177-180
   E. Bylaw Initiatives
      *Int’l Brotherhood of Teamsters v. Fleming Companies, Inc.* at 180 *et. seq.*
      MBCA §§ 10.20 & 10.21
   F. The Board’s Role and Limitations
      CB 198 - mid 200
      CB mid 206- top 207
   G. State of Incorporation
      CB bottom 200 - mid 206
   H. Formalities for Director Meetings
      CB bottom 207-top 210
      MBCA §§ 8.20 - 8.25
   G. Cumulative Voting for the Election of Directors
      CB mid 217-top 220
      MBCA § 7.28

VI. Limited Liability: Piercing the Corporate Veil
   CB mid 220-top 221
   *Walkovsky v. Carlton* at 227 *et. seq.*
Sea-Land Services, Inc. v. Pepper Source at 243 et. seq.
CB bottom 246-top 247
CB top 248 - bottom 248
Note on United States v. Bestfoods at 248 et. seq.
CB mid 256-257

VII. Equitable Subordination
CB bottom 252-254

VIII. Shareholder Information Rights & Record of Ownership
Saito v. McKesson HBOC, Inc. at 258 et. seq.
CB bottom 263-top 269
MBCA §16.02
CB mid 269 - top 270

IX. Federal Proxy Rules
A. Introduction
   CB top 270-mid 281
   Rules 14a-1(f), (l)(1) & (2)(iv); 14a-2(b)(1) & (2)
B. Misleading Proxy Materials
   Rule 14a-9
   Mills v. Electric Auto-Lite Co. at 282 et. seq.
   Note on TSC Ind. v. Northway, Inc. at 288 et. seq.
   Virginia Bankshares, Inc. v. Sandberg at 290 (omit concurring/dissenting
   opinions)
C. Shareholder Proposal Rule
   Rule 14a-8(a),(b)(1), (g), (i) & (j)
   CB mid 303- mid 304
   CB mid 313 - bottom 315

X. Close Corporations
A. Special or Non-Special Area
   CB 325-top 326
   Donahue v. Rodd Electrotype Co. at 327 et. seq.
   Note on Nixon v. Blackwell at 334 et. seq.
B. Legislative Developments for Close Corporations
   MBCA §§ 732(a) & (b)
   CB bottom 336 - top 341
C. Voting Arrangements
   Ringling Bros-Barnum & Bailey Combined Shows v. Ringling at 341 et. seq.
   MBCA §§ 7.30 & 7.31
   CB bottom 348-356
D. Directors’ Voting Agreements
   Note on Clark v. Dodge at 362
   Galler v. Galler at 362 et. seq.
   CB bottom 368-mid 369
MBCA § 7.32(a)(1)-(8)

Adler v. Svingos at 370 et. seq.

E. Supervoting/quorum Requirements

MBCA §§ 7.27, 7.28 & 8.24
Del. §§141(b) & 216

F. Fiduciary Protection

Rosenthal v. Rosenthal at 375
Wilkes v. Springside Nursing Home at 375 et. seq.

G. Share Transfer Restrictions

CB bottom 411-12
F.B.I. Farms, Inc. V. Moore at 412 et. seq.
CB mid 421 - top 425
MBCA § 6.27

H. Dissolution

Wollman v. Littman at 433-434
CB 434
Matter of Kemp & Beatley, Inc. at 438 et. seq.
MBCA 14.30 & 14.34(a)(b) & (d)
Meiselman v. Meiselman at 444 et. seq.
McCallum v. Rosen’s Diversified, Inc. at 448 et. seq.
Mullenberg v. Bikon Corp. 451
CB 452-mid 454

XI. Alternatives to Corporate Form

A. Limited Partnership

RULPA § 303 (Handout)
CB 466-67
CB 482-83
Gotham Partners, L.P. v. Hallwood Realty Partners at 483 et. seq.
CB bottom 492-493

B. Limited Liability Company

CB 494-499
CB mid 511-514

XII. Issuance of Shares

MBCA §§ 6.21(b)-(d) & (f), 6.30
Del. §§ 152, 153, 154, 156 & 162(a)

XIII. Dividends and Share Repurchases

A. The Policy-Finance Question

CB 1225-1230

B. Regulatory Issues

CB mid 1247-1249
Dividend Handout Materials
Del.§§ 170(a) & 160(a)(1)
MBCA §§1.40(6) & 6.40 (a)-(d)

XIV. Fiduciary Obligations of Officers and Directors
A. Duty to be Attentive
   *Francis v. United Jersey Bank* at 515 et. seq.
   Note on Causation CB 528-531
   MBCA § 8.30
B. Substantive Standard for Care-Based Decision
   *Kamin v. American Express Co.* at 531 et.seq.
C. Reasonable Investigation
   *Smith v. Van Gorkom* at 544 et.seq.
   MBCA §§ 8.30 & 8.31
D. Compliance Systems
   *In re Caremark Int’l Inc. Derivative Litigation* at 562 et. seq.
   CB 574- bottom 578
E. Statutory Developments
   Del. § 102(b)7
   MBCA § 2.02(b)(4)
   *Emerald Partners v. Berlin* at 580
   *Malpiede v. Townson* at 580 et. seq.
F. A “Third” Duty- Good Faith?
   *In re Walt Disney Company Derivative Litigation* (handout)

G. Violation of Criminal Statute
   *Miller v. Amer. Tel. & Tel. Co.* at 596 et. seq.
   CB at 599 - 603
H. D & O Insurance
   CB mid 603-605
I. Self-Dealing Transactions
   Del. § 144
   *Lewis v. S. L. & E., Inc.* at 609 et. seq.
J. Executive Compensation
   CB 644- mid 648
J. Corporate Opportunities
   *Northeast Harbor Golf Club, Inc. v. Harris* at 658 et. seq.
   ALI Principles of Corporate Governance § 5.05 (Casebook 663-64)
   CB 666-mid 668
   *In re eBay Inc.* at 677-78

XV. Controlling Stockholder’s Fiduciary Obligations
A. Disputes Between Classes of Shares
   *Zahn v. Transamerica Corp.* at 678 et. seq.
   CB 685-top 686
B. Disclosure Obligations
C. Exercising Influence

*Sinclair Oil Corp. v. Levien* at 688 et. seq.

*Levco Alternative Fund v. The Readers’ Digest* at 709-711

D. Transfers of Control

*Jones v. H.F. Ahmanson & Co.* 711 et. seq.

*Perlman v. Feldman* at 731 et. seq.

E. Sale of Corporate Office

*Essex Universal Corp. v. Yates* at 738 et. seq.

MBCA § 8.10

XVI. Derivative Suit Litigation

A. Nature of the Suit

*Tooley v. Donaldson, Lufkin, & Jenrette, Inc.* at 919 et. seq.

*Barth v. Barth* at 926 et. seq.

B. Vicarious Incapacity and Contemporaneous Ownership Rules


CB 944-946

MBCA § 7.41

C. The Demand on the Directors Requirement

*Marx v. Akers* at 950 et. seq.

MBCA §§ 7.42, 7.43 & 7.44

D. The Special Litigation Committee

*Zapata Corp. v. Maldonado* at 967 et. seq.

CB bottom 978-982

E. Paying the Lawyers

*Tandycrafts, Inc. v. Initio Partners* at 992 et. seq.

F. Indemnification of Officers and Directors

Del. § 145

*Waltuch v. Conticommodity Services, Inc.* at 1005 et. seq.

G. Attorney Client Privilege and Representative Suit Litigation

CB bottom 1028-1031

H. A Retrospective Look at Shareholder Suits

CB 1033-1039

XVII. Corporate Combinations

A. Sale of All or Substantially all the Assets

Del. § 2.71

MBCA §§ 12.01 & 12.02

*Hollinger, Inc. V. Hollingers Int’l, Inc.* at 1040 et. seq.

B. Statutory Merger and Short-Form Merger

CB 1056-bottom 1060

MBCA §§ 11.01, 11.02(a)(c), 11.04 & 11.05

C. De Facto Merger Doctrine
D. Appraisal Remedy

MBCA § 13.02(a)(1) & (3), (b)(1) & (3)

CB bottom 1051-1055

E. Merger Cash Outs

CB bottom 1081-1082

Weinberger v. UOP, Inc. at 1083 et. seq.

MBCA § 13.02(b)(3)(4), (c), (d) & (i)(A)(B)

Glassman v. Unocal Exploration Corp. at 1098 et. seq.

Solomon v. Pathe at 1102 et. seq.

Note on Pure Resources at 1104-1109

Coggins v. New England Patriots Football Club, Inc. at 1110 et. seq.

Alpert v. 28 Williams St. Corp. at 1111 et. seq.

XVIII. The Market for Control- Defending Control

A. Defensive Measures

Unocal Corp. v. Mesa Petroleum Co. at 1124 et. seq.

Note on Unitrin, Inc. at 1135-1138

B. The “Revlon Moment”

Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc. at 1163 et. seq.

C. What’s Left

Paramount Communications, Inc. V. Time, Inc., (handout materials)

D. Deal Protection Provisions and Fiduciary Out Clause

Omnicare, Inc. v. NCS Healthcare, Inc. at 1206 et seq.

E. Williams Act Provisions

CB bottom 1120-1124

Securities Exchange Act §§ 13(d)(1), 14(d)(1) & 14(e)

Exchange Act Rules 14d-7, 14d-8, 14d-10, 14e-1, and 14e-2

F. State Anti-takeover Provisions

CB mid 1221-1224

Del. § 203 (a)(b)(1)&(4) & (c)(5)[first 5 lines of text only]

XIX. The Regulation of Insider Trading

A. Historical Precedents

In the Matter of Cady Roberts & Co. at 760 et. seq.

SEC v. Texas Gulf Sulphur Co. at 760 et. seq.

B. Constriction of Doctrine

Chiarella v. United States at 817 et. seq.

Dirks v. Securities and Exchange Commission at 826 et. seq.

C. Restoration of Doctrine

United States v. O’Hagan at 837 et. seq.

Rules 10b5-1 & 10b5-2
CB 808
Exchange Act Regulation FD, Rules 100 - 102 in Supp. at 301 et. seq.
Rule 14e-3 (a) & (d) of the Exchange Act

D. Short-Swing Trading
   Exchange Act Section 16
   CB 860-mid 872
   CB bottom 891 - 895

XX. The Scope of the Anti Fraud Provision
   A. Introduction
      Section 10(b) of the Exchange Act
      Rule 10b-5 of the Exchange Act
   B. Materiality and Causation
      Basic Inc. v. Levinson at 785 et. seq.
      CB mid 800-mid 804
      Dura Pharmaceuticals, Inc. v. Broudo (handout materials)
   C. Standing and “In Connection With” Requirements
      The Wharf (Holdings) Ltd. v. United Int’l Holdings, Inc. at 752 et. seq.
      CB 756-mid 758
   D. Scienter, Aiding and Abetting
      CB 758-top 760
      CB bottom 805-top 810
   E. The Deception Requirement
      Santa Fe Industries, Inc. v. Green at 849 et. seq.
      Exchange Act Section 14(e)
   F. Duty to Speak
      CB bottom 857-mid 860

That’s All Folks
Introduction to the Law of Partnerships

A. Formation
   CB 31-top 32
   RUPA §§ 101(6), 203
   Lupien v. Malsbenden at 36 et. seq.
   CB 39-top mid 40
   CB 59-60
   Davis v. Loftus at 61 et. seq.

B. Contextualizing the Partnership
   CB mid 40-42

Thursday, January 11th

C. Managing the Partnership
   Paciaroni v. Crane (handout materials)
   CB 46-48
   RUPA §§ 103, 401(f), (i) (j), 403

D. Liability of Partners
   RUPA §§ 305 & 306
   CB mid 62-63
   Redman v. Walters (handout materials)
   RUPA §§ 301, 303(a), (d)1, (e) & (f)

Friday, January 12th - (Makeup Class)

E. Partnership Property and Breakups
   CB mid 67-mid 71
   Page v. Page at 88 et. seq.
   CB bottom 99-105
   RUPA §§ 601 (1)- (3), (6) & (7), 602, 603, 701 (a)- (c), (f) & (h), 801 (1) -(3),
   802 (a)(b), 803 (a) & 804
   CB 97-99

Tuesday, January 16th

Formation of the Corporation

A. Selecting a Corporate Domicile: Internal Affairs Doctrine
   CB 106-116

B. Drafting the Articles of Incorporation
   MBCA § 2.02 (a)

C. Defective Incorporation
   MBCA §§ 203, 204 & 205
   CB 117-124

Wednesday, January 17th

The Shareholder Primacy Model and Other Constituencies

Note on Dodge v. Ford Motor Co. CB bottom 134 et. seq.
A.P. Smith Mfg. Co. v. Barlow at 137 et. seq.
CB 142-mid 145
MBCA § 3.02(13)
Credit Lyonnais Bank Nederland v. Path Comm. at 145 et. seq.