

SYLLABUS

BUSINESS ORGANIZATIONS—LAW # 601(A)

Fall 2010

Professor Robert C. Downs

GENERAL INFORMATION

- Required Books:** HAMILTON, *CORPORATIONS INCLUDING PARTNERSHIPS AND LIMITED LIABILITY COMPANIES* (11th ed.) ("TEXT") published by West Group.
- SELECTED MISSOURI BUSINESS ORGANIZATIONS STATUTES* ("MOSUPP") to be purchased from the copy center in the Law School Library.
- Other Course Materials:** Some additional cases, forms and other materials will be made available in electronic or paper form, free of charge, at various points during the course.
- Blackboard Site:** An electronic site for this course has been set up on the UMKC "Blackboard" system. You should check that site regularly for course announcements and some materials to which I will refer in class.
- Class Schedule:** Tues/Thurs 8:30 a.m. – 9:45 a.m. (Law School Room 05)
- Office Location:** Whittaker Suite, Office Number 2-507
- Phone:** (816) 235-2392 (Office); (913) 469-6847 (Home)
- E-Mail:** downsr@umkc.edu
- Office Hours:** I have an "open door" policy. Please feel free to stop by my office any time or call or e-mail to make an appointment.
- Grading:** **Subject to possible alteration pursuant to the "Attendance and Preparation Policy" described below:**
- One-third of your grade will be based on a one-hour Mid-Term Progress Test**, consisting of true/false and multiple-choice questions, to be administered during the Tuesday, **October 12**

class session. The Mid-Term Progress Test will be “closed book,” except that you will be allowed to consult your MOSUPP (provided that the copy thereof you bring to the Test has no additions or annotations on it, other than (i) index tabs which you may add and/or (ii) underlining or highlighting of statutory language).

Two-thirds of your grade will be based on a three-hour Final Examination, which will be “closed book” (except that you may consult your MOSUPP under the same conditions as on the Mid-Term) and will consist of a combination of true/false, multiple choice and essay questions.

Prior to both the Mid-Term Progress Test and the Final Exam I will provide sample exam instructions and sample questions. In addition, I will plan on maintaining extra office hours in the days leading up to the exams, and will also be available to answer questions by e-mail (unless there’s a computer crash) through 11:00 p.m. on the night before each of the two scheduled exams.

Class Participation:

The “Socratic Method” will be used in most class sessions, and I will expect all students to be prepared. If you encounter a problem in preparing for a particular class session, please let me know at least 30 minutes before class.

Attendance & Preparation Policy:

A copy of the Law School Attendance Policy may be found on the Law School website. It contemplates that a grade penalty will be imposed for excess absences. The threshold for absences before imposition of penalties is the equivalent of two full weeks of classes. Thus, there will be one grade step reduction (e.g., A to A-) for the fifth class session missed and thereafter each additional class session absence will cause an additional grade step reduction. In addition, I reserve the right to reduce your course grade by one grade step reduction if I find you to be unprepared for class without adequate excuse on more than one occasion.

Assignments:

A list of the scheduled reading assignments for our classes is set forth below. If a need to change any of these assignments develops during the course I will notify you in class and post the change on Blackboard.

Disabled Student Services:

UMKC endeavors to make all activities, programs and services accessible to students with disabilities. A Campus Coordinator for Disabled Student Services is available to arrange for reasonable accommodations. If you need accommodations, it is important that you contact the Coordinator as soon as possible to arrange for providing appropriate documentation and the prescribing of reasonable accommodations in the classroom

and for exams. For information call (816) 235-5696. Speech and hearing impaired use Relay Missouri, 1-800-735-2966 (TT) or 1-800-735-2466 (Voice.) For questions or further information, see Adela Fleming in the Law School Administrative Suite.

COURSE DESCRIPTION

Business Organizations in General

Virtually all lawyers must be familiar with various aspects of the attributes, formation, operation, combination, and dissolution of business organizations and transfers of interests therein. For example, whether practicing “business law” *per se*, litigating disputes involving business entities, or complying with or administering statutes, rules and regulations affecting the conduct of business, it is important for an attorney to have an understanding of the relative rights, duties and obligations of (i) a business organization, its owners, managers, directors, officers and other employees and (ii) third parties dealing with, injured by or injuring such organization or individuals. This course is designed to introduce you to many of those rights, duties and obligations as they relate to various types of business organizations, and to provide you with a foundation for developing the knowledge and skills necessary to provide legal services in connection with such matters as the comparison, formation, maintenance, dealing with, transfer and dissolution of business organizations and interests therein and related litigation.

Major Topics to be Covered

The principal topics I intend to address in this course are as follows:

1. Overview of business organizations and relevance of course; introduction to business vocabulary; basic agency law concepts.
2. Formation, some key tax attributes, financing, governance, operation, dissolution, transfers of interests in and common disputes involving various aspects of such business entities as:
 - General Partnerships (including Limited Liability Partnerships)
 - Limited Partnerships (including Limited Liability Limited Partnerships)
 - Limited Liability Companies
 - Corporations
3. Introduction to securities laws pertaining to the formation, financing, transfer and other aspects of business entities or interests in business entities.
4. Selected topics regarding publicly-held corporations.

5. Fiduciary duties of corporate directors and officers and related dispute resolution matters (including derivative actions)
6. Review of comparative analysis of certain principal aspects of the federal income tax treatment of different types of business entities and review of interplay of various tax and non-tax “choice of entity” considerations.

READING ASSIGNMENTS

NOTE: Unless otherwise noted the assigned reading in materials apart from the TEXT and MOSUPP referenced below will be posted on the Blackboard site for the course, except for the few assigned cases outside of the TEXT which you will be required to access on your own (the citations for such cases are footnoted below). If you encounter trouble accessing Blackboard you can obtain paper copies of the materials posted there from Debra Banister in the Whittaker Suite.

CLASS:

REQUIRED READING:

Tuesday, Aug. 24

Syllabus, Case Study #1, (attached) and TEXT—pp. 1-6 (Course Overview); TEXT—pp. 15-17 and Outline of Agency Issues (Introduction to Agency)

Thursday, Aug. 26

TEXT—pp. 17-38, and Note (2) on pp. 189-190 and *Hamilton Hauling*¹ case (Agency Law Concepts/Issues); and TEXT—pp. 39-40 (Introduction to the “General Partnership”)

Tuesday, Aug 31

TEXT—pp. 40-50; and, in MOSUPP, RSMO Sections 358.060, 358.070 and 358.160; and *H2O*² case. (Inadvertent Partnerships; Partner by Estoppel)

Thursday, Sept. 2

TEXT—pp. 51-56; and, in MOSUPP, RSMO Sections 358.090 and 358.180 (Partnership Management; and TEXT—pp. 56-69 and, in MOSUPP, RSMO Sections 358.180 and 358.400) (Partnership Accounting and Sharing of Profits and Losses); and, in MOSUPP. RSMO Sections 358.130 through 358.150, 358.170, 358.180,

¹ 719 S.W. 2d 841

² 114 S.W. 3d 397

	351.395 (Premature Commencement and Defective Incorporation)
Thursday, Oct. 7	60-MINUTE MID-TERM PROGRESS TEST ADMINISTERED DURING NORMAL CLASS PERIOD
Tuesday, Oct. 12	TEXT—pp. 206-240 and, in MOSUPP, RSMO Section 351.275 (Piercing the Corporate Veil)
Thursday, Oct. 14	TEXT—pp. 240-266 (Veil-Piercing, Federal/State Veil-Piercing Issues, Reverse Piercing, and Successor Liability)
Tuesday, Oct. 19	TEXT—pp. 267-300 and, in MOSUPP, RSMO Sections 351.160 through 351.190 and 351.295 and 351.300 (Types of Equity Securities; Issuance of Shares; Debt Financing); (Overview of Regulation of Securities Offerings)
Thursday, Oct. 21	TEXT—pp. 300-303 (Prepare answers to problem set), (Issues and Examples in Planning Capital Structure with Debt, Equity or Combinations Thereof)
Tuesday, Oct. 26	TEXT—pp. 322-352 and; in MOSUPP, RSMO Section 351.305 (Preemptive Rights and Dilution; Dividend Distributions by Corporations)
Thursday, Oct. 28	TEXT—pp. 352-375, and, in MOSUPP, RSMO Sections 351.195, 351.200, 351.210 and 351.220, 347.109; 359.381 (Repurchase of shares; Legal Restrictions on Distributions); TEXT—pp. 376-391 (Traditional Role of Shareholders; Introduction to Shareholders Agreements)
Tuesday, Nov. 2	TEXT—pp. 392-432; and, in MOSUPP, <i>skim</i> RSMO Sections 351.750 through 351.935 and read Sections 351.225 through 351.273 (Management and Control of Closely-Held Corporations; Statutory Close Corporations; Shareholder Meetings and Voting)
Thursday, Nov. 4	TEXT—pp. 432-454 (Voting Matters, continued); TEXT—pp. 454-475, and, in MOSUPP, Sections

351.310 through 351.323 and 351.462, 351.464, 351.466, 351.467, 351.484 and 351.494 (Deadlock, Oppression and Dissolution)

Tuesday, Nov. 9

TEXT—pp. 475-483 and, in MOSUPP, Section 351.360 (Authority of Directors and Officers); TEXT—pp. 483-503, and, in MOSUPP, Section 351.407 (Transactions in Controlling Shares)

Thursday, Nov. 11

TEXT—pp. 504-525 and 532-567; and, in MOSUPP, RSMO Section 351.347; (Property Theory vs. Social Entity Theory; Intro. to Governance of Publicly-Held Corporations; Role/Duties of Directors; Lessons from Enron and Other Recent Corporate Scandals); (Securities Fraud and Insider Trading; Proxy Regulation)

Tuesday, Nov. 16

TEXT—pp. 639-687; and, in MOSUPP, RSMO Section 351.055.2(3) (Duty of Care; Business Judgment Rule) **Optional attendance at mock shareholders meeting, Law School Court Room, 3:30 -5:20**

Thursday, Nov. 18

TEXT—pp. 742-774 and, in MOSUPP, RSMO 351.327 (Duty of Loyalty; Conflicts of Interest and Self-Dealing)

Nov. 23 and 25

Thanksgiving Vacation

Tuesday, Nov. 30

TEXT—pp. 774-804 (Conflicts of Interest and Self-Dealing. Continues; Corporate Opportunity; Duties to Various Constituencies and Derivative Actions)

Thursday, Dec. 2

Optional review session.

Monday, Dec. 7

FINAL EXAM, Monday, December 6.

Case Study #1

READ THE FOLLOWING AND BE PREPARED TO DISCUSS IN OUR FIRST CLASS ON AUGUST 24 THE “TOPICS FOR DISCUSSION” SET FORTH BELOW. YOU DO NOT NEED TO DO ANY OTHER READING/RESEARCH FOR THIS ASSIGNMENT—JUST APPLY YOUR INSTINCTS AND YOUR LEGAL TRAINING TO DATE TO TRY TO BEGIN TO LIST POTENTIAL ISSUES.

Steven Acheson (“Acheson”), Susan Brown (“Brown”), Audrey Connors (“Connors”) and Jacob Daniels (“Daniels”) went to college together, all Class of 1994. They were (and still are) good friends. They all have advanced degrees--Acheson and Connors in computer engineering; Brown in psychology; and Daniels in education. All four have always shared an interest in cutting edge technology.

Acheson currently works as a computer engineer at a well-known, multi-national corporation (CE Software, Inc.) that manufactures and sells or licenses a wide variety of computer software programs. Connors is currently a vice president in the products development division of a lesser-known, but growing electronics company (Oddson Electronics Corporation) that manufactures, among other products, game machines used in gambling casinos. Brown teaches psychology courses at a state university. Daniels teaches history at a middle school.

At their 15th college reunion last year, the four began talking about the need for all levels of education to keep pace with developments in technology. Brown mentioned some deficiencies that she and several of her colleagues at her university see in the way technology is used in high school classrooms they have studied. Daniels indicated that he sees similar deficiencies at his middle school. The discussion eventually led to a number of ideas about mixing some of the gaming and entertainment concepts Acheson and Connors have seen emphasized in the development of the products their companies make with components of what Brown and Daniels view as some of the better technology-based teaching/learning tools used at their educational institutions.

Since the reunion, Acheson has organized several meetings among the four. Largely through his persistence, those meetings have led to the creation of some computer software for games linked to traditional curriculum on selected middle school and high school subjects. The group believes these games are quite clever and unique, and can be both entertaining for teachers and students and exceptionally effective vehicles for education. They have decided to put together a business plan and to form a business entity, with the four of them as the initial owners, to further develop, manufacture and sell the educational games.

Topics for discussion:

What types of issues relating to this proposed venture might require assistance from a lawyer?

Focusing on just the deal among the four initial owners as to their respective rights and obligations as owners of the business entity, what business points might they need/want to address in their organizational documents?