

AGENCY, PARTNERSHIPS, AND LLC'S

Spring Semester 2012

Instructor: Mark A. Spitz
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MW, 4:15-5:30 pm
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Course Description: this course covers the fundamentals of the law of agency and the law of unincorporated business organizations, including partnerships, limited partnerships (LPs), limited liability partnerships (LLPs), and limited liability companies (LLCs). Agency law is important because it is used in many types of business and other relationships, and is the basis for how most organizations conduct business and incur liability through the acts of their employees and contractors.

We will also look at the law governing partnerships and its variants, as these entities are found in our own profession as well as many other industries, including oil and gas, real estate, and venture capital. LLCs, which have been around for less than two decades, have become an extremely popular form of business entity, and it is important to know the advantages and disadvantages of this form in order to advise your clients effectively. In addition to the casebook and some relevant articles, we will introduce some of the practical aspects of these topics by looking at sample agreements and other transactional documents.

Course Objectives: to gain an understanding of the basic legal framework governing agency relationships, as well as the legal environment applicable to the various forms of partnerships and LLCs. You will also be able to further develop your legal reasoning skills and gain exposure to some of the practical and ethical concerns you will face as an attorney.

Pre-requisites: There are no pre-requisites for this course, but having taken Corporations will provide a helpful background.

Texts:

1. *Agency, Partnerships, and Limited Liability Entities: Cases and Materials on Unincorporated Business Associations*, 3rd edition, by Klein, Ramseyer and Bainbridge (Foundation Press 2012). Available at the DU Bookstore. The 3rd edition also offers an online version of the text, which some of you may prefer to hard copy.
2. **Optional:** *Business Associations: Agency, Partnerships, LLCs and Corporations: 2011 Statutes and Rules*, (Klein, Ramseyer and Bainbridge (Foundation Press 2011). This text is optional, as the new edition of the casebook contains the restatements and uniform statutes that we will need. If you do wish to purchase it, it should be available at the DU Bookstore.
3. I will provide additional articles and materials on topics that we shall cover that the casebook does not, such as the Colorado statutes, and recent developments in our subject matter. We will also look at sample partnership and LLC operating

agreements. I will hand these materials out or make them available in a course pack in the next few weeks, but well before you need them for class.

Grading: The final grade will be a combination of a final exam (90% - see “Final Exam” below), plus class participation (10% - see “Class Participation” below). Grading will conform to law school requirements regarding distribution of letter grades in elective courses. However, as noted below, since class participation is part of your grade, I will take that into account non-anonymously in grading.

Class Participation: I expect everyone to participate in class discussions. To ensure as much opportunity as possible, I will call on students randomly, and expect you to volunteer. Also, I expect you to be prepared – if you are not, say so when called upon. Being prepared means having done the reading (including the notes, problems, and analysis sections), and having made an effort to understand it sufficiently to engage in a professional discussion about it. (don’t wait until the last weeks of class to begin participating, since the opportunities will be limited by then.) Class participation is not based simply on the number of times you speak, but on the quality and substance of your participation. Look on this as an opportunity to practice—in a safe environment—the verbal skills that you will need once you leave law school and begin your professional career.

Attendance: Class attendance is important to developing an understanding of this subject matter, and the law school is required by the ABA to guarantee that you have attended class. I will monitor attendance, and more than five unexcused absences could result in exclusion from the final exam. I know that everyone is busy, however, so if you anticipate being unable to attend class, please let me know in advance by phone or email.

Final Exam: There will be one open-book, no-collaboration final exam. It will be either an in-class exam, or an online exam available on the Registrar’s Office’s on-line exam site and returned there. It will consist of legal problems based on actual professional practice, will be anonymously graded, and will comprise 90% of the course grade. It will rely solely on the class readings and discussions, and not on any library, internet, or other outside research. The no-collaboration rule will be in effect throughout the 24 hours of the exam, so study groups are advised to complete all their work together and finalize all contacts by the end of the last day of reading period.

Seating Chart: By the third class (January 23), please select a seat and sign for it on the seating chart. This will help me to learn your names more quickly. Also, given the participation format of the class, my copy of the seating chart is controlling – a person not on it (or on it, but repeatedly not in that exact seat) will not have his or her final exam graded and will receive a final course grade of F. If you wish to change your seat during the semester, be sure to advise me so that I can change my copy of the seating chart.

Office Hours: For now, after class or by appointment. If I get an office in the law school building assigned to me for office hours, I will let you know.

Honor Code: The Honor Code applies to all aspects of this course. Even a suspicion of a

violation requires a report to the Honor Board, without notice.

Assignments: For the most part, we will follow the casebook, as it is laid out in a logical order. We will go into somewhat more depth on limited partnerships and LLC's, and will also look at the Colorado statutes to see how an actual statute differs from the uniform act. For this reason, I may add some material later in the course in these areas. Also, since the pace of the class may vary with the material, some tinkering with the syllabus is likely, but I will always keep you informed in advance of any changes. I will also assign some additional cases and articles to read on the more specialized topics in the areas of limited partnerships and LLCs.

In doing the readings, be sure to work through the analysis, problems, and planning sections that follow the cases and notes. It is not necessary to write these out or hand them in, but working through them and thinking about them will help you to be prepared for class discussion, and will also give you a chance to consider some of the practical applications. We will include these in our class discussion.

| <u>Class Date</u> | <u>Readings</u> |
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| January 11 | Who is an Agent? Casebook pp. 1-22 |
| January 18 | Liability of Principals to Third Parties in Contract: Types of Authority Casebook pp. 23-50 |
| January 23 | Other Means of Binding Principals: Ratification, Estoppel; Liability of Agents on Contracts Casebook pp. 51-69 |
| January 25 | Liability of Principals in Tort: Servant vs. Independent Contractor Casebook pp. 70-83 |
| January 30 | Tort Liability: Apparent Agency; Scope of Employment Casebook pp. 83-99 |
| February 1 | Liability of Independent Contractors; Fiduciary Obligations of Agents Casebook pp. 105-127 |
| February 6 | Duties during and after Termination of Agency; Non-competes Casebook pp. 127-147 |
| February 8 | Partnerships: what is a partner, and who are the partners? Casebook pp. 176-194 |
| February 13 | Partners compared to Lenders; Fiduciary Obligations of Partners Casebook pp. 195-227 |
| February 15 | Fiduciary Obligations continued Casebook pp. 228-252 |
| February 20 | Partnership property; Rights of Partners in Management Casebook pp. 253-272 |
| February 22 | Dissolution of Partnerships: right to dissolve, consequences of dissolutions |

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| | Casebook pp. 273-283, 289-306 |
| February 27 | Dissolution continued: buyout agreements, sharing of losses, dissolution of law partnerships Casebook pp. 307-322 |
| February 29 | Partnership Agreements: review and discussion of sample agreement Sample agreement to be distributed |
| March 5 | Review of Colorado Partnership Law and related cases Readings: Colorado Uniform Partnership Law (C.R.S. 7-60-101 et seq.; Colorado Uniform Partnership Act 1997, C.R.S. 7-64-101 et seq.) |
| March 7 | Limited Partnerships: management and operation; control issues; entities as general partner Casebook pp. 359-367; RULPA (1985) §§ 302, 305, 402-403; ULPA (2001) §§ 302, 304, 402, 406-407 |
| March 12 | Limited Partnerships: Fiduciary duties of general and limited partners Casebook pp. 367-376; additional cases to be distributed |
| March 14 | Limited Partnerships: ownership interests, transferability, exit rights Readings to be distributed [Ragazzo text] |
| March 26 | Limited Partnerships under Colorado and Delaware law; comparisons with newer versions of ULPA Readings to be distributed (Colorado Uniform Limited Partnership Law 1981, C.R.S. 7-62-101 et seq.) |
| March 28 | Limited Liability Partnerships (LLPs) and Limited Liability Limited Partnerships (LLLPs) Reading: pp. 851-868 in <i>Closely Held Business Organizations: Cases, Materials, and Problems</i> , Ragazzo and Moll (Thomson West 2006)—to be distributed |
| April 2 | Limited Liability Partnerships; Limited Liability Limited Partnerships under Colorado law Reading: selections from Colorado Uniform Partnership Act 1977 (C.R.S. 7-64-1001 to 1010 and selected cases) |
| April 4 | Limited Liability Companies (LLCs): Introduction, Formation, Operating Agreement Casebook pp. 377-393 |
| April 9 | LLCs: review and discussion of an LLC operating agreement Sample agreement to be distributed |
| April 11 | LLCs: piercing the LLC veil; fiduciary obligations; addition of capital Casebook pp. 394-416; Herrick K. Lidstone, Jr., <i>Piercing the Veil of an LLC or a Corporation</i> , <i>The Colorado Lawyer</i> , August 2010 (vol. 39, no. 8, p. 71) |
| April 16 | LLCs: Expulsion and dissolution Casebook pp. 417-449 |

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| April 18 | Review of Colorado LLC statute and recent developments Readings to be distributed (C.R.S. 7-80-101 et seq.) |
| April 23 | Choice of entity and advising your client: advantages and disadvantages of LLCs, C corporations, and S corporations Readings to be distributed |
| April 25 | To be determined |