

# **Agency and Partnership**

## **Syllabus**

**Spring 2024**

**LAW 527-2 § 001**

**Tuesday and Thursday 9:00-9:50 am**

**Location: Room 204**

**Professor David Lourie**

**Office: Room 252**

**Office hours: Tuesdays and Thursdays, 10-11; or by appointment**

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### **What is this course about?**

The primary course objectives are the study of agency concepts, which involve the legal consequences of acting on behalf of other persons or entities, and the formation and operation of unincorporated businesses such as sole proprietorships, partnerships, and limited liability companies.

Important topics include the rights and liabilities of those owning and managing unincorporated business forms vis-à-vis other owners/managers, their employees, and third parties. By the semester's end, each student will be able to understand and articulate:

- The agency relationships in business entities, including the attendant fiduciary obligations and the operation of agency principles to bind the business;
- The definition and nature of the various unincorporated business forms, including sole proprietorships, partnerships (general, limited), and limited liability companies (LLCs);
- How these unincorporated businesses are formed, and the liabilities associated with defective formation;
- How these unincorporated businesses are managed, and the fiduciary obligations associated with management; and
- The rights and obligations of business owners, and the extent to which they may be personally liable for business obligations.

### **How are you evaluated?**

There will be a final, three-hour exam, during the period devoted to final exams - scheduled from April 30 to May 10. I will provide more details on the final examination as the semester progresses.

## **Class Participation**

Numerous studies have demonstrated that active learning and participation are critically important for success in law school and as a lawyer. Further, I value all of you as individuals and believe it is important for the class to hear your perspectives. Therefore, I take the following approach to class participation:

- I will typically randomly “cold call” a few students in each class to discuss issues related to the course readings, lectures, and practice questions. Of course, everyone in this course is valued and is free to contribute, not just those that are called on.
- I do not call on students to demonstrate superiority or pick on people but rather to help the class learn the material and demonstrate learning in a way that will lead to more successful outcomes on law school examinations and legal practice.
- Speaking in class is an opportunity, not a burden. The types of thinking we do in class together are what is valuable for your success.
- If you are unprepared for a particular class, please advise me of that fact by the evening before class. By letting me know in advance that you are not prepared, I will not call on you during that class period. However, do not let this happen often or I will revoke your privilege.
- If a student is not prepared to discuss the assigned materials when called upon, the student will be marked as absent for that class and the student’s grade may be lowered.
- ***Please remember – You do not have to be perfect. You do need to be prepared and put in the effort required to succeed in law school – doing the readings, actively listening to lectures, and coming to me if you have questions or concerns. I am here to help - thanks for your hard work!***

## **Casebook**

Bainbridge, Agency, Partnerships, and Limited Liability Entities: Cases and Materials on Unincorporated Business Associations (5th ed. West Foundation Press, 2022) ISBN: 978-1-64708-575-9

## **Citizenship**

Citizenship has to do with attendance as well as how you treat others. I am a big fan of respect – and will do my best to show it to you. Respect builds a safe learning community, even if we disagree. Please show respect to your classmates.

## **Laptops**

I permit the responsible use of computers in class. By this, I mean using your laptops to take notes. I expect you to listen, participate, remain engaged with the material, and avoid the distractions caused by misusing computers and electronic devices in a professional environment.

## **Attendance Policy**

Attendance will be taken at the beginning of each class. Our class time is vitally important for you to understand the material needed to be successful in this course and in legal practice. Accordingly, you should not miss any classes. However, I understand uncontrollable circumstances may come up and will allow a maximum of three (3) absences, no questions asked. If you miss more than two classes, I will lower your course grade one half a letter grade (i.e., B+ to B) for each additional class missed.

## **Recording of Classes**

Classes may be recorded by the instructor for ADA compliance purposes. No recordings should be used or disseminated without the professor's permission.

## **Writing Assignments**

We will have a writing assignment to comply with the writing-across-the-curriculum requirement and the requirement to have a Bar exam-type assessment. Satisfactory completion of this assignment is required to be eligible to take the final exam and complete the course.

## **Workload Expectation**

You might be interested to know that the ABA standards incorporate out-of-class work in the calculation of credit hours. Under the ABA standards, you should plan to spend at least **6 hours per week (2 in class and 4 preparing for class) on course-related work.**

## **Plagiarism**

Plagiarizing another's work, in whole or in part, is a violation of the Honor Code and can lead to serious penalties, including expulsion. An Honor Code investigation must also be reported to the Bar Examiners, even if you are cleared of any violation. The Honor Code defines plagiarism as: passing off another's ideas, words, or work as one's own, including written, oral, multimedia, or other work, either word for word or in substance, unless the student author credits the original author and identifies the original author's work with quotation marks, footnotes, or other appropriate designations in such a way as to make clear the true author of the work.

### **Ban on Collaboration/AI in Writing Assignment**

You are not allowed to obtain help from any other person (including any other student) or from generative artificial intelligence (including, but not limited to, ChatGPT) on the writing assignment in this course. This ban on collaboration includes obtaining written materials from any other person or generative artificial intelligence and communicating with any other person about the assignment. If you violate the ban on collaboration policy, you will fail to successfully complete the assignment and will not be entitled to take the final exam in the course. You also may be found in violation of the Honor Code, which can lead to serious penalties, including expulsion. An Honor Code investigation must also be reported to the Bar Examiners, even if you are cleared of any violation. When in doubt about how to proceed, ask me.

### **Ban on Collaboration/AI on Exams**

Both the midterm exam and the final exam for this course are closed book. You may NOT consult materials of any kind, with any person other than the proctor, nor access any other resource, including, but not limited to generative artificial intelligence. Failure to comply with this rule will result in a failing grade on the exam. You also may be found in violation of the Honor Code, which can lead to serious penalties, including expulsion. An Honor Code investigation must also be reported to the Bar Examiners, even if you are cleared of any violation.

### **Student Learning Objectives**

At the end of this course, students will be able to:

- Understand concepts of Avoiding Enforcement of a contract; Justification for Nonperformance; Consequences of Nonperformance; Expectation Damages; Alternatives to Expectation Damages, and Third-Party Rights and Duties.
- Analyze whether various contract law doctrines and systems provide buyers and others with appropriate access to justice when they are aggrieved.

### **Tentative List of Reading Assignments**

Except as otherwise noted, all references are to the assigned Bainbridge Casebook. Each week, I will confirm the following week's reading assignment at the end of Thursday's class.

Please complete the assigned reading in advance of each class. Please bring your Bainbridge casebook to every class for reference during each class session.

### **Projected Reading Schedule (subject to change)**

#### **Week 1**

Tuesday, January 16

Introduction and Course Overview

Thursday, January 18

Chapter 1: Agency (1)

1. Who is an Agent? (1)

a. Gorton v. Doty (Idaho 1937)(1)

b. MJ & Partners Restaurant Ltd Partnership v. Zadikoff (N.D. Ill. 1998)(7)

## Week 2

Tuesday, January 23

Chapter 1: Agency, cont'd

1. Who is an Agent? Cont'd

a. Rose v. Giamatti (S.D. Ohio 1989)(13)

b. A. Gay Jensen Farms Co. v. Cargill, Inc. (Minn. 1981)(19)

Thursday, January 25

Liability of Principal to 3rd Parties in Contract (26)

a. Authority(26)

i. Mill Street Church of Christ v. Hogan (Ky. App. 1990)(26)

ii. Karl Rove & Co. v. Thornburgh(5th Cir. 1994)(29)

b. Apparent Authority (34)

i. Lind v. Schenley Industries, Inc. (3d Cir. 1960)(37)

ii. Ackerman v. Sobol Family Partnership, LLP (Conn 2010)(42)

## Week 3

Tuesday, January 30

Chapter 1: Agency, cont'd

1. Liability of Principal to 3rd Parties in Contract

a. Inherent Authority (50)

i. Watteau v. Fenwick (Queen's Bench 1892)(50)

ii. Kidd v. Thomas A. Edison, Inc. (S.D.N.Y. 1917)(54)

iii. Nogales Service Center v. Atlantic Richfield Co. (Ariz. 1980)(57)

b. Ratification (63)

i. Botticello v. Stefanovicz (Conn. 1979)(63)

ii. Ercanbrack v. Crandall-Walker Motor Co. (Utah Sup. Ct. 1976)(67)

Thursday, February 1

Estoppel (72)

i. Hoddeson v. Koos Bros. (N.J. App. Div. 1957)(72)

ii. Pension Fund v. Steven Scott Enterprises (S.D.N.Y. 1999)(75)

Agent's Liability on the Contract (82)

i. Atlantic Salmon A/S v. Curran (Mass. App. 1992)(82)

## Week 4

Tuesday, February 6

- Liability of Principal to 3rd Parties in Tort (85)
  - a. Servant or Independent Contractor? (85)
    - i. Humble Oil & Refining Co. v. Martin (Tex. 1949)(86)
    - ii. Hoover v. Sun Oil Co. (Del. 1965)(89)
    - iii. Murphy v. Holiday Inns, Inc. (Va. 1975)(93)
    - iv. Parker v. Domino's Pizza (Fla. Dist. Ct. App. 1993)(96)
  - b. Tort Liability and Apparent Agency (101)
    - i. Miller v. McDonald's Corp (Oregon 1997)(101)

Thursday, February 8

- Scope of Employment (106)
  - i. Brill v. Davajon (Ill. App. 1964)(106)
  - ii. Ira S. Bushey & Sons, Inc. v. U.S. (2d Cir. 1968)(109)
  - iii. Manning v. Grimsley (1st Cir. 1981)(115)
  - iv. Lamkin v. Brooks (La. 1986)(118)
- Statutory Claims (106)
  - i. Arguello v. Conoco, Inc. (5th Cir. 2000)(121)

## Week 5

Tuesday, February 13

- Liability of Principal to 3rd Parties in Tort
  - a. Liability for Torts of Independent Contractors (129)
    - i. Majestic Realty Associates, Inc. v. Toti Contracting Co. (N.J. 1959)(129)
    - ii. Anderson v. Marathon Petroleum Co. (7th P Cir. 1986)(133)
    - iii. Kleeman v. Rheingold (N.Y. 1993)(139)

Thursday, February 15

- Fiduciary Obligation of Agents (142)
  - a. Duties During Agency (142)
    - i. Reading v. Regem (King's Bench 1948)(142)
    - ii. General Automotive Manufacturing Co. v. Singer (Wisc. 1963)(146)
  - b. Duties During & After Termination of Agency: "Grabbing & Leaving" (154)
    - i. Bancroft-Whitney Co. v. Glen (Cal. 1966)(154)
    - ii. Town & Country House & Home Service, Inc. v. Newbery (N.Y. 1958)(167)
    - iii. Corroon & Black-Rutters & Roberts, Inc. v. Hosch (Wisc. 1982)(170)

## Week 6

Tuesday, February 20

- Chapter 2: Partnerships (209)

1. What Is a Partnership? Who Are the Partners? (209)
  - a. Partners Compared with Employees (209)
    - i. Fenwick v. Unemployment Compensation Commission (N.J. 1945)(209)
    - ii. Clackmas Gastroenterology Associates v. Wells (U.S. 2003)(214)
    - iii. Equal Employment Opportunity Commission v. Sidley Austin Brown & Wood (7th Cir. 2002)(220)
    - iv. Frank v. R.A. Pickens & Son Co. (Ark. 1978)(228)

Thursday, February 22

- Partners Compared with Lenders (232)
- i. Martin v. Peyton (N.Y. 1927)(232)
  - ii. Kaufman-Brown Potato Co. v. Long (9th Cir. 1950)(238)
- c. Partnership by Estoppel (242)
- i. Young v. Jones (D. S.C. 1992)(245)
2. Partnership Property (245)
- a. In re Fulton (Bankruptcy 1984)(245)
  - b. Putnam v. Shoaf (Tenn. Ct. App. 1981)(248)

## Week 7

Tuesday, February 27

- Chapter 2: Partnerships, cont'd
1. The Rights of Partners in Management(252)
    - a. National Biscuit Co. v. Stroud (N.C. 1959)(252)
    - b. Summers v. Dooley (Idaho 1971)(255)
    - c. Moren ex rel. Moren v. JAX Restaurant (Minn. App. 2004)(256)
    - d. RNR Investments Ltd. Partnership v. Peoples First Community Bank (Fla. App. 2002)(259)
    - e. Day v. Sidley & Austin (D. D.C. 1976)(263)

Thursday, February 29

- The Fiduciary Obligations of Partners(271)
- a. Introduction(271) i. Meinhard v. Salmon (N.Y. 1928)(271)
  - b. ii. Sandvick v. LaCrosse(North Dakota 2008)(277)
  - c. iii. Singer v. Singer (Okla. Ct. App. 1981)(283)
  - d. iv. Nemec v. Shrader(Oklahoma App. 1981)(287)

## Week 8

Tuesday, March 5

- Chapter 2: Partnerships, cont'd
1. The Fiduciary Obligations of Partners, cont'd
    - a. After Dissolution (296) i. Bane v. Ferguson (7th Cir. 1989)(296)
    - b. Grabbing and Leaving (296)
      - i. Meehan v. Shaughnessy (Mass. 1989)(298)

- ii. Gibbs v. Breed, Abbott & Morgan (N.Y. Sup. Ct. 2000)(305)
- c. Expulsion (311)
- i. Lawlis v. Kightlinger & Gray (Ind. App. 1990)(311)
- ii. Bohatch v. Butler & Binion (Tex. 1998)(317)

Thursday, March 7

- 2. Partners at Loggerheads: Dissolution Solution Under the UPA (1914) (325)
  - a. Right to Dissolve (325)
    - i. Owen v. Cohen (Cal. 1941)(325)
    - ii. Collins v. Lewis (Tex. Ct. Civ. App. 1955)(329)
    - iii. Page v. Page (Cal. 1961)(334)

### Week 9

NO CLASS: SPRING BREAK – MARCH 9-17

### Week 10

Tuesday, March 19

- Chapter 2: Partnerships, cont'd
- 1. Partners at Loggerheads: Dissolution Solution Under the UPA (1914), cont'd
  - a. The Consequences of Dissolution (337)
    - i. Prentiss v. Sheffel (Ariz. App. 1973)(337)
    - ii. Disotell v. Stiltner (Alaska S. Ct. 2004)(341)
    - iii. Monin v. Monin (Ky. App. 1989)(349)
    - iv. Pav-Saver Corp. v. Vasso Corp. (Ill. App. 1986)(352)
  - b. The Sharing of Losses (358)
    - i. Kovacik v. Reed (Cal. S. Ct. 1957)(358)

Thursday, March 21

- c. Law Partnership Dissolution (361)
  - i. Meehan v. Shaughnessy (Mass. S. Ct. 1989)(361)
- 2. Partners at Loggerheads: Dissolution Solution Under the UPA (1997)(366)
  - a. Giles v Giles Land Company (Kansas App 2012)(367)
  - b. Creel v Lily (Maryland 1999)(374)
- 3. Buyout Agreements
  - a. G&S Investments v. Belman (Ariz. Ct. App. 1984)(382)

### Week 11

Tuesday, March 26

- Chapter 2: Partnerships, cont'd 1
- . Limited Partnerships (386)



- a. Frigidaire Sales Corp. v. Union Properties, Inc. (Wash. 1977)(387)
- b. Jerman v. O’Leary (Ariz. App. 1985)(389)

Thursday, March 28

- c. Sonet v. Plum Creek Timber Co., L.P. (Del. Ch. 1998)(394)
- d. Cincinnati SMSA L.P. v. Cincinnati Bell Cellular Systems Co. (Del. 1998)(401)
- e. In re: El Paso Pipeline Partners, L.P. Derivative Litigation(Delaware 2014)(405)

## Week 12

Tuesday, April 2

- Chapter 3: Limited Liability Entities (479)
- 1. Limited Liability Companies (479)
  - a. Formation (479)
    - i. Water, Waste & Land, Inc. d/b/a Westec v. Lanham (Col. 1998)(479)
  - b. The Operating Agreement (484)
    - i. Duray Development, LLC v. Perrin (Michigan App. 2010)(485)
    - ii. Elf Atochem North America, Inc. v. Jaffari (Del. Sup. Ct. 1999)(491)
    - iii. Fisk Ventures, LLC v Segal()(498)

Thursday, April 4

- c. Piercing the LLC Veil (505)
  - i. Tom Thumb Food Markets, Inc. v. TLH Properties, LLC (Minn. App. 1999)(unpublished opinion)(506)
  - ii. NetJets Aviation, Inc. v. LHC Communications, LLC (2nd Cir. 2008)(509)

## Week 13

Tuesday, April 9

- Chapter 3: Limited Liability Entities, cont’d
- 1. Limited Liability Companies, cont’d
  - a. Fiduciary Obligation (517)
    - i. McConnell v. Hunt Sports Enterprises (Ohio App. 1999)(517)
    - ii. VGS, Inc. v. Castiel (Del. Ch. 2000)(523)
    - iii. Gottsacker v. Monnier (Wisconsin 2005)(530)

Thursday, April 11

- b. Additional Capital (535)
  - i. Racing Investment Fund 2000, LLC v. Clay Ward Agency, Inc. (Kentucky 2010)(535)
- c. Expulsion from the LLC (540)
  - i. Walker Resource Development Co. (Del. Ch. 2000)(540)

## Week 14

Tuesday, April 16

1. Limited Liability Companies, cont'd a. Dissolution (555)
  - i. The Dunbar Group, LLC v. Tignor (Va. 2004)(555)
  - ii. Investcorp, L.P. v. Simpson Investment Co. (Kan. 1999)(560)
  - iii. R & R Capital, LLC v. Buck & Doe Run Valley Farms, LLC (Del. Ch. 2008)(564)
  - iv. Fisk Ventures, LLC v. Segal (Del. Ch. 2009)(568)

Thursday, April 18

1. Securities Regulation Issues (575)
  - a. Great Lakes Chemical Corp. v. Monsanto Co. (D. Del. 2000)(575)
  - b. Koch v. Hankins (9th Cir. 1991)(589)

## Week 15

Tuesday, April 23

Catch-Up

Thursday, April 25

Course Review Session

## Final Exam

- Specific exam time to be announced (to be scheduled by the law school). Final exams will take place from April 30 to May 10.