



P R E F A C E

More than thirty years ago, I taught one of the pioneer paralegal courses in business organizations in the Continuing Legal Education Program of the University of Denver College of Law. The course materials were a compilation of examples of documents and certificates that were typically used by lawyers and their assistants to advise and represent business organizations. This book began in that classroom and has been developed through five previous editions to this newest and most complete sixth edition with the latest resources and examples and challenging problems that confront today's legal assistant, paralegal, and lawyer in representation of business clients. Previous editions of this book have been used extensively in paralegal training courses. They have also been used in several law schools and by practitioners who taught other lawyers in continuing legal education courses. This sixth edition is a greatly expanded version of the materials developed through all of those courses and through my own experiences counseling clients and teaching students over those thirty-plus years.

This book is designed to be used in two environments:

- It is a classroom teaching source for the training of paralegals and lawyers in the practical aspects of the law of business organizations.
- It is a useful how-to-do-it reference work for paralegals and attorneys in the practice of this field, with an explanation of the legal and ethical principles that must be observed in counseling an enterprise. As a reference work, it covers all of the issues that are typically encountered in working with business clients, and identifies resources to obtain forms and additional information.

In the classroom, the book provides the students with a variety of examples of the work in business organization law, including:

- Numerous sample clauses and forms sprinkled throughout the text to illustrate the legal rules described;
- Procedural checklists to study the array of tasks involved in accomplishing the client's objectives;
- Representative cases in each chapter to illustrate the manner in which courts interpret that area of business law;
- Problems illustrating the issues of each chapter, with expanded and practical problems to provide the real experiences of conducting research into the relevant facts and applying the facts to the legal task to be accomplished;
- Examples of the real forms being used by practitioners throughout the country.
- Resources on the Internet to review applicable local laws, to obtain forms, and to conduct further research on each topic;
- A glossary of legal terms used in this practice area with concise explanations of the terms and how they are used.

In the office, the book provides the practitioner with useful resources for the practice of business organization law, such as:

- How-to-do-it explanations of the steps involved in organizing, drafting, operating, and maintaining business entities, with state law variations highlighted and explained;

- Forms and checklists that are currently used in developing the documents required for business organization clients, including a Table of Forms for quick reference;
- Internet resources to download the most current forms in each state;
- The latest version of uniform laws and where to expect local state variations, together with Internet resources for quick reference to local laws;
- Sample clauses to use in drafting documents for clients;
- Identification of ethical issues that arise in representing business organization clients;
- Drafting techniques for business organization documents;
- Concise explanation and step-by-step review of registrations, reports, and documents required for public companies by the Securities Act of 1933, the Securities Exchange Act of 1934, and state securities laws.

Except for the sole proprietorship, business organizations are based upon statutory authority. To ensure national application of this book, the text explains the law based upon the following uniform laws and model acts (which are set forth in their entirety in Appendices A through I):

- the Uniform Partnership Act
- the Revised Uniform Partnership Act (1997)
- the Revised Uniform Limited Partnership Act with the latest amendments
- the Uniform Limited Partnership Act of 2001
- the Uniform Limited Liability Company Act
- the Model Business Corporation Act
- the Model Professional Corporation Act
- the Model Close Corporation Supplement

The limited liability partnership materials are based upon the states that have recently authorized the registration of such entities for limited liability purposes. All of these uniform laws and model acts have been extensively revised in the past few years, and state adaptations of these laws have variously combined the new model rules with existing state law. The text discusses both the revisions and the former approaches of the statutes, since many states' laws continue to be based upon some version of the pre-revision text. The revised organization and modern corporate concepts in the most current version of the Model Business Corporation Act are included as the basis of the corporate statutory rules. Important jurisdictional variations from these statutes are noted in footnotes in many cases, and the reader is regularly reminded to analyze the appropriate state law in practice.

The book begins with the most simple form of business enterprise, the sole proprietorship; progresses through general partnership, limited partnership, and limited liability partnership; describes the flexibility and operations of a limited liability company; and concentrates on the most complex business organization, the corporation. Chapter 7 considers issues relating to special corporate variations—public corporations, close corporations, and professional corporations.

Chapters 2, 3, and 4 contain discussions of frequently encountered problems in the organization and operation of sole proprietorship, and partnerships, including procedures for the formation and operation of the business, characteristics of the enterprise, liabilities of the associate parties, taxation issues, dissolution, and termination. The general partnership materials compare the original uniform version of the Uniform Partnership Act with the Revised Uniform Partnership Act. A paralegal or lawyer will eventually be working with the revised partnership law and will need to know modern thinking about partnership issues as they are addressed in the revised act. The materials on limited partnerships are based on the Revised Uniform Limited Partnership Act as amended in 1985, since that statute forms the basis of most states' limited partnership laws. The variations adopted in the Uniform Limited Partnership Act of 2001 are highlighted as the newest concepts in limited partnerships, which will likely be considered and adopted by various states during the next few years.

The limited liability company has become a very popular business form during the past decade. Most states have now adopted the Uniform Limited Liability Company Act with some variations; the text in Chapter 5 focuses on that uniform law with comparisons of the partnership and corporate forms. The chapter also highlights the drafting issues that are predictable from the various state statutes for a limited liability company. Logically, the limited

liability company is a hybrid organization between partnerships and corporations, so the chapter concerning these entities follows partnerships and precedes corporations. It may be easier to understand the concepts of limited liability companies after a student first studies the basic forms of partnerships and corporations, since the LLC has characteristics of both.

The corporate materials are arranged somewhat chronologically as they usually will be met in practice. Following the identification of the intracorporate parties and a general discussion of the characteristics, powers, continuity, and taxation of the corporation, the remaining chapters consider formation procedures, meetings, development of the corporate financial structure, issues relating to publicly held corporations, dividends and corporate distributions, agreements affecting employment and share ownership, qualification and operation as a foreign corporation, modifications to the corporate structure, and dissolution. While these topics are organized in the sequence typically encountered in a functioning corporation, many of the subjects may be addressed in a different chronology and many of these matters also arise in the operation of a partnership or a limited liability company. For example, matters involving shareholder agreements may arise in the formation stage of a corporation; employment issues arise in all business entities; and cash distributions are made from all entities during business operations and upon dissolution. The material is all cross-referenced by footnotes for easy reference back and forth among the chapters.

Chapter 1 deals with the basic agency concepts that are applicable in every business entity and form the basis for the relationships between a business entity and its representatives. A general understanding of the law of agency is an important backdrop to describe the relationship of the people who operate business organizations. These concepts are directly related to the material on employment and compensation in Chapter 12, where the book covers the drafting and legal issues in formalizing the agency relationships through employment agreements. Chapter 12 appears in the corporate section of the book because it involves agreements that will be executed with key employees in corporate practice, and the discussions concerning pension and profit sharing plans, stock options, and insurance programs are almost exclusively corporate in nature. However, the remaining sections and particularly the discussion of agency law in the first chapter, are equally applicable to sole proprietorships, partnerships, and limited liability companies.

Chapter 13 discusses techniques in drafting shareholder buyout agreements, and the same concepts are often included in partnership agreements and operating agreements for limited liability companies. Again, these materials are useful in all business organizations and should be read in that context. Chapter 15 describes many of the new anti-takeover statutes and the lexicon of techniques that protect shareholders from hostile takeovers and minority shareholders from abusive corporate dissolutions. These sophisticated devices and techniques are becoming commonplace in the corporate world and are increasingly important to all practitioners of corporate law.

The practice of modern business organization law is being conducted increasingly over the Internet. Public officials who are required to accept formation and operational documents for these entities have been converting their files for electronic access and filing procedures, and they have been making forms and documents available to be downloaded from their Web sites. Similarly, computerized legal research is the modern way to verify and review local entity laws to ensure compliance with local statutory variations. This edition includes Internet resources with each topic, including sources for legal research into local statutes, sources for forms and information about the entity's operations, and sources for more sophisticated documents that are made available by various suppliers.

Having incorporated suggestions from the various teachers, practitioners, and students who have used the prior editions of this book, I am confident that this sixth edition covers the most current and important areas of enterprise practice. I commend it to the reader with the hope that I have created a usable manual for the assistance in or practice of the law of business organizations.

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SUPPLEMENTAL TEACHING MATERIALS

- The **Instructor's Manual** is available on-line at *www.westlegalstudies.com* in the Instructor's Lounge under Resource. Written by the author of the text, the *Instructor's Manual* contains the following:
 - Suggestions for developing a course syllabus for courses of varying credit hours
 - Answers to the Problems within the text
 - Answers to the Review Questions within the text
 - Additional role-play problems with confidential facts
 - Synopses of the cases presented in the text
- The **WebTutor™** offers questions that augment those in the text and provides immediate feedback so that students know if their response is correct and know the reason if it is incorrect. Vocabulary is tested using "flashcards." Discussion questions challenge students to integrate and assimilate information. A brief introduction at the beginning of each section sensitizes students to what they should focus on.
- **Web page**—Come visit our Web site at *www.westlegalstudies.com*, where you will find valuable information such as hot links and sample materials to download, as well as other West Legal Studies products.
- **Westlaw®**—West's on-line computerized legal research system offers students "hands-on" experience with a system commonly used in law offices. Qualified adopters can receive ten free hours of Westlaw®. Westlaw® can be accessed with Macintosh and IBM PC and compatibles. A modem is required.
- **Survival Guide for Paralegal Students**, a pamphlet by Kathleen Mercer Reed and Bradene Moore covers practical and basic information to help students make the most of their paralegal courses. Topics covered include courses of study and note-taking skills.
- **West's Paralegal Video Library**—West Legal Studies is pleased to offer the following videos at no charge to qualified adopters:
 - *The Drama of the Law II: Paralegal Issues Video*
ISBN: 0-314-07088-5
 - *The Making of a Case Video*
ISBN: 0-314-07300-0
 - *ABA Mock Trial Video-Product Liability*
ISBN: 0-314-07342-6
 - *Arguments to the United States Supreme Court Video*
ISBN: 0-314-07070-2

Please note the Internet resources are of a time-sensitive nature and URL addresses may often change or be deleted.

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