DOWNLOAD PDF DELAWARE LAWS GOVERNING BUSINESS ENTITIES (VOLUMES 1 2, FALL 2006 EDITION)

Chapter 1 : Tarik J. Haskins - Morris, Nichols, Arsht & Tunnell LLP

*Delaware Laws Governing Business Entities, Volumes 1 & 2, Fall Edition on calendrierdelascience.com *FREE* shipping on qualifying offers.*

Download PDF version of guide for print I. Introduction Business entities are structured in a variety of legal forms, including corporations, partnerships, and limited liability companies, among others. The purpose of this guide is to help researchers locate helpful primary and secondary sources available through the Goodson Law Library on matters related to business entities also known as "business associations" or "business organizations" , such as choice of entity, corporate formation and governance, and Delaware law. Business associations are formed and governed largely under state law, and this guide therefore focuses primarily on state law resources. Businesses are also, of course, subject to extensive regulation under federal securities and tax laws. Online collections of materials on business associations Bloomberg, Lexis Advance, and Westlaw all offer comprehensive business associations practice centers or areas, which are convenient starting places for research. These practice centers collect both primary and secondary sources. In the Corporate Law Resource Center on Bloomberg BNA , researchers can find news, portfolios, and practice tools like sample documents and checklists, along with cases and statutes. The state-specific business law materials presently include California, Florida, New York, and Texas, with more states to be added in the future. On Westlaw , cases, statutes, regulations, secondary sources, and forms can be found both in the Corporations and Corporate Governance practice areas. The Delaware Corporation Law 8 Del. A15 A44 and on Bloomberg Law. It has not, however, been updated yet to reflect the revision of the MBCA. The current legislative status of each uniform law i. See, for example, the UBOC page. Each page also provides the text of the act and a "Legislative Information Kit," which includes a summary of the legislation and information about the reasons it should be adopted. Current and historical versions of uniform laws are also available comprehensively in the Uniform Laws Annotated Reference KF This collection includes the text of each act, official comments, cross references to West topics and key numbers and Corpus Juris Secundum, and notes on state adoptions and variations. In print, the uniform laws on business associations are found in the Business and Nonprofit Organizations and Associations Laws volumes. Once adopted, state statutes on business associations are found in state codes. More narrowly, databases containing only the portions of state codes dealing with business entities are available in the practice centers on Bloomberg Law, Lexis Advance, and Westlaw described in Part I above. Of particular note is the State Forms of Business section of the Corporate practice center on Bloomberg Law , which quickly takes researchers to business entity laws and corporate forms for all 50 states and the District of Columbia. To locate state statutes on narrower aspects of the law of business associations, researchers can use state surveys. Additional state surveys on corporate compliance, governance, legal departments, and forms of business are available in the Corporate Law Resource Center on Bloomberg BNA. The 50 State Surveys: Statutes and Regs database on Lexis Advance covers laws and regulations pertaining to several types of business associations, including corporations, limited liability companies, limited liability partnerships, non-profits, and professional associations. Finally, on Westlaw , surveys on issues such as corporate formation, dissolution, and shareholder protections are available in the 50 State Statutory Surveys database. F67 and on HeinOnline. State regulations pertaining to business associations are located in state administrative codes, in print or online. Current state administrative codes and registers are available comprehensively on Bloomberg Law, Lexis Advance, and Westlaw. Narrower databases containing only state regulations and other administrative materials dealing with business associations are also available in the practice centers on Lexis Advance and Westlaw described in Part I above. Business entities are required to make annual filings with the corporations division of the Secretary of State in the state s in which they are incorporated or licensed to do business. Documents dated before the early s are often available only on microfiche. Appellate decisions State and federal appellate decisions on matters related to business

associations can be found with other cases in standard state, regional, and federal reporters, in print and online. In addition, each of the practice centers discussed in part I above provides access to subject-specific databases of state and federal cases. Decisions of specialized business courts Some states have created separate trial courts or separate dockets within trial courts of general jurisdiction to handle commercial and business disputes, with the goal of speedy resolution of cases by judges with expertise in business and commercial law. For example, the North Carolina Business Court hears cases "involving complex and significant issues of corporate and commercial law. Books and Treatises 1. Introductory works Researchers new to the law of business associations may wish to consult a study guide. Z9 H95 , Business Associations in a Nutshell, 3d ed. S53 , The Law of Corporations in a Nutshell, 7th ed. H37 , and Understanding Corporate Law, 5th ed. A more substantial introduction to business associations is found in Professors James D. Comprehensive works on corporations The leading treatise on corporations is James D. This four-volume treatise analyzes all areas of corporate law and major provisions of federal securities laws and covers the Model Business Corporation Act and major non-Model Act jurisdictions, including California, Delaware, and New York. Narrower works Many other treatises focus on narrower aspects of the law of business associations. This series of practitioner-oriented portfolios covers corporate compliance, corporate governance, corporate legal departments, financial reporting, and forms of business. Portfolios provide detailed analysis, practice tools like checklists and sample documents, and extensive bibliographies. R and on Lexis Advance. A comprehensive treatise on corporations under the North Carolina Business Corporation Act, from formation through dissolution. H36 and on Bloomberg Law. A short glossary appears at the end, followed by several appendices including sample documents, a planning checklist, and charts on the proxy voting process. Analysis and Recommendations Reserves KF A ; current edition on Westlaw ; drafts, current edition, and updated case citations on HeinOnline. Goodman and Steven M. Officers and directors Edward Brodsky and M. Rights, Duties, and Liabilities KF B and on Westlaw. Knepper and Dan A. Bailey, Liability of Corporate Officers and Directors, 8th ed. K and on Lexis Advance. A detailed treatment of the duties and liabilities of officers and directors, as well as sources of limitation of liability, indemnification, and insurance. Radin, The Business Judgment Rule: Fiduciary Duties of Corporate Directors, 6th ed. A four-volume, heavily-footnoted treatise on the duties of corporate directors and controlling shareholders , covering the origins of the business judgment rule, its scope, and its application in specific situations such as financial difficulties, takeovers, and shareholder derivative litigation. A A7 and on HeinOnline. William Callison and Maureen A. Sullivan, Partnership Law and Practice: This one-volume annual publication covers choice of entity; formation, management, and dissolution of various kinds of partnerships; and partnership taxation. Includes checklists and forms and reproduces the texts of relevant uniform laws. Covers the formation and operation of various types of business entities with an emphasis on federal and state taxation. Hillman and Mark J. An overview of domestic and foreign alternatives to incorporation, covering topics such as fiduciary duties, tax treatment, and dissolution. Includes a chapter by Professor Deborah DeMott on the application of the common law of agency to general and limited partnerships and limited liability companies. H and as an audio book. A guide to creating and operating Certified B Corporations "B Corps" , which are companies that have been certified to meet standards of "social and environmental performance, accountability, and transparency. O and on Westlaw. This treatise covers the characteristics, organization, control, and operation of closely-held businesses. Keatinge and Larry E. R and on Westlaw. This treatise describes the history of and policies underlying the LLC as a form of entity and focuses on the legal and tax aspects of forming and operating LLCs. Appendices include sample operating agreements for various kinds of LLCs and a formation checklist. Franklin Balotti and Jesse A. One of the leading scholarly treatises along with Folk, below on the Delaware General Corporation Law. Volumes 1 and 2 cover the formation, operation, and dissolution of Delaware corporations including Blue Sky law and taxation of corporations , statutory trusts, LLCs, and limited partnerships. Volume 3 consists of numerous forms corresponding to chapters in the treatise. The print version is accompanied by an annual statutory deskbook that reproduces relevant Delaware statutes. Alexander, The

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Delaware Corporation: A practitioner-oriented guide to incorporating and organizing a Delaware corporation. Also addresses the roles of stockholders and directors. Forms and sample documents are available in the practice tools at the end of the volume. This treatise was originally written by one of the drafters of the Delaware General Corporation Law. Volumes of the current edition provide a section-by-section analysis of the DGCL. Volume 4 covers limited liability companies and limited partnerships. Some helpful catalog subject headings include: Business enterprises--Law and legislation.

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Chapter 2 : Closing Opinions for Common Law Trusts [Press Release] | Carter Ledyard & Milburn LLP

CSC brings you Delaware Laws Governing Business Entities, Fall Edition. This annotated deskbook helps you to conduct research more effectively, complete transactions more efficiently, and better advise your clients.

Slights III Today, an increasing number of states have a business court or judges assigned only to business disputes. Most of these courts were created in the past 15 years. For example, during this period Pennsylvania established a Complex Litigation Center in Philadelphia and later a Commerce Program; the Illinois Circuit Court in Cook County began assigning judges to hear only commercial cases; New York created a division of the New York State Supreme Court devoted solely to commercial litigation; Wisconsin began a pilot program in Milwaukee County and appointed two judges to a special business court; and North Carolina established a business court with judges in Greensboro, Charlotte, and Raleigh, who preside over complex corporate and commercial law cases. A few more states join this list each year. The Court of Chancery has broad jurisdiction over disputes involving the internal affairs of Delaware business entities. Otherwise, its jurisdiction is generally limited to traditional equity jurisdiction. Consequently, some complex commercial disputes fall outside its purview. The Delaware Superior Court handles most of those cases, which include, for example, contract disputes where only legal remedies, such as money damages, are sought. The Delaware Court of Chancery In its more than years, the Court of Chancery has become the forum of choice for determining disputes that involve the internal affairs of corporations and other business entities. It has developed a respected body of case law interpreting the Delaware General Corporation Law and earned a worldwide reputation for fairness, experience, and expertise in presiding over corporate disputes. The Delaware Constitution of divested the Court of Common Pleas of its equity jurisdiction and established a Court of Chancery and the position of chancellor to exercise that jurisdiction. By the late s, most other states had consolidated their equity and law jurisdictions and moved away from having a separate equity court. During its early years, the Court of Chancery primarily exercised equity jurisdiction and provided relief that was not available in a court of law. Most of the early volumes of the Court of Chancery reporters do not deal with corporation law issues but instead involve decisions condemning property and ordering parties to perform certain obligations or to stop doing certain things. In , Delaware adopted a new constitution, permitting incorporation under general law instead of by special legislative mandate. Under this provision, Delaware enacted a general corporation law in calling for perpetual corporate existence and general powers. In fact, Delaware modeled its General Corporation Law largely after the relatively liberal statute New Jersey had at that time. Because the Court of Chancery does not have jury trials, explained Lewis S. Black, a Wilmington attorney and author of numerous books and articles on corporation and securities law, the judges were called upon to write opinions explaining their reasoning and a body of law began to develop. New Jersey remained the leading state for incorporation until , when under the leadership of New Jersey Governor Woodrow Wilson, it passed antitrust and other laws inhospitable to corporations. These new laws outlawed attempts to create monopolies or suppress competition and forbade the chartering of any new holding companies. The number of corporations incorporated in New Jersey declined precipitously. Delaware, with its newly adopted General Corporation Law, stood ready to serve as the state of incorporation for the many companies fleeing New Jersey. The Court of Chancery provided an able forum in which to adjudicate and resolve internal corporate controversies. The chancellor remained the sole judge of the Court of Chancery under the constitution of He was appointed by the governor and served a year term. In , the Delaware legislature created the position of vice chancellor, to be appointed by the chancellor and to serve much like a magistrate or master. In , the Delaware Constitution provided for the office of vice chancellor as a judge, with nomination by the governor and confirmation by the senate, and a year term. In , the legislature amended the constitution again and created a three-member supreme court with appellate jurisdiction in certain criminal and civil matters, including final judgments and other orders of the Court of Chancery. Today, the Court of Chancery

consists of the chancellor and four vice chancellors. Since , the court also has had two masters, who are comparable to magistrates and hear guardianship cases, real property disputes among individuals, and trust administration cases, thereby enabling the Chancery judges to spend more time on corporate and commercial disputes. A number of features make the Court of Chancery unique. First, the court does not have jury trials, only bench trials. Litigating parties can expect one judge to handle their case from start to finish and, in most instances, to provide a well-reasoned written opinion. Although the court generally does not have jurisdiction over matters for which there is an adequate remedy at law, the "clean-up doctrine" gives the court discretionary jurisdiction over legal claims that are joined with other claims within its jurisdiction. The synopsis of the bill enacting this and another statute discussed below, authorizing a separate "mediation only" docket, explained that the legislature intended to provide "additional benefits for businesses choosing to domicile in Delaware" and to "keep Delaware ahead of the curve in meeting the evolving needs of businesses, thus strengthening the ability of the state to convince such businesses to incorporate and locate operations" in Delaware. The second part of the legislation authorized the Court of Chancery to create a special mediation-only docket that allows parties to mediate their business disputes before a judicial officer of the court, rather than litigate them. Qualifying business disputes include complex corporate and commercial disputes, as well as certain technology disputes. There is no requirement that any litigation be pending in the Court of Chancery or anywhere else. More than a dozen such cases have been mediated over the past three years, most of them successfully. The success rate in this program exceeds 70 percent. The court has mediated 68 of these cases in the past three to four years, an average of about 20 cases a year. As Chancellor William B. The five judges of the Court of Chancery dedicate most of their time to deciding corporate law and alternative entity disputes, which are taken on direct appeal to the state supreme court, also consisting of five judges. As Professor Robert B. Is the Common Law the Problem? Furthermore, as most recently noted in by Vice Chancellor Leo E. The members of the Court of Chancery and the Delaware Supreme Court regularly interact with academics, shareholder groups, corporate directors, mergers and acquisitions lawyers, and corporate litigants around the country to keep current on the most recent business developments. These interactions provide valuable insights on the fast-moving business and capital markets, in which the complexity of transactions constantly evolves. The Delaware Superior Court While the Delaware Court of Chancery is known for its expertise in matters of corporate and business law, the Superior Court of Delaware also has an outstanding reputation in the business community for resolving commercial disputes. The Superior Court has original jurisdiction over civil matters at common law and frequently resolves business disputes where an adequate remedy at law exists. Lawyers who are considering pursuing litigation in Delaware should keep the distinction between equity and law in mind when determining in which Delaware court to bring their claims. The members of the Delaware judiciary enjoy an atmosphere of respect and collegiality that is essential to maintaining an advantageous forum for corporate and commercial litigation. This collaboration is most evident when cases are transferred between the Court of Chancery and the Superior Court to ensure the appropriate court awards proper relief. Energy, LLC, A. The Superior Court, likewise, will transfer matters to the Court of Chancery if it determines that the parties seek equitable relief or if the claims involve matters relating to the exercise of fiduciary duties. The Delaware State Constitution of established the Superior Court, which held its first session on April 9, Chamber of Commerce Institute for Legal Reform. The study polls national in-house counsel and senior corporate litigators to evaluate the performance of state court systems in creating a fair and reasonable litigation environment. Delaware ranked first in nine of the 12 categories, including its treatment of tort and contract litigation, class action suits, and mass consolidation suits. The Superior Court manages a diverse civil docket, including complex commercial litigation matters. In the s, the court decided large-scale commercial cases involving declarations of rights under insurance coverage agreements arising from environmental and mass product liability exposures. These disputes frequently required the judges to interpret complex insurance policies while applying the law of other jurisdictions. More recently, the court has addressed several disputes involving director and officer liability coverage. Of course,

the court regularly addresses claims arising from failed business relationships, including related breach of contract and business tort claims. The Superior Court continually strives to implement best practices to accommodate large-scale business litigation. Between and , more than Superior Court civil decisions were made available on the Web site without cost each year. The Superior Court Web site also hosts a listserv that accommodates more than 1, subscribers and transmits updates regarding recent decisions, rules changes, and case management protocols as they are issued. The court has experienced great success with alternative dispute resolution ADR. The court educates and trains local counsel to serve as mediators in ADR proceedings. It also has five commissioners appointed by the governor who, among other duties, resolve eligible disputes through appropriate ADR techniques. Superior Court judges also will serve as ADR practitioners when asked by colleagues. The Superior Court is proud of its record for providing a sophisticated, convenient, and efficient forum for businesses to resolve their disputes. In the last five years, the average time from complaint to trial disposition in civil cases filed in Superior Court was approximately 28 months. The court also recognizes that full-blown, jury trial litigation is not always the most efficient or preferred means by which to resolve a controversy. With the expense and inherent inefficiencies of commercial litigation in mind, the court has developed "summary proceeding rules" that provide for expedited and streamlined discovery, motion practice, and trials for commercial disputes when the parties agree that a more direct approach to adversarial dispute resolution is appropriate and desirable. The President Judge of the Superior Court has appointed six Superior Court judges to the Summary Proceedings for Commercial Disputes Panel, all of whom stand ready to manage these cases through expedited discovery, motion practice, ADR, and trial if necessary. This unique approach to dispute resolution is intended to mirror the Court of Chancery environment by providing learned judges who will facilitate expeditious resolutions of commercial disputes. Mindful that business litigation requires special attention, the court continues to explore new avenues to accommodate business litigants. The business court would provide a forum for businesses to litigate disputes for which a legal remedy is adequate and no other basis for jurisdiction in the Court of Chancery exists. A report was due by the end of , and the Superior Court is expected to implement any appropriate rule changes soon thereafter. Delaware is the forum of choice for resolving complex business and commercial issues, in part, because the judiciary focuses so actively on fairness, efficiency, and expertise in corporate law and related business matters. As a result, businesses that choose to incorporate in Delaware enjoy the benefit of a reliable and consistent body of law on which they can rely when conducting their business affairs. Delaware welcomes the trend among other states to create a business court system similar to its Court of Chancery. Delaware benefits from having a unique combination of an enabling corporation statute, a legislature that keeps the statute up to date and that has developed a long and trusting relationship with the corporate bar, and judges who come from among the best and brightest attorneys in the state, he says. No jury trials or punitive damages. Frequently handling cases on an expedited basis. Extensive and well-developed body of corporate law. Well-researched opinions by one of five judges, each of whose docket consists predominantly of business cases. Single level of appellate review by Delaware Supreme Court. Experience, both before and after becoming judges, that gives them an unmatched expertise in corporate law. Regular interactions with shareholder groups, corporate directors, deal lawyers, litigants, and academics regarding important developments in business law. The Superior Court is known for: Great success with alternative dispute resolution. Development of summary proceedings rules, available upon the consent of all parties, for expedited and streamlined discovery, motion practice, and trials for commercial disputes. Their respective e-mails are donald. The authors gratefully acknowledge the valuable assistance of their externs, Shannon German, Stephanie Habelow, and Kevin Gallagher on this article.

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Chapter 3 : Business Associations | Duke University School of Law

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It also concerns other stakeholders, such as creditors , consumers , the environment and the community at large. One of the main differences between different countries in the internal form of companies is between a two-tier and a one tier board. The United Kingdom, the United States, and most Commonwealth countries have single unified boards of directors. In Germany, companies have two tiers, so that shareholders and employees elect a "supervisory board", and then the supervisory board chooses the "management board". Recent literature, especially from the United States, has begun to discuss corporate governance in the terms of management science. While post-war discourse centred on how to achieve effective "corporate democracy" for shareholders or other stakeholders, many scholars have shifted to discussing the law in terms of principalâ€"agent problems. Reducing the risks of this opportunism, or the "agency cost", is said to be central to the goal of corporate law. Corporate constitution A bond issued by the Dutch East India Company , dating from 7 November , for the amount of 2, florins The rules for corporations derive from two sources. The law will set out which rules are mandatory, and which rules can be derogated from. Examples of important rules which cannot be derogated from would usually include how to fire the board of directors , what duties directors owe to the company or when a company must be dissolved as it approaches bankruptcy. Examples of rules that members of a company would be allowed to change and choose could include, what kind of procedure general meetings should follow, when dividends get paid out, or how many members beyond a minimum set out in the law can amend the constitution. The United States, and a few other common law countries, split the corporate constitution into two separate documents the UK got rid of this in It states which objects the company is meant to follow e. In the event of any inconsistency, the memorandum prevails [17] and in the United States only the memorandum is publicised. Another common method of supplementing the corporate constitution is by means of voting trusts , although these are relatively uncommon outside the United States and certain offshore jurisdictions. Some jurisdictions consider the company seal to be a part of the "constitution" in the loose sense of the word of the company, but the requirement for a seal has been abrogated by legislation in most countries. Balance of power[edit] Adolf Berle in The Modern Corporation and Private Property argued that the separation of control of companies from the investors who were meant to own them endangered the American economy and led to a mal- distribution of wealth. The most important rules for corporate governance are those concerning the balance of power between the board of directors and the members of the company. Authority is given or "delegated" to the board to manage the company for the success of the investors. Certain specific decision rights are often reserved for shareholders, where their interests could be fundamentally affected. There are necessarily rules on when directors can be removed from office and replaced. To do that, meetings need to be called to vote on the issues. How easily the constitution can be amended and by whom necessarily affects the relations of power. It is a principle of corporate law that the directors of a company have the right to manage. In the United Kingdom , the right to manage is not laid down in law, but is found in Part. This means it is a default rule, which companies can opt out of s. UK law specifically reserves shareholders right and duty to approve "substantial non cash asset transactions" s. During the Great Depression , two Harvard scholars, Adolf Berle and Gardiner Means wrote The Modern Corporation and Private Property , an attack on American law which failed to hold directors to account, and linked the growing power and autonomy of directors to the economic crisis. In the UK, the right of members to remove directors by a simple majority is assured under s.

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Chapter 4 : Corporate law - Wikipedia

The Fall Edition of CSCÂ®Publishing's Delaware Laws Governing Business Entities captures this year's changes, and provides statutory amendment analysis from legal experts in the state to help business and legal professionals get up to speed quickly on the new legislation.

View in PDF format. The following article by Jim Gadsden discusses the status and power opinions for non-statutory trusts used as investment vehicles. These trusts often are formed under New York law. As Jim points out, non-statutory or common law trusts are to be distinguished from statutory trusts formed under the statutes of states like Delaware and Maryland that provide for the organization of business trusts as separate legal entities. Non-statutory trusts also are formed for other purposes, including as mutual funds, REITS and holding companies. Opinion practice for business trusts will be discussed in a future issue of the Newsletter. For federal income tax purposes, these trusts are generally treated as either partnerships or corporations rather than as ordinary trusts. Statutory Trusts Trusts used as investment vehicles may be organized as either common law trusts or statutory trusts, depending on the laws of the state in which the trust is formed. These statutes have typically specified that the trust is a separate entity. Delaware also has a statute providing for the formation of statutory trusts. The status and power opinions for statutory trusts are similar to their counterparts for corporations, limited liability companies and limited partnerships. The opinion preparers satisfy themselves as to the due formation of the entity, its status certificates of status can be obtained for statutory trusts , and the power of the entity under its organizational documents and the governing statute to enter into the transaction that is the subject of the closing opinion. The focus of this article is not on statutory trusts but on common law trusts used as investment vehicles created under state non-statutory trust law. The Status and Power Opinions for Corporations and Alternative Entities The foundation for many of the opinions given on corporations, limited liability companies and limited partnerships is the entity status opinion. A typical status opinion for a corporation may state that the corporation is validly existing [7] and is in good standing in the state of its incorporation, and, if relevant, is in good standing and qualified to do business in a state other than the state of incorporation that has a nexus with the transaction. First, common law trusts do not require a filing to be formed. The Status Opinion Although, as with a partnership, a written agreement is not necessary to create a common law trust, [14] as is the common practice with partnerships, opinion givers typically require that a common law trust have a written trust agreement before they will deliver a closing opinion. No public filing is required for creation of the trust. Since no public filing is necessary to form a common law trust, a valid existence certificate from the secretary of state typically is not available. Similarly, a certificate of good standing ordinarily is not available. The relevant consideration is whether the trust continues to exist and has not been terminated. If a trustee is an entity, the opinion preparers must either determine or assume that the trustee is a validly existing entity and has taken the steps required by its organizational documents to execute the agreement in this case as trustee. The opinion preparers may obtain certificates of good standing and other necessary documentation from the appropriate governmental official to establish that the entity is validly existing. If the trustee is not the trustee named in the original trust agreement, then the opinion preparers should obtain satisfactory evidence or assume that the succession was accomplished in the manner authorized by the trust agreement or otherwise applicable law. Sometimes counsel for the trust takes these steps to satisfy itself regarding a trustee. The inquiry as to the status of a trustee of a common law trust for purposes of the status opinion is arguably more important than an inquiry for opinion purposes as to the status, when an entity, of a member, manager or general partner of a limited liability company or a limited partnership. Whether the trustee is an individual or an entity, and whether the trustee is the original trustee or a successor, the opinion preparers satisfy themselves or assume that the trustee is authorized under applicable law to act as trustee and that the trustee has taken the necessary steps, if any, to qualify as trustee. For example, state and federal banks and trust companies are typically authorized to exercise trust powers under the laws of their chartering

jurisdictions. For an individual trustee, the opinion preparers confirm that the trustee is not subject to any limitations on his or her ability to act as trustee in the transaction. The investigation will also confirm that the trust does not have a stated term that has expired and that no events have occurred causing the termination of the trust. Forms of Status and Power Opinions The following are forms of the status and power opinions for a New York common law trust used as an investment vehicle [24]: For the reasons discussed above, no opinion is given that the Trust is validity existing. James Gadsden Endnotes [1] See, e. Limited Liability Companies, 61 Bus. The TriBar Opinion Committee is currently preparing a report on closing opinions for limited partnerships. The Maryland State Bar report on closing opinions discusses closing opinions on statutory trusts. Notwithstanding the many advantages of a statutory trust under the DSTA. These sectors have expressed concerns that a trust which is a separate legal entity might be treated differently than a common law trust under various provisions of federal and state law. There is also a growing trend in some transactions to use a federally chartered financial institution, such as a national bank, as the trustee to hold title to the trust assets rather than holding title in the name of the trust. The trend reflects a concern that the trust might be a target for regulators and others who would not otherwise have authority over a federally chartered financial institution engaged in a similar transaction. Americold Realty Trust v. The diversity statute, 28 U. Consistent with its treatment of limited partnerships and other unincorporated associations, the Supreme Court has declined to extend that rule to a trust. For a comprehensive treatment of trusts and trustees under Article 9, see N. The members of a limited liability partnership obtain their shield from personal liability from the registration of the partnership as a limited liability partnership, but the partnership exists independent of that filing. States also regulate the right of institutions charted under federal law or the laws of other states to exercise trust powers in the state. For federally chartered national associations, see 12 U. Opinion preparers may assume, without so stating, that an individual trustee has the requisite capacity to contract and is not subject to a disability, unless they have knowledge to the contrary.

Chapter 5 : LEXISNEXIS - books from this publisher (ISBNs begin with)

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Under Delaware corporate law, fiduciary duties are mandatory. These duties, owed by the managers of a corporation to the shareholders of the firm, in general cannot be waived or modified by contract. Rather than debating whether fiduciary duties should be subject to contractual limitations, [7] distinguished academics and practitioners now debate whether fiduciary duties should even apply as a legal default under unincorporated alternative entity law. In recent years, unincorporated alternative entities, and LLCs in particular, have become increasingly prominent in various aspects of the business world. Sophisticated parties can and will contract to avoid undesirable default rules. And LLCs and LPs with passive investors have contractually created an almost de facto rule eliminating fiduciary duties. Instead, because the parties chose a Delaware LLC and because the Delaware judiciary is skilled in resolving difficult issues of contract interpretation, the opposite conclusion is likely true, that is, parties would prefer Delaware courts to determine their rights and duties in accordance with the terms of the contract and not an unbargained-for default fiduciary principle. Regardless of the default rules that apply to LLCs and LPs, as long as Delaware law affords the maximum freedom of contract to deviate from such rules, [13] sophisticated parties can and will contract for their desired result. By hypothesis, sophisticated parties are aware of the default rules, understand they are not inescapably bound to such rules and will bargain for different rules if the default rules are undesirable. If fiduciary duties apply as the default, sophisticated parties that want to eliminate or modify such duties can and will easily do so. But even if default rules continue to apply fiduciary duties to LLCs and LPs that involve passive investors, such rules will be largely irrelevant. This is because LLCs and LPs with passive investors still retain the statutory freedom to contract out of the default rules, [24] and evidence suggests that almost all such entities actually do. And although my results are limited to the relatively few extant publicly traded Delaware LLCs and LPs, it is not unreasonable to believe that private LLCs and LPs with passive investors eliminate fiduciary duties with similar frequency. Thus, even putting aside the problems of bifurcating default rules for sophisticated and unsophisticated parties that attorney Callison and Dean Vestal have noted, [27] the ultimate default rules in this context prove largely irrelevant. Given the statutory freedom of contract to deviate from default rules, LLCs and LPs with passive investors regularly eliminate fiduciary duties. In this sense, debating whether fiduciary duties should apply as a default in the context of LLCs and LPs with passive investors is like debating whether the fiduciary duty of care should apply as a default in the context of public corporations. The debate is largely academic: And it is this small population that the new debate as to fiduciary defaults is all about. Corporations, however, cannot eliminate the fiduciary duty of loyalty; cannot eliminate the corporate opportunity doctrine altogether; cannot insulate all interested transactions from exacting entire fairness review; cannot eliminate so-called Revlon duties; and cannot protect managerial decisions from judicial scrutiny under the intermediate Unocal standard of review. But, in the absence of a contrary provision in the LLC agreement, the manager of an LLC owes the traditional fiduciary duties. Steele of the Delaware Supreme Court, Dec. Ribstein, Delaware for Small Fry: An Empirical Analysis June 28, p. To help answer this question, it is important to note that sophisticated parties bargain for the obligations and duties provided in an LLC agreement. The choice of the LLC form was an intentional form, chosen by sophisticated parties because that form provides the contracting parties with the maximum ability to customize their relationship. The contract is much easier to draft. Note, it is unlikely that unsophisticated out-of-state mom-and-pop business would reach to Delaware LLC lawâ€”rather than the law of their home stateâ€”to organize a small business. Census Bureau, Delaware QuickFacts , available at http:

Chapter 6 : The History of Delaware's Business Courts: their rise to preeminence

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Acting under a charter sanctioned by the Dutch government, the Dutch East India Company defeated Portuguese forces and established itself in the Moluccan Islands in order to profit from the European demand for spices. Investors in the VOC were issued paper certificates as proof of share ownership, and were able to trade their shares on the original Amsterdam Stock Exchange. The best-known example, established in , was the East India Company of London. Queen Elizabeth I granted it the exclusive right to trade with all countries to the east of the Cape of Good Hope. Labeled by both contemporaries and historians as "the grandest society of merchants in the universe", the English East India Company would come to symbolize the dazzlingly rich potential of the corporation, as well as new methods of business that could be both brutal and exploitative. Subsequent stock offerings demonstrated just how lucrative the Company had become. The rapid inflation of the stock value in the s led to the Bubble Act , which restricted the establishment of companies without a royal charter. A similar chartered company , the South Sea Company , was established in to trade in the Spanish South American colonies, but met with less success. In fact the Spanish remained hostile and let only one ship a year enter. Unaware of the problems, investors in Britain, enticed by extravagant promises of profit from company promoters bought thousands of shares. By , the South Sea Company was so wealthy still having done no real business that it assumed the public debt of the British government. This accelerated the inflation of the share price further, as did the Bubble Act , which possibly with the motive of protecting the South Sea Company from competition prohibited the establishment of any companies without a Royal Charter. The share price rose so rapidly that people began buying shares merely in order to sell them at a higher price, which in turn led to higher share prices. As bankruptcies and recriminations ricocheted through government and high society, the mood against corporations and errant directors was bitter. In the late 18th century, Stewart Kyd , the author of the first treatise on corporate law in English, defined a corporation as: By this point, the Industrial Revolution had gathered pace, pressing for legal change to facilitate business activity. Without cohesive regulation, proverbial operations like the "Anglo-Bengalee Disinterested Loan and Life Assurance Company" were undercapitalised ventures promising no hope of success except for richly paid promoters. As a result, many businesses came to be operated as unincorporated associations with possibly thousands of members. Any consequent litigation had to be carried out in the joint names of all the members and was almost impossibly cumbersome. Though Parliament would sometimes grant a private act to allow an individual to represent the whole in legal proceedings, this was a narrow and necessarily costly expedient, allowed only to established companies. Then, in , William Gladstone became the chairman of a Parliamentary Committee on Joint Stock Companies, which led to the Joint Stock Companies Act , regarded as the first modern piece of company law. For the first time in history, it was possible for ordinary people through a simple registration procedure to incorporate. Limited liability[edit] However, there was still no limited liability and company members could still be held responsible for unlimited losses by the company. This allowed investors to limit their liability in the event of business failure to the amount they invested in the company â€" shareholders were still liable directly to creditors , but just for the unpaid portion of their shares. The principle that shareholders are liable to the corporation had been introduced in the Joint Stock Companies Act The Act allowed limited liability to companies of more than 25 members shareholders. Insurance companies were excluded from the act, though it was standard practice for insurance contracts to exclude action against individual members. Limited liability for insurance companies was allowed by the Companies Act This prompted the English periodical The Economist to write in that "never, perhaps, was a change so vehemently and generally demanded, of which the importance was so much overrated. In the later nineteenth

century, depression took hold, and just as company numbers had boomed, many began to implode and fall into insolvency. Much strong academic, legislative and judicial opinion was opposed to the notion that businessmen could escape accountability for their role in the failing businesses. Further developments[edit] Lindley LJ was the leading expert on partnerships and company law in the Salomon v. The landmark case confirmed the distinct corporate identity of the company. This inspired other countries to introduce corporations of this kind. The last significant development in the history of companies was the decision of the House of Lords in Salomon v. In the United States , forming a corporation usually required an act of legislation until the late 19th century. State governments began to adopt more permissive corporate laws from the early 19th century, although these were all restrictive in design, often with the intention of preventing corporations for gaining too much wealth and power. Countries began enacting anti-trust laws to prevent anti-competitive practices and corporations were granted more legal rights and protections. The 20th century saw a proliferation of laws allowing for the creation of corporations by registration across the world, which helped to drive economic booms in many countries before and after World War I. Another major post World War I shift was toward the development of conglomerates , in which large corporations purchased smaller corporations to expand their industrial base. Deregulation reducing the regulation of corporate activity often accompanied privatization as part of a laissez-faire policy. Ownership and control[edit] A corporation is, at least in theory, owned and controlled by its members. In a joint-stock company the members are known as shareholders and each of their shares in the ownership, control, and profits of the corporation is determined by the portion of shares in the company that they own. Thus a person who owns a quarter of the shares of a joint-stock company owns a quarter of the company, is entitled to a quarter of the profit or at least a quarter of the profit given to shareholders as dividends and has a quarter of the votes capable of being cast at general meetings. Who a member is depends on what kind of corporation is involved. In a worker cooperative , the members are people who work for the cooperative. In a credit union , the members are people who have accounts with the credit union. In some cases, this will be a single individual but more commonly corporations are controlled by a committee or by committees. Broadly speaking, there are two kinds of committee structure. A single committee known as a board of directors is the method favored in most common law countries. Formation[edit] Historically, corporations were created by a charter granted by government. Today, corporations are usually registered with the state, province, or national government and regulated by the laws enacted by that government. The law sometimes requires the corporation to designate its principal address, as well as a registered agent a person or company designated to receive legal service of process. It may also be required to designate an agent or other legal representative of the corporation. If a corporation operates outside its home state, it is often required to register with other governments as a foreign corporation , and is almost always subject to laws of its host state pertaining to employment , crimes , contracts , civil actions , and the like. Historically, some corporations were named after their membership: Nowadays, corporations in most jurisdictions have a distinct name that does not need to make reference to their membership. In Canada, this possibility is taken to its logical extreme: In most countries, corporate names include a term or an abbreviation that denotes the corporate status of the entity for example, "Incorporated" or "Inc. These terms vary by jurisdiction and language. In some jurisdictions, they are mandatory, and in others they are not. Some jurisdictions do not allow the use of the word "company" alone to denote corporate status, since the word " company " may refer to a partnership or some other form of collective ownership in the United States it can be used by a sole proprietorship but this is not generally the case elsewhere. For example, a corporation can own property, and can sue or be sued. Corporations can exercise human rights against real individuals and the state, [41] [42] and they can themselves be responsible for human rights violations. Insolvency may result in a form of corporate failure, when creditors force the liquidation and dissolution of the corporation under court order, [44] but it most often results in a restructuring of corporate holdings. Corporations can even be convicted of criminal offenses, such as fraud and manslaughter. However, corporations are not considered living entities in the way that humans are.

Chapter 7 : Bills and Laws Oregon Revised Statutes

Laws Governing DELAWARE Annotated Statutes and Rules BUSINESS ENTITIES Amounts Payable by Business Entities Under Delaware Law General Corporation Law.

The first section of this subchapter stated the following: The General Assembly has conferred on boards, commissions, departments and other agencies of the Executive Branch of State Government the authority to adopt regulations. The General Assembly has found that this delegation of authority has resulted in regulations being promulgated without effective review or oversight and conformity to legislative intent. The General Assembly finds that they must provide a procedure of oversight and review of regulations pursuant to this delegation of legislative power to curtail excessive regulations and to establish a system of accountability. It is the intent of this subchapter to establish an effective method of ongoing review, accountability and oversight of regulations. It is further the intent of this subchapter to provide review by requiring a comment period following the proposal of regulations and requiring the agency to review any comments submitted. A full text copy is available here: One provision requires the publication, on a monthly basis, any regulatory changes occurring in a particular month in a Register of Regulations. The Delaware Regulations website contains, among other items, the monthly Delaware Register of Regulations , and the Delaware Administrative Code which is the official version of the regulations for the State of Delaware. The monthly Register is a compilation of all regulatory changes occurring in a given month. The Administrative Code is a topically oriented compilation of all regulations in effect. Any Delaware Executive branch agency, boards and commissions and other quasi-government entities that wish to propose to formulate, adopt, amend or repeal a regulation must abide by the provisions of the Delaware Administrative Procedures Act APA. The purpose of the APA is to: The Office certifies the authenticated documents published on this website and assures the authenticity of the author, source, and origin of the authenticated documents when such document bears the following emblem: There are several other provisions of Delaware law that impact the regulatory process. The first is the Regulatory Flexibility Act, which was established on June 10, The declared policy of this act is: A full text copy of the chapter is available here: Section of Title 29 of the statutory code provides: Consideration of agency rules during legislative interim. A standing committee may withdraw from the joint committee at any time. Each such joint committee shall be co-chaired by a House standing committee chairperson and a Senate standing committee chairperson. Each committee report shall be forwarded to the Sunset Committee. Agency "rules review" a The Sunset Committee may conduct a specialized or focused review of 1 or more rules or regulations of an agency. This review is known as a "rules review," and does not include the same schedules and procedures as an agency review. If the Committee decides to conduct a rules review of an agency, the name of the agency must be included among those agencies scheduled for the next immediate review. A rules review may begin immediately if, in the determination of the Committee, an emergency exists. The Committee must also permit members of the public and any state agency to send written testimony and other materials to the Committee. The Committee shall, from the information-gathering hearing and submitted materials, compile a list of concerns which must include those issues, concerns, defects, or problems which the Committee feels merit closer study and consideration. If an agreement or possible solutions to the remaining items set forth in the list of concerns cannot be obtained, the Committee shall issue its recommendations in the next final report, and shall cause legislation to be drafted that will, in the determination of the Committee, best accomplish its recommendations.

Chapter 8 : Robert J. Krapf - Richards, Layton & Finger - Delaware Law Firm

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Chapter 9 : Corporation - Wikipedia

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