

ISSUE CHECKLIST – BUSINESS ASSOCIATIONS

CORPORATIONS

1. Formation
 - a. Pre-incorporation transactions
 - i. Promoters and their liability
 - ii. Corporation's liability
 - b. Corporation formation
 - i. De jure corporation – procedure
 - ii. Ultra vires acts
 - iii. Failure to meet requirements
 1. De facto corporation
 2. Corporation by estoppel
2. Securities (stock)
 - a. Valuation of stock
 - i. Par value stock
 - ii. Sale of stock below par value
 - b. Federal causes of action for improper sale of securities
 - i. Rule 10(b)(5) – fraudulent scheme
 - ii. Rule 16(b) – recovery of profits
 - iii. Common law insider trading
 - iv. Common law misrepresentation
 - v. Misappropriation theory
3. Shareholders
 - a. Meetings
 - b. Voting
 - i. Right to elect and remove directors
 - ii. Fundamental corporate change (merger/sale of corporation)
 1. When shareholder disagrees
 - c. Proxy voting
 - d. Shareholder agreements
 - e. Cumulative voting
 - f. Rights against corporation:
 - i. Right to distribution (dividends)
 - ii. Right to inspection
 - iii. Shareholder derivative action
 - iv. Direct action by shareholder
 - g. Liability of shareholders: piercing the corporate veil
 - h. Controlling shareholders: shareholder agreement to control voting
 - i. Fiduciary duties
 - ii. Liability – sale of interest
 1. Failure to make reasonable investigation
 2. Disguised sale of corporate assets
 3. Sale of a board position
 4. Sale of interest at a premium
 - iii. Oppression of other shareholders
 - i. Shareholders as managers
 - i. Pooling agreements

4. Directors
 - a. Selection, removal and voting on the board of directors
 - b. Fiduciary duties
 - i. Duty of care
 1. Business judgement rule
 - ii. Duty of loyalty
 1. Self-dealing
 - a. Safe harbor rules
 - b. Remedies
 2. Competing ventures
 3. Usurping corporate opportunity
 - c. Indemnification
5. Officers
 - a. Authority (agency)
 - i. Express actual authority
 - ii. Implied actual authority
 - iii. Apparent authority
 - b. Indemnification
6. Dissolution and winding up
 - a. Dissolution – distribution of corporate assets

PARTNERSHIPS

1. Formation
 - a. General partnership
 - b. Limited partnership
 - i. Formalities
 - c. Registered Limited Liability Partnership
 - i. Formalities
 - d. Limited liability company
 - i. Formalities
2. Liabilities to third parties
 - a. Partners as agents – express actual, implied actual, apparent authority
 - b. Liability for partner's tortious acts
 - c. Partnership liability
 - d. Personal liability of partners
 - i. Incoming partners
 - ii. Dissociating/withdrawing partners
 - iii. Liability by estoppel
 - e. Effect of judgement
3. Duties and rights of partners
 - a. Duty of loyalty
 - i. Self-dealing
 - ii. Usurp corporate opportunities
 - iii. Make secret profit
 - iv. Remedies
 - b. Duty of care
 - c. Distribution of profits and losses
 - d. Management rights
 - e. Salary
4. Dissolution/winding up of a partnership
 - a. Dissolution
 - i. Partnership at will with no agreement
 - ii. Partnership at will with agreement
 - b. Winding up
 - i. Compensations
 - ii. Partner's liabilities
 - iii. Distribution of assets

AGENCY

1. Creation of agency relationship
2. Liability of principal for torts of agent (respondeat superior)
 - a. Scope of employment – frolic, detour
 - b. Subagents
 - c. Borrowed agents
 - d. Independent contractors
 - e. Intentional torts of agent
3. Liability of principal for contracts entered into by agent
 - a. Express actual authority
 - i. Revocation
 - b. Implied actual authority
 - c. Apparent authority
 - d. Ratification
4. Duties agents owe to principal
 - a. Duty of reasonable care
 - b. Duty to obey reasonable instructions
 - c. Duty of loyalty
 - i. Self-dealing
 - d. Usurping corporate opportunity
 - e. Remedies
5. Duties principal owes to agent
 - a. Indemnification