

**BUSINESS ORGANIZATIONS (626-1001) – Fall 2016**  
TuTh 3:05 – 4:30 p.m. (BSL 112)

**SYLLABUS**

**Office Hours: Tuesday and Thursday, 1:45 - 2:45 p.m. or by appointment or drop-in**

**Course Materials**

D. GORDON SMITH & CYNTHIA WILLIAMS, *CASES, PROBLEMS, AND CASE STUDIES* (3rd ed. 2012) (“Smith & Williams”)

RESTATEMENT (THIRD) OF AGENCY (on Westlaw) (“Rest. 3d”)

Uniform Acts (online: <http://www.uniformlaws.org/Acts.aspx>):

Limited Liability Company Act (“ULLCA”) (2006) (Last Amended 2013)

Partnership Act (“UPA”) (1997) (Last Amended 2013)

NEVADA REVISED STATUTES, TITLE 7 BUSINESS ASSOCIATIONS; SECURITIES;  
COMMODITIES (online: <http://www.leg.state.nv.us/nrs/>) (“NRS”)

Chapter 78 Private Corporations

Chapter 86 Limited Liability Companies

Chapter 87 Partnerships

Supplementary materials on Westlaw via the:

Course TWEN page (password: BusOrgsF2016) (“TWEN”) *Optional*:

Study aids are available on Westlaw Academic.

**Course Learning Outcomes**

Students who successfully complete this course will - to varying degrees - be able to demonstrate skills, knowledge, and values in the following areas: knowledge of the laws of agency, partnership, limited liability companies and corporations, application of agency, partnership, limited liability company, and corporations law to business situations, analyzing legal issues related to specific problems arising in business organizations, evaluation of specific situations in light of policies affecting business organizations, and understanding lawyers professional and ethical responsibilities in the business context.

## **Course Description**

This course provides an introduction to law governing business associations. The course focuses on issues related to agency relationships, which are fundamental to all business associations, and several forms for conducting business, specifically partnerships, limited liability companies, and corporations. Issues examined include common law versus statutory regulation, federal versus state regulation, purposes of corporate law, shareholder and stakeholder interests, limited liability, and special issues in closely-held corporations. An emphasis is placed on the analysis of fiduciary duties.

## **Attendance Policy**

Attendance is required and attendance will be taken every class period, either by roll call, circulation of a sign-in sheet or an in-class assignment. Students should write legibly on the sign-in sheet. A student should sign only his or her own name to the sign-in sheet. Anyone missing more than 20 percent of the class periods (six (6) or more classes) will fail the course. Unauthorized absences will be considered in calculating the student's class participation score, which is a component of the final grade. If you are absent for what you believe is an appropriate excuse (e.g., religious holidays or illness), please notify me in writing, preferably via email and I will consider the absence and treat it accordingly for purposes of calculating your class participation score. If your absence is excused and you request permission from me in advance, you may arrange with a classmate to audiotape the class. Absences due to job interviews, work, or other pursuits will generally not be excused.

## **Grading Policy**

For each student, a raw score will be calculated based on the final examination (80 percent of the raw score) and class participation (20 percent of the raw score). Students will be given an anonymous ID number for taking the final exam. After exams are graded (on a zero-to-100 raw score, names will be matched with the exam scores prior to addition of the class participation grades (on a zero-to-25 raw score) to calculate the overall raw score for each student. Final grades will be determined by applying the School of Law curve to the raw scores of the class.

Class participation grades will be determined by class attendance, preparation, contribution to class discussion, and successful completion of any assigned class exercises. Although any assigned class exercise will not in itself be a scored component of your class participation grade, your performance in these activities will be evaluated and considered in calculating your class participation grade. Students who do consistently excellent work on the exercises may have class participation scores increased while students who do subpar work on the exercises will receive lower class participation grades.

The final examination will be a three-hour *closed-book* examination involving an essay question based on a primary fact pattern, a question requiring the application of fundamental layering skills in a realistic situation, a short answer question based on a small fact pattern, and a set of multiple choice questions. Copies of exams from past courses I have taught are on file in the Law Library. Please be advised that past examinations reflect the substantive emphasis of the course in that year and some past examinations were open book or take home examinations. The examination for this course will be closed book.

### **Seating Chart**

Please take your assigned seat as per the seating chart posted on TWEN. Please continue to use this seat for the remainder of the semester and use the name placards distributed on the first day of class. Persons with any special seating requests should contact me before the initial class or see me after the initial class meeting.

### **Honor Code**

Students are expected to uphold the Academic Honor Code of the William S. Boyd School of Law. Violations of the Honor Code may be prosecuted and may lead to sanctions, including expulsion. Irrespective of the outcome of any Honor Code proceedings, I reserve the right to consider ethically questionable behavior in calculating class participation scores as a component to the final grade. In addition, students are advised that a student's law school record may be subject to review by the State Bar of Nevada or other bar examiners and may affect a student's subsequent application for admission to the bar. Of particular concern: students should do their own work and should avoid plagiarism or the use of unauthorized materials. Misrepresentation of any sort is particularly subject to condemnation and sanction.

### **Class Conduct**

All students will be expected to observe a modicum of decorum, civility and personal hygiene (i.e., at least minimum compliance with state and federal health laws) while in class. This means, at a minimum:

- Be seated in your assigned seat on time. I am prepared to be reasonable. Sometimes late arrival is unavoidable. Within reason, I would rather have you come late rather than skip class. (You should feel that way, too.). However, chronic tardiness will adversely affect your class participation score. Late arrivals in excess of 10 minutes will be counted as an absence unless there are compelling circumstances.
- Once class begins, I expect students to remain seated (unless asked to move as part of a class exercise). Students with any special medical needs should inform me. Otherwise, I

will assume that absent unusual circumstances, students are capable of sitting still and deferring bathroom breaks, etc. until the completion of class.

- No eating in class (except for judicious and discreet use of cough drops or lozenges as necessary); beverages are permitted but should be in closed containers. Students are responsible for keeping their respective seating areas neat and clean.
- No hats, caps or other headgear may be worn in class. I do not expect to be required to remind students of this requirement.
- No use of any electronic devices other than laptop computers or tablets for note taking will be permitted in class. This includes phones, Palm Pilots, Blackberrys, Game Boys, etc. No emailing, surfing on the internet, using Facebook or engaging in other noncourse-related activities online during class. Any student violating this rule will be counted as absent on that class day and will be warned. If there is a second violation, I will ask the Registrar to drop the student from the course.
- No side conversations during class. If you have a question about the reading, class discussion, or other aspects of the course, ask me. If the question is too idiosyncratically individual to discuss before the entire class, we can address it after class, during office hours, or by phone or email. If you are bored in class, I apologize -- but this does not permit you to distract others or give you permission to stop trying to focus on the course material and class discussion. Remember, your boredom may not be entirely my fault. • No snide commentary or disparaging remarks about the comments of other students. I expect all students to show civility toward one another and respect for the views of one another -- but not to be shy about expressing their own views. Disagreement and discussion is encouraged but should be conducted in a civil and professional manner. In addition to doing this because you want to at least act like a good person, your own selfinterest should compel civility. Remember, ten years from now, the fellow student you are tempted to attack in class may be a judge presiding over your biggest case or a legislator voting on legislation vital to one of your clients.

I reserve the right to make specific additions or modifications to this informal code of class conduct should it become necessary. Violation of class conduct norms will result in reductions in the student's class participation score. In extreme cases, disciplinary action will be pursued.

### **UNLV-required Disclosures:**

**Academic Misconduct**—Acceptance to the William S. Boyd School of Law (the Law School) represents much more than admission to the study of an intellectual discipline. The privilege of admission comes with a unique set of responsibilities, not only to fellow students, but to the Law School, to the legal profession, and to the public. The legal profession demands the highest degree of trustworthiness, honesty and public integrity. As

future members of that profession, students of the Law School are bound to observe principles that reflect the same high standards that govern the practice of law. This Student Honor Code (the Honor Code) sets forth conduct that is prohibited, and it establishes minimum standards for student professional responsibility. The standards of conduct in the Honor Code are in addition to the standards set forth in the UNLV Student Conduct Code and the Law School Student Policy Handbook. Violations of the Honor Code will be subject to the procedures and sanctions of the Honor Code, as set forth below. <https://portal.law.unlv.edu/files/portal/Student%20Handbook.12-13.Honor%20Code.pdf>

Academic integrity is a legitimate concern for every member of the campus community; all share in upholding the fundamental values of honesty, trust, respect, fairness, responsibility and professionalism. By choosing to join the UNLV community, students accept the expectations of the Student Academic Misconduct Policy and are encouraged when faced with choices to always take the ethical path. Students enrolling in UNLV assume the obligation to conduct themselves in a manner compatible with UNLV's function as an educational institution.

An example of academic misconduct is plagiarism. Plagiarism is using the words or ideas of another, from the Internet or any source, without proper citation of the sources. See the *Student Academic Misconduct Policy* (approved December 9, 2005) located at: <https://www.unlv.edu/studentconduct/student-conduct>.

**Academic Success Program/CASE**—The Boyd Academic Success Program assists students in removing barriers to academic success. This includes reviewing past exams, giving sample exams or hypotheticals, evaluating study habits, and assisting with time and stress management issues.

The Academic Success Program also provides a series of pre-bar exam lectures to assist in preparing to take the bar, as well as opportunities for thoughtful feedback and individualized assistance in bar preparation through the bar prep period. More information can be found here: <https://law.unlv.edu/academics/asp/current-students>

**Copyright**—The University requires all members of the University Community to familiarize themselves with and to follow copyright and fair use requirements. You are individually and solely responsible for violations of copyright and fair use laws. The University will neither protect nor defend you nor assume any responsibility for employee or student violations of fair use laws. Violations of copyright laws could subject you to federal and state civil penalties and criminal liability, as well as disciplinary action under University policies. Additional information can be found at: <http://www.unlv.edu/provost/copyright>.

**Disability Resource Center (DRC)**—The UNLV Disability Resource Center (SSC-A 143, <http://drc.unlv.edu/>, 702-895-0866) provides resources for students with disabilities. If you feel that you have a disability, please make an appointment with a Disabilities

Specialist at the DRC to discuss what options may be available to you. If you are registered with the UNLV Disability Resource Center, bring your Academic Accommodation Plan from the DRC to the law school Registrar's office to develop strategies for implementing the accommodations to meet both your needs and the requirements of the course.

**Law Library**—The Wiener-Rogers Law Library provides resources to support students' access to information. Reference librarians are available for consultation in person or by phone or email. For library services and resources, see <https://law.unlv.edu/law-library> and <https://law.unlv.edu/academics/law-library/student>.

**Religious Holidays Policy**—Any student missing class quizzes, examinations, or any other class or lab work because of observance of religious holidays shall be given an opportunity during that semester to make up missed work. The make-up will apply to the religious holiday absence only. It shall be the responsibility of the student to notify the instructor **within the first 14 calendar days of the course for fall and spring courses (excepting intersession courses), or within the first 7 calendar days of the course for summer and modular courses**, of his or her intention to participate in religious holidays which do not fall on state holidays or periods of class recess. For additional information, please visit: <http://catalog.unlv.edu/content.php?catoid=6&navoid=531>.

**Rebelmail**—Rebelmail is UNLV's official email system for students. It is one of the primary ways students receive official university communication such as information about deadlines, major campus events, and announcements. All UNLV students receive a Rebelmail account after they have been admitted to the university. Students' email prefixes are listed on class rosters. The suffix is always [@unlv.nevada.edu](mailto:@unlv.nevada.edu). The law school has two general email lists for students: INFO and ADMIN-MSGS. Some faculty will use TWEN or personal gmail groups to send specific class messages.

## CLASS MEETING TIMES

We will be holding class on the following indicated dates.

Tuesday, August 30	–	Regular Class Meeting – First Class
Thursday, September 1	–	Regular Class Meeting
Tuesday, September 6	–	Regular Class Meeting
Thursday, September 8	–	Regular Class Meeting
Tuesday, September 13	–	Regular Class Meeting
Thursday, September 15	–	Regular Class Meeting
Tuesday, September 20	–	Regular Class Meeting
Thursday, September 22	–	Regular Class Meeting
Tuesday, September 27	–	Regular Class Meeting
Thursday, September 29	–	Regular Class Meeting
Tuesday, October 4	–	Regular Class Meeting
Thursday, October 6	–	Regular Class Meeting
Tuesday, October 11	–	Regular Class Meeting
Thursday, October 13	–	Regular Class Meeting
Tuesday, October 18	–	Regular Class Meeting
Thursday, October 20	–	Regular Class Meeting
Tuesday, October 25	–	Regular Class Meeting
Thursday, October 27	–	Regular Class Meeting
Tuesday, November 1	–	Regular Class Meeting
Thursday, November 3	–	Regular Class Meeting
Tuesday, November 8	–	Regular Class Meeting
Thursday, November 10	–	Regular Class Meeting
Tuesday, November 15	–	Regular Class Meeting
Thursday, November 17	–	Regular Class Meeting
Friday, November 18	–	Regular Class Meeting
Tuesday, November 22	–	Regular Class Meeting
Tuesday, November 29	–	Regular Class Meeting
Monday, December 5	–	Review Session
Thursday, December 8	–	Final Exam

## CLASS ASSIGNMENTS

### I. Historical Background of the Law of Business Organizations

### II. Main forms of Business Organizations

#### Partnerships - Definition, Formation, Determining Existence or Non-Existence

Smith & Williams, *Holmes v. Lerner*, p. 33  
UPA §202, ULPA §§110 and 111, NRS §87.4322

#### Corporations - Incorporation, Evidence of Incorporation, Purporting to Do Business as a Corporation without Incorporation

Smith & Williams, *Grant v. Mitchell*, p. 179  
NRS §§78.030, 78.035, 78.037, 78.039, 78.047, 78.050, 78.055

#### Limited Liability Companies (LLCs) - Formation, Governing Law

Smith & Williams, *Stone v. Jetmar Properties, LLC*, p. 98  
ULLCA §§201, 203, 205, 206, 207, 208, 209

***Student Presentation(s):*** Group presentation on how to set up a specific type of business organization. [assignment and materials materials will be posted on TWEN]

### III. Governing Documents, Ownership, Management

#### Partnership Agreement (Partnerships)

UPA §§105, 106, 107, 119  
NRS §§87.180, 87.320(1)(d), 87.380, 87.4306, 87.4316, 87.433, 87.4333(10),  
87.4335(3), 87.4336(4) and (5), 87.4337, 87.4341(2)(c)(6) Smith  
& Williams, *Vecchitto v. Vecchitto*, p. 43

#### Bylaws and Articles of Incorporation (Corporations)

NRS §§78.115, 78.120, 78.125, 78.130, 78.310, 78.315, 78.320, 78.325, 78.330, 78.345,  
78.350, 78.370, 78.375  
Smith & Williams, *Adlerstein v. Wertheimer*, p. 204

#### Operating Agreement and Articles of Organization (LLCs)

ULLCA §§105, 106, 107, 111

NRS §§86.286, 86.291, 86.293, 86.296, 86.301, 86.311, 86.326, 86.331, 86.335, 86.341  
Smith & Williams, *Gottsacker v. Monnier*, p. 104  
Smith & Williams, *Taghipour v. Jerez*, p. 111

#### **IV. Dissolution**

Smith & Williams, pp. 82-83, 149

***Student Presentation(s):*** Group presentation on dissolution or winding up of a specific type of business organization. [assignment and materials materials will be posted on TWEN]

#### **V. Agency Relationships**

##### Definition and Formation of Agency Relationship

Rest. 3d §§1.01, 1.02, 1.03, 1.04

##### Actual Authority

Rest. 3d §§2.01, 2.02, 3.01, 3.02  
Smith & Williams, *Castillo v. Case Farms of Ohio, Inc.*, p. 14

##### Apparent Authority

Rest. 3d §§2.03, 3.03  
Smith & Williams, *Bethany Pharmacal Co. v. QVC, Inc.*, p. 21

##### Registered Agents

NRS §§87.480, 87.500, 87.520(4) and (5), 87.534 - Partnerships  
NRS §§78.090, 78.097, 78.105, 78.107 - Corporations  
NRS §§86.231, 86.241, 86.243, 86.246, 86.251, 86.261 - LLCs

##### Partners - Partnerships

UPA §§301, 303, 305, 306, 307, 308  
NRS §§87.090, 87.100, 87.110, 87.120, 87.130, 87.140, 87.150, 87.160, 87.170

##### Members and Managers - LLCs

NRS §§86.281(9), 86.301(3) and (4), 86.311(3) and (4) ULLCA  
§§301, 302, 303

Directors, Officers and Managers - Corporations

NRS §§78.135, 78.138

**VI. Fiduciary Duties**

Principal's Duties to Agent

Rest. 3d §§8.13, 8.14, 8.15

Agent's Duties to Principal

Rest. 3d §§8.01, 8.02, 8.03, 8.04, 8.05, 8.06, 8.07, 8.08, 8.09, 8.10, 8.11, 8.12  
Smith & Williams, *Food Lion, Inc. v. Capital Cities/ABC, Inc.*, p. 14

Partners' Fiduciary Duties - Partnerships

Smith & Williams, *Meinhard v. Salmon*, p. 48  
UPA §§401, 409  
NRS §§87.210, 87.4336

Members' and Managers' Fiduciary Duties - LLCs

Smith & Williams, *Auriga Capital Corporation v. Gatz Properties LLC*, p. 127  
ULLCA §§105, 409

Directors,' Officers' and Managers' Fiduciary Duties - Corporations

Smith & Williams, *Smith v. Van Gorkam*, p. 48  
Smith & Williams, *Stone v. Ritter*, p. 422  
NRS §§78.138(7), 78.139, 78.140, 78.242(1)

I reserve the right to make specific modifications to the syllabus, class meeting dates or assigned reading as needed.