

UNINCORPORATED BUSINESS ENTITIES

LEXISNEXIS LAW SCHOOL ADVISORY BOARD

Lenni B. Benson

*Professor of Law &
Associate Dean for Professional Development*
New York Law School

Raj Bhala

Rice Distinguished Professor
University of Kansas, School of Law

Charles P. Craver

Freda H. Alverson Professor of Law
The George Washington University Law School

Richard D. Freer

Robert Howell Hall Professor of Law
Emory University School of Law

Craig Joyce

*Andrews Kurth Professor of Law &
Co-Director, Institute for Intellectual Property and Information Law*
University of Houston Law Center

Ellen S. Podgor

*Professor of Law &
Associate Dean of Faculty Development and Electronic Education*
Stetson University College of Law

Paul F. Rothstein

Professor of Law
Georgetown University Law Center

Robin Wellford Slocum

*Professor of Law & Director,
Legal Research and Writing Program*
Chapman University School of Law

David I. C. Thomson

LP Professor & Director, Lawyering Process Program
University of Denver, Sturm College of Law

UNINCORPORATED BUSINESS ENTITIES

Fourth Edition

LARRY E. RIBSTEIN

*Mildred Van Voorhis Chair in Law
University of Illinois College of Law*

JEFFREY M. LIPSHAW

*Associate Professor of Law
Suffolk University Law School*

Library of Congress Cataloging-in-Publication Data

Ribstein, Larry E.
Unincorporated business entities / Larry E. Ribstein, Jeffrey M. Lipshaw. -- 4th ed.
p. cm.
Includes index.
ISBN 978-1-4224-2960-0 (hardbound)
1. Business enterprises--Law and legislation--United States. I. Lipshaw, Jeffrey M. II. Title.
KF1366.R52 2009
346.73'065--dc22

2009014512

This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional services. If legal advice or other expert assistance is required, the services of a competent professional should be sought.

LexisNexis and the Knowledge Burst logo are registered trademarks and Michie is a trademark of Reed Elsevier Properties Inc., used under license. Matthew Bender and the Matthew Bender Flame Design are registered trademarks of Matthew Bender Properties Inc.

Copyright © 2009 Matthew Bender & Company, Inc., a member of the LexisNexis Group.
All Rights Reserved.

No copyright is claimed in the text of statutes, regulations, and excerpts from court opinions quoted within this work. Permission to copy material exceeding fair use, 17 U.S.C. § 107, may be licensed for a fee of 25¢ per page per copy from the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, telephone (978) 750-8400.

NOTE TO USERS

To ensure that you are using the latest materials available in this area, please be sure to periodically check the LexisNexis Law School web site for downloadable updates and supplements at www.lexisnexis.com/lawschool.

Editorial Offices
744 Broad Street, Newark, NJ 07102 (973) 820-2000
201 Mission St., San Francisco, CA 94105-1831 (415) 908-3200
www.lexisnexis.com

MATTHEW  BENDER

DEDICATION

L.E.R.: To Ann, Sarah and Susannah.

J.M.L.: To Alene, Arielle, Matthew, James, and Simon.

PREFACE FOR THE FOURTH EDITION

Unincorporated firms, and particularly the limited liability company, are becoming the predominant form of business organization, at least as measured by the number of companies being formed each year. This Fourth Edition of *Unincorporated Business Entities* addresses this trend. By 2009 it is clearly time to stop thinking of this material as a quickie add-on to what is essentially a “corporations” course. Unincorporated business associations are a distinct and increasingly important area of modern business law practice. Indeed, many lawyers are more likely to find themselves working with unincorporated business entities than with corporations. Moreover, what most law students learn in the basic business associations course about standardized publicly held corporations, even with a two or three-week introduction to partnerships and LLCs, is inadequate to help them deal with the vast array of contracting issues that arise in unincorporated firms. This book gives this important area the detailed coverage it deserves.

This edition carries on the goals of its predecessors: (1) to provide the basis for a course that teaches the kind of business law the overwhelming majority of lawyers are likely to practice; (2) to teach issues in current legal doctrine issues and not to be overly concerned with historical and arcane rules; and (3) to teach the law in a business planning context, demonstrating the interaction between default rules and the art of business lawyering.

Although the book’s format remains largely the same as the previous edition, we have particularly emphasized the latter goal. Chapter 1 introduces five stories that carry on in realistic problems distributed throughout the materials on agency, partnership, limited partnerships, LLCs, and LLPs: a fledgling start-up company, two enterprising neighborhood gourmet shop entrepreneurs, young lawyers starting a new law firm, a hedge fund, and two large corporations contemplating a joint venture. The many problems focus on planning and drafting as well as legal doctrine. They also draw on other areas of the law, including tax, bankruptcy, securities, and employment discrimination. The problems highlight the lawyer’s role as counselor in the business planning and dispute resolution process.

The “Chameleon Agreement” in the Appendix provides the basics of a partnership or operating agreement. (It is a chameleon because it refers to the parties as “Memners,” i.e., either partners in a partnership or members in a limited liability company.) The agreement is a skeleton of provisions normally found in a partnership or operating agreement. You should refer to it as a starting point when considering the planning and drafting problems, which are intended to add flesh to the skeleton.

The Appendix also contains the partnership, limited partnership, and limited liability company statutes you will need for purposes of the book. We have tried to reduce the cost burden by relieving you of the obligation to purchase a statutory supplement. This approach also helps ensure that you see these statutes as an important and integral part of the material.

We begin our coverage with an overview of agency in Chapter 2. We focus on the basics of agency law in order to leave enough time in the course to deal with the many modern problems facing lawyers who represent unincorporated businesses, their owners, and others who deal with them. Chapters 3 through 9 deal with general partnerships. We

PREFACE FOR THE FOURTH EDITION

provide extensive coverage of general partnerships not because they are necessarily the predominant mode of unincorporated business association, but because much of the learning from partnership law applies to the other business forms. We are able to propose a Chameleon Agreement because the basic issues of capital contribution, financial rights, management rights, withdrawal, and other matters that arise in partnership surface in almost all unincorporated business associations. Moreover, in the case of limited partnership, at least under the 1985 version of the Uniform Limited Partnership Act, the law still links back to general partnership law.

The alternative forms of unincorporated business associations follow the discussion of partnership. This Fourth Edition features significantly expanded treatment of limited partnerships, limited liability companies and limited liability partnerships in Chapters 11-13 to reflect the burgeoning law and practice regarding these business associations. Instructors will want to save ample time for these chapters, as they now comprise almost half the book. Larry Ribstein's expectation in the Preface to the Third Edition that LLCs would be a dominant business form has largely been borne out, and the expanded coverage gives LLCs their due. As an indication of the extent of the coverage, Chapter 12 on LLCs contains seventeen problems that might face lawyers advising with their business clients, as well as extensive notes on planning and drafting. Limited partnerships also have increased in significance as sophisticated investment vehicles, and LLPs remain important for professional practice. Coverage of these business entities has been updated to reflect the most recent uniform laws — the 2001 Uniform Limited Partnership Act, and the 2006 Revised Uniform Limited Liability Company Act.

It is inadvisable and almost impossible to teach a general business law course, and particularly one with a planning emphasis, without reference to other areas of the law. We discuss enough tax to indicate where some of the tax issues lie, but we leave most of the discussion to our tax colleagues. We also highlight some of the other areas in which unincorporated business association law intersects with other areas of the law, particularly securities and employment discrimination.

This book is suitable for a variety of different course plans, depending on professors' preferences and the other courses in the curriculum. The book is designed for an upper-class three-semester-hour survey course. It can also be used for a two-semester-hour course with selective coverage or for a comprehensive four-semester-hour-course with detailed coverage of the problems. The authors have used the book in both three- and four-semester hour courses.

This is a fast-moving area. We plan to track continuing developments through Professor Ribstein's weblog, www.ideoblog.org (see the Unincorporated Business Entities archive), and to post PowerPoint slides, supplements, updates and other documents on Professor Ribstein's website, www.ribstein.org. In addition to those who helped Professor Ribstein with previous editions of this book, we would like to thank the students who bore with the preparation of this edition at the University of Illinois College of Law, Suffolk University Law School, and New York University School of Law.

Larry Ribstein and Jeff Lipshaw
April 1, 2009

TABLE OF CONTENTS

Chapter 1	Introduction	1
§ 1.01	Why Study Unincorporated Firms?	1
§ 1.02	The Menagerie of Business Associations	2
A.	The Functions of Business Association Statutes	2
B.	Linking Statutory Forms	3
C.	Choice of Form	3
D.	Choice of Law and Uniformity	3
E.	Business Associations as Aggregates and Entities	4
§ 1.03	Tax Considerations	5
§ 1.04	Lawyers' Roles	5
§ 1.05	Outline and Overview	6
§ 1.06	The Role of the Parties' Agreement	6
Chapter 2	Introduction to Agency	9
§ 2.01	Agency and the Firm	10
§ 2.02	Formation of Agency	11
A.	The Definition of Agency	11
1.	Consent	12
2.	Control	12
3.	Action on Behalf of the Principal	12
B.	Distinguishing Agency and Non-Agency Relationships	12
	<i>Gay Jensen Farms Co. v. Cargill, Incorporated</i>	13
	Notes and Questions 2-1	18
	Problem Set 2-1	20
§ 2.03	Management Powers of Agent	21
A.	Apparent and Actual Authority	21
	<i>Essco Geometric v. Harvard Industries</i>	21
	Notes and Questions 2-2	29
	<i>Progress Printing Corporation v. Jane Byrne Political Committee</i>	30
	Notes and Questions 2-3	34
B.	Inherent Authority	35
	<i>Kidd v. Thomas A. Edison, Inc.</i>	35
	Notes and Questions 2-4	37
C.	Undisclosed Principals	39
	<i>Morris Oil Company, Inc. v. Rainbow Oilfield Trucking, Inc.</i>	39
	Notes and Questions 2-5	43
	Problem Set 2-2	44
§ 2.04	Duties of Agent to Principal	45
	Problem Set 2-3	45
§ 2.05	Duties of Principal to Agent	45

TABLE OF CONTENTS

§ 2.06 Termination of Agency 46

§ 2.07 Principal’s Liability for Agent’s Torts 46

 A. Scope of Employment 46

Jackson v. Righter 46

Mains v. II Morrow, Inc. 50

Millan v. Dean Witter Reynolds, Inc. 52

 Notes and Questions 2-6 55

 B. Independent Contractors 57

Anderson v. Marathon Petroleum Company 58

 Notes and Questions 2-7 62

 Problem Set 2-4 63

§ 2.08 The Future of Agency and Sole Proprietorship 63

Progress Printing Corporation v. Jane Byrne Political Committee 63

 Notes and Questions 2-8 65

Chapter 3 Forming the Partnership 67

§ 3.01 Introduction: Application of Partnership Default Rules 67

§ 3.02 Existence of Partnership: Partnership Law 69

[In re Marriage of Hassiepen] 70

 Note 3-1 73

Martin v. Peyton 73

Minute Maid Corp. v. United Foods, Inc. 76

 Notes and Questions 3-2 82

 Problem Set 3-1 89

§ 3.03 Existence of Partnership: Other Law 90

 A. Employment discrimination 91

Clackamas Gastroenterology Associates, P. C. v. Wells 94

 Notes and Questions 3-3 98

 B. Federal Securities Laws 99

 Notes and Questions 3-4 99

Chapter 4 Partner’s Financial Rights 103

§ 4.01 Partners’ Financial Rights in General 103

§ 4.02 Financial Contributions 104

 A. Partnership and Individual Property 104

 B. Compensation for Financial Contributions 105

 Problem Set 4-1 105

§ 4.03 Service Contributions 105

 A. Default Rules and Implied Agreements 106

 B. Alternative Compensation Arrangements 106

 1. Business Considerations 106

 2. Legal Considerations 108

TABLE OF CONTENTS

	<i>Starr v. Fordham</i>	108
	Notes and Questions 4-1	112
	Problem Set 4-2	113
§ 4.04	The Role of Partnership Accounting	113
A.	Using Capital Accounts to Track Partner Equity	113
B.	A Primer on Financial Accounting	114
1.	The Fundamental Equation: Assets = Liabilities + Owners' Equity .	114
2.	A Simple Example of Accounting for Partner Capital Accounts . . .	116
C.	Tax Issues	119
D.	Accounting, Tax, and Contract Interpretation in the Real World	119
	<i>Darr v. D.R.S. Investments</i>	119
	Notes and Questions 4-2	124
	Problem 4-3	125
	<i>Kessler v. Antinora</i>	125
	Notes and Questions 4-3	128
	Problem Set 4-4	130
Chapter 5	Management and Control	131
§ 5.01	Management Rights Among the Partners	131
§ 5.02	Partners' Authority to Bind the Partnership	133
	<i>Patel v. Patel</i>	133
	Notes and Questions 5-1	135
§ 5.03	Partners' Wrongful Acts	137
	Notes and Questions 5-2	138
	Problem Set 5-1	140
§ 5.04	Management and Control Agreements	141
A.	Allocating Management and Voting Rights	141
B.	Variations on Partners' Veto Power	142
	<i>Bailey v. Fish & Neave</i>	144
	Notes and Questions 5-3	147
	Problem 5-2	147
C.	Varying Partners' Authority to Bind the Firm	147
	Problem Set 5-3	148
Chapter 6	Partners' Vicarious Liability	151
§ 6.01	Partners' Liability for Partnership Debts	151
	<i>Thompson v. Wayne Smith Construction Company, Inc.</i>	152
	<i>Gildon v. Simon Property Group, Inc.</i>	156
	Notes and Questions 6-1	160
§ 6.02	Creditors' Contracts with Partners	161
	<i>Regional Federal Savings Bank v. Margolis</i>	161

TABLE OF CONTENTS

Commons West Office Condos, Ltd. v. Resolution Trust Corporation . . . 164

Notes and Questions 6-2 166

§ 6.03 Indemnification and Contribution 166

 A. Indemnification 166

 B. Contribution 167

 C. Drafting the Partnership Agreement 168

 Problem 6-1 168

Chapter 7 Partners’ Property Rights 171

§ 7.01 Description of Partners’ Property Rights 171

 A. Partners’ Interest in Specific Partnership Property 171

 B. Partners’ Interest in the partnership 172

 C. Partners’ Interest in Management 172

§ 7.02 Transfer of Partnership Interests 172

Sunshine Cellular v. Vanguard Cellular Systems, Inc. 172

 Notes and Questions 7-1 176

 Problem Set 7-1 177

§ 7.03 Rights of Partners’ Creditors 178

Hellman v. Anderson 178

 Notes and Questions 7-2 183

 Problem Set 7-2 184

§ 7.04 Rights of Divorced Spouse 185

 Problem Set 7-3 186

Chapter 8 Fiduciary Duties and Remedies 187

§ 8.01 The Nature of Partners’ Fiduciary Duties 187

Meinhard v. Salmon 188

 Notes and Questions 8-1 194

 Problem 8-1 197

§ 8.02 Disclosure 197

Walter v. Holiday Inns, Inc. 197

Appletree Square I Limited Partnership v. Investmark, Inc. 204

 Notes and Questions 8-2 207

 Problem 8-2 208

§ 8.03 Duty of Loyalty 209

Labovitz v. Dolan 209

 Notes and Questions 8-3 215

 Problem 8-3 217

§ 8.04 Duty of Care 218

§ 8.05 Good Faith 218

 Problem 8-4 220

§ 8.06 Waiver 220

TABLE OF CONTENTS

	<i>Labovitz v. Dolan</i>	220
	<i>Exxon Corporation v. Burglin</i>	220
	Notes and Questions 8-4	226
	Problem Set 8-5	233
§ 8.07	Partners' Remedies: Accounting Actions	234
	<i>Sertich v. Moorman</i>	235
	Notes and Questions 8-5	239
	Problem 8-6	240
Chapter 9	Dissociation and Dissolution	241
§ 9.01	Introduction	242
A.	Upa	242
B.	Rupa	243
C.	Policy Considerations	243
D.	Overview of Chapter	244
§ 9.02	Dissolution and Dissociation Causes	245
A.	Dissolution at Will: Term and At-Will Partnerships	245
	<i>Page v. Page</i>	245
	Notes and Questions 9-1	248
B.	Partner Death	250
C.	Bankruptcy	250
D.	Judicial Dissolution	251
§ 9.03	Winding Up and Liquidation	252
§ 9.04	Continuation and Buyout of Dissociating Partner	253
A.	Valuation	254
1.	The Minority Discount	254
2.	Wrongful Dissolution	255
3.	Partnership Liabilities	255
4.	Goodwill	255
	<i>Spayd v. Turner, Granzow & Hollenkamp</i>	256
	Notes and Questions 9-2	259
	Problem 9-1	261
B.	The Long Goodbye: The Rights of Partners Who are Being Bought Out	261
C.	Work-in-Process in Professional Firms	263
	Problem 9-2	263
D.	Tax Consequences of Withdrawal and Dissolution	264
§ 9.05	Liabilities of Dissolved and Continuing Firms	264
A.	Former Partners' Liability for Pre-Dissolution Debts	264
B.	Former Partnership's Liability for Post-Dissolution Debts	265
C.	New Partners' and Partnership's Liability for Pre-Dissolution Debts ..	266
1.	New partners	266
2.	Successor Partnerships	267

TABLE OF CONTENTS

3. Partnership Merger 268
 Problem 9-3 269

§ 9.06 Buyout and Continuation Agreements 269

A. General Considerations 270
Starr v. Fordham 270
 Notes and Questions 9-3 271
 Problem 9-4 274

B. Expulsion or Forced Buyout 274
Chandler Medical Building Partners v. Chandler Dental Group 275
Cadwalader, Wickersham & Taft v. Beasley 278
 Notes and Questions 9-4 282
 Problem 9-5 284

C. Post-Dissolution Work-in-Process and Competition 286
Meehan v. Shaughnessy 286
 Notes and Questions 9-5 296
 Problem Set 9-6 297

D. Withdrawal Compensation and Ethical Rules 298
Howard v. Babcock 298
 Notes and Questions 9-6 306
 Problem 9-7 308

Chapter 10 The Search for the Incorporated Partnership 309

§ 10.01 Introduction 309

§ 10.02 Corporate Governance and the Closely Held Firm 311

A. Corporate Default Rules 311

1. Management 311

2. Shareholder Voting 311

3. Transferability 311

4. Dissociation and Dissolution 312

B. Waiver of Corporate Defaults 312

C. Filling the Gaps 313

§ 10.03 Double Taxation and the Corporation 314

§ 10.04 The Evolution of Unincorporated Limited Liability Firms 315

§ 10.05 Recurring Themes of Unincorporated Limited Liability Firms 317

§ 10.06 Choice of Form 318
 Problem 10-1 318

§ 10.07 New Frontiers in Limited Liability 318

A. New Forms 318

B. Limited Liability without Business Associations 318

C. Limited Liability as a Default Rule 319

TABLE OF CONTENTS

Chapter 11	The Limited Partnership	321
§ 11.01	Introduction	322
A.	Background and History	322
B.	Overview	324
C.	Linkage with General Partnership Law	325
§ 11.02	Formation: Formalities and Consequences of Non-Compliance	326
§ 11.03	Partners' Financial Rights	326
A.	Contributions	326
B.	Sharing of Profits, Losses, or Distributions	327
C.	Creditors	327
1.	Liability for Contributions	328
2.	Liability for distributions	328
	<i>Henkels & McCoy, Inc. v. Adochio</i>	329
	Questions 11-1	339
	Problem 11-1	339
§ 11.04	Partners' Management and Control Rights	340
A.	General Partners	340
	<i>Luddington v. Bodenvest Ltd.</i>	340
	Notes and Questions 11-2	345
	Problem Set 11-2	346
B.	Limited Partners	346
1.	Voting Rights	347
	<i>Fox v. I-10, Ltd.</i>	347
	In re Nantucket Island Associates Ltd. Partnership Unitholders	
	Litigation	352
	Notes and Questions 11-3	354
2.	Management Rights: The Control Rule	355
	<i>Gast v. Petsinger</i>	356
	Notes and Questions 11-4	359
	Problem Set 11-3	360
§ 11.05	Partners' Liability for Partnership Debts	360
§ 11.06	Partners' Property Rights	361
A.	Transferability of Interests	361
	<i>Northeast Communications of Wisconsin, Inc. v. Centurytel, Inc.</i>	361
	Notes and Questions 11-5	364
	Problem 11-4	365
B.	Rights of Partners' Creditors	366
	<i>Baybank v. Catamount Construction, Inc.</i>	366
	Notes and Questions 11-6	370
§ 11.07	Fiduciary Duties and Remedies	372
A.	Fiduciary Duties of General Partners	373
	<i>Gotham Partners, L.P. v. Hallwood Realty Partners, L.P.</i>	374
	Notes and Questions 11-7	380

TABLE OF CONTENTS

Problem 11-5 385

B. Fiduciary Duties of Limited Partners 385

C. Remedies 387

Anglo American Security Fund, L.P. v. S.R. Global International Fund, L.P. 388

Notes and Questions 11-8 390

§ 11.08 Dissociation and Dissolution 391

A. Dissociation of Limited Partners 391

1. RULPA 391

2. ULPA 2001 392

B. Dissociation of General Partners 392

1. RULPA 392

2. ULPA 2001 393

C. Dissolution Causes 393

Crow Irvine #2 v. Winthrop California Investors Limited Partnership . 394

Questions 11-9 396

D. Consequences of Dissolution 396

In re Dissolution of Midnight Star Enterprises, L.P. Ex Rel. Midnight Star Enterprises, Ltd. 397

Questions 11-10 398

Problem 11-6 398

§ 11.09 Merger and Conversion 399

Welch v. Via Christi Health Partners, Inc. 400

Notes and Questions 11-11 406

§ 11.10 Taxation of Limited Partnerships 407

Question 407

§ 11.11 Application of the Securities Laws 407

Notes and Questions 11-12 409

Chapter 12 The Limited Liability Company (LLC) 411

Introductory Hypothetical 413

§ 12.01 Introduction 414

A. The Current State of LLC Law 414

B. An Overview of the LLC Concept 415

Notes 12-1 417

Problem Set 12-1 418

§ 12.02 LLC Formalities 418

A. Organizing the LLC 418

Notes and Questions 12-2 419

B. Member Requirements 420

Notes and Questions 12-3 421

C. The Operating Agreement 422

1. The Role of the Operating Agreement 422

TABLE OF CONTENTS

2.	Writing Requirements	422
3.	Interpretation of Operating Agreements	423
	Notes and Questions 12-4	423
	Problem Set 12-2	425
D.	Conversions from Partnership	425
	Notes and Questions 12-5	425
	Problem 12-3	426
E.	Series LLCs	427
	Question 12-6	428
F.	Non-Profit LLCs	428
	Problem 12-4	429
G.	Choice of Law	429
	Problem 12-5	431
§ 12.03	Management	431
A.	The Management Election	432
B.	Effect of Articles and Operating Agreement	432
C.	The Agency Power of Members and Managers	433
	Notes and Questions 12-7	434
	Problem Set 12-6	435
D.	Member Voting Rights	436
	<i>Gottsacker v. Monnier</i>	436
	Notes and Questions 12-8	440
	Notes 12-9: Management and Control Provisions in the Operating Agreement	440
	Problem Set 12-7	442
§ 12.04	Members' Financial Rights and Obligations	443
A.	Allocation of Financial Interests	443
B.	Member Contributions	443
	Problem Set 12-8	443
C.	Members' Individual Liability to Creditors of the LLC	444
	Notes and Questions 12-10	444
	Problem Set 12-9	447
§ 12.05	Transfer of Interests	447
A.	Consensual Transfers	447
	Notes 12-11: Transfer Provisions in the Operating Agreement	447
B.	Creditors' Remedies	448
	Notes and Questions 12-12	448
§ 12.06	Issues of Limited Liability	450
A.	The Default Rule	450
	Notes 12-13	450
B.	Veil Piercing	452
	<i>Kaycee Land and Livestock v. Flahive</i>	452
	Notes and Questions 12-14	455

TABLE OF CONTENTS

	Problem 12-10	456
§ 12.07	Fiduciary Duties	456
A.	Managers' Duties	456
1.	Duty of Care	456
2.	Duty of Loyalty	457
3.	To Whom are Duties Owed?	458
	<i>[In re Allentown Ambassadors, Inc.]</i>	458
	Notes and Questions 12-15	459
B.	Members' Duties	460
C.	Fiduciary Duty Contracts	461
	<i>Fisk Ventures, LLC, v. Segal</i>	462
	Notes and Questions 12-16	466
	Problem 12-11	468
D.	Remedies	469
1.	Derivative Actions	469
	<i>Tzolis v. Wolff</i>	469
	Notes and Questions 12-17	474
2.	Contractual Remedies	477
	Notes and Questions 12-18	477
	Problem 12-12	478
§ 12.08	Dissociation and Dissolution	478
A.	Dissociation	479
1.	Default Rules	479
	<i>Holdeman v. Epperson</i>	479
	Notes and Questions 12-19	483
2.	Buyout Provisions	486
	<i>Valinote v. Ballis</i>	487
	Notes and Questions 12-20	490
	Problem Set 12-13	492
3.	Expulsion	493
	<i>CCD, L.C. v. Millsap</i>	493
	Question 12-21	495
	Problem 12-14	495
B.	Dissolution	496
1.	General Provisions	496
2.	The Oppression Remedy	496
3.	Distributions on Dissolution	499
4.	Formalities	500
	Notes and Questions 12-22: Drafting the Operating Agreement	500
	Problem 12-15	500
C.	Merger	501
	Problem 12-16	501
§ 12.09	Special Issues in LLC Law	502
A.	Application of Other Law	502

TABLE OF CONTENTS

1. Securities Law 502

2. Other Regulatory Law 503

Meyer v. Oklahoma Alcoholic Beverage Laws Enforcement

Commission 504

Notes and Questions 12-23 506

B. Professional Firms as LLCs 510

Notes and Questions 12-24 510

Problem 12-17 513

Chapter 13 Limited Liability Partnerships 515

Introductory Hypothetical 516

§ 13.01 Background and History 516

 Problem Set 13-1 517

§ 13.02 Creation of an LLP 518

A. LLP Registration Process 518

 1. Formation of the Partnership 518

 2. Vote on Registration 518

 3. Post-registration liability 518

 4. Effect on Existing Contracts 519

B. Potential Problems of Registration 519

 1. Effect on Dissenting Members 519

 2. Creation of Two Classes of Liabilities 519

 3. Effect on Post-Registration Creditors 519

 4. Effect on Existing Contracts and Relationships 520

 Problem 13-2 520

C. Choice of Law 521

§ 13.03 Limited Liability 522

A. Scope of Limited Liability 522

 Notes and Questions 13-1 523

B. Supervisory and Misconduct Liability 524

 Problem 13-3 525

C. Contracting for Liability 526

D. Veil-Piercing 526

E. Creditor Enforcement of Partner Liability 527

F. Contribution 527

G. Indemnification 528

§ 13.04 Effect of LLP Registration on Partnership Default Rules and Partnership Agreements 528

A. Application of General Partnership Law: Linkage 528

B. Partners' Management Rights 529

C. Financial Rights and Obligations 529

 1. Default Rule: Equal Profit Shares 529

 2. Agreements on Partner Compensation and Profit

TABLE OF CONTENTS

Shares 529

3. Distributions to Partners 530

4. Indemnification, Contribution and Other Loss-Sharing Provisions .. 531

D. Fiduciary Duties 531

E. Dissolution 532

§ 13.05 Tax and Regulatory Aspects of LLPs 532

A. Tax Characterization 533

B. LLP and LLC Interests as “Securities” Under Federal and State Securities
Laws 533

C. Employment Discrimination Law 533

D. Bankruptcy Law 534

E. Professional Firms as LLPs 535

Notes and Questions 13-2 535

§ 13.06 Limited Liability Limited Partnerships 537

A. Liability of LLLP partners 537

B. LLP Statutes With No LLLP Provisions 537

C. Foreign LLLPs 538

Appendix 1 Membership Agreement of the Chameleon Company 539

Appendix 2 Selected Excerpts from Restatement Third, Agency 559

Appendix 3 Uniform Partnership Act (1914) 563

**Appendix 4 Uniform Partnership Act (1997) with marked limited liability act
amendments 581**

Appendix 5 Uniform Limited Partnership Act (1985) 617

Appendix 6 Uniform Limited Partnership Act (2001) 639

Appendix 7 Uniform Limited Liability Company Act (1996) 695

Appendix 8 Revised Uniform Limited Liability Company Act 739

**Appendix 9 Selected Provisions from the Delaware Limited Liability Company
Act 791**

Table of Cases TC-1

Index I-1