TABLE OF CONTENTS

ONE TWO THREE FOUR FIVE SIX SEVEN	PRC FOR INTE DIRE OFF SHA	TORY DMOTERS RMATION ERNAL AFFAIRS ECTORS TICERS & AGENTS RREHOLDERS	1 7 21 65 95 161 197
EIGHT NINE		REHOLDER SUITS ICER & DIRECTOR LIABILITY TO THIRD PARTIES	239 301
TEN		REHOLDER LIABILITY TO THIRD PARTIES	329
ELEVEN		RPORATION'S LIABILITY TO THIRD PARTIES	365
TWELVE	MEF	RGERS, SALES OF ALL ASSETS & DISSOLUTION	389
CHAPTER	ONE -	- HISTORY	
1.01	Englis	sh Corporate Law	1
1.02	United	d States & Oregon Corporate Law	2
	Α.	Early statutes	2
	B.	Constitutional prohibitions against	
		incorporation by special act	3
	C.	Early corporation statutes were restrictive	4
	D.	The first modern statutes	4
	E.	Model Acts	4
	F.	Oregon's Business Corporation Acts	5
	G.	Close Corporation Supplement	6
		- PROMOTERS	7
2.01	Gene	•	7
	Α.	Term defined	7
	B.	Incorporators distinguished	8
	C.	Multiple promoters	8
0.00	D.	Modern trend	9
2.02		iary Duty	9
	Α.	Disclosure duty	10
	В.	Transactions between promoter & corporation	11
	C.	Secret profits	11
	D.	Multiple promoters	12

2.	03 Breach	n of Duty	12
	A.	Claims against promoter are usually claims	
		of corporation, not shareholders	12
	B.	Exception - shareholder claims against promoters	13
	C.	Remedy	13
2.	04 Promo	oter Compensation	14
		y of Promoter to Third Parties	14
	A.	General rules of agency apply	16
	B.	Exception – third party agrees to look only to corporation	16
	C.	Promoter remains liable even if corporation	
		assumes contract	17
	D.	Miscellaneous	17
2.	06 Promo	ter Liability for Acts of Defective Corporation	18
2.	07 Water	ed Stock	19
CHAPTE	ER THREE	E - FORMATION	
	01 Gener		21
		corporator	21
	A.	Qualifications	22
	B.	Duties	23
3.	.03 Organ	izational Meeting	24
	•	cto Corporations & Corporations by Estoppel	26
	A.	Overview	26
	B.	De facto corporations	27
	C.	Corporations by estoppel	29
3.	.05 Article	s of Incorporation	31
	A.	History	32
	B.	Corporate purpose	33
	C.	Contents of articles: mandatory provisions	34
	D.	Contents of articles: optional provisions	35
	E.	Filing Requirements	37
3.	.06 Consti	itutional Limits on Statutory Changes	38
3.	.07 Amend	dment of the Articles of Incorporation	40
	A.	Old rule - unanimous consent	40
	B.	New rule - majority vote & fairness	41
	C.	Current law - majority rule & fairness	43
	D.	Mechanics	43

3.08 Bylaws		44
A.	Content of bylaws: mandatory provisions	47
B.	Content of bylaws: recommended provisions	47
C.	Emergency bylaws	48
D.	Amendment	48
3.09 Par Valu	ue	50
3.10 Stock Co	ertificates	51
A.	Shareholder rights if certificates not delivered	52
B.	Uncertificated shares	53
C.	Form & content of the certificate	53
D.	Classes or series	54
E.	Treasury shares	54
F.	Restrictions on transfer	55
G.	Miscellaneous	55
3.11 Principa	Il Office	55
3.12 Corpora	ite Seal	56
3.13 Classes	or Series of Shares	57
3.14 Name		59
A.	Reserving a name	59
B.	Assumed business name	60
C.	Name must be distinguishable	61
D.	Unfair competition & unfair trade practices	61
E.	Foreign corporations	63
F.	Changing corporate name	63
CHAPTER FOUR -	INTERNAL AFFAIRS	
4.01 Registe	red Agents	65
4.02 Dividend	ds & Other Distributions	66
A.	Definition	66
B.	Power to declare	66
C.	The right of shareholders to force declaration of a distribution	68
D.	Shareholder rights after dividend declared	69
E.	Dividends on preferred shares	71
 F.	When can the board declare a distribution: early tests	73
G.	Solvency test	74
О. Н.	Oregon has adopted the solvency test	74
I.	Delayed distributions	75
 J.	Liability for illegal distributions	76
Ŭ.		

4.03 Share	/Stock Dividends	76
A.	Current rule	76
В.	Old rule	77
C.	Share splits	78
4.04 Indem	nnity of Directors & Officers; Limited Liability	78
A.	Permissive indemnity of directors & officers	79
B.	Mandatory indemnity of directors & officers	79
C.	Advance of expenses	81
D.	Limited liability	82
4.05 Corpo	orate Records	82
	holder Right to Inspect Records	83
A.	Statutory right to inspect	83
B.	Proper purpose	85
C.	Burden of Proof	87
D.	Court ordered inspection	87
E.	Inspection Rights of LLC Members	88
4.07 Share	cholder Agreements in Close Corporations	91
A.	Statutory requirements	91
B.	History	91
CHAPTER FIVE	- DIRECTORS	
5.01 Gene	·	95
A.	Collective power, not individual power	95
B.	Directors are not corporate agents	96
C.	Manner of acting	97
5.02 Numb	per & Qualification	98
A.	Size of the board of directors	98
B.	Qualifications	98
5.03 Electi		99
A.	Election	99
B.	Term	100
C.	Vacancies	100
D.	Staggered terms	101
E.	Cumulative voting	102
F.	Voting by class	103
G.	Oath of office	104
5.04 Meeti		104
Α.	Organizational meeting	104
B.	Regular meetings	105
C.	Special meetings & notice	106

D.	Written consent in lieu of meeting	107
E.	Telephone meetings	108
F.	Location	108
G.	One director, one vote	108
H.	Director proxies	109
I.	Attendance by attorneys	109
5.05 Quorum	1	110
A.	Generally	110
B.	Changing the quorum requirement	111
C.	Effect of vacancies	111
D.	Variable range boards	112
E.	Effect of conflicts of interest	112
5.06 Minutes	of Meetings	113
5.07 Remova	al & Resignation	114
A.	Removal, generally	114
B.	Removal when cumulative or class voting used	115
C.	Directors removing directors	115
D.	Removal by court order	115
E.	Failure to qualify	116
F.	Resignation	116
5.08 Duties		116
A.	Power reserved to shareholders	117
B.	Example - dividends	118
C.	Example - technical amendments to articles	118
D.	Example - amending bylaws	118
E.	Example - dissolution	119
F.	Power to delegate duties	119
5.09 Compe	nsation	119
5.10 Ultra Vi	res Acts	120
A.	Statutory limitations on the power of board	121
B.	Acts contrary to provisions in articles or bylaws	121
C.	Ultra vires - history	121
D.	Ultra vires - today	123
5.11 Delega	tion of Duties - Agents & Committees	123
A.	Delegation to agents	123
B.	Delegation to board committees	125
5.12 Standard of Care		
A.	Standard at common law	126
B.	Current statutory standard	127
C.	Business judgement rule	128

D.	Director liability may be limited	129
E.	Liability for breach of standard of care	129
F.	Public benefit companies	130
5.13 Busine	ess Judgment Rule	130
A.	Generally	130
B.	Example - Chicago Cubs	132
C.	Two exceptions to business judgement rule	133
D.	Uninformed decision - gross negligence exception	133
E.	Bad faith - corrupt purpose exception	135
F.	ALI's codification of business judgment rule	136
G.	Business judgement rule - examples	136
H.	Example - dividends	137
١.	Example - consideration for stock	138
J.	Example - derivative lawsuits	139
K.	Example – employment issues in close corporation	140
L.	Example – Takeovers	141
M.	Burden of proof	142
5.14 Directo	ors as Fiduciaries	143
A.	The rule today	143
B.	History	145
C.	Termination of fiduciary duty	146
5.15 Fiducia	ary Duty to Individual Shareholders	147
5.16 Conflic	cts of Interest	150
A.	Transactions between director & corporation	
	governed by director's fiduciary duty	150
B.	Early case law	151
C.	Fairness became most important factor	151
D.	Current statute	152
E.	Exception - loans to directors	153
5.17 Direct	ors as Creditors	153
A.	General rule - directors can become corporate creditors	153
B.	Exception - transactions at or near insolvency	154
5.18 Usurp	ing Corporate Opportunities	155
A.	Transaction must be open	156
В.	Corporation must knowingly reject opportunity	157
C.	Other tests	159
D.	Forced sales	159
E.	Non-competition agreements	159
F.	Preparations to compete	159
G.	Statute of limitations	160

H.	Oppression	160
CHAPTER SIX - O	FFICERS & AGENTS	
6.01 Genera	ally	161
A.	Officers & agents distinguished - historical view	162
B.	Today - less distinction between officers & other agents	162
C.	Principles of agency apply to officers	163
D.	Miscellaneous	163
6.02 Appoin	tment	164
6.03 Term &		165
A.	Term	165
B.	Removal	166
C.	Resignation	167
6.04 Duties	Ğ	167
6.05 Authori	ity, Generally	169
6.06 Expres	•	171
6.07 Implied	I, Inherent & Apparent Authority	173
Å.	Implied/inherent authority	174
B.	Implied/inherent authority of general	
	manager & other agents	175
C.	Apparent authority	177
6.08 Ratifica	ation	183
A.	Express ratification	184
B.	Implied ratification	185
C.	Ratification by acquiescence	188
D.	Ratification by the shareholders	188
E.	Relation back	189
6.09 Absend	ce of Authority	189
A.	Generally	189
B.	Example - no inherent authority to execute notes	190
C.	Discretionary authority	190
6.10 Standa	ard of Care	191
6.11 Officer	s as Fiduciaries	191
6.12 Compe	ensation	192
A.	Early view	192
B.	Modern view	193
C.	Compensation if officer breaches fiduciary duty	195
CHAPTER SEVEN	N - SHAREHOLDERS	
7.01 Genera	ally	197

A.	Shareholders are distinct from corporation	197
B.	Directors - not shareholders - manage the corporation	198
C.	Shareholders not agents of corporation	198
D.	Shareholders' role may be expanded under ORS 60.265	199
7.02 Subscri	ptions & Other Contracts to Purchase Shares	199
A.	Definitions	200
B.	Subscriptions are contracts	201
C.	Subscriber's rights & liabilities once	
	subscription accepted	202
D.	Qualifications to acquire shares	203
E.	Miscellaneous	203
7.03 Limited	Liability	203
7.04 Meeting	gs	204
A.	Annual meeting	204
B.	Special meetings	205
C.	Court-ordered meetings	206
D.	Action without meeting	206
E.	Bylaws should contain rules for meetings	207
F.	Notice	207
G.	Telephone meetings	208
H.	Record date	209
1.	Shareholder list	209
J.	Voting	209
K.	Quorum	210
L.	Conduct of meeting	210
M.	Inspector of elections	211
N.	Minutes	212
7.05 Proxies		212
7.06 Dividen	ds & Other Distributions	214
7.07 Preemp	otive Rights	216
A.	Generally	216
B.	How long open?	217
C.	Securities laws are applicable	217
D.	Exceptions to preemptive rights	217
E.	Court protection	218
F.	Additional sources	219
7.08 Voting	Trusts	219
A.	Defined	219
B.	Old rule - disfavored	219
C.	Current law - permitted	220

7.09 Sharehold	ler's Duty to the Corporation	221
7.10 Duty of Co	ontrolling Shareholders	222
A. O	regon cases	224
B. O	other states	224
C. E	xceptions	225
7.11 Duty of Sh	nareholders in Close Corporation	226
A. C	lose corporation defined	226
B. C	lose corporations are like partnerships	226
C. Ir	n close corporation, all shareholders	
	may owe fiduciary duty	228
D. W	lajority shareholders in close	
	corporation owe fiduciary duty	228
E. B	usiness judgment rule	229
F. P	ecuniary interest	231
G. A	ttorney liability	231
	reponderance of evidence standard applies	231
•	on-controlling Shareholders	231
	General rule - no fiduciary duty	231
	xception - 50% shareholder	232
	xception - minority shareholder with veto power	233
	Court to Protect Minority Shareholders	235
	statutory authority to dissolve corporation	236
	Courts reluctant to intervene	237
	Courts retain equitable powers	238
D. M	fliscellaneous	238
CHAPTER EIGHT - S	SHAREHOLDER SUITS	
8.01 Sharehold	der Actions Against Corporation	239
A. G	Generally	239
B. R	Right to jury trial	240
8.02 Individual		241
A. G	General rule - shareholders may not sue individually	
	to enforce rights of corporation or of all	0.4.4
	shareholders, as a group	241
	ndividual contract claims against corporation	243
C. C	Claims when third party owes direct	0.40
5 .	duty to both corporation & shareholder	243
	ndividual claims for declared dividends	245
	nspection of corporate records	245 246
F. A	Action seeking judicial dissolution	240

	G.	Action to compel stock transfer	246
8.03	Special	Case - Closely Held Corporations	246
	А.	·	246
	B.	•	247
8.04	Actions	Arising Out of Oppression & Deadlock	248
	Α.	<u> </u>	249
	B.	• • •	249
	C.		250
	D.	· · · · · · · · · · · · · · · · · · ·	251
	E.	Oppression usually involves pattern of conduct	254
	F.	Deadlock	254
	G.	Court's power to dissolve is discretionary	255
	H.	2002 statutory provisions for non-public corporations	257
	I.	ORS 60.952(6): forced buy-out	260
	J.	Steps to invoke forced-buy out provisions	261
	K.	Scope of trial	261
	L.	Fair value	262
	M.	Discounts	263
	N.	Equitable or legal claim	264
	Ο.	Attorney fees	264
	P.	Derivative lawsuits	265
8.05	Derivati	ve Lawsuits	265
	A.	Generally	265
	B.	Equitable action; extraordinary remedy	269
	C.	Who may bring suit: contemporaneous	
		ownership of shares	270
	D.	Who may bring suit: representative plaintiff	273
	E.	Demand requirement	274
	F.	Recovery belongs to corporation, not plaintiff-shareholder	279
	G.	Settlement	280
	H.	Attorney fees	281
	I.	Oregon does not require plaintiff to post security	283
	J.	Oregon does not require verification of complaint	283
	K.	Equitable defenses	284
	L.	Forced buyout provisions of ORS 60.952(6) may apply	285
	M.	Benefit companies	285
8.06	Dissent	ers' Rights	285
	A.	Steps required by statute	287
	B.	Fair value	289
	C.	Discounts	292

	D. E.	Legal action; burden of proof	293 294
	F.	Attorney fees Appraisal actions - exclusive remedy?	295
	г. G.	Reverse Stock Splits	298
	G.	Neverse Glock Opins	200
CHAPTER	NINE -	OFFICER & DIRECTOR LIABILITY TO THIRD PARTIES	
9.01	1 Genera	ally	301
	A.	Shareholders	301
	B.	Officers	301
	C.	Directors	302
9.02	2 Acts Be	efore Incorporation	302
9.03	3 Defecti	ive Corporations	303
9.04	4 Contra	ct Liability	304
	A.	Directors not usually liable on corporate contracts	305
	B.	Agent for undisclosed principal is personally liable	306
	C.	Agent for partially-disclosed principal is personally liable	307
	D.	Corporation also liable	309
	E.	Agents are liable for unauthorized acts	309
	F.	Agents are liable for acts on behalf of disclosed,	
		but nonexistent, principal	309
	G.	Agents are liable if they personally guarantee contract	310
9.0	5 Tort Lia	ability	311
	A.	Agents are liable for own tortious acts	312
	B.	Officers & directors not liable for tortious acts of others	313
	C.	Specific torts	314
	D.	Civil & criminal actions by state	316
	E.	Punitive damages	316
9.0	6 Interfe	rence with Contract & Civil Conspiracy	317
	A.	Interference with contract	317
	B.	Civil conspiracy	321
9.0	7 Improp	per Distributions	323
9.0	8 Liabilit	y of Officers & Directors to Creditors	324
9.0	9 False I	Prospectuses & Annual Reports	326
9.1	0 Statuto	ory Liability	327
CHAPTER	R TEN - :	SHAREHOLDER LIABILITY TO THIRD PARTIES	
	01 Gene		329
. ••	Α.	Successor corporation & agency distinguished	330
	B.	Miscellaneous	330
10.	02 Pierc	ing the Corporate Veil	331

A.	Extraordinary remedy	332
B.	Question of facts	333
C.	Which state law applies?	333
D.	Early cases	334
E.	Amfac test	334
F.	Similar tests	335
G.	Reverse piercing	337
H.	Limited liability companies	338
1.	Piercing claim is separate count in complaint	338
10.03 Cont	rol	338
Α.	Early development	339
B.	Control is not enough	340
C.	Who has actual control?	341
D.	Active & latent control distinguished	342
E.	Control by non-shareholders	342
10.04 Impr	oper Conduct	343
10.05 Inade	equate Capitalization	345
A.	Generally	345
B.	Other states	346
C.	Funds considered as part of capitalization	346
D.	When measured?	347
E.	How much is enough?	347
F.	Miscellaneous	348
10.06 Milki	ng	349
A.	Generally	349
B.	Related grounds for imposing liability	350
10.07 Com	mingling & Confusion	351
10.08 Viola	ations of Statute	353
A.	Generally	353
B.	Licensing & administrative cases	354
10.09 Corp	orate Formalities	354
10.10 Prox	imate Cause	355
A.	Generally	355
B.	Recovery may be limited to sum milked	357
10.11 Unpa	aid Subscriptions	358
A.	Generally	358
B.	Failure to issue shares	359
C.	Consideration permitted	359
D.	Calls & assessments	360
E.	Actions by corporation	361

F. Actions by creditors	361	
10.12 Distributions Upon Dissolution		
A. Generally	362	
B. Procedures for cutting off corporate debts		
after dissolution	364	
CHAPTER ELEVEN - CORPORATION'S LIABILITY TO		
THIRD PARTIES		
11.01 Liability of Corporation for Acts of Promoter	365	
11.02 Contract Liability	367	
 A. Corporations may enter into contracts 	367	
B. Ultra vires contracts	368	
11.03 Tort Liability, Generally	369	
 A. Master/servant & principal/agent distinguished 	370	
 B. Corporate liability for act of employee 	370	
 C. Corporate liability for act of non-employee agent 	371	
 D. Knowledge of agent imputed to corporation 	373	
E. Act of promoters	373	
F. Punitive damages	374	
11.04 Intentional Acts of Agents	374	
11.05 Liability after Acquisition of Assets – Successor Liability	375	
 A. General rule - purchasing corporation 		
not liable for selling corporation's debts	375	
B. Five exceptions	377	
 C. Express agreement exception 	378	
D. De facto merger exception	378	
E. Continuation exception	379	
F. Fraud exception	381	
G. Product line exception	382	
 H. Rights of creditor when exception applies 	383	
 Related issues - fraudulent conveyance 		
& piercing corporate veil	384	
11.06 Liability after Mergers	385	
11.07 Criminal Responsibility	386	
ALLA DEED TAKELINE MEDOED OALE OF ALL ACCETO & DICCOLLITIO	5 N I	
CHAPTER TWELVE – MERGER, SALE OF ALL ASSETS & DISSOLUTIO		
12.01 Sale of Assets	389	
12.02 Merger & Share Exchange	390	
A. Procedures	390	
 B. Exception - merger subsidiary into parent 	391	

	C.	Effect of merger	392
	D.	Consolidations	392
12.03 Dissolution, Generally			392
12.04 \	12.04 Voluntary Dissolution		
	A.	Procedures	393
	B.	Effect of dissolution on conducting business	394
	C.	Creditors have first claim to assets upon dissolution	395
	D.	Cutting off known & unknown claims	
		against corporation	396
	E.	Distributions to shareholders	398
12.05 Administrative Dissolution			399
	A.	Grounds for administrative dissolution	399
	B.	Reinstatement	400
12.06 Judicial Dissolution			402
	A.	Shareholder initiated dissolutions	402
	B.	Court's power to dissolve is discretionary	404
	C.	Court's equitable power to regulate corporate affairs	405
12.07 Insolvent Corporations; Rights of Creditors; Trust Fund Theory			405
	Α.	Duty of directors	405
	B.	Rights of creditors	406
	C.	Trust fund theory	407
	D.	Oregon has never fully accepted trust fund theory	409
ORS CHAPT	ER 60	SECTIONS CITED	413
INDEX			415