



DEMO HYPERLINKED SERIES

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DEMO VERSION

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- **The Mnemonics and Definitions Series** of eBooks separately available: Constitution; Crimes; Contracts - includes the UCC; Torts - includes Intentional Torts, Other Torts and Negligence.
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LAW SCHOOL AND BAR EXAM SERIES

CORPORATIONS HYPERLINKED

By Edward I. Torriel

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INTRODUCTION

The Hyperlinked Series consists of comprehensive Law School Study Guides designed to cover each subject in a common sense logical order.

Bookmarks are ordered to provide a quick reference point. Each Bookmark is hyperlinked to the relevant rules and definitions.

The Subject Outline Section at the end of each book can be used as a printable Outline or Checklist. Legal Issues are ordered in a logical manner to assist in the organization of a proper essay.

Common Law, Modern Law, and Traditional Rules are used to provide the Definitions for every important legal issue for the subject covered. Federal Statutes are referenced when Federal Law is controlling. Model Code Rules are cited when they have been generally adopted by a majority of the States and when there is a modern trend to adopt the Model Code. Each book references the important substantive legal terms that must be discussed in Law School Exams, the California First Year Law Student Exam, and the Bar Exams for most States. The definitions provided should be used as a starting point for a full understanding of each concept. Further research of the fine points of each rule will be necessary. Application of the law to factual situations is not addressed in this book; however spotting all relevant issues and the ability to recite the elements of each rule are both essential to proper legal analysis.

Use of this book in electronic form provides both a unique learning experience and a handy reference tool based on the hyperlink features employed. Letters in [blue](#) text are hyperlinks that will take the reader to the section of the book related to the word or phrase. Clicking on the Back Arrow in the navigation toolbar area returns the reader to the previous section. Please note that the functions and layout features will vary depending on the set up and capabilities of the specific reader program. To get an idea about how to use these features, use the mouse to left click on any words in [blue](#) text.

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Please contact us at crogware@wisteriamanor.com with Questions, Comments and Suggestions.

Sincerely, Edward Torriel

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THE CORPORATION

Distinct Legal Entity

A [Corporation](#) is a [Legal Entity Distinct from its Owners](#) having a Potentially [Perpetual Life](#) and Transferable Ownership.

Legal Entity

A [Corporation](#) is a Fictional Person with Legal Capacity to enter contracts, own property, and sue or be sued in its own Name.

Grant of Authority: The [Legal Entity](#) is created under the [Laws of the State of Incorporation](#) which establish the Limits of its [Powers](#), Rights, Obligations, and Liabilities.

Distinct from its Owners

The Owners of a [Corporation](#) are its [Shareholders](#) who have:

1. **Limited Personal Liability:** Liability of Owners is limited to the amount of their investment. [Shareholders](#) and the [Corporation](#) are not responsible for each other's debts, liabilities, contracts, or obligations. Exceptions: [Defects](#) in or [Disregard](#) of Corporate Formation;
2. **Freely Transferable Ownership Interests;** and
3. **No Fiduciary Duty** owed to the [Corporation](#) based on Ownership.

Potentially Perpetual Life

The existence of a [Corporation](#) may be Perpetual or Fixed in duration as established by the [Articles of Incorporation](#). Changes in Ownership do not affect its Continuous Existence.

Constitutional Issues

Due Process Clause: Federal Subject Matter and Personal Jurisdiction

[Corporations](#) are Citizens of their State of Incorporation and of the State that is their Principle Place of Business for Federal Diversity Jurisdiction. To exercise Personal Jurisdiction over a [Corporation](#) the Minimum Contacts Test is applied.

Commerce Clause

States cannot Restrict or Exclude [Corporations](#) from Interstate Commerce.

Limits on Constitutional Rights

1. **Self-Incrimination:** [Corporations](#) are not Natural Persons under the 5th Amendment; [Directors](#), [Officers](#), Employees, Agents may be Compelled to Testify in Legal Proceedings;
2. **Privileges and Immunities:** [Corporations](#) are not Citizens under Article IV, Section 2;
3. **State Police Powers:** States have Power to Regulate foreign and domestic [Corporations](#).

State Grant of Power

The Privilege to Exist and the [Power](#) to [Act](#) as a [Corporation](#) must be Granted by the State under a Constitutionally Valid State Statute.

State Incorporation Statutes

Incorporation is a Privilege subject to State Regulations designed to protect [Shareholders](#), [Creditors](#), and the Public from [Abuse of Power](#).

The State of Incorporation establishes the Outer Limits of the Corporate [Power](#) to [Act](#).

[Shareholders](#) may further restrict the [Powers](#) granted by the State in the [Corporate Charter: Articles of Incorporation](#) and Bylaws.

Outer Limits of Corporate Power to Act

The Outer Limits of Corporate [Power](#) generally include the [Power](#) to:

1. Do all things Necessary and Convenient to carry out its business the same as an individual;
2. Conduct lawful business;
3. Exist Indefinitely: Potentially [Perpetual Life](#);
4. Sue and be Sued;
5. Acquire and Dispose of property;
6. Loan and Borrow money;
7. Contract;
8. Create and [Amend](#) the [Articles of Incorporation](#) and Bylaws;
9. Elect and Appoint [Directors](#), [Officers](#), Employees, and Agents;
10. Acquire and use a Corporate Seal.

SHAREHOLDERS

Powers and Rights

Shareholders are the Owners of a Corporation who have the Power of Indirect Control Exercised by the use of Voting Rights at Annual and Special Shareholders Meetings; and by Direct or Derivative Civil Actions.

General Rights

General Rights of Shareholders include the Right to:

1. **Honest and Careful Management** of the Corporation for the Benefit and Profit of all Shareholders;
2. **Equal and Fair Treatment** by Management and Majority Shareholders in Corporate Transactions and Proposals affecting their Investment Interests: New Issues of Securities, Amendments to the Bylaws and Articles of Incorporation, Fundamental Changes;
3. **Participate in Dividend Distributions and in Distributions of Assets from Liquidation;**
4. **Register on the Corporate Books** as a Shareholder;
5. **Receive Information: Inspect Corporate Books;**
6. **Institute Civil Actions:** Sue to Protect their Rights Individually or Derivatively from Abuses of Power by Directors or Officers;
7. **Notice of Meetings; and a Vote with a Quorum Present** for Shareholder Acts.

Voting Rights

Voting Rights of Shareholders may be exercised to:

1. **Elect and Remove Directors;**
2. **Adopt and Modify** Bylaws and Articles of Incorporation;
3. **Approve Fundamental Changes in the Corporate Structure** proposed by the Board of Directors: Consolidation; Share Exchanges; Transfer of Corporate Assets not in the Ordinary Course of Business; Merger; Dissolution; Extraordinary Corporate Matters;
4. **Propose Director Action** by Adopting Shareholder Resolutions: Directors are put on Notice of the Direction Shareholders expect the Corporation to take;
5. **Ratify Void or Voidable Acts** of Directors and Officers: Incentive Compensation, Bonuses, Indemnification, Self-Dealing Contracts.

Limited Liability: Privilege of Immunity from Personal Liability

Shareholders cannot be held Personally Liable for Acts or Debts of the Corporation except for an Abuse of the Privilege or a limitation in the Articles of Incorporation.

Limits of Power

Shareholders have no Power to:

1. Directly conduct Corporate Business: Shareholders must Act through Directors and Officers;
2. Bind the Corporation: Transactions made without Authority are Void and have no effect.

DIRECTORS

The Board of Directors

Every [Corporation](#) must have a [Board of Directors](#) who Exercise the [Powers](#) of the [Corporation](#) to Manage its Business Affairs subject to the limits of [State Law](#) and the [Articles of Incorporation](#).

Inside Directors: Insiders or Managing [Directors](#) who are usually [Officer Employees](#).

Outside Directors: Advisory and Supervisory [Directors](#) who are not Employees.

Power to Act

A [Corporation](#) may only [Act](#) through its [Board of Directors](#) following [Formal Procedures](#) during [Legal Board Meetings](#). Individually [Directors](#) have no Corporate [Power](#) to [Act](#).

Initial Directors

The Initial [Directors](#) are named in the [Articles of Incorporation](#); or Elected at the first Organizational Meeting. At the first [Shareholders Meeting](#) following Incorporation a new Election of [Directors](#) is held; subsequent Elections are held Annually at the [Annual Shareholders Meeting](#).

Annual Election

[Directors](#) are Elected Annually unless Staggered Terms are Permitted by [Statute](#) and Specified in the [Articles of Incorporation](#) or the Bylaws.

Staggered Terms

Staggering the Terms of the [Directors](#) prevents [Corporate Raiders](#) from Replacing the Entire [Board](#); and Limits the impact of Cumulative [Voting](#).

Number of Directors

The Size of the [Board](#) may be Fixed; or Set by Formula in the [Articles of Incorporation](#) or the Bylaws.

Most States require at least 3 [Directors](#) unless there are fewer than 3 [Shareholders](#).

Qualifications

Minimum Qualifications of [Directors](#) may be established by [Statute](#), [Articles of Incorporation](#), or Bylaws.

Elected [Directors](#) must Accept to Qualify.

SECURITIES EXCHANGE ACT OF 1934

Publicly Traded Securities

Congress Preempted State Law under the Commerce Power to Regulate **Securities** that are **Publicly Traded** or Owned by a Large Number of Investors.

Regulatory Purpose

Registration of **Securities** and Continuous Public Disclosure is necessary to Protect the Investing Public.

Regulated Securities

1. **Publicly Traded Securities**: Shares Traded on any National Securities Exchange regardless of the size of the Company; and
2. **Securities Owned by a Large Number of Investors**: Companies with any **Class of Stock** held by 500 or more **Shareholders of Record** and Assets over \$5M.

The SEC has Power to set the \$5M Asset Value Requirement to any amount over \$1M.

NASDAQ is not a National Securities Exchange for SEC Reporting Purposes.

§12 Registration

Any Regulated **Class of Security** must be Registered with the Securities and Exchange Commission (SEC).

§13 Continuous Public Disclosure

Every Company with Regulated **Securities** Outstanding must make Continuous Public Disclosures that provide Information about the Company Important to the Investment Decision:

1. Annual Reports;
2. Quarterly Financial Reports;
3. Major Business Development Reports within 15 Days of their occurrence.

Continuing Regulation

Jurisdiction of the SEC Continues until a Company stops using a National **Securities** Exchange;

and there are either:

1. Less than 300 Total **Shareholders** of all **Classes of Securities**; or
2. Less than 500 Total **Shareholders** of all **Classes** and Total Assets are less Than \$5M.

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Subject Outline Section

DEMO VERSION.....	1
LAW SCHOOL AND BAR EXAM SERIES.....	2
INTRODUCTION.....	3
THE CORPORATION.....	4
Distinct Legal Entity.....	4
Legal Entity.....	4
Distinct from its Owners.....	4
Potentially Perpetual Life.....	4
Constitutional Issues.....	4
Due Process Clause: Federal Subject Matter and Personal Jurisdiction.....	4
Commerce Clause.....	4
Limits on Constitutional Rights.....	4
State Grant of Power.....	5
State Incorporation Statutes.....	5
Outer Limits of Corporate Power to Act.....	5
SHAREHOLDERS.....	6
Powers and Rights.....	6
General Rights.....	6
Voting Rights.....	6
Limited Liability: Privilege of Immunity from Personal Liability.....	6
Limits of Power.....	6
DIRECTORS.....	7
The Board of Directors.....	7
Power to Act.....	7
Initial Directors.....	7
Annual Election.....	7
Staggered Terms.....	7
Number of Directors.....	7
Qualifications.....	7
SECURITIES EXCHANGE ACT OF 1934.....	8
Publicly Traded Securities.....	8
Regulatory Purpose.....	8
Regulated Securities.....	8
§12 Registration.....	8
§13 Continuous Public Disclosure.....	8
Continuing Regulation.....	8