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*Cases and Materials on  
Business Entities*

*2007-2008 Supplement*

*Eric A. Chiappinelli*

*Associate Dean for Alumni and Professional Relations  
Professor of Law  
Seattle University School of Law*

*[www.BusinessEntitiesOnline.com](http://www.BusinessEntitiesOnline.com)*



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## Preface

The purpose of this Preface is to tell you, whether you're a professor or a student, what you can expect in this Supplement. There are six kinds of materials here. First are recent, important developments in caselaw. The Delaware courts in particular have been quite busy since January 2006, when the text of the casebook was finalized. Second are recent cases of less importance but that make pedagogically useful additions to the text. Third are recent cases that are meant to replace cases in the casebook, either because the casebook case is older or because it doesn't teach as well as the case here. Fourth are casebook errata that make a difference in comprehension. That is to say, I've put corrections here for things in the casebook that were just plain wrong when I wrote them. I think there are mercifully few of these. Fifth are statutory changes since the book was written. Both the MBCA and the DGCL have made a few changes of importance to corporate law professors—at least those corporate law professors using this casebook. Sixth are discussions of two substantive areas of great current interest. One is the options backdating scandal, which is considered both doctrinally in Chapter 11, and more generally in Chapter 14. The other is the simple majority vote movement, which is covered in Chapter 15.

I describe each of the important developments in this Supplement to let you know why it's here. As with the casebook itself, my criteria for selection are recent cases (less than 20 years old, with few exceptions) that present issues suitable for upper division law students in an introductory course in business entities, and that seem to me to be teachable.

As in the casebook, following each case are Notes and Questions. One of the most useful features of this casebook is the way in which the Notes and Questions sections are organized. I have divided the notes and questions into five types, labeled each, and set them out in the same order throughout the book. Not every Notes and Questions section will have each type. The first type is called, believe it or not, Notes. This has factual information, usually about the preceding case, the kind of transaction, or the applicable law. The second type is called Reality Check. These questions are designed to make sure you understand the transaction, the dispute, and the resolution. They should be of particular value before class and at the end of the course, when you're preparing for the final exam. The third type is called Suppose. These questions ask you to be a bit flexible in your thinking. They ask you to imagine that the facts or the law were slightly different from the actual case. One of a lawyer's most frequent tasks is to analogize or distinguish one set of facts from another. The Suppose questions give you practice in doing that. The fourth type is called What Do You Think? These are policy and theory questions. They ask you for your view of the case's

result on the parties, the social effect of the rule in the case, or a more general theoretical question. These may seem a bit divorced from reality at first, but I think law students tend to underestimate the power of theory on the world in which they live.

Finally, some of the Notes and Questions sections end with a You Draft It exercise. These are, as you see by the name, opportunities to hone your drafting skills. My pedagogical view is that drafting exercises that are simply made up by the professor are not nearly as valuable as those drawn from actual legal practice. Moreover, I believe that an underappreciated writing skill is the talent to draft small, very focused, pieces. Every You Draft It assignment is based on actual language that was important in the case just discussed.

## Highlights of the Contents

If you teach nothing else from this Supplement, you should cover the following:

### **Stone v. Ritter in Chapter 11**

This reconceptualizes *Caremark* and deals with the duty of good faith.

### **Desimone v. Barrows in Chapter 11**

This case discusses the corporate law issues involved in backdating options.

### **ATR-Kim Eng Financial Corp. v. Araneta in Chapter 13**

This is important because it's a thoughtful application of *Caremark* and holds directors liable for breaching *Caremark* duties.

### **The Backdated Options Scandal in Chapter 14**

The text summarizes the corporate responsibility aspects of the backdating scandal in light of the post-Enron reforms.

### **The Simple Majority Vote Movement in Chapter 15**

The rise of this important shareholder activist initiative and the statutory implications are discussed here.

### **Seinfeld v. Verizon Communications, Inc. in Chapter 15**

This case is important, although it reaffirmed the long-standing rule, because it suggests that the Delaware courts may focus their attention on shareholder books and records rights.

Finally, I want to point out that [www.BusinessEntitiesOnline.com](http://www.BusinessEntitiesOnline.com) provides both students and professors with additional resources, including new case developments.



## Acknowledgments

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