

Authors' Introduction

2025 Edition

O'Neal and Thompson's Close Corporations and LLCs: Law and Practice continues to be the leading treatise examining the challenges facing closely held enterprises and the attorneys that advise them. Among the dozens of new cases discussed in this latest update are:

- An Oklahoma case which should remind close corporation participants and their lawyers that in some jurisdictions bylaws can be amended by course of conduct as well as by formal amendment. § 3:50
- Cases highlighting the continued disagreement between jurisdictions as to whether an LLC will be bound by an agreement signed by all LLC members but not the LLC itself. § 5:4
- A Pennsylvania case illustrating potential pitfalls that can appear when an LLC operating agreement divides economic and voting rights among members in different ways, leading to a situation in which members holding three-fourths of the LLC's "membership interests" could not amend the LLC operating agreement because the remaining member held half the company's "voting interests." § 5:11
- A Delaware case noting differences between Delaware's LLC act and the Uniform LLC act when it comes to the power of a deceased member's executor; the Delaware LLC act allows a member's executor to exercise a deceased member's governance rights while administering and settling the estate, while the Uniform Act denies governance rights to an executor. § 5:11
- Several cases addressing whether a member or manager has the authority to file for bankruptcy for the LLC. § 5:12
- A South Carolina case where an appellate court reversed a lower court's order that an LLC member be dissociated, even though the member's relation with the LLC's other members was personally fractious. § 5:27
- A New York case striking down as against public policy a provision in a corporation's bylaws which absolutely

forbade a shareholder to transfer his interest without the other shareholders' consent and contained no provision that consent would not be unreasonably withheld. § 7:7

- A New York case holding that a mandatory stock repurchase agreement did not violate the Rule Against Perpetuities. § 7:14
- A Wisconsin case which determined minority shareholders' "reasonable expectations" by referring to the private placement memorandum given to the shareholders when they bought their shares thirty years earlier. § 9:8
- A Hawaii case in which fiduciary duties were found to have arisen out of the owners' kinship—an older brother and majority owner of a corporation was held to owe his younger brother, the minority owner, fiduciary duties because the two had a "very good and trusted relationship from way back to childhood." § 9:23
- A Connecticut decision which held that there was a common-law exception to the universal demand requirement contained in the state's corporation statute. § 9:26
- A Minnesota Supreme Court decision which held that a bank, which was trustee for a trust holding 90% of a private corporation's shares, could be regarded as the corporation's controlling shareholder when among other things it called shareholder meetings, chose directors, and voted the shares in the trust. § 9:30
- A Tennessee case finding that two brothers who owned an LLC 50-50 did not owe one another fiduciary duties, even though the state's current LLC act imposed such duties, because the previous statute, which did not provide for fiduciary duties, was in force when the LLC was formed. § 9:41
- Cases from several jurisdictions addressing whether minority owners in a closely held firm can bring a suit directly where the law typically would require the claim to be brought derivatively. § 9:48
- A discussion of several LLC cases where, amidst deep hostility between members, one member brought a derivative suit and was challenged under rules of civil procedure which require that a derivative plaintiff "fairly and adequately represent the interests of shareholders or members who are similarly situated." § 9:50.

HIGHLIGHTS

We welcome your thoughts on the treatise and any suggestions for additional coverage.

Robert B. Thompson: thompson@georgetown.edu

Harwell Wells: harwell.wells@temple.edu

July 2025