Volume 1

PART I. BUSINESS ENTITIES

CHAPTER 1. THE LAWYER-CLIENT RELATIONSHIP

I. SCOPE

§ 1:1 In general

II. TERMS OF LAWYER-CLIENT RELATIONSHIP

A. FORMATION AND SCOPE

- § 1:2 Agreement
- § 1:3 —Initial understandings
- § 1:4 Non-engagement
- § 1:5 Disengagement

B. FEES AND BILLING

- § 1:6 Fee arrangements
- § 1:7 Computing fees
- § 1:8 Ethical issues
- § 1:9 "Best Practices" in Billing the Small Business Client

C. LAWYER'S ROLE IN ADVISING THE SMALL BUSINESS

- § 1:10 In general
- § 1:11 Small businesses vs. Startups

III. ETHICAL GUIDELINES FOR BUSINESS LAWYERS

A. IDENTIFYING THE CLIENT

- § 1:12 In general
 - B. CLIENT CONTROL
- § 1:13 In general
 - C. COMPETENT REPRESENTATION
- § 1:14 In general
 - D. COMMUNICATION
- § 1:15 In general
- § 1:16 Tax advice

E. CONFIDENTIALITY

- § 1:17 In general
- § 1:18 Exceptions
- § 1:19 Law firms

F. CONFLICTS OF INTEREST BETWEEN CLIENTS

- § 1:20 In general
- § 1:21 Current clients
- § 1:22 —Joint representation
- § 1:23 —Payment of legal fees by another party
- § 1:24 —Entity and associated individuals
- § 1:25 Former clients
- § 1:26 Prospective clients
- § 1:27 Law firms

G. CONFLICTS OF INTEREST BETWEEN LAWYER AND CLIENT

§ 1:28 In general

IV. SPECIFIC ETHICAL ISSUES

- A. LAWYERS AS CORPORATE OFFICERS AND DIRECTORS
- § 1:29 In general
 - B. MULTI-JURISDICTIONAL PRACTICE
- § 1:30 In general

V. PENALTIES

- § 1:31 In general
- § 1:32 Professional discipline
- § 1:33 Tort liability
- § 1:34 Criminal accountability
- § 1:35 Loss of contract rights
- § 1:36 Fee forfeiture
- § 1:37 Tax preparer penalties

CHAPTER 2. SELECTION OF A BUSINESS ENTITY

I. SCOPE

§ 2:1 In general

II. ALTERNATIVE FORMS OF BUSINESS ORGANIZATION

- § 2:2 In general
- § 2:3 Sole proprietorship
- § 2:4 General partnership
- § 2:5 Limited partnership
- § 2:6 Limited liability company
- § 2:7 Limited liability partnerships
- § 2:8 Limited liability limited partnerships
- § 2:9 C corporation
- § 2:10 S corporation

III. FACTORS RELATING TO FORM SELECTION

A. INTRODUCTION

§ 2:11 Overview of factors to be considered

B. OWNERS' LIABILITY

- § 2:12 In general
- § 2:13 No liability protection
- § 2:14 Liability protection for some owners
- § 2:15 Liability protection for all owners

C. TAX TREATMENT

- § 2:16 In general
- § 2:17 Pass-through tax treatment
- § 2:18 Separate entity treatment
- § 2:19 Hybrid pass-through treatment
- § 2:20 Accounting methods

D. MANAGEMENT STRUCTURE

- § 2:21 In general
- § 2:22 Decentralized management
- § 2:23 Centralized management

E. TRANSFERABILITY OF OWNERSHIP INTERESTS

- § 2:24 In general
- § 2:25 Nontransferable interests
- § 2:26 Partially transferrable interests
- § 2:27 Freely transferrable interests

F. ORGANIZATIONAL AND MAINTENANCE COSTS

- § 2:28 In general
- § 2:29 Minimal organizational and maintenance costs
- § 2:30 Greater organizational and maintenance costs

IV. CHECKLISTS OF ADVANTAGES AND DISADVANTAGES

- § 2:31 In general
- § 2:32 Sole proprietorship
- § 2:33 General partnership
- § 2:34 Limited liability partnership
- § 2:35 Limited partnership
- § 2:36 Limited liability limited partnerships
- § 2:37 Limited liability company

xxii

- § 2:38 C corporation
- § 2:39 S corporation

CHAPTER 3. SOLE PROPRIETORSHIPS

I. SCOPE

§ 3:1 In general

II. ORGANIZING THE SOLE PROPRIETORSHIP

- § 3:2 In general
- § 3:3 Business plan
- § 3:4 Business-counseling services
- § 3:5 Financing

III. BUSINESS NAME

- § 3:6 Choosing a name
- § 3:7 Assumed or fictitious business name registration
- § 3:8 Name availability and enforceability
- § 3:9 Determining availability and enforceability
- § 3:10 Common law rights in business names
- § 3:11 Statutory protection of business names

IV. OPERATIONAL ISSUES

- § 3:12 Licenses and permits
- § 3:13 Owner exposure to business risks
- § 3:14 Accounting and taxes
- § 3:15 Succession planning

V. THE U.S. CORPORATE TRANSPARENCY ACT

§ 3:16 Sole proprietorships are not considered "reporting companies" for purposes of the U.S. Corporate Transparency Act and accordingly are not required to file Beneficial Ownership Information Reports with FinCen as required by that Act

CHAPTER 4. TAX ASPECTS OF SOLE PROPRIETORSHIPS

I. SCOPE

§ 4:1 In general

II. TAXATION OF SOLE PROPRIETORSHIPS

0.40	m 1 10 11
§ 4:2	Tax classification
§ 4:3	Income and loss
§ 4:4	Self-employment tax
§ 4:5	Alternative minimum tax
§ 4:6	Losses offset income
§ 4:7	—Hobby losses
§ 4:8	—Passive loss rules
§ 4:9	Deduction of business expenses
§ 4:10	—Start-up and organizational expenditures
§ 4:11	—Home office deduction
§ 4:12	Qualifying for the 20% "pass-through" tax
	deduction—Active trades and businesses
§ 4:13	—Small business entities with significant
	amounts of passive income
§ 4:14	Tax deferral and other provisions of the
	Coronavirus Assistance, Relief and Economic
	Security Act of 2020 (C.A.R.E.S. Act)
§ 4:15	Tax deferral and other provisions of the
	Consolidated Appropriations Act, 2021
§ 4:16	Qualified retirement plans
§ 4:17	Other fringe benefits

III. REPORTING REQUIREMENTS

- § 4:18 Annual income tax return
- § 4:19 Estimated tax
- § 4:20 Information returns and withholding

IV. SALE OF A SOLE PROPRIETORSHIP'S BUSINESS

§ 4:21 Asset sale

CHAPTER 5. GENERAL PARTNERSHIPS

I. SCOPE

§ 5:1 In general

xxiv

II. USES OF PARTNERSHIPS

- § 5:2 In general
- § 5:3 General Partnerships Formed by Accident
- § 5:4 Joint ventures
- § 5:5 Strategic alliances

III. UNIFORM ACTS

- § 5:6 In general
- § 5:7 Uniform Partnership Act (1914)
- § 5:8 Uniform Partnership Act (1994)
- § 5:9 Uniform Partnership Act (1997)

IV. PARTNERSHIP CREATION

- § 5:10 Partnership defined
- § 5:11 Creation of partnership
- § 5:12 —Partnership by agreement
- § 5:13 —Partnership by estoppel

V. PARTNERS' ECONOMIC INTERESTS AND MANAGEMENT RIGHTS

- § 5:14 Partners' economic interests—Allocation
- § 5:15 —Profits, losses, and distributions
- § 5:16 —Capital
- § 5:17 Partners' management rights
- § 5:18 Partners' authority as agents

VI. CHANGES IN PARTNERS' INTERESTS

- § 5:19 In general
- § 5:20 Sales and other transfers
- § 5:21 Admission and redemption
- § 5:22 Termination

VII. RELATIONS BETWEEN PARTNERS

- § 5:23 Partners' fiduciary duties
- § 5:24 Remedies for breach of fiduciary duty
- § 5:25 Right of indemnification

VIII. LIABILITY TO THIRD PARTIES

- § 5:26 Partners as agents
- § 5:27 —Contracts

§ 5:28	—Admissions, representations, and notice
§ 5:29	—Torts
§ 5:30	—Breach of fiduciary duty
§ 5:31	Liability of partners
§ 5:32	—Planning
§ 5:33	—Liability of incoming partner

IX. PARTNERSHIP PROPERTY

§ 5:34	Ownership of partnership property
§ 5:35	Title to partnership property
§ 5:36	Conveying partnership property

X. CONVERSION AND REORGANIZATION

§ 5:37	Conversion
§ 5:38	Reorganization

XI. LIMITED LIABILITY PARTNERSHIPS

§ 5:39	In general
§ 5:40	Approval, filing, and name
§ 5:41	Management
§ 5:42	Tax treatment
§ 5:43	Partners' liability

XII. THE U.S. CORPORATE TRANSPARENCY ACT

§ 5:44 General partnerships are not considered "reporting companies" for purposes of the U.S. Corporate Transparency Act and accordingly are not required to file Beneficial Ownership Information Reports with FinCen as required by that Act

CHAPTER 6. LIMITED PARTNERSHIPS

I. SCOPE

§ 6:1 In general

II. UNIFORM ACTS

 § 6:2 History
 § 6:3 Definitions: Limited Partnership and Limited Liability Limited Partnership

	\sim	_		~ = 1
		1 A	/ 1 1	
	. K	H. 4		
III.	$\mathbf{v}_{\mathbf{I}}$			ON

- § 6:4 Certificate of limited partnership
- § 6:5 Name
- § 6:6 Defective formation
- § 6:7 Amendment of certificate
- § 6:8 Foreign limited partnerships
- § 6:9 Limited partnership agreement

IV. RIGHTS AND LIABILITIES OF PARTNERS

- § 6:10 In general
- § 6:11 General partners
- § 6:12 —Management
- § 6:13 —Authority
- § 6:14 —Liability
- § 6:15 —Fiduciary duties
- § 6:16 Limited partners
- § 6:17 —Management, authority and duties
- § 6:18 —Limited liability
- § 6:19 —Loss of limited liability

V. FINANCIAL MATTERS

- § 6:20 Capital contributions
- § 6:21 Allocation of income and loss
- § 6:22 Distributions
- § 6:23 —Required
- § 6:24 Books and records

VI. CHANGES IN PARTNERS' INTERESTS

- § 6:25 Transfers of interests
- § 6:26 Dissociation
- § 6:27 —General partners
- § 6:28 —Limited partners
- § 6:29 Admission of new partners

VII. ORGANIZATIONAL CHANGES

- § 6:30 Mergers
- § 6:31 Conversions

VIII. DISSOLUTION AND WINDING UP

§ 6:32 In general

IX. PLEADING AND PRACTICE RULES

§ 6:33 In general

X. TAX ASPECTS

- § 6:34 In general
- § 6:35 Family limited partnerships

XI. SECURITIES LAWS

§ 6:36 In general

XII. THE U.S. CORPORATE TRANSPARENCY ACT AND BENEFICIAL OWNERSHIP INFORMATION REPORTS

- § 6:37 In general
- § 6:38 Who must comply?
- § 6:39 When must you comply?
- § 6:40 How do you comply?
- § 6:41 Who must be disclosed
- § 6:42 What must be disclosed
- § 6:43 Disclosure of "company applicants"
- § 6:44 After the initial BOI is filed
- § 6:45 Penalties for noncompliance
- § 6:46 New York's LLC Transparency Act

CHAPTER 7. LIMITED LIABILITY COMPANIES

I. SCOPE

§ 7:1 In general

II. LEGAL AND TAX FRAMEWORK

- § 7:2 History
- § 7:3 Statutory framework
- § 7:4 Member and manager liability

III. CREATING AN LLC

- § 7:5 In general
- § 7:6 Conversions

IV. ARTICLES OF ORGANIZATION

§ 7:7 Purpose

xxviii

§ 7:8 § 7:9 § 7:10	Content Amendment and restatement Maintaining good standing
V. C .	APITAL AND OTHER CONTRIBUTIONS
-	Capital contributions Contributions of services

VI. OPERATING AGREEMENT

In general
Function
Record of organization and capitalization
Modification of statutory default rules
Roadmap for operations
Buy-sell arrangements

VII. LLC MANAGEMENT

§ 7:19	Flexibility
§ 7:20	Selection of management type
§ 7:21	Member management
§ 7:22	Manager management
§ 7:23	Unanimous member consent
§ 7:24	Inspection of books and records
§ 7:25	Fiduciary duties

VIII. MEMBERS' INTERESTS

8 7.26	In general
O .	8
8 7:27	Interests in capital
§ 7:28	Interests in profits and losses
§ 7:29	Rights to distributions

IX. CHANGES IN MEMBERS' INTERESTS

§ 7:30	In general	
§ 7:31	Sales and other transfers of members' interests	
§ 7:32	—Buy-sell arrangements	
§ 7:33	—Securities laws	
§ 7:34	Admission of new member or redemption of existing member	
§ 7:35	Dissociation of members	
§ 7:36	—Withdrawal	
§ 7:37	—Expulsion	

§ 7:38 —Consequences

X. TAXATION OF LLCS

- § 7:39 Tax classification of LLCs § 7:40 Pass-through tax treatment
- § 7:41 Other tax issues
- § 7:42 Election to be taxed as a corporation
- § 7:43 Tax classification of members
- § 7:44 Qualifying for the 20% "pass-through" tax deduction—Active trades and businesses
- § 7:45 —Small business entities with significant amounts of passive income

XI. THE U.S. CORPORATE TRANSPARENCY ACT AND BENEFICIAL OWNERSHIP INFORMATION REPORTS

- § 7:46 In general
- § 7:47 Who must comply?
- § 7:48 When must you comply?
- § 7:49 How do you comply?
- § 7:50 Who must be disclosed
- § 7:51 What must be disclosed
- § 7:52 Disclosure of "company applicants"
- § 7:53 After the initial BOI is filed
- § 7:54 Penalties for noncompliance
- § 7:55 New York's LLC Transparency Act
- § 7:56 Constitutionality of the Federal Corporate Transparency Act

CHAPTER 8. TAX ASPECTS OF PARTNERSHIPS

I. SCOPE

§ 8:1 In general

II. BASICS

- § 8:2 Tax definition of a partnership
- § 8:3 Classification elections
- § 8:4 Tax consequences of classification elections
- § 8:5 Anti-abuse rules
- § 8:6 Aggregate and entity concepts

§ 8:7 State taxation of partnerships

III. FORMATION

A. PARTNERSHIP AGREEMENT

§ 8:8 Advisability of formal agreement

B. CONTRIBUTION OF PROPERTY

- § 8:9 Tax-free exchange
- § 8:10 Qualifying property
- § 8:11 Options
- § 8:12 Exceptions to nonrecognition rule
- § 8:13 Contribution of services

C. TAX BASIS IN PARTNERSHIP INTERESTS

- § 8:14 Inside and outside basis
- § 8:15 Outside basis
- § 8:16 —Effect of liabilities
- § 8:17 —Allocation of liabilities
- § 8:18 Inside basis

IV. OPERATION

A. TAX ACCOUNTING

- § 8:19 Partnership income tax returns
- § 8:20 Calculation of income or loss
- § 8:21 Qualifying for the 20% "pass-through" tax deduction—Active trades and businesses
- § 8:22 —Small business entities with significant amounts of passive income
- § 8:23 Tax deferral and other provisions of the Coronavirus Assistance, Relief and Economic Security Act of 2020 (C.A.R.E.S. Act)
- § 8:24 Tax deferral and other provisions of the Consolidated Appropriations Act, 2021
- § 8:25 Elections
- § 8:26 Taxable year
- § 8:27 Closing of taxable year

B. DISTRIBUTIVE SHARES

- § 8:28 Partners' shares of partnership income and loss
- § 8:29 Determination of distributive shares

\$ 8:30 \$ 8:31 \$ 8:32 \$ 8:33 \$ 8:34 \$ 8:35 \$ 8:36 \$ 8:37 \$ 8:38 \$ 8:39	—Substantial economic effect —In accordance with partners' interests —Capital accounts Allocations with respect to contributed property Limitations on deduction of losses —At-risk rule —Passive losses
C.	DISTRIBUTIONS
§ 8:40 § 8:41 § 8:42	1 0
D.	TRANSACTIONS BETWEEN PARTNERSHIPS AND PARTNERS
§ 8:43 § 8:44	Partner capacity Controlled partnerships
E.	FAMILY PARTNERSHIP RULES
§ 8:45	Status as a partner and allocations
V. TI	RANSFERS OF INTERESTS
A.	GAIN OR LOSS
§ 8:47	1
\$ 8:48 \$ 8:49 \$ 8:50 \$ 8:51 \$ 8:52 \$ 8:53 \$ 8:54	Differences between sales and liquidations Liquidation of interests in personal service partnerships Collapsible partnership rules —Unrealized receivables and inventory —Sale or exchange of interest —Liquidation of interest Like-kind exchanges
\$ 8:49 \$ 8:50 \$ 8:51 \$ 8:52 \$ 8:53	Liquidation of interests in personal service partnerships Collapsible partnership rules —Unrealized receivables and inventory —Sale or exchange of interest —Liquidation of interest

- \S 8:57 —I.R.C. $\S\S$ 734 and 743 adjustments
- § 8:58 —I.R.C. § 732(d)

C. ALLOCATION OF INCOME OR LOSS

- § 8:59 Termination of partner's interest
- § 8:60 Changes in partners' interests

VI. TERMINATION

- § 8:61 Termination for tax purposes
- § 8:62 Tax consequences of termination

VII. CHANGE OF FORM OF BUSINESS ENTITY

- § 8:63 In general
- § 8:64 Conversion to another form of tax partnership
- § 8:65 Conversion to a disregarded entity
- § 8:66 Conversion to a corporation
- § 8:67 —Partnership contributes property
- § 8:68 —Partnership liquidates
- § 8:69 —Partners contribute interests

CHAPTER 9. CORPORATIONS

I. SCOPE

§ 9:1 In general

II. LEGAL AND TAX FRAMEWORK

- § 9:2 Statutory framework
- § 9:3 Entity concept
- § 9:4 Use of corporations by small businesses

III. ORGANIZING A CORPORATION

- § 9:5 In general
- § 9:6 State of incorporation

IV. PREINCORPORATION STAGE

- § 9:7 Promoters
- § 9:8 Preincorporation agreements

V. ARTICLES OF INCORPORATION

§ 9:9 In general

§ 9:10	Contents
§ 9:11	
§ 9:12	<u>*</u>
§ 9:13	Registered office and agent
§ 9:14	Incorporators and board of directors
§ 9:15	Amendment
§ 9:16	Articles of amendment or restatement
VI. (ORGANIZATIONAL MEETING
§ 9:17	In general
VII.	BYLAWS
§ 9:18	In general
	Amendment
VIII.	STOCK AND STOCKHOLDERS
§ 9:20	Issuance of shares
§ 9:21	Stock subscriptions
	Stock certificates
-	Transfers of stock
§ 9:24	
§ 9:25	
§ 9:26	information Shareholder economic interests
8 9.20	Shareholder economic interests
IX. (CORPORATE OPERATIONS
§ 9:27	In general
§ 9:28	Management
§ 9:29	<u>-</u>
§ 9:30	Maintaining good standing
X. T	HE U.S. CORPORATE TRANSPARENCY
	CT AND BENEFICIAL OWNERSHIP
II	NFORMATION REPORTS
§ 9:31	In general
§ 9:32	Who must comply?
§ 9:33	When must you comply?
§ 9:34	How do you comply?
§ 9:35	Who must be disclosed
§ 9:36	What must be disclosed
§ 9:37	Disclosure of "company applicants"

§ 9:38	After the initial BOI is filed
§ 9:39	Penalties for noncompliance
§ 9:40	New York's LLC Transparency Act

CHAPTER 9A. CORPORATIONS WITH A SOCIAL PURPOSE (ALSO KNOWN AS BENEFIT CORPORATIONS)

§ 9A:1	In general
§ 9A:2	"For profit" corporations that make charitable donations
§ 9A:3	Benefit corporations vs. not-for-profit corporations
§ 9A:4	History of benefit corporations
§ 9A:5	Benefit corporations vs. "B corps."
§ 9A:6	Formation of benefit corporations
§ 9A:7	Election of benefit corporation status by existing corporation
§ 9A:8	Corporate purposes
§ 9A:9	Standard of conduct for benefit corporation directors and officers
§ 9A:10	Liability of benefit corporation directors and officers
§ 9A:11	Annual benefit report
§ 9A:12	Tax treatment of benefit corporations
§ 9A:13	Changes of control of benefit corporations
§ 9A:14	Termination of benefit corporation status
§ 9A:15	The U.S. Corporate Transparency Act

CHAPTER 10. TAX ASPECTS OF CORPORATIONS

I. SCOPE

§ 10:1 In general

II. BASICS

A. GENERAL RULES OF CORPORATE INCOME TAX

§ 10:2	Definition of a corporation	
§ 10:3	Separate entity	
§ 10:4	Taxable year and accounting methods	
§ 10:5	Income tax rates and returns	

§ 10:6 § 10:7	Impact of the Tax Cuts and Jobs Act of 2017 Tax deferral and other provisions of the Coronavirus Assistance, Relief and Economic Security Act of 2020 (C.A.R.E.S. Act)	
§ 10:8	Corporate tax provisions of the Inflation Reduction Act of 2022	
§ 10:9	Tax deferral and other provisions of the Consolidated Appropriations Act, 2021	
§ 10:10	Deductions and losses	
§ 10:11	Double tax	
В.	PENALTY TAXES	
§ 10:12	In general	
§ 10:13	Accumulated earnings tax	
§ 10:14	—Prohibited intent	
§ 10:15	—Accumulated earnings credit	
§ 10:16	—Dividends-paid deduction	
§ 10:17 § 10:18	Personal holding company tax	
§ 10:18 § 10:19	—Corporations subject to tax —Computation	
8 10.13	—Computation	
III. CAPITALIZATION OF CORPORATIONS		
III. C	APITALIZATION OF CORPORATIONS	
A.	TAX CONSEQUENCES OF OWNERS	
A.	TAX CONSEQUENCES OF OWNERS	
A. § 10:20	TAX CONSEQUENCES OF OWNERS In general TAX CONSEQUENCES OF	
A. § 10:20 B.	TAX CONSEQUENCES OF OWNERS In general TAX CONSEQUENCES OF SHAREHOLDERS	
A. § 10:20 B. § 10:21 § 10:22 § 10:23	TAX CONSEQUENCES OF OWNERS In general TAX CONSEQUENCES OF SHAREHOLDERS Purchase Transfer of property and I.R.C. § 351 Property	
A. § 10:20 B. § 10:21 § 10:22 § 10:23 § 10:24	TAX CONSEQUENCES OF OWNERS In general TAX CONSEQUENCES OF SHAREHOLDERS Purchase Transfer of property and I.R.C. § 351 Property —Intangible personal property	
A. § 10:20 B. § 10:21 § 10:22 § 10:23 § 10:24 § 10:25	TAX CONSEQUENCES OF OWNERS In general TAX CONSEQUENCES OF SHAREHOLDERS Purchase Transfer of property and I.R.C. § 351 Property —Intangible personal property —Services	
A. § 10:20 B. § 10:21 § 10:22 § 10:23 § 10:24 § 10:25 § 10:26	TAX CONSEQUENCES OF OWNERS In general TAX CONSEQUENCES OF SHAREHOLDERS Purchase Transfer of property and I.R.C. § 351 Property —Intangible personal property —Services —Mid-stream transfer of income	
A. § 10:20 B. § 10:21 § 10:22 § 10:23 § 10:24 § 10:25 § 10:26 § 10:27	TAX CONSEQUENCES OF OWNERS In general TAX CONSEQUENCES OF SHAREHOLDERS Purchase Transfer of property and I.R.C. § 351 Property —Intangible personal property —Services —Mid-stream transfer of income Exchange	
A. § 10:20 B. § 10:21 § 10:22 § 10:23 § 10:24 § 10:25 § 10:25 § 10:27 § 10:28	TAX CONSEQUENCES OF OWNERS In general TAX CONSEQUENCES OF SHAREHOLDERS Purchase Transfer of property and I.R.C. § 351 Property —Intangible personal property —Services —Mid-stream transfer of income Exchange Stock	
A. § 10:20 B. § 10:21 § 10:22 § 10:23 § 10:24 § 10:25 § 10:26 § 10:27 § 10:28 § 10:29	TAX CONSEQUENCES OF OWNERS In general TAX CONSEQUENCES OF SHAREHOLDERS Purchase Transfer of property and I.R.C. § 351 Property —Intangible personal property —Services —Mid-stream transfer of income Exchange Stock —Boot	
A. § 10:20 B. § 10:21 § 10:22 § 10:23 § 10:24 § 10:25 § 10:26 § 10:27 § 10:28 § 10:29 § 10:30	TAX CONSEQUENCES OF OWNERS In general TAX CONSEQUENCES OF SHAREHOLDERS Purchase Transfer of property and I.R.C. § 351 Property —Intangible personal property —Services —Mid-stream transfer of income Exchange Stock —Boot —Assumption of liabilities	
A. § 10:20 B. § 10:21 § 10:22 § 10:23 § 10:24 § 10:25 § 10:26 § 10:27 § 10:28 § 10:29	TAX CONSEQUENCES OF OWNERS In general TAX CONSEQUENCES OF SHAREHOLDERS Purchase Transfer of property and I.R.C. § 351 Property —Intangible personal property —Services —Mid-stream transfer of income Exchange Stock —Boot —Assumption of liabilities Controlled corporation	
A. § 10:20 B. § 10:21 § 10:22 § 10:23 § 10:24 § 10:25 § 10:26 § 10:27 § 10:28 § 10:29 § 10:30 § 10:31	TAX CONSEQUENCES OF OWNERS In general TAX CONSEQUENCES OF SHAREHOLDERS Purchase Transfer of property and I.R.C. § 351 Property —Intangible personal property —Services —Mid-stream transfer of income Exchange Stock —Boot —Assumption of liabilities	

C. TAX CONSEQUENCES OF SECURITIES HOLDERS

- § 10:35 In general
 - D. TAX CONSEQUENCES OF CORPORATION
- § 10:36 Issuance of Stock
- § 10:37 Issuance of securities
- § 10:38 Receipt of capital contributions
- § 10:39 Basis and holding period of property received
 - E. DEBT OR EQUITY
- § 10:40 In general
- § 10:41 Distinctions
 - F. LEASING AND LICENSING
- § 10:42 In general

IV. TRANSFERS OF STOCK AND SECURITIES

- A. GENERAL RULES
- § 10:43 Sales and exchanges
- § 10:44 Capital gains and losses
- § 10:45 Modification of debt instruments
 - B. SMALL BUSINESS CORPORATION STOCK
- § 10:46 Qualified small business stock
- § 10:47 Section 1244 stock
- § 10:48 —Small business corporation
- § 10:49 —Ordinary loss
 - C. IMPACT ON CORPORATION
- § 10:50 In general

V. SPECIALLY-TAXED CORPORATIONS

- § 10:51 In general
- § 10:52 Personal service corporations
- § 10:53 Closely-held C corporations
- § 10:54 Tax-exempt organizations
- § 10:55 Mutual funds and REITs

VI. STATE TAXATION OF CORPORATIONS

§ 10:56 In general

- § 10:57 Income taxes
- § 10:58 Franchise taxes

CHAPTER 11. S CORPORATIONS

I. SCOPE

§ 11:1 In general

II. NATURE

§ 11:2 In general

III. ELIGIBILITY

- § 11:3 In general
- § 11:4 Type of entity
- § 11:5 Limit on types of shareholders
- § 11:6 —Trusts
- § 11:7 —Qsubs
- § 11:8 Limit on number of shareholders
- § 11:9 One class of stock requirement
- § 11:10 —Debt

IV. ELECTION

- § 11:11 Filing
- § 11:12 New corporations
- § 11:13 C corporation conversions
- § 11:14 Shareholder consent

V. TERMINATION

- § 11:15 Termination of S corporation status
- § 11:16 Revocation
- § 11:17 Failure to meet eligibility requirements
- § 11:18 Passive investment income
- § 11:19 Inadvertent termination

VI. TAXABLE YEAR

- § 11:20 Choice
- § 11:21 Election

VII. PASS THROUGH OF INCOME AND LOSS

§ 11:22 Calculation and information returns

xxxviii

VIII.	TRANSFER OF S CORPORATI
§ 11:27	—Shareholders' basis in stock and debt
§ 11:26	Limitation on shareholder deductions
§ 11:25	—Employment tax
§ 11:24	—Allocation
§ 11:23	Pass through to shareholders

ION STOCK

- § 11:28 Sale or exchange
- § 11:29 Redemption

IX. DISTRIBUTIONS TO SHAREHOLDERS

- § 11:30 In general
- § 11:31 Current distributions
- § 11:32 Accumulated adjustments account
- § 11:33 Post-termination distributions
- § 11:34 Liquidating distributions
- § 11:35 Effect on corporation

X. CORPORATE LEVEL TAX

- § 11:36 In general
- § 11:37 Built-in gains tax
- § 11:38 Tax on excess passive investment income
- § 11:39 State tax

TAX CHARACTERIZATION OF S XI. CORPORATIONS

- § 11:40 Application of subchapter C
- § 11:41 Employee fringe benefits
- § 11:42 Comparison of S corporations and partnerships
- § 11:43 Deduction of business expenses—Home office deduction
- Qualifying for the 20% "pass-through" tax § 11:44 deduction—Active trades and businesses
- § 11:45 —Small business entities with significant amounts of passive income
- Tax deferral and other provisions of the § 11:46 Coronavirus Assistance, Relief and Economic Security Act of 2020 (C.A.R.E.S. Act)
- § 11:47 Tax deferral and other provisions of the Consolidated Appropriations Act, 2021

S CORPORATION AGREEMENTS XII.

§ 11:48 In general

XIII. THE U.S. CORPORATE TRANSPARENCY ACT AND BENEFICIAL OWNERSHIP INFORMATION REPORTS

§ 11:49 In general

CHAPTER 11A. NOT-FOR-PROFIT CORPORATIONS AND TAX-EXEMPT ORGANIZATIONS

I. SCOPE

- § 11A:1 In general
- § 11A:2 "For profit" corporations that engage in charitable activities
- § 11A:3 Benefit corporations (B corps.) vs. not-for-profit corporations

II. THE THREE TYPES OF NOT-FOR-PROFIT CORPORATION

- § 11A:4 In general
- § 11A:5 Mutual benefit corporations
- § 11A:6 Public charities
- § 11A:7 Private foundations

III. THE FOUR STEPS IN SETTING UP A TAX-EXEMPT ORGANIZATION

- § 11A:8 In general
- § 11A:9 Step one: formation and initial capitalization of the not-for-profit corporation
- § 11A:10 —Required provisions in "public charity" certificates of incorporation
- § 11A:11 —Initial capitalization by the corporation's organizers
- § 11A:12 Step two: application for tax-exempt status from the Internal Revenue Service
- § 11A:13 —Form 1023-EZ
- § 11A:14 —Form 1023
- § 11A:15 —Forms 1024, 1024-A, and 8871
- § 11A:16 —Political activities of tax-exempt organizations
- § 11A:17 —Charitable activities before IRS approval is granted

§ 11A:18	—Issuance of IRS "determination letter"
§ 11A:19	Step three: application for exemption from
	state and local taxes
§ 11A:20	Step four: registering as a "charitable
	fundraiser"

IV. ANNUAL REPORT REQUIREMENTS

§ 11A:21 In general

V. REVENUE STRATEGIES FOR THE NOT-FOR-PROFIT CORPORATION

§ 11A:22	In general
§ 11A:23	Individual donations
§ 11A:24	Government grants
§ 11A:25	Fundraising activities
§ 11A:26	Unrelated business taxable income

VI. GOVERNANCE OF THE NOT-FOR-PROFIT CORPORATION; LIABILITY OF DIRECTORS AND OFFICERS

§ 11A:27 In general

VII. CHANGE OF CONTROL, DISSOLUTION, AND LIQUIDATION OF THE NOT-FOR-PROFIT CORPORATION

§ 11A:28 In general

VIII. FOREIGN NOT-FOR-PROFIT CORPORATIONS

§ 11A:29 In general § 11A:30 The U.S. Corporate Transparency Act

PART II. FINANCING

CHAPTER 12. FINANCING IN GENERAL

I. SCOPE

§ 12:1 In general

II. CAPITAL STRUCTURE

§ 12:2 Business financing overview

	Advising Small Busin
§ 12:3	Needs of business
§ 12:4	Changes as business grows
§ 12:5	Banks as source of capital
§ 12:6	Asset-based financing
§ 12:7	Non-traditional sources—Life settlements
§ 12:8	—Intellectual property
§ 12:9	—Mutual funds
§ 12:10	—Alternative lenders
§ 12:11	—Friends and Family
§ 12:12	—Rollovers as Business Startups (ROBS)
§ 12:13	—Royalty financing
III. R	OLE OF THE LAWYER IN FINANCING
§ 12:14	In general
§ 12:15	Initial consultation with borrower
§ 12:16	Checklist for borrower's counsel
§ 12:17	Relationship with accountant and borrower
§ 12:18	Lawyer as deal-maker, not deal-breaker

- § 12:19 How to be a deal-maker
- § 12:20 Bank financing
- § 12:21 —Loan negotiations
- § 12:22 —Credit scoring for commercial loans
- § 12:23 Forms resources
- § 12:24 Doing the deal
- § 12:25 Securities offerings
- § 12:26 Change of accounting firms

IV. ACCOUNTING FOR LAWYERS

- § 12:27 In general
- § 12:28 Accounting principles for preparation of financial statements
- § 12:29 Types of reports
- § 12:30 Financial statements
- § 12:31 Personal financial statements
- § 12:32 How lenders analyze financial statements
- § 12:33 Financial covenants
- Financial ratios § 12:34
- § 12:35 —EBITDA
- § 12:36 Financial ratios in loan documents
- § 12:37 Post-closing due diligence

CHAPTER 13. DEBT FINANCING

I. SCOPE

§ 13:1 In general

II. INTERNAL SOURCES OF FUNDS

- § 13:2 Earnings
- § 13:3 Sale of assets
- § 13:4 Trade creditors
- § 13:5 Shareholder loans
- § 13:6 The "grid" promissory note

III. COMMERCIAL LENDERS

- § 13:7 Commercial banks
- § 13:8 Commercial finance companies
- § 13:9 Factors
- § 13:10 Sources of information
- § 13:11 Credit unions
- § 13:12 Government financing

IV. COMMERCIAL LOANS

- § 13:13 Creditworthiness
- § 13:14 Interest
- § 13:15 Fees and expenses
- § 13:16 Prepayment penalties and prohibitions
- § 13:17 Contracts to lend
- § 13:18 —Letters of interest
- § 13:19 —Proposal letters
- § 13:20 —Commitment letters
- § 13:21 Individual guarantees
- § 13:22 Corporate guarantees
- § 13:23 Types of guarantees
- § 13:24 Termination of guaranty and release of guarantor

V. SECURED LOANS

- § 13:25 In general
- § 13:26 Accounts receivable financing
- § 13:27 —Collections
- § 13:28 —Lender protections
- § 13:29 Foreign sales

Advising Small Businesses

§ 13:30	Purchase order financing
§ 13:31	Inventory financing
§ 13:32	Equipment financing
§ 13:33	Purchase money security interests
§ 13:34	Mortgage and trust deed lending
§ 13:35	Mezzanine financing
§ 13:36	Junior participations
§ 13:37	Exotic collateral
§ 13:38	Participations
§ 13:39	Syndicated loans
§ 13:40	
VI. L	OAN AGREEMENTS
§ 13:41	Contents
§ 13:42	Representations and warranties of borrower
§ 13:43	
§ 13:44	Conditions to lending
§ 13:45	Affirmative covenants
§ 13:46	
§ 13:47	
§ 13:48	
§ 13:49	Forbearance agreements
§ 13:50	3 1
§ 13:51	
§ 13:52	
§ 13:53	-
§ 13:54	Margin call
VII. F	FACTORING
§ 13:55	Purchase of receivables
§ 13:56	Arrangements
§ 13:57	The bankrupt factor
VIII.	LETTERS OF CREDIT
§ 13:58	Basics
§ 13:59	

Types of letters of credit

Controlling law

xliv

§ 13:60

§ 13:61

CHAPTER 14. GOVERNMENT FINANCING OF SMALL BUSINESSES

I. SCOPE

§ 14:1 In general

II. GOVERNMENT PROGRAMS

- § 14:2 Federal and state programs
- § 14:3 Source materials

III. SMALL BUSINESS ADMINISTRATION

A. ASSISTANCE FOR SMALL BUSINESSES

- § 14:4 In general
- § 14:5 Loan guarantees and other assistance
- § 14:6 General credit requirements
- § 14:7 Eligibility of applicants
- § 14:8 Amount and terms of loan
- § 14:9 Seller Financing in Section 7(A) Guaranteed Loans
- § 14:10 Purposes

B. SECTION 7(A) LOAN PROGRAM

- § 14:11 In general
- § 14:12 International trade
- § 14:13 Paycheck Protection Loan (PPP) Program and Other Covid-19 Pandemic Relief Programs
- § 14:14 Community Adjustment and Investment Program
- § 14:15 Qualified Employee Trusts Loan Program
- § 14:16 Pollution control
- § 14:17 CAPLines

C. SURETY BONDS

- § 14:18 In general
 - D. DISASTER LOANS
- § 14:19 In general
 - E. SECTION 504 PROGRAM
- § 14:20 In general

F. SMALL BUSINESS INVESTMENT COMPANIES

- § 14:21 In general
 - G. MICROLOAN PROGRAM
- § 14:22 In general
 - H. EMERGENCY RELIEF UNDER THE CONSOLIDATED APPROPRIATIONS ACT, 2021
- § 14:23 In General
- § 14:24 Small Business Relief
- § 14:25 Changes to the Paycheck Protection Program (PPP)
- § 14:26 Changes to Economic Injury Disaster Loan (EIDL) Program
- § 14:27 Tax Credits, Deferrals and Deductions

IV. OTHER FEDERAL PROGRAMS

- § 14:28 In general
- § 14:29 Department of Agriculture
- § 14:30 [Reserved]
- § 14:31 Bureau of Indian Affairs
- § 14:32 Department of Housing and Urban Development
- § 14:33 National Marine Fisheries Service
- § 14:34 Export-Import Bank of the United States
- § 14:35 Small business innovation research program

V. STATE AND LOCAL GOVERNMENTS

- § 14:36 Private activity bonds
- § 14:37 Other programs

CHAPTER 15. VENTURE CAPITAL FINANCING

I. SCOPE

§ 15:1 In general

xlvi

II. VENTURE CAPITAL FINANCING: THE LIFEBLOOD OF GROWING ENTREPRENEURIAL BUSINESSES

- § 15:2 The role of venture capital in the U.S.
- § 15:3 Distinguishing characteristics of a venture capital investor
- § 15:4 How do venture capitalists analyze a possible investment?

III. BASIC STAGES AND STRUCTURES OF A VENTURE CAPITAL INVESTMENT

- § 15:5 Investment stages
- § 15:6 —Early or seed stage
- § 15:7 —Growth stage
- § 15:8 Structure of investments
- § 15:9 —Formation
- § 15:10 —Friends, family and angel investments
- § 15:11 Structure of investments: early-stage venture capital
- § 15:12 Structure of investments: management capital
- § 15:13 Obligation to close

IV. VALUATION OF THE BUSINESS AND OWNERSHIP PERCENTAGES

- § 15:14 Basic approaches to valuation
- § 15:15 Determination of ownership percentage: vesting
- § 15:16 Determination of ownership percentage: clawbacks for founders
- § 15:17 Determination of ownership percentage: down rounds
- § 15:18 Determination of ownership percentage down rounds: fiduciary duties

V. DOCUMENTATION

- § 15:19 In general
- § 15:20 Term sheet
- § 15:21 Stock purchase agreement
- § 15:22 Investor rights agreement
- § 15:23 Amended governing documents
- § 15:24 Voting Agreement and Co-Sale and Right of First Refusal agreement
- § 15:25 Other documentation

VI. FUNDAMENTAL STRUCTURAL ISSUES

§	15:26	In general
§	15:27	Governance
§	15:28	Governance: pension plan investors
§	15:29	Additional capital and dilution
§	15:30	Preferred equity
§	15:31	Participating preferred equity: cap approach
§	15:32	Participating preferred equity: caps and conflicts of interest
S	15.33	[Reserved]
_	15:34	
_	15:35	Exit strategies: general transfer restrictions
_	15:36	Exit strategies: drag-along and tag-along rights
_	15:37	
_	15:38	Exit strategies: rights of first refusal, offer and
e	15.00	negotiation
	15:39	
	15:40	Exit strategies: registration rights
§	15:41	Exit strategies: registration rights pre-IPO
§	15:42	Exit strategies: registration rights post-IPO
§	15:43	Exit strategies: registration rights—Delay of registration
§	15:44	e
8	15:45	1 000
-	15:46	Compensation of VC fund managers
J		1

VII. CHOICE OF ENTITY AND FEDERAL TAX CONSIDERATIONS

§ 15:47	In general
§ 15:48	Limitations of S corporations
§ 15:49	Unrelated business taxable income
§ 15:50	Exit strategy and acquisitive reorganization transactions
§ 15:51	Qualified small business stock

VIII. FEDERAL INCOME TAXATION OF EQUITY-BASED COMPENSATION ARRANGEMENTS

§ 15:52	In general
§ 15:53	Restricted stock
§ 15:54	Sale of stock

§ 15:55	Stock options
§ 15:56	Stock options: statutory options ("ISOs")
§ 15:57	Stock options: non-statutory option plans
	("NSOs")
§ 15:58	Interests in entities taxed as partnerships
\$ 15:59	Phantom equity

CHAPTER 16. OVERVIEW OF SECURITIES LAWS

I. SCOPE

§ 16:1 In general

II. GENERAL PRINCIPLES OF SECURITIES REGULATION

§ 16:2	Purpose of securities regulation
§ 16:3	Federal securities regulation
§ 16:4	State securities regulation
§ 16:5	National Securities Markets Improvement Act of
	1996

III. STATUTORY DEFINITIONS OF SECURITY

§ 16:6	State and federal definitions
§ 16:7	Securities Act of 1933
§ 16:8	Securities Exchange Act of 1934
§ 16:9	Blue sky laws
§ 16:10	Form versus substance analysis

IV. APPLICATION OF SECURITIES LAWS TO COMMON BUSINESS TRANSACTIONS

§ 16:11	Notes
§ 16:12	Stock
§ 16:13	Investment contracts
§ 16:14	—Howey test
§ 16:15	— —Investment of money
§ 16:16	— —Common enterprise
§ 16:17	— Expectation of profit
§ 16:18	——Solely from efforts of others
§ 16:19	—Risk capital test
§ 16:20	Guarantees
§ 16:21	Employee retirement plans

§ 16:22	Franchises and distributorships
§ 16:23	General partnerships
§ 16:24	Limited partnerships
§ 16:25	Limited liability companies
§ 16:26	Real estate transactions
§ 16:27	Sales of business
§ 16:28	Memberships
§ 16:29	Financial consulting agreements
§ 16:30	Novelty items

CHAPTER 17. PRIVATE PLACEMENTS AND LIMITED OFFERINGS OF SECURITIES

I. SCOPE

§ 17:1 Author's Note § 17:2 In general

II. SECURITIES ACT OF 1933

A. EXEMPTIONS FROM REGISTRATION

§ 17:3 In general

B. SECTION 4(A)(2)

§ 17:4 In general
§ 17:5 Administrative and judicial interpretations
§ 17:6 —Sophistication
§ 17:7 —Access to information
§ 17:8 —Integration of offerings
§ 17:9 —Number of offerees

C. REGULATION D

§ 17:10	In general
§ 17:11	Rule 501 definitions
§ 17:12	Rule 502 general conditions
§ 17:13	—Integration
§ 17:14	—Information requirements
§ 17:15	—Limitations on manner of offering
§ 17:16	—Limitations on resale
§ 17:17	—Sales commissions
§ 17:18	Rule 503 filings of notice of sale

- § 17:19 Rule 504 exemption for offers and sales not exceeding \$1,000,000
- § 17:20 [Reserved]
- § 17:21 Rule 506 exemption for offers and sales without regard to dollar amount

D. OTHER EXEMPTIONS

- § 17:22 In general
- § 17:23 Regulation A
- § 17:24 Section 3(a)(10)
- § 17:25 Intrastate offerings
- § 17:26 Section 4(a)(5)
- § 17:27 SEC Rule 701

E. DISCLOSURE REQUIREMENTS

§ 17:28 In general

III. STATE BLUE SKY LAWS

- § 17:29 In general
- § 17:30 Uniform Securities Act of 1956 and state acts
- § 17:31 —California
- § 17:32 —Illinois
- § 17:33 —New York
- § 17:34 —Texas

CHAPTER 18. PUBLIC SALES OF SECURITIES

I. SCOPE

- § 18:1 Author's note
- § 18:2 In general

II. DECISION TO "GO PUBLIC"

A. ADVANTAGES AND DISADVANTAGES

§ 18:3 In general

B. REASONS FOR "GOING PUBLIC"

- § 18:4 Cheaper capital
- § 18:5 Retention of operating control
- § 18:6 Insiders' liquidity

		ADVISING SMALL DUSI
§	18:7	Established value
§	18:8	Exposure and prestige
	C.	REASONS FOR NOT "GOING PUBLIC"
§	18:9	Time and expense of initial filing
§	18:10	Continuous reporting and other requirements
§	18:11	Lack of flexibility
§	18:12	Exposure
Ι	II. P	PARTICIPANTS IN PUBLIC OFFERING
§	18:13	In general
§	18:14	Issuer
§	18:15	Managing underwriter
§	18:16	Issuer's counsel
§	18:17	Underwriters' counsel
§	18:18	Auditors

IV. OFFERING PROCESS

Miscellaneous personnel

§ 18:19 Outside experts

§ 18:20 Printer

§ 18:21

§ 18:22	Initial planning
§ 18:23	—Requirements of company and purpose of offering
§ 18:24	—Determining feasibility
§ 18:25	—Structuring transaction
§ 18:26	Integration
§ 18:27	Restrictions on offers and sales; dissemination of information
§ 18:28	Smaller reporting companies
§ 18:29	Preparing disclosure document
§ 18:30	—Identification of proper form
§ 18:31	Regulation A
§ 18:32	Preparing disclosure document—Identification of proper form—Form S-1
§ 18:33	——State forms
§ 18:34	—Due diligence
8 18:35	Review process

V. CONSEQUENCES OF BECOMING PUBLIC COMPANY

§ 18:36 In general

§ 18:37	1934 Act reporting companies
§ 18:38	—Registration
§ 18:39	—Periodic reporting requirements
§ 18:40	—Proxy rules and reports to shareholders
§ 18:41	—Insider trading
§ 18:42	—Transactions by major shareholders
§ 18:43	—Transactions by company
§ 18:44	Responsibilities to public market

Volume 2

PART III. CORPORATE OPERATIONS

CHAPTER 19. VOTING AND OTHER RIGHTS OF SHAREHOLDERS AND LLC MEMBERS

I. SCOPE

§ 19:1 In general

II. SHAREHOLDER VOTING

§ 19:2	Shareholders' voting rights
§ 19:3	—Majority requirement
§ 19:4	Shareholder voting rights—Appraisal rights
§ 19:5	Shareholders' voting rights—Election of directors
§ 19:6	Proxies
§ 19:7	—Proxy solicitation
§ 19:8	Preemptive rights

III. SHAREHOLDERS' MEETINGS

A. SHAREHOLDER ACTION

§ 19:9	Group action required
§ 19:10	Annual meetings
§ 19:11	Special meetings
§ 19:12	Action without a meeting

B. NOTICE AND RECORD DATE

§ 19:13 Notice

§ 19:14 § 19:15	Shareholders entitled to notice Waiver of notice
C. § 19:16 § 19:17 § 19:18 § 19:19	QUORUM AND CONDUCT OF MEETING Quorum required Right to attend meeting Conduct of meeting Adjournment
IV. LLC MEMBER VOTING	
§ 19:20	In general
V. INSPECTION OF CORPORATE RECORDS	
A.	RIGHT OF INSPECTION
§ 19:21 § 19:22 § 19:23 § 19:24	Shareholders' inspection rights Affiliated corporations Foreign corporations Rights of others to inspect corporate records
В.	BOOKS AND RECORDS SUBJECT TO INSPECTION
§ 19:25 § 19:26 § 19:27	In general Shareholder voting lists Financial information
C.	TIME, PLACE, AND MANNER OF INSPECTION
§ 19:28 § 19:29	Time and place of inspection Manner of inspection
D.	PURPOSE OF INSPECTION
§ 19:30 § 19:31	Proper purpose Grounds for refusing inspection
E.	ENFORCEMENT OF RIGHT OF INSPECTION
§ 19:32 § 19:33	Demand Court-ordered inspections

VI. INSPECTION OF LLC RECORDS

§ 19:34 Access to records

- § 19:35 Right to information
- § 19:36 Transferees of members' interests

VII. ENFORCEMENT OF SHAREHOLDER RIGHTS

- § 19:37 Shareholder derivative actions
- § 19:38 —Procedural safeguards
- § 19:39 Shareholder direct actions
- § 19:40 Judicial dissolution
- § 19:41 Enforcement of LLC member rights

CHAPTER 20. SHAREHOLDER VOTING ARRANGEMENTS

I. SCOPE

§ 20:1 In general

II. GENERAL PRINCIPLES

- § 20:2 Purpose of voting arrangements
- § 20:3 Tests of validity; conflict of laws

III. POOLING AGREEMENTS

- § 20:4 Definition
- § 20:5 Validity
- § 20:6 Advantages and disadvantages

IV. VOTING TRUSTS

- § 20:7 Definition
- § 20:8 Validity
- § 20:9 Advantages and disadvantages

V. IRREVOCABLE PROXIES

- § 20:10 Definition
- § 20:11 Validity
- § 20:12 Advantages and disadvantages

VI. CUMULATIVE VOTING

- § 20:13 Definition
- § 20:14 Validity

§ 20:15 Advantages and disadvantages

VII. CLASSIFICATION OF SHARES

- § 20:16 Definition
- § 20:17 Validity
- § 20:18 Advantages and disadvantages

VIII. SUPERMAJORITY APPROVAL REQUIREMENTS

- § 20:19 Definition
- § 20:20 Validity
- § 20:21 Advantages and disadvantages

IX. DEADLOCK RESOLUTION DEVICES

- § 20:22 Definition
- § 20:23 Validity
- § 20:24 Advantages and disadvantages

X. LLC MEMBER VOTING ARRANGEMENTS

- § 20:25 In general
- § 20:26 LLC member voting rights

XI. VOTING ARRANGEMENTS OF CORPORATE DIRECTORS AND LLC MANAGERS

- § 20:27 In general
- § 20:28 Proxy arrangements
- § 20:29 Supermajority voting of directors or LLC managers

CHAPTER 21. BUY-SELL AGREEMENTS

I. SCOPE

- § 21:1 In general
- § 21:2 Small businesses vs. startup ventures

II. PURPOSE

- § 21:3 In general
- § 21:4 Transfer restrictions
- § 21:5 —Partnerships
- § 21:6 —LLCs

§ 21:7 —Corporations
§ 21:8 —Estate tax planning
§ 21:9 Owner transitions
§ 21:10 —Partnerships
§ 21:11 —LLCs
§ 21:12 —Corporations
§ 21:13 Lawyer conflicts of interest

III. FORM

- § 21:14 In general
- § 21:15 Buy-sell agreements that reference employment agreements

IV. STRUCTURE

- § 21:16 In general
 § 21:17 Cross-purchase agreement
 § 21:18 Redemption agreement
 § 21:19 Hybrid agreement
 § 21:20 "May" or "shall"?
 § 21:21 Insurance funding, in general
 § 21:22 Insurance funding—Cross-purchase agreements
- $\S~21:23~$ —Redemption and hybrid agreements

V. CORE PROVISIONS

- § 21:24 In general
- § 21:25 Transfer restrictions
- § 21:26 —Definition of transfer
- § 21:27 —Right of first refusal or first option
- § 21:28 —Permitted transfers
- § 21:29 Owner transitions
- § 21:30 —Death
- § 21:31 —Disability
- § 21:32 —Retirement, withdrawal, and termination of employment
- § 21:33 "Voluntary withdrawal," "bad behavior," and "laziness" as triggering events
- § 21:34 —Insolvency
- § 21:35 Owner transition—divorce or other dissolution of a marriage
- § 21:36 Owner transitions—Other events
- § 21:37 Price
- § 21:38 —Agreed price

§ 21:39	—Stipulated value
§ 21:40	—Formula price
§ 21:41	— —Liquidation value
§ 21:42	——Going concern value
§ 21:43	—Appraised price
§ 21:44	— — The "pyramid" appraisal clause
§ 21:45	—Offer price
§ 21:46	—Adjustment for shareholder debt
§ 21:47	—Startup venture
§ 21:48	Terms
§ 21:49	—Closing
§ 21:50	—Security and guarantees
§ 21:51	—Restrictions on business operations
§ 21:52	Legends
§ 21:53	Enforcement

VI. ADDITIONAL PROVISIONS

§ 21:54	In general
§ 21:55	Guaranties
§ 21:56	Deadlock
§ 21:57	Dissolution
§ 21:58	Termination of loans between a company and it owners
§ 21:59	Releases or indemnification of departing owners from obligations to third parties
§ 21:60	Option for the departing owner to purchase buyout insurance
§ 21:61	Termination of agreement
§ 21:62	S corporations
§ 21:63	Allocation of income in connection with sales of interests
§ 21:64	Consent of third parties

CHAPTER 22. POWERS, DUTIES, AND LIABILITIES OF CORPORATE DIRECTORS AND OFFICERS

I. SCOPE

 $\S 22:1$ In general

lviii

II. POWERS AND DUTIES OF DIRECTORS AND OFFICERS

A. POWERS OF DIRECTORS

- § 22:2 Power to manage the corporation
- § 22:3 Statutory powers of directors
- § 22:4 Limitations on directors' powers

B. ACTION BY DIRECTORS

- § 22:5 Meetings of board of directors
- § 22:6 Action without a meeting
- § 22:7 Committees

C. POWERS OF OFFICERS

- § 22:8 Actual authority of officers
- § 22:9 Apparent authority of officers
- § 22:10 Ratification

III. DUTIES OF DIRECTORS AND OFFICERS

- § 22:11 In general
- § 22:12 Duty of care
- § 22:13 —Duty of diligence
- § 22:14 —Negligence and the "business judgment" defense
- § 22:15 —Liabilities for improper distributions
- § 22:16 Duty of loyalty
- § 22:17 —Conflict of interest transactions
- § 22:18 —Competition with the corporation
- § 22:19 —Corporate opportunity doctrine
- § 22:20 Duty of obedience

IV. LIABILITIES OF DIRECTORS AND OFFICERS

- § 22:21 In general
- § 22:22 Contractual liability
- § 22:23 Tort liability
- § 22:24 Criminal liability
- § 22:25 Statutory liability
- § 22:26 —Securities law liability

V. INDEMNIFICATION AND INSURANCE

§ 22:27 Indemnification

§ 22:28 Insurance

CHAPTER 23. CORPORATE DIVIDENDS AND NONCORPORATE ENTITY DISTRIBUTIONS

T		Q			D	F
	_	$\overline{}$	٠,	` ,		T.

§ 23:1 In general

II. AUTHORITY TO PAY DIVIDENDS

- § 23:2 In general
- § 23:3 Cash or property dividends
- § 23:4 Share dividends
- § 23:5 Articles of incorporation and contracts

III. DECLARATION AND PAYMENT OF DIVIDENDS

- § 23:6 Declaration by board of directors
- § 23:7 Payment to shareholders
- § 23:8 Liability for payment of improper dividends

IV. PREFERRED STOCK

- § 23:9 Dividend preference
- § 23:10 Right to payment

V. LEGAL ACTIONS RELATING TO DIVIDENDS

- § 23:11 Suit to compel payment
- § 23:12 Suit to restrain payment

VI. INCOME TAX ASPECTS OF DIVIDENDS

- § 23:13 In general
- § 23:14 Definition of dividend for tax purposes
- § 23:15 Taxation of dividend income
- § 23:16 —Dividends-received deduction
- § 23:17 Computation of dividend income
- § 23:18 Taxation of share dividends
- § 23:19 Effect of dividend on corporation
- § 23:20 Dividends to Overseas Shareholders

VII. PARTNERSHIP INTERIM DISTRIBUTIONS

§ 23:21 Authority to make distributions

§ 23:22	Insolvency limitations
§ 23:23	Allocation between partners
§ 23:24	Right to payment
§ 23:25	Income tax aspects of partnership distributions

VIII. LLC INTERIM DISTRIBUTIONS

§ 23:26	Authority to make distributions
§ 23:27	Insolvency limitations
§ 23:28	Allocation between members
§ 23:29	Right to payment
§ 23:30	Tax aspects of LLC distributions

CHAPTER 24. OPERATING IN OTHER STATES

I. SCOPE

§ 24:1 In general

II. CONSEQUENCES OF TRANSACTING BUSINESS IN OTHER STATES

$\S 24:2$	In general
§ 24:3	State of organization
§ 24:4	—Change

III. AUTHORITY TO TRANSACT BUSINESS

$\S 24:5$	Requirement of qualification
$\S 24:6$	Definition of transacting business
§ 24:7	Certificate of authority
§ 24:8	Registered office and agent
$\S 24:9$	Annual report
$\S 24:10$	Rights and duties of an authorized entity

IV. SUITS AGAINST NONRESIDENT BUSINESSES

§ 24:11	In general
§ 24:12	Constitutional limitations
§ 24:13	Minimum contacts test
§ 24:14	Qualified foreign entities
§ 24:15	Uniform Interstate and International Procedure
	Act

V. STATE TAXATION OF NONRESIDENT BUSINESSES

§ 24:16	In general
§ 24:17	Constitutional limitations
§ 24:18	Due Process Clause
§ 24:19	Commerce Clause
§ 24:20	Constitutional limitations—Nexus
§ 24:21	The impact of the Internet and e-commerce on nexus: "Amazon taxes," "economic nexus," and the <i>Wayfair</i> case
§ 24:22	Constitutional limitations—Apportionment
§ 24:23	—No discrimination against interstate commerce
§ 24:24	—Fair relationship to services provided
§ 24:25	Statutory limitations

CHAPTER 25. SPECIAL PROBLEMS OF CLOSELY-HELD BUSINESSES

I. SCOPE

§ 25:1 In general

II. OWNER CONFLICTS

§ 25:2	In general
§ 25:3	Control
§ 25:4	Use of earnings
§ 25:5	Freeze-outs
§ 25:6	Squeeze-outs
§ 25:7	Tyranny of the minority
§ 25:8	Deadlock
§ 25:9	Structural solutions for owner conflict
§ 25:10	—Close corporation statutes
§ 25:11	—LLCs
§ 25:12	Dealing with owner conflict by agreement

III. PRESERVING LIMITED LIABILITY

§ 25:13	In general
§ 25:14	Organization and maintenance of limited
	liability entities
§ 25:15	Piercing the corporate veil
§ 25:16	—Avoiding veil piercing
§ 25:17	Other grounds for personal liability

IV. ADVERSE TAX CONSEQUENCES

§ 25:18	In general
§ 25:19	Disregard of entity
§ 25:20	—Corporations
§ 25:21	—Partnerships
§ 25:22	Disguised dividends
§ 25:23	—Transactions not at arms' length
§ 25:24	—Below-market loans
§ 25:25	—Payment of shareholder obligations
§ 25:26	—Payment of shareholder expenses
§ 25:27	—Related party transactions
§ 25:28	Transactions between related taxpayers
§ 25:29	—Losses disallowed
§ 25:30	—Gains taxed as ordinary income
§ 25:31	—Limitations on installment reporting
§ 25:32	—Denial of tax-free treatment for like-kind exchanges
§ 25:33	—Matching income and deductions
§ 25:34	—Sales of stock to related corporations
§ 25:35	-Reallocation of income
§ 25:36	Denial of multiple corporate tax benefits
§ 25:37	Personal holding company tax
§ 25:38	Limitations on loss deductions
3 – 5.00	

CHAPTER 26. TAX-FREE REORGANIZATIONS

I. SCOPE

§ 26:1 In general

II. CORPORATE REORGANIZATIONS

$\S 26:2$	Code provisions
§ 26:3	Purpose and theory of reorganization provisions
§ 26:4	General requirements
§ 26:5	IRS rulings

III. TYPES OF CORPORATE REORGANIZATIONS

§ 26:6	In general
§ 26:7	Type A: mergers and consolidations
§ 26:8	—Corporate law

	TIDVISING DIVIALL D
§ 26:9	—Triangular mergers
§ 26:10	—Disregarded entities and cross-entity "conversions"
§ 26:11	Type B: acquisitions of subsidiaries for stock
§ 26:12	—Share exchange
§ 26:13	Type C: acquisitions of assets for stock
§ 26:14	Type D: corporate divisions
§ 26:15 § 26:16	Type E: recapitalizations Type F: changes in identity, form, or place of incorporation, and "domestication" of limited liability companies and corporations
§ 26:17	Type G: bankrupt corporations
§ 26:18	Overlap situations
	AX TREATMENT OF PARTIES TO ORPORATE REORGANIZATIONS
A.	SHAREHOLDERS AND SECURITIES HOLDERS
§ 26:19	In general
§ 26:20	Definition of stock and securities
§ 26:21	Receipt of boot
В.	TARGET CORPORATION
§ 26:22	In general
§ 26:23	Gain or loss on distribution
C.	ACQUIRING CORPORATION
§ 26:24	In general
§ 26:25	Carryover of tax attributes
§ 26:26	—Preacquisition losses and credits
§ 26:27	—Built-in gains
v. c c	DRPORATE DIVISIONS
A.	REQUIREMENTS FOR TAX-FREE TREATMENT
§ 26:28	In general
§ 26:29	Requirements
§ 26:30	—Active business
§ 26:31	—Five-years of business operations
§ 26:32	—Not a device

- § 26:33 Business purpose§ 26:34 Requirements—Continuity of ownership
 - B. TAXATION OF PARTIES
- § 26:35 Shareholders and securities holders
- § 26:36 Distributing corporation
- § 26:37 Distributed subsidiary

VI. PARTNERSHIP AND LIMITED LIABILITY COMPANY REORGANIZATIONS

- $\S~26:38$ In general
- § 26:39 Mergers
- § 26:40 —Taxation
- § 26:41 ——Assets-over
- § 26:42 ——Assets-up
- § 26:43 ——Surviving entity
- § 26:44 —Corporations
- § 26:45 Recapitalizations
- § 26:46 Changes of state of organization
- § 26:47 Divisions

PART IV. BUSINESS TRANSACTIONS

CHAPTER 27. BUSINESS RISK AND INSURANCE COVERAGE

I. SCOPE

§ 27:1 In general

II. BUSINESS RISK

- § 27:2 Description of the business risk
- § 27:3 Sources of liability to third parties
- § 27:4 Avoiding the business risk

III. BASIC INSURANCE CONSIDERATIONS

- § 27:5 Business insurance in general
- § 27:6 Operation of the insurance industry
- § 27:7 Types of insurance

IV. PROPERTY INSURANCE

- § 27:8 In general
- § 27:9 Interest of insured
- § 27:10 Amount of coverage
- § 27:11 —Replacement cost
- § 27:12 —Coinsurance and average clauses
- § 27:13 What is covered
- § 27:14 Indirect or consequential loss

V. LIABILITY INSURANCE

- A. IN GENERAL
- § 27:15 Policies and coverage
 - B. COMMERCIAL GENERAL LIABILITY
- § 27:16 In general
- § 27:17 Who is covered
- § 27:18 What is covered

C. SPECIALTY LIABILITY INSURANCE PRODUCTS

- § 27:19 In general
- § 27:20 Commercial umbrella liability insurance
- § 27:21 Employment practices liability insurance
- § 27:22 Directors and officers liability insurance
- § 27:23 Environmental impairment liability insurance
- § 27:24 Cyberliability insurance

D. MOTOR VEHICLE LIABILITY INSURANCE

- § 27:25 In general
- § 27:26 Comprehensive coverage

VI. BONDS

§ 27:27 Fidelity and surety bonds

VII. PERSONAL INSURANCE

- § 27:28 In general
- § 27:29 Life insurance
- § 27:30 Disability insurance

lxvi

CHAPTER 28. ANTITRUST LAWS

I. SCOPE

§ 28:1 In general

II. BACKGROUND AND PURPOSES

- § 28:2 Federal antitrust laws
- § 28:3 Purposes and objectives
- § 28:4 State laws

III. PROHIBITED CONDUCT

- § 28:5 Focus of antitrust statutes
- § 28:6 Per se offenses and rule of reason
- § 28:7 Quick look analysis
- § 28:8 Diminishing use of per se rule

IV. HORIZONTAL RESTRAINTS OF TRADE

A. PER SE OFFENSES

- § 28:9 Price-fixing and bid-rigging
- § 28:10 Horizontal division of markets
- § 28:11 Group boycotts

B. OTHER HORIZONTAL RESTRAINTS

- § 28:12 Collaboration among competitors
- § 28:13 Exchanges of information
- § 28:14 Standardization
- § 28:15 Joint research and development
- § 28:16 Joint purchasing and selling
- § 28:17 "Pay-for-Delay" Agreements
- § 28:18 Rationalizing competition
- § 28:19 State action

V. VERTICAL RESTRAINTS OF TRADE

A. PER SE OFFENSES

- § 28:20 Tying arrangements
- § 28:21 Price discrimination
- § 28:22 —Elements of offense
- § 28:23 —Defenses
- § 28:24 —Commissions and advertising allowances

§ 28:25	—Purchaser liability	
В.	OTHER VERTICAL RESTRAINTS	
\$ 28:26 \$ 28:27 \$ 28:28 \$ 28:29 \$ 28:30	Territorial and customer restrictions Refusals to deal	
VI. PROVING CONTRACT, COMBINATION, OR CONSPIRACY		
\$ 28:31 \$ 28:32 \$ 28:33	Conscious parallelism	
VII. MONOPOLIZATION AND EFFORTS TO MONOPOLIZE		
A.	MONOPOLIZATION	
\$ 28:34 \$ 28:35 \$ 28:36 \$ 28:37 \$ 28:38	Relevant market Market power Willful acquisition	
В.	ATTEMPTS TO MONOPOLIZE	
§ 28:39 § 28:40 § 28:41 § 28:42	Specific intent	
C.	CONSPIRACY TO MONOPOLIZE	
§ 28:43	In general	
VIII.	MERGERS	
A.	UNLAWFUL MERGERS	
\$ 28:44 \$ 28:45 \$ 28:46 \$ 28:47	In general Types of mergers Defining relevant market Anticompetitive effects	

lxviii

§ 28:48 Defenses

B. PREMERGER NOTIFICATION AND GOVERNMENT CHALLENGES

- § 28:49 Premerger notification
- § 28:50 Government challenges

C. REMEDIES

§ 28:51 In general

IX. EXEMPTIONS

§ 28:52 In general

CHAPTER 29. PUBLIC AND PRIVATE ENFORCEMENT OF ANTITRUST LAWS

I. SCOPE

§ 29:1 In general

II. DEPARTMENT OF JUSTICE

- § 29:2 Role and philosophy
- § 29:3 Criminal prosecutions
- § 29:4 Investigations
- § 29:5 Grand jury
- § 29:6 Amnesty and cooperation
- § 29:7 Government civil cases
- § 29:8 Civil investigative demand
- § 29:9 Business review procedure

III. FEDERAL TRADE COMMISSION

- § 29:10 Role and philosophy
- § 29:11 Unfair and deceptive practice rules
- § 29:12 Guidelines and industry trade practice rules
- § 29:13 Advisory opinions
- § 29:14 Access to business information
- § 29:15 Cease and desist actions
- § 29:16 —Hearing
- § 29:17 —Judgment and review
- § 29:18 —Compliance
- § 29:19 —Civil enforcement actions

IV. STATE ATTORNEYS GENERAL

§ 29:20 In general

V. SHARED AUTHORITY AND COOPERATION

§ 29:21	Federal agency cooperation
§ 29:22	Federal shared authority and cooperation—
	Liaison agreement
§ 29:23	—Joint enforcement guidelines
§ 29:24	—Premerger notification
§ 29:25	Federal-state cooperation
8 29.26	International cooperation

VI. PRIVATE ANTITRUST ACTIONS

$\S 29:27$	Treble damage actions
§ 29:28	Private injunctive relief
§ 29:29	RICO claims
§ 29:30	State indirect purchaser statutes
§ 29:31	Prosecuting private actions

VII. TRADE ASSOCIATIONS

§ 29:32 In general

VIII. ANTITRUST COMPLIANCE PROGRAMS

§ 29:33 In general

CHAPTER 30. FRANCHISING: DIFFERING PERSPECTIVES OF FRANCHISOR AND FRANCHISEE

I. SCOPE

§ 30:1 In general

II. OVERVIEW

- § 30:2 Definitions and regulations § 30:3 Franchises, business opportunities, and licenses
- III. THE FRANCHISOR'S PERSPECTIVE

§ 30:4 Developing a franchise program; advantages and disadvantages of franchising

§ 30:5	Franchise fees
§ 30:6	Preparation of the franchise agreement and the
	franchise disclosure document
§ 30:7	Sale of franchises; franchise registration
§ 30:8	Financial performance representation

IV. THE FRANCHISEE'S PERSPECTIVE

§ 30:9	Choosing a franchise
§ 30:10	Review of franchise disclosure documents—
	generally
§ 30:11	—Specific franchise disclosure document issues
§ 30:12	Reviewing franchise disclosure documents—
	Pragmatic considerations in advising the
	franchisee client
§ 30:13	Financial performance representations
§ 30:14	Relationship and termination provisions

V. RESOLUTION OF FRANCHISE PROBLEMS AND LITIGATION

§ 30:15	Avoidance of litigation
§ 30:16	Choice of law and forum selection clauses
§ 30:17	Litigation issues

CHAPTER 31. GOVERNMENT REGULATION OF FRANCHISES

I. SCOPE

§ 31:1 In General

II. FRANCHISING—FEDERAL AND STATE REGULATION

A. FEDERAL TRADE COMMISSION

§ 31:2	Federal Trade Commission Rule
-	FTC Rule definition of a "franchise" and "business
	opportunity"
§ 31:4	Enforcement of The FTC Rule
§ 31:5	Relationship between the FTC Rule and state law

B. NASAA GUIDELINES

§ 31:6 Former NASAA Guidelines

§ 31:7	Current NASAA Guidelines	
C.	STATE LAW	
§ 31:8	State law franchise registration	
§ 31:9		
§ 31:10	State law enforcement	
§ 31:11	State registration and disclosure	
D.	PARTICULAR ARRANGEMENTS	
§ 31:12	Alternatives to franchising	
§ 31:13		
III. F	TRANCHISE OFFERING DOCUMENTS	
	FTC format	
-	NASAA Guidelines format	
§ 31:16	Financial performance representations	
	-	
IV. REGULATION OF THE FRANCHISE RELATIONSHIP		
A.	FRANCHISING AND ANTITRUST ISSUES	
§ 31:17	In general	
В.	ANTITRUST LAWS—NONPRICE ISSUES	
§ 31:18	Nonprice vertical restraints	
§ 31:19	Exclusive distributorships and territorial restrictions	
§ 31:20	Tying arrangements	
§ 31:21	1	
§ 31:22	—Market power	
C.	ANTITRUST LAWS—PRICE ISSUES	
§ 31:23	Minimum resale price maintenance	
§ 31:24	Boycotts and refusals to deal	
§ 31:25	Price discrimination	
CHAI	PTER 32. TRADEMARKS	

I. SCOPE

§ 32:1 In general

lxxii

II. GENERAL PRINCIPLES

- § 32:2 Functions of trademarks § 32:3 Types of marks
- § 32:4 Trademarks
- § 32:5 —Service marks
- g 52.5 —Service marks
- § 32:6 —Certification marks
- § 32:7 —Collective marks
- § 32:8 —Trade dress
- § 32:9 Functionality
- § 32:10 Trademarks compared to trade names

III. SELECTION

- § 32:11 In general
- § 32:12 Availability
- § 32:13 Coined or fanciful marks
- § 32:14 Arbitrary marks
- § 32:15 Suggestive marks
- § 32:16 Descriptive terms
- § 32:17 Generic names
- § 32:18 Secondary meaning

IV. CREATING AND MAINTAINING TRADEMARK RIGHTS

- § 32:19 Common law
- § 32:20 Federal law
- § 32:21 Abandonment

V. PROPER USE

- § 32:22 Usage techniques
- § 32:23 Trademark notice

VI. REGISTRATION

- § 32:24 In general
- § 32:25 Benefits
- § 32:26 Federal agency having jurisdiction
- § 32:27 Application for federal registration
- § 32:28 Use or intent to use
- § 32:29 Examination
- § 32:30 Publication
- § 32:31 Opposition
- § 32:32 Supplemental Register

ADVISING SMALL BUSINESSES

§ 32:33	Issuance
§ 32:34	Declaration of use and incontestability
§ 32:35	Renewals
§ 32:36	Cancellation proceedings
§ 32:37	·
VII.	INFRINGEMENT
§ 32:38	In general
§ 32:39	Use in commerce
§ 32:40	Likelihood of confusion
§ 32:41	False designations and descriptions
§ 32:42	Contributory infringement
§ 32:43	Dilution
§ 32:44	Cyberpiracy
§ 32:45	Exception for artistic works
§ 32:46	Remedies
VIII.	TRANSFER OF RIGHTS
§ 32:47 § 32:48	General considerations Assignments

IX. FOREIGN TRADEMARK PROTECTION

- § 32:50 General considerations § 32:51 International treaties European community trademarks § 32:52

CHAPTER 33. COPYRIGHTS

I. SCOPE

§ 33:1 In general

§ 32:49 Licenses

II. SUBJECT MATTER

§ 33:2	Brief history and source of the law
§ 33:3	Protectable subject matter
§ 33:4	—Useful articles
§ 33:5	—Blank forms
§ 33:6	Originality
§ 33:7	Tangible form
§ 33:8	Protectable expression
§ 33:9	Common law copyright

lxxiv

III. SCOPE OF PROTECTION

§ 33:10	Exclusive rights
§ 33:11	Moral rights
§ 33:12	Limitations on exclusive rights
§ 33:13	—Fair use
§ 33:14	—Reproduction by libraries and archives
§ 33:15	—First sale doctrine
§ 33:16	—Certain performances and displays and secondary transmissions
§ 33:17	—Computer programs
§ 33:18	—Pictorial, graphic, and sculptural works
§ 33:19	—Musical works, sound recordings and nondramatic musical works
§ 33:20	—Architectural works
§ 33:21	Miscellaneous provisions affecting the scope of protection
§ 33:22	Duration of copyright
§ 33:23	Circumvention of protective technological measures

IV. OWNERSHIP AND TRANSFER

§ 33:24	Authors
§ 33:25	Works made for hire
§ 33:26	Divisibility
§ 33:27	Compulsory licenses
§ 33:28	Transfer
§ 33:29	Recordation
§ 33:30	Termination

V. FORMALITIES

§ 33:31	Copyright notice
§ 33:32	Form and placement
§ 33:33	Publication
§ 33:34	Registration
§ 33:35	Deposit
§ 33:36	Restoration

VI. INFRINGEMENT

§ 33:37	Analysis
§ 33:38	Statute of limitations
§ 33:39	Contributory infringement

§ 33:40	The Copyright Alternative in Small-Claims Enforcement Act (C.A.S.E. Act)
§ 33:41	Computer programs
§ 33:42	
§ 33:43	
§ 33:44	
§ 33:45	
§ 33:46	
§ 33:47	-
§ 33:48	Infringement by licensees
VII.	COPYRIGHT OFFICE
§ 33:49	In general
-	Functions
	Access
VIII.	INTERNATIONAL CONSIDERATIONS
§ 33:52	In general
§ 33:53	
CHA	PTER 34. PATENTS
I. SC	OPE
§ 34:1	In general
§ 34:2	Abbreviations and definitions
II. G	ENERAL PRINCIPLES
§ 34:3	Overview of the patent laws—The constitutional plan
§ 34:4	The patent statutes
	First-inventor-to-file patenting priority
§ 34:6	Three Types of Patents
§ 34:7	Inventorship
§ 34:8	Patent application requirement
III. A	APPLYING FOR A PATENT
§ 34:9	Preparation for filing
§ 34:10	Who may apply
§ 34:11	Provisional vs. nonprovisional applications and the benefit of earlier filing date of a provisional application

lxxvi

§ 34:12	Original vs. continuing applications and the benefit of earlier filing date of an original application
§ 34:13	Effective filing date
§ 34:14	Parts of an application—Overview
§ 34:15	—Requirements
§ 34:16	Filing the application
§ 34:17	Options available only at the time of filing
§ 34:18	Representation
§ 34:19	After the application is filed—Marking articles "patent pending"

IV. PATENTING REQUIREMENTS

A. ELIGIBLE SUBJECT MATTER

- § 34:20 Utility patents
- § 34:21 Design patents

B. PATENTABILITY

- § 34:22 Adequacy of disclosure
- § 34:23 Novelty and prior art
- § 34:24 Nonobviousness
- § 34:25 Claim Interpretation
- § 34:26 Definiteness requirement
- § 34:27 Claiming strategy

V. PATENT EXAMINATION

- § 34:28 Duty of candor
- § 34:29 Intake of new patent application
- § 34:30 Examination
- § 34:31 First Office action
- § 34:32 Applicant's response
- § 34:33 Final Office action
- § 34:34 After final rejection
- § 34:35 Pre-issuance submissions by third parties
- § 34:36 Publication and provisional rights

VI. THE ISSUED PATENT

- § 34:37 Notice of allowance
- § 34:38 Patent term
- § 34:39 Maintenance fees

VII. OTHER USPTO PROCEEDINGS

§ 34:40 Derivation proceedings

§ 34	1:41	Reissue
§ 34	1:42	Ex parte reexamination
§ 34	1:43	Inter partes review
§ 34	1:44	Post-grant review
§ 34	4:45	Supplemental examination
§ 34	1:46	Transitional Program for Covered Business Method Patents
VI	II.	APPEALS FROM USPTO PROCEEDINGS
§ 34	1:47	Appeals within the USPTO
§ 34	1:48	Appeals of PTAB decisions to courts
§ 34	1:49	Relief by civil action in case of derivation
IX.	P	ATENT RIGHTS AND TRANSFERS
	A.	PATENT RIGHTS
§ 34	l:50	Ownership
	В.	TRANSFERS
§ 34	l:51	Assignments
§ 34	1:52	Licenses
U		
		Proving title
	l:53	
§ 34	l:53	Proving title NFORCEMENT OF PATENT RIGHTS
§ 34 X. § 34	EN A.	Proving title NFORCEMENT OF PATENT RIGHTS INFRINGEMENT In general
§ 34 X. § 34 § 34	EN A. 4:54 4:55	Proving title NFORCEMENT OF PATENT RIGHTS INFRINGEMENT In general Contributory infringement
§ 34 X. § 34 § 34	EN A. 4:54 4:55	Proving title NFORCEMENT OF PATENT RIGHTS INFRINGEMENT In general Contributory infringement Determination of infringement
\$ 34 X. \$ 34 \$ 34 \$ 34	EN A. 4:54 4:55 4:56 4:57	Proving title NFORCEMENT OF PATENT RIGHTS INFRINGEMENT In general Contributory infringement Determination of infringement Doctrine of equivalents
\$ 34 X. \$ 34 \$ 34 \$ 34 \$ 34	EN A. 4:54 4:55 4:56 4:57 4:58	Proving title NFORCEMENT OF PATENT RIGHTS INFRINGEMENT In general Contributory infringement Determination of infringement Doctrine of equivalents Design patent infringement
\$ 34 \$ 34 \$ 34 \$ 34 \$ 34 \$ 34	EN A. 4:54 4:55 4:56 4:57 4:58 4:59	Proving title NFORCEMENT OF PATENT RIGHTS INFRINGEMENT In general Contributory infringement Determination of infringement Doctrine of equivalents Design patent infringement Extraterritorial infringement
\$ 34 X. \$ 34 \$ 34 \$ 34 \$ 34 \$ 34	EN A. 4:54 4:55 4:56 4:57 4:58 4:59 4:60	Proving title NFORCEMENT OF PATENT RIGHTS INFRINGEMENT In general Contributory infringement Determination of infringement Doctrine of equivalents Design patent infringement Extraterritorial infringement Remedies
\$ 34 \$ 34 \$ 34 \$ 34 \$ 34 \$ 34	EN A. 4:54 4:55 4:56 4:57 4:58 4:59	Proving title NFORCEMENT OF PATENT RIGHTS INFRINGEMENT In general Contributory infringement Determination of infringement Doctrine of equivalents Design patent infringement Extraterritorial infringement Remedies Willful infringement and opinion letters
\$ 34 \$ 34 \$ 34 \$ 34 \$ 34 \$ 34	EN A. 4:54 4:55 4:56 4:57 4:58 4:59 4:60 4:61	Proving title NFORCEMENT OF PATENT RIGHTS INFRINGEMENT In general Contributory infringement Determination of infringement Doctrine of equivalents Design patent infringement Extraterritorial infringement Remedies Willful infringement and opinion letters
\$ 34 X. \$ 34 \$ 34 \$ 34 \$ 34 \$ 34 \$ 34	EN A. 4:54 4:55 4:56 4:57 4:58 4:60 4:61 4:62	Proving title NFORCEMENT OF PATENT RIGHTS INFRINGEMENT In general Contributory infringement Determination of infringement Doctrine of equivalents Design patent infringement Extraterritorial infringement Remedies Willful infringement and opinion letters Limitation on remedies—Notice and marking
\$ 34 X. \$ 34 \$ 34 \$ 34 \$ 34 \$ 34 \$ 34 \$ 34	EN A. 4:54 4:55 4:56 4:57 4:58 4:59 4:60 4:61 4:62 B.	Proving title NFORCEMENT OF PATENT RIGHTS INFRINGEMENT In general Contributory infringement Determination of infringement Doctrine of equivalents Design patent infringement Extraterritorial infringement Remedies Willful infringement and opinion letters Limitation on remedies—Notice and marking SELECTED DEFENSES Invalidity
\$ 34 X. \$ 34 \$ 34 \$ 34 \$ 34 \$ 34 \$ 34 \$ 34 \$ 34	EN A. 4:54 4:55 4:56 4:57 4:58 4:60 4:61 4:62 B.	Proving title NFORCEMENT OF PATENT RIGHTS INFRINGEMENT In general Contributory infringement Determination of infringement Doctrine of equivalents Design patent infringement Extraterritorial infringement Remedies Willful infringement and opinion letters Limitation on remedies—Notice and marking SELECTED DEFENSES
\$ 34 X. \$ 34 \$ 34 \$ 34 \$ 34 \$ 34 \$ 34 \$ 34 \$ 34	EN A. 4:54 4:55 4:56 4:57 4:58 4:60 4:61 4:62 B. 4:63	Proving title NFORCEMENT OF PATENT RIGHTS INFRINGEMENT In general Contributory infringement Determination of infringement Doctrine of equivalents Design patent infringement Extraterritorial infringement Remedies Willful infringement and opinion letters Limitation on remedies—Notice and marking SELECTED DEFENSES Invalidity Inequitable conduct and fraud Patent misuse

lxxviii

C. LIMITATIONS ON PATENT RIGHTS

- § 34:67 Exhaustion
 - D. CIVIL PROCEDURE
- § 34:68 Jurisdiction and venue
- § 34:69 Declaratory judgment action
- § 34:70 Appeals

XI. FOREIGN PATENT APPLICATIONS

- § 34:71 In general
- § 34:72 Filing routes—Utility subject matter
- § 34:73 —Design subject matter
- § 34:74 Absolute novelty requirement
- § 34:75 Right of Priority
- § 34:76 Foreign filing license

CHAPTER 35. TRADE SECRETS

I. SCOPE

§ 35:1 In general

II. PUBLIC POLICY OF TRADE SECRET PROTECTION AND RELATIONSHIP TO OTHER INTELLECTUAL PROPERTY

- § 35:2 Philosophy
- § 35:3 Overview of trade secret law
- § 35:4 Relationship to patent law
- § 35:5 Relationship to copyright law
- § 35:6 Preemption by copyright and patent laws
- § 35:7 Decision about form of protection

III. MODERN DEFINITION OF TRADE SECRETS

- § 35:8 Sources of trade secret law
- § 35:9 —Federal Defend Trade Secrets Act
- § 35:10 —Restatement of Unfair Competition
- § 35:11 —State statutes
- § 35:12 Federal statutes
- § 35:13 Other federal statutes
- § 35:14 Trade secret protection—Use of secret

§ 35:15	—Relative secrecy
§ 35:16	—Reasonable precautions
§ 35:17	Concreteness
§ 35:18	Breach of confidential relationship
§ 35:19	Value
§ 35:20	Secrets of trade
§ 35:21	Reverse engineering
§ 35:22	Components in public domain
§ 35:23	Marketing concepts and new product ideas

IV. DISCLOSURE AND MISAPPROPRIATION

§ 35:24	In general
§ 35:25	Improper means
§ 35:26	Breach of confidential relationship
§ 35:27	Third-party liability
§ 35:28	Mistake

V. CONTRACTUAL RESTRICTIONS AND RESTRICTIVE COVENANTS

§ 35:29	Advisability
§ 35:30	Protecting nonsecret information
§ 35:31	License agreements and recovery of royalties

VI. DURATION OF PROTECTION

$\S 35:32$	In general
§ 35:33	Sales to public, publication and disclosure in
	patents
§ 35:34	Effect of termination

VII. REMEDIES AND LITIGATION

§ 35:35	Elements of misappropriation claim
§ 35:36	Burden of proof
§ 35:37	Injunctions
§ 35:38	—Inevitable disclosure
§ 35:39	Damages
§ 35:40	Defenses
§ 35:41	Statute of limitations

VIII. PARTICULAR APPLICATIONS OF TRADE SECRET PRINCIPLES

§ 35:42 Freedom of Information Act

lxxx

§ 35:43	Federal Rules of Civil Procedure
§ 35:44	Submitted ideas
§ 35:45	Liability of employers
§ 35:46	Trade secrets developed by employees
§ 35:47	Customer lists
§ 35:48	Software

IX. TRADE SECRET PROTECTION PROGRAMS

§ 35:49 In general

X. TABLES

§ 35:50 Table of states adopting the Uniform Trade Secrets Act

CHAPTER 36. CONFIDENTIALITY AGREEMENTS

I. SCOPE

- § 36:1 In general
- § 36:2 Sources of trade secrets protection

II. BASIC CONSIDERATIONS

§ 36:3 Advantages of confidentiality agreements
§ 36:4 Preliminary discussion agreements
§ 36:5 Consideration

III. TERMS OF CONFIDENTIALITY AGREEMENTS

- § 36:6 In general
- § 36:7 Types of confidentiality agreements

IV. DEFINITION OF CONFIDENTIAL INFORMATION

§ 36:8	In general
§ 36:9	General description
§ 36:10	Specific description
§ 36:11	Marked items
§ 36:12	Exclusions clause
§ 36:13	—Nonsecret information
§ 36:14	—Already known

§ 36:15	—Receipt from third party
§ 36:16	—Independently developed
§ 36:17	—Burden of proof

V. OTHER PROVISIONS

§ 36:18	Restrictions on recipient's employees
§ 36:19	Nondisclosure and nonuse
§ 36:20	Acknowledgment of confidentiality
§ 36:21	Acknowledgment of irreparable harm
§ 36:22	Liquidated damages
§ 36:23	Duration
§ 36:24	Notification of subpoena or compulsory process
§ 36:25	Ownership of confidential information
§ 36:26	Return of documents
§ 36:27	Arbitration provision

PART V. EMPLOYEES

CHAPTER 37. RELATIONSHIPS WITH EMPLOYEES

I. SCOPE

§ 37:1 In general

II. EMPLOYMENT AGREEMENTS

§ 37:2	Formation and enforcement
§ 37:3	Term
§ 37:4	Uses
§ 37:5	—Trade secret protection
§ 37:6	——Customer lists
§ 37:7	—Ownership of intellectual property
§ 37:8	—Non-competition agreements
§ 37:9	—Tax planning for employee-shareholder
	compensation
§ 37:10	—Minority shareholder protections
§ 37:11	—Arbitration
§ 37:12	—Independent contractor relationships

III. EMPLOYMENT-AT-WILL AND UNJUST DISMISSAL

§ 37:13 Employment-at-will doctrine

lxxxii

§ 37:14 Employment at will doctrine—Public policy exception
§ 37:15 —Good faith and fair dealing
§ 37:16 —Transformation of relationship
§ 37:17 Unjust dismissal claims
§ 37:18 Avoiding unjust dismissal claims
§ 37:19 Notice of plant closings and mass layoffs

IV. OWNERSHIP OF INTELLECTUAL PROPERTY RIGHTS

§ 37:20 Intellectual property created by employees

A. PATENTS

- § 37:21 In general
- § 37:22 Employee hired to invent
- § 37:23 Shop rights

B. TRADE SECRETS

§ 37:24 In general

C. COPYRIGHTS

- § 37:25 In general
- § 37:26 Employees and independent contractors
- § 37:27 Shop right

V. RESTRICTIONS ON EX-EMPLOYEES

A. IMPLIED-IN-LAW

- § 37:28 In general
- § 37:29 Pre-termination activities
- § 37:30 —Planning to compete
- § 37:31 —Customer solicitation
- § 37:32 —Soliciting fellow employees
- § 37:33 —Duty of disclosure
- § 37:34 Post-termination activities
- § 37:35 —Trade secrets
- § 37:36 ——Customer lists
- § 37:37 —Confidential relationships

B. CONTRACTUAL

§ 37:38 Covenants not to compete

§ 37:39	—Reasonableness requirement
§ 37:40	—Existing employees
§ 37:41	—Sale of business
§ 37:42	—State law variations and conflict of law principles
§ 37:43	Non-solicitation covenants—Customers and employees
§ 37:44	Nondisclosure agreements for trade secrets

VI. INDEPENDENT CONTRACTORS

8	37:45	In	general	ı
-	01.40	111	ECHICIA	ı

- § 37:46 Tax classification
- § 37:47 Employment law classification

CHAPTER 38. EXECUTIVE AND OWNER COMPENSATION

I. SCOPE

§ 38:1 In general; overview

II. CASH COMPENSATION

A. AUTHORIZATION

§ 38:2 Corporate power

B. REASONABLE COMPENSATION

- § 38:3 Corporate law
- § 38:4 Tax law
- § 38:5 —Determining reasonableness
- § 38:6 —Avoiding unreasonable compensation
- § 38:7 —Hedge agreements

C. SEVERANCE PAY

- § 38:8 Tax treatment
- § 38:9 Golden parachute payments

D. REIMBURSEMENT OF EMPLOYEE BUSINESS EXPENSES

§ 38:10 Exclusion from taxable income

lxxxiv

III. DEFERRED COMPENSATION

A. NONQUALIFIED DEFERRED COMPENSATION PLANS

- § 38:11 Definition
- § 38:12 Lack of funding
- § 38:13 Comparison to qualified retirement plans

B. I.R.C. § 409A

- § 38:14 Constructive receipt rules
- § 38:15 Timing of elective deferrals
- § 38:16 Distributions
- § 38:17 Protecting employees' benefits
- § 38:18 Penalties
 - C. I.R.C. § 101(J)
- § 38:19 Funding benefits with life insurance

D. WITHHOLDING AND EMPLOYMENT TAXES

- § 38:20 Time of payment and amount
 - E. ERISA
- § 38:21 Employee protections
- § 38:22 Top hat plans

IV. INCENTIVE COMPENSATION

A. TYPES AND AUTHORIZATION

- § 38:23 Tied to effort or profitability
- § 38:24 Corporate power and authorization
- § 38:25 Tax aspects

B. ISSUANCE OF STOCK TO EMPLOYEES

- § 38:26 In general
- § 38:27 I.R.C. § 83
- § 38:28 I.R.C. § 83(b) election
- § 38:29 Restrictions that will never lapse
- § 38:30 Employer's deduction
- § 38:31 Employment taxes
- § 38:32 Securities law

§ 38:33	Debt obligations
C.	STOCK OPTIONS
§ 38:34	In general
§ 38:35	Nonqualified stock options
§ 38:36	—Benefits
§ 38:37	Incentive stock options
§ 38:38	—Requirements
§ 38:39	Options vs. warrants
D.	COMPENSATION BASED ON STOCK VALUE
§ 38:40	In general
§ 38:41	Stock appreciation rights
§ 38:42	Phantom stock plans
§ 38:43	Simple agreements for future equity (SAFEs) in employee compensation
v. FR	INGE BENEFITS
A.	IN GENERAL
§ 38:44	Types and tax aspects
§ 38:45	Nondiscrimination rules
В.	HEALTH CARE
§ 38:46	In general
§ 38:47	Affordable Care Act
§ 38:48	—Individual mandate
§ 38:49	—Employer mandate
§ 38:50	—Small employer health insurance credit
§ 38:51	—New taxes
§ 38:52	Health and accident plans
§ 38:53	Other health care plans
§ 38:54	—Health flexible spending arrangements
§ 38:55	—Health reimbursement arrangements
§ 38:56	—Health savings accounts
§ 38:57	—Archer MSAs
§ 38:58	Nonconforming group health plans
§ 38:59	Continuation of benefits
§ 38:60	Qualified medical child support orders
C.	OTHER FRINGE BENEFITS
§ 38:61	Group-term life insurance

lxxxvi

§ 38:63 § 38:64	Child and dependent care Educational assistance Miscellaneous fringe benefits Valuation of taxable benefits
8 29:00	varuation of taxable benefits

D. MULTIPLE BENEFIT PLANS

§ 38:66	Cafeteria plans
§ 38:67	—Funding
§ 38:68	—Elections
§ 38:69	—Use it or lose it rule
§ 38:70	—Nondiscrimination rules
§ 38:71	Simple cafeteria plans
8 38.72	Voluntary employee benefit associations

VI. COMPENSATION PAID BY LLCS

§ 38:73	In general
§ 38:74	Employee compensation—Profits interests vs. capital interests
§ 38:75	Member compensation—Limited liability company law
§ 38:76	—Tax consequences

CHAPTER 39. QUALIFIED RETIREMENT PLANS

I. INTRODUCTION

§ 39:1 In general

II. TAX-QUALIFIED RETIREMENT PLANS

§ 39:2	Definition
-	Delimition
§ 39:3	Advantages of maintaining a tax-qualified plan
§ 39:4	Definition of defined benefit plan
§ 39:5	Types of defined benefit plans
§ 39:6	Methods for calculating pay
§ 39:7	Integration with Social Security
§ 39:8	Characteristics of defined benefit plans
§ 39:9	Definition of a defined contribution plan
§ 39:10	Types of defined contribution plans—Money
	purchase pension plan
§ 39:11	—Profit sharing plan
§ 39:12	—Code section 401(k) plan

e 00 1	0
	3 —Thrift plan
	4 —Stock bonus plan 5 —Employee stock ownership plan
§ 39.1 § 39:1	
8 00.1	o Characteristics of defined contribution plans
III.	BASIC RULES FOR QUALIFIED PLANS
A	A. PARTICIPATION AND NONDISCRIMINATION STANDARDS
§ 39:1	7 In general
§ 39:1	_
§ 39:1	9 Nondiscrimination
I	B. MINIMUM VESTING STANDARDS
§ 39:2	0 Employee contributions
§ 39:2	1 Employer contributions
§ 39:2	2 Vesting upon attainment of normal retirement age
§ 39:2	3 Years of service for vesting purposes
(C. ACCRUED BENEFIT REQUIREMENTS
§ 39:2	4 Defined benefit plans
Ι	D. MINIMUM FUNDING STANDARD
§ 39:2 § 39:2	•
I	E. LIMITATION ON CONTRIBUTIONS AND BENEFITS
§ 39:2 § 39:2	±
	_
IV.	WHICH TAX-QUALIFIED PLAN IS RIGHT FOR YOUR CLIENT?
§ 39:2	9 In general
§ 39:3	
§ 39:3	
§ 39:3	1 0
, ,,,,	to meet a business's needs
§ 39:3	3 Pre-approved plans

lxxxviii

V. OTHER APPROACHES TO PROVIDING RETIREMENT BENEFITS

§ 39:34 In general Individual retirement accounts ("IRAs")— § 39:35 Deductible IRAs § 39:36 -Non-deductible IRAs —Exemption from early withdrawal tax § 39:37 § 39:38 Individual retirement annuity Simplified employee pension plans ("SEPs")— § 39:39 Requirements —Nondiscrimination § 39:40 § 39:41 —How to establish a SEP § 39:42 —Deductibility of employer contributions to a § 39:43 —Salary reduction SEP (a "SARSEP") § 39:44 Simple plans § 39:45 Non-qualified plans

CHAPTER 40. WAGE AND HOUR LAWS

I. SCOPE

§ 40:1 In general

II. FAIR LABOR STANDARDS ACT

A. REQUIRMENTS AND PROHIBITIONS

- $\S 40:2$ In general
- § 40:3 Minimum wage
- § 40:4 Overtime pay
- § 40:5 —Regular rate
- § 40:6 —Hourly employees
- § 40:7 —Salaried employees
- § 40:8 Pieceworkers
- § 40:9 Hours worked
- § 40:10 Payment
- § 40:11 —Tipped employees
- § 40:12 Child labor
- § 40:13 Equal pay
- § 40:14 Record keeping

B. COVERAGE

§ 40:15 Employers

	Employees Independent contractors
C.	EXEMPTIONS
\$ 40:19 \$ 40:20 \$ 40:21 \$ 40:22 \$ 40:23	In general Minimum wage and overtime pay exemptions —White collar exemptions —Salary basis Partial minimum wage exemptions Overtime pay exemptions Partial overtime pay exemptions
D.	ENFORCEMENT AND PENALTIES
§ 40:25	In general
III. F	EDERAL CONTRACTS
A.	WALSH-HEALEY PUBLIC CONTRACTS ACT
§ 40:27	Requirements Exemptions Noncompliance
В.	SERVICE CONTRACT ACT OF 1965
	Requirements Noncompliance
IV. F	EDERAL CONSTRUCTION
A.	DAVIS-BACON ACT
§ 40:31 § 40:32	Requirements Noncompliance
В.	CONTRACT WORK HOURS AND SAFETY STANDARDS ACT
§ 40:33 § 40:34	Requirements Noncompliance
C.	ANTI-KICKBACK ACT OF 1986
§ 40:35 § 40:36	In general Noncompliance

CHAPTER 41. FAIR EMPLOYMENT PRACTICES LAWS

I. SCOPE

§ 41:1 In general

II. TITLE VII OF THE CIVIL RIGHTS ACT OF 1964

A. COVERED EMPLOYERS

- § 41:2 In general
- § 41:3 Exemptions from coverage

B. PROHIBITED ACTS

- § 41:4 Discrimination
- § 41:5 Proving discrimination
- § 41:6 Disparate treatment
- § 41:7 Mixed motive
- § 41:8 Disparate impact
- § 41:9 Retaliation
- § 41:10 Employment notices

C. PRACTICES SPECIFICALLY PERMITTED

- § 41:11 In general
- § 41:12 Bona fide occupational qualification

D. SPECIAL CONSIDERATIONS

- § 41:13 Religious accommodation
- § 41:14 Sexual harassment
- § 41:15 —Supervisor conduct
- § 41:16 —Co-worker conduct
- § 41:17 —Practical effect of affirmative defenses
- § 41:18 Pregnancy benefits
- § 41:19 Pension benefits
- § 41:20 National origin
- § 41:21 Selection procedures
- § 41:22 Seniority systems
- § 41:23 Affirmative action and reverse discrimination

E. ENFORCEMENT

§ 41:24 EEOC

§ 41:25	Filing charge
§ 41:26	Investigation
§ 41:27	Dismissal
§ 41:28	Reasonable cause determination
§ 41:29	Government civil action
§ 41:30	Private civil action
§ 41:31	Remedies

III. EQUAL PAY ACT

§ 41:32	Coverage
§ 41:33	Prohibited acts
§ 41:34	Practices specifically permitted
§ 41:35	Recordkeeping requirements
§ 41:36	Remedies

IV. AGE DISCRIMINATION IN EMPLOYMENT ACT

§ 41:37	Coverage
§ 41:38	Prohibited acts
§ 41:39	Practices specifically permitted
§ 41:40	Notice and record requirements
§ 41:41	Remedies
§ 41:42	Waiver of ADEA claims
§ 41:43	Procedure

V. EMPLOYMENT AND REEMPLOYMENT RIGHTS OF VETERANS

§ 41:44	In general
§ 41:45	Rights of reemployment
§ 41:46	Rights to benefits
\$ 41:47	Remedies

VI. RECONSTRUCTION ERA LEGISLATION

```
§ 41:48
§ 41:49
§ 42 U.S.C.A. § 1981
§ 41:49
42 U.S.C.A. § 1983
§ 41:50
42 U.S.C.A. § 1985(3)
```

VII. EXECUTIVE ORDERS REGULATING EMPLOYMENT PRACTICES

§ 41:51	Executive	Order	No.	11246
§ 41:52	Executive	Order	No.	11141

VIII. IMMIGRATION REFORM AND CONTROL ACT

- § 41:53 Ban on hiring illegal aliens
- § 41:54 Antidiscrimination rules

IX. REHABILITATION ACT OF 1973

- § 41:55 Hiring individuals with disabilities
- § 41:56 Discrimination and accommodation

X. AMERICANS WITH DISABILITIES ACT

- § 41:57 Scope and coverage
- § 41:58 Individuals with disabilities under the ADA
- § 41:59 Individuals with disabilities under the ADAAA
- § 41:60 Prohibited discrimination
- § 41:61 Reasonable accommodation
- § 41:62 Remedies and enforcement

XI. FAMILY AND MEDICAL LEAVE ACT OF 1993

- § 41:63 Scope and coverage
- § 41:64 Employee entitlement to leave
- § 41:65 Notices, Designations and Medical Certifications
- § 41:66 Discrimination, retaliation, and enforcement

XII. GENETIC INFORMATION NONDISCRIMINATION ACT

§ 41:67 In general

CHAPTER 42. OCCUPATIONAL SAFETY LAWS

I. SCOPE

§ 42:1 In general

II. OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

A. IN GENERAL

- § 42:2 Purpose
- § 42:3 Employers covered
- § 42:4 Duties imposed

$\S~42:5$	—Providing a safe place of employment
§ 42:6	—Compliance with safety and health standards
§ 42:7	-Keeping records, posting notices, and allowing
	inspections
В.	OCCUPATIONAL SAFETY AND HEALTH
D.	STANDARDS
§ 42:8	Standards promulgated by the Secretary of Labor
§ 42:9	Procedure for adoption of standards
§ 42:10	—Interim standards
§ 42:11	—Emergency temporary standards
§ 42:12	——Permanent standards
§ 42:13	Specific standards
§ 42:14	—Hazard communication
§ 42:15	—Training
§ 42:16	—Lockout/tagout
§ 42:17	—Blood borne pathogens
§ 42:18	—Machine guarding
§ 42:19	—Ergonomics
§ 42:20	—Respirators
§ 42:21	—Powered industrial trucks
C.	ENFORCEMENT
§ 42:22	Complaints of violations
§ 42:23	Investigations by the Department of Labor
§ 42:24	—Sequence of events
§ 42:25	Inspection
§ 42:26	Citations
§ 42:27	Administrative hearings and judicial review
§ 42:21	Informal conference
§ 42.20 § 42:29	Penalties
	—De minimis
o .	
§ 42:31	
-	—Serious
	—Repeated
§ 42:34	
_	—Egregious
-	—Failure to correct violation
§ 42:37	—Failure to comply with record keeping and posting requirements
	r

III. DELEGATION OF JURISDICTION TO STATES

§ 42:38 In general

PART VI. BUSINESS TERMINATIONS

CHAPTER 43. REDEMPTIONS OF OWNERS' INTERESTS IN BUSINESS ENTITIES

I. SCOPE

§ 43:1 In general

II. SUBSTANTIVE LAW ASPECTS OF CORPORATE REDEMPTIONS

- § 43:2 Authority to redeem stock
- § 43:3 Reacquired stock

III. INCOME TAX CONSEQUENCES OF STOCK REDEMPTIONS

A. CLASSIFICATION AS SALE OR EXCHANGE OR DISTRIBUTION

- § 43:4 In general
- § 43:5 Consequences of classification for noncorporate shareholder
- § 43:6 Consequences of classification for a redeemed shareholder that is a corporation
- § 43:7 Consequences of classification for other shareholders

B. OTHER CONSEQUENCES FOR REDEEMED SHAREHOLDER

- § 43:8 Gain or loss on partial redemption
- § 43:9 Disappearing basis
- § 43:10 Basis of property received

C. CONSEQUENCES FOR REDEEMING CORPORATION

§ 43:11 In general

§ 43:12 § 43:13	Gain, loss and deductions Limitation on use of pre-redemption losses
D.	REQUIREMENTS FOR SALE OR EXCHANGE CLASSIFICATION
§ 43:14 § 43:15 § 43:16 § 43:17	In general Not essentially equivalent to a dividend Substantially disproportionate Complete termination of interest
E.	ATTRIBUTION RULES FOR CLASSIFYING STOCK REDEMPTIONS
§ 43:22 § 43:23 § 43:24 § 43:25	Purpose Family attribution —Waiver of family attribution for an individual —Waiver of family attribution for an entity —Prohibited interests Entity attribution —Partnerships and estates —Trusts —Corporations Option attribution Chain or double attribution
F.	STOCK REDEMPTIONS TO PAY DEATH TAXES AND EXPENSES
§ 43:29 § 43:30	In general Requirements
IV. B	AILOUTS OF EARNINGS AND PROFITS
A.	CIRCUMVENTING THE RULES FOR TAXING DIVIDENDS
§ 43:31	In general
В.	SALES OF STOCK TO RELATED CORPORATIONS
	In general Transactions covered Coordination with I.R.C. § 351
C.	PREFERRED STOCK BAILOUTS
§ 43:35	In general

§ 43:36	Definition of Section 306 stock
§ 43:37	Taxation of dispositions of Section 306 stock
\$ 49.90	Transitions to dividend transfer

§ 43:38 Exceptions to dividend treatment

V. DISTRIBUTIONS IN PARTIAL LIQUIDATIONS OF CORPORATIONS

§ 43:39	In general
§ 43:40	Requirements for sale or exchange treatment
8 43:41	Parent-subsidiary distributions

VI. REDEMPTION OF LLC MEMBERS' INTERESTS

§ 43:42	Authority to redeem interests
§ 43:43	Income tax consequences
§ 43:44	—Redeemed member
§ 43:45	—Other members
§ 43:46	—LLC

VII. REDEMPTION OF STOCK IN SUBCHAPTER S CORPORATIONS

§ 43:47	In general
§ 43:48	Redemption under Section 302
§ 43:49	Redemption under Section 301
§ 43:50	Does a Redemption Create a Second Class of Stock?
§ 43:51	Impact of Conversion to C Corporation Before and After Redemption: Special Rules for the Eligible Terminated S Corporation (ETSC)

CHAPTER 44. DISSOLUTION AND LIQUIDATION OF BUSINESS ENTITIES

I. SCOPE

§ 44:1 In general

II. CORPORATIONS

A. VOLUNTARY DISSOLUTION BY INCORPORATORS

§ 44:2 In general

B. VOLUNTARY DISSOLUTION BY SHAREHOLDERS

- § 44:3 Shareholder approval
- § 44:4 Revocation of voluntary dissolution
- § 44:5 State filing
- § 44:6 Winding up and liquidation
- § 44:7 Survival of remedies and shareholder liability

C. ADMINISTRATIVE DISSOLUTION

§ 44:8 In general

D. JUDICIAL DISSOLUTION

- § 44:9 Action by state attorney general
- § 44:10 Action by shareholder
- § 44:11 Action by creditor
- § 44:12 Procedure

III. TAX CONSEQUENCES OF CORPORATE LIQUIDATIONS

A. CORPORATION

- § 44:13 Gain or loss
- § 44:14 Subsidiary liquidations
- § 44:15 Installment obligations
- § 44:16 Income and deductions

B. SHAREHOLDERS

- § 44:17 Gain or loss
- § 44:18 Computation of gain or loss
- § 44:19 Double taxation
- § 44:20 Basis of property received
- § 44:21 Installment obligations

C. S CORPORATIONS

§ 44:22 In general

D. TAX FILINGS

- § 44:23 Corporation
- § 44:24 Shareholders

xcviii

E. DEFINITION OF LIQUIDATION FOR TAX PURPOSES

- § 44:25 Complete liquidation; conversion of corporation to limited liability company taxed as a partnership
- § 44:26 Partial liquidation

IV. PARTNERSHIPS

A. CAUSES OF DISSOLUTION

- § 44:27 In general
- § 44:28 Dissolution of general partnerships—Uniform Partnership Act (1914)
- § 44:29 —Uniform Partnership Act (1997)
- § 44:30 Limited partnerships—Uniform Limited Partnership Act (1976)
- § 44:31 —Uniform Limited Partnership Act (2001)

B. WINDING UP

- § 44:32 General partnerships
- § 44:33 Limited partnerships

C. STATE FILINGS

§ 44:34 In general

V. TAX CONSEQUENCES OF PARTNERSHIP TERMINATIONS

- § 44:35 Partnership
- § 44:36 Partners

VI. LIMITED LIABILITY COMPANIES

A. CAUSES OF DISSOLUTION

- § 44:37 In general
- § 44:38 Dissociation of members

B. WINDING UP

- § 44:39 In general
- § 44:40 Survival of remedies and member liability

C. STATE FILINGS

§ 44:41 In general

VII. TAX CONSEQUENCES OF LLC TERMINATIONS

§ 44:42 In general

CHAPTER 45. EVALUATING AND STRUCTURING THE BUSINESS SALE: NONTAX ISSUES

I. SCOPE

§ 45:1 In general

II. THE DECISION TO BUY OR SELL

- § 45:2 In general
- § 45:3 Finding a purchaser or seller
- § 45:4 Letter of intent

III. INVESTIGATIONS BY PARTIES

A. PURCHASER

- § 45:5 In general
- § 45:6 Intellectual property

B. SELLER

- § 45:7 In general
- § 45:8 Confidentiality issues

IV. VALUING THE BUSINESS

A. ALTERNATIVE METHODS OF VALUATION

- § 45:9 In general
- § 45:10 Going concern value
- § 45:11 Liquidation value
- § 45:12 Book value

B. ANALYSIS OF FINANCIAL STATEMENTS

- § 45:13 In general
- § 45:14 Receivables
- § 45:15 Inventory
- § 45:16 Depreciable assets
- § 45:17 Intellectual property

- § 45:18 Real estate § 45:19 Liabilities § 45:20 Compensation
- § 45:21 Nonrecurring income and expense
- § 45:22 Ratios

C. USE OF PROFESSIONAL ASSISTANCE

- § 45:23 Certified public accountants
- § 45:24 Professional appraisers
- § 45:25 Business brokers

V. STRUCTURES FOR BUSINESS SALES

A. ALTERNATIVES

§ 45:26 In general

B. ASSET SALE

- § 45:27 In general
- § 45:28 Mechanics
- § 45:29 Type C reorganization

C. EQUITY INTERESTS SALES

- § 45:30 In general
- § 45:31 Bootstrap sale
- § 45:32 Type B reorganization

D. MERGERS

§ 45:33 In general

E. AUCTION SALE

§ 45:34 In general

VI. STRUCTURAL CONSIDERATIONS

A. PARTIES

§ 45:35 In general

B. TROUBLED BUSINESSES

- § 45:36 Purchaser's perspective
- § 45:37 Seller's perspective

C. APPROVALS

- § 45:38 Asset sales
- § 45:39 Equity interest sales
- § 45:40 Third-party approvals

D. TAXES

§ 45:41 In general

E. SECURITIES LAW

§ 45:42 In general

VII. TERMS OF SALE

A. PURCHASE PRICE

- § 45:43 Negotiating price and terms
- § 45:44 Earnouts, Holdbacks and Other Post-Closing

B. TERMS OF PAYMENT

- § 45:45 Cash
- § 45:46 Deferred payment
- § 45:47 —Form of obligation
- § 45:48 —Prepayment
- § 45:49 —Security
- § 45:50 —Guaranties

C. LIABILITIES OF THE BUSINESS SOLD

- § 45:51 Assumption
- § 45:52 Indemnification
- § 45:53 Release

D. FRAGMENTING THE TRANSACTION

- § 45:54 In general
- § 45:55 Covenants not to compete
- § 45:56 Consulting agreement
- § 45:57 Leases and licenses

VIII. DRAFTING SALE DOCUMENTS

A. FORM

§ 45:58 Sale agreement

	Ş	45:59	Other	sale	document
--	---	-------	-------	------	----------

B. TERMS

- § 45:60 In general
- § 45:61 Selecting assets and liabilities
- § 45:62 Conduct of business and risk of loss
- § 45:63 Warranties
- § 45:64 —Seller
- § 45:65 —Purchaser

C. OPINION LETTERS

§ 45:66 In general

IX. CLOSING

- § 45:67 Timing
- § 45:68 Conditions to closing

CHAPTER 46. STRUCTURING THE BUSINESS SALE: TAX ISSUES

I. SCOPE

§ 46:1 In general

II. SALE OF ASSETS

- § 46:2 In general
- § 46:3 Sales price allocation
- § 46:4 —Capital assets
- § 46:5 —Depreciation recapture
- § 46:6 —Installment contracts
- § 46:7 Leases and licenses
- § 46:8 Like-kind exchanges

III. SALE OF OWNERSHIP INTERESTS

A. STOCK SALES

- § 46:9 In general
- § 46:10 Tax consequences to seller in stock sale
- § 46:11 —Qualified small business stock
- § 46:12 —I.R.C. § 1244 stock
- § 46:13 Tax consequences to purchaser in stock sale

- § 46:14 Tax consequences to corporation in stock sale
- § 46:15 Tax consequences of sale of S corporation stock

B. ELECTION TO TREAT STOCK PURCHASE AS ASSET PURCHASE

- § 46:16 In general
- § 46:17 Making an I.R.C. § 338 election
- § 46:18 Effect of I.R.C. § 338 election on acquired corporation
- § 46:19 Consistency rules

C. SALES OF OWNERSHIP INTERESTS IN ENTITIES TAXED AS PARTNERSHIPS

- § 46:20 In general
 - D. SALES OF OWNERSHIP INTERESTS IN DISREGARDED ENTITIES
- § 46:21 In general

IV. BOOTSTRAP SALES

§ 46:22 In general

V. PAYMENT OF SALES PRICE

- § 46:23 In general
- § 46:24 Installment sales
- § 46:25 —Limits on installment reporting
- § 46:26 —Sales price adjustment
- § 46:27 —Imputed interest
- § 46:28 —Payment of interest on a current basis
- § 46:29 Funds held in escrow

VI. COVENANTS NOT TO COMPETE AND CONSULTING AGREEMENTS

§ 46:30 In general

VII. BUSINESS ACQUISITION COSTS

§ 46:31 In general

CHAPTER 47. BANKRUPTCY

I. SCOPE

§ 47:1 In general

II. ALTERNATIVES TO RELIEF UNDER THE BANKRUPTCY CODE

A. OUT-OF-COURT WORKOUTS

- § 47:2 In general
- § 47:3 Benefits
- § 47:4 Costs and risks

B. ASSIGNMENT FOR BENEFIT OF CREDITORS

- § 47:5 In general
- § 47:6 Benefits
- § 47:7 Costs and risks

III. OVERVIEW OF BANKRUPTCY CODE

- § 47:8 Legislative enactments
- § 47:9 Structure
- § 47:10 Claims
- § 47:11 Rules and electronic case filing
- § 47:12 Impact of Northern Pipeline

IV. DECISION TO LIQUIDATE OR REORGANIZE

- § 47:13 Adequacy of business plan
- § 47:14 Availability of funds
- § 47:15 Size of case
- § 47:16 Benefits to partners, shareholders, and guarantors

V. LIQUIDATION UNDER CHAPTER 7

- § 47:17 In general
- § 47:18 Benefits
- § 47:19 —Appointment of trustee
- § 47:20 —Cost
- § 47:21 —Automatic stay

- § 47:22 —Discharge and dischargeability
- § 47:23 Costs and risks

VI. RESTRUCTURING INDEBTEDNESS UNDER CHAPTER 13

- § 47:24 In general
- § 47:25 Benefits
- § 47:26 —Restructuring indebtedness
- § 47:27 —No voting requirements and easy plan modification
- § 47:28 —Absence of nondischargeability provisions
- § 47:29 —Automatic stay and co-debtor stay
- § 47:30 Costs and risks

VII. REORGANIZATION OF FAMILY FARMERS AND FAMILY FISHERMEN UNDER CHAPTER 12

- § 47:31 In general
- § 47:32 Benefits
- § 47:33 —Automatic stay and adequate protection
- § 47:34 —Conversion to liquidation
- § 47:35 —No absolute priority rule
- § 47:36 —Special tax and homestead benefits
- § 47:37 Costs and risks

VIII. REORGANIZATION UNDER CHAPTER 11

- § 47:38 In general
- § 47:39 Small Business Reorganizations Under Subchapter V of Chapter 11
- § 47:40 Chronology and timeline of chapter 11 case
- § 47:41 Benefits
- § 47:42 —Automatic stay
- § 47:43 ——Exceptions to automatic stay
- § 47:44 ——Relief from automatic stay
- § 47:45 ——Time of hearing on motion for relief
- § 47:46 —Preservation of control
- § 47:47 —Treatment of executory contracts and unexpired leases
- § 47:48 —Establishment of "home court"
- § 47:49 —Avoidance powers
- § 47:50 —Turnover power
- § 47:51 —Ability to use, sell, or lease assets including "cash collateral"

§ 47:52 —Potential tax benefits § 47:53 -Exemption from securities laws § 47:54 —Disregard of after-acquired property clauses § 47:55 —Borrowing after filing petition § 47:56 —Power to reinstate indebtedness § 47:57 —Potential to increase liquidity § 47:58 Costs and risks § 47:59 —Impact on business operations § 47:60 —Ability to obtain post-petition credit § 47:61 —Impact on management § 47:62 —Impact on shareholders § 47:63 —Expense § 47:64 —Control by creditor's committee and court § 47:65 —Impact on multiple business entities § 47:66 —Effect of creditor remedies § 47:67 Reorganization plans § 47:68 —Development of business plan § 47:69 —Composition, extension or liquidation

—Development of disclosure statement

IX. TAXES

§ 47:70

§ 47:71

- § 47:72 In general
- § 47:73 Mandatory return filing

-Cram down

- § 47:74 Automatic stay limited
- § 47:75 Limitations on discharge of taxes
- § 47:76 Readjustment restricted
- § 47:77 Repayment accelerated
- § 47:78 Interest increased

X. HEALTH CARE BUSINESSES

§ 47:79 In general

XI. WHEN A SMALL BUSINESS IS A CREDITOR IN A BANKRUPTCY CASE

- § 47:80 In general
- § 47:81 Reclamation
- § 47:82 Preferences

CHAPTER 48. ESTATE PLANNING FOR THE CLOSELY-HELD BUSINESS OWNER

I. SCOPE

- § 48:1 Author's note
- § 48:2 In general

II. ESTATE PLANNING AND OBJECTIVES

- § 48:3 In general
- § 48:4 Nontax planning
- § 48:5 Tax planning

III. FEDERAL ESTATE AND GIFT TAXES

- § 48:6 2017 Tax Act and its history
- § 48:7 Operation of federal estate and gift taxes
- § 48:8 Applicable exclusion amount
- § 48:9 Basis adjustment
- § 48:10 Transfers between spouses
- § 48:11 Gift tax annual exclusion
- § 48:12 Generation-skipping transfer tax
- § 48:13 State taxes

IV. TAX PLANNING

- § 48:14 Deductions
- § 48:15 Transfer tax planning strategies
- § 48:16 Tax planning strategies after the 2017 Tax Act
- § 48:17 Lifetime gifting after the 2017 Tax Act
- § 48:18 New income tax basis at death
- § 48:19 Trust income tax
- § 48:20 Income splitting
- § 48:21 Charitable redemption
- § 48:22 Family-owned business deduction

V. USE OF ENTITIES

- § 48:23 In general
- § 48:24 Partnerships
- § 48:25 Limited partnerships
- § 48:26 Limited liability companies
- § 48:27 C corporations
- § 48:28 S corporations

cviii

§ 48:29 Multiple entities

V	I	V	ΔΤ	II	ΔT	ГT	\cap 1	V
v		- V	_	10	_			. "

§ 48:30	In general
§ 48:31	Valuation adjustments
§ 48:32	—Minority interests
§ 48:33	— —Family ownership
§ 48:34	—Control premium
§ 48:35	—Lack of marketability
§ 48:36	Lapsing rights and restrictions
§ 48:37	Special use valuation for certain farm and
	business property
§ 48:38	Conservation easements

VII. BUY-SELL AGREEMENTS

§ 48:39 In general § 48:40 Valuation of business interests subject to a buysell agreement—I.R.C. § 2703

VIII. ESTATE FREEZES

§ 48:41 In general
§ 48:42 Family members and transfers
§ 48:43 —Valuation of retained interests
§ 48:44 —Valuation of junior equity interests
§ 48:45 —Excluded transactions
§ 48:46 Transfer tax on undistributed qualified payments

IX. ALTERNATIVE ESTATE FREEZE TECHNIQUES

§ 48:47 Sale using private annuity
§ 48:48 Sale using self-canceling installment note
§ 48:49 Use of a GRAT
§ 48:50 Sale to a grantor trust
§ 48:51 GRAT vs. sale to grantor trust

X. PAYMENT OF ESTATE TAX

§ 48:52	In general
§ 48:53	Extension of time for payment of estate tax
§ 48:54	Installment payment of estate tax
§ 48:55	—Terms of payment

§ 48:56	—Qualification
§ 48:57	—Revocation

XI. LIFE INSURANCE

§ 48:58	In general
§ 48:59	Corporate-owned life insurance
§ 48:60	Split dollar life insurance

§ 48:61 Irrevocable life insurance trust

XII. POST MORTEM PLANNING

- § 48:62 In general § 48:63 Disclaimer
- **CHAPTER 49. INTERNET LAW**
- § 49:1 Scope
- § 49:2 Section 230 of the Communications Decency Act of 1996 ("Section 230")
- § 49:3 Domain Names and Trademark Law: The Anti-Cybersquatting Consumer Protection Act and the ICANN's Uniform Dispute Resolution Policy
- § 49:4 Copyright Law on the Internet: The Digital Millennium Copyright Act
- § 49:5 Privacy Regulation of the Internet in the United States, the United Kingdom and the European Union
- § 49:6 Forming Contracts on the Internet: digital signatures and enforcement of "clickwrap" and "shrinkwrap" contracts
- § 49:7 Jurisdiction on the Internet: the *Zippo* standard and minority "all or nothing" approaches to personal jurisdiction
- § 49:8 Taxation of Internet Commerce: sales taxes and the *Wayfair* case; income taxes and state "economic nexus" statutes
- § 49:9 Internet Crimes and Enforcement

CHAPTER 50. IMMIGRATION LAW: TEMPORARY WORKING VISAS AND THE EMPLOYMENT OF FOREIGN NATIONALS IN THE UNITED STATES

I. SCOPE

§ 50:1 Introduction and overview

II. THE H-1B VISA FOR SPECIALTY WORKERS

- § 50:2 In general
- § 50:3 Core Principles of the H-1B Visa Program
- § 50:4 The H-1 cap and annual lottery
- § 50:5 The Labor Condition Application
- § 50:6 H-1B process and procedure

III. THE L-1 INTRACOMPANY TRANSFEREE VISA

- § 50:7 In general
- § 50:8 Determining L-1 eligibility
- § 50:9 Applying for L-1 classification
- § 50:10 L-1 validity
- § 50:11 L-1 dependents

IV. THE O-1 VISA FOR INDIVIDUALS WITH EXTRAORDINARY ABILITY OR ACHIEVEMENT IN THEIR FIELD

- § 50:12 Overview of the O-1 visa
- § 50:13 O-1A: Individuals with Extraordinary Ability in the Sciences, Education, Business, or Athletics
- § 50:14 O-1B: Individuals with a demonstrated record of extraordinary achievement in the motion picture and television industry
- § 50:15 Adjudication

V. THE E-1 TREATY TRADER AND E-2 TREATY INVESTOR VISAS

- § 50:16 In general
- § 50:17 The Rules Governing Nationality for the E Visa
- § 50:18 Establishing Eligibility for the E-1 Treaty Trader Visa
- § 50:19 Establishing Eligibility for the E-2 Treaty Investor Visa
- § 50:20 The Rules Governing Eligibility for an E-1 or E-2 Visa for Employees of the U.S. Enterprise
- § 50:21 The E-1/E-2 Visa application process and E-1/E-2 status
- § 50:22 The Family of the E Visa Holder

VI. COUNTRY SPECIFIC NONIMMIGRANT VISAS

§ 50:23 In general

§ 50:24	E-3 Nonimmigrant Visas: Specialty Occupation
	Nonimmigrant Visas for Australian Citizens
§ 50:25	H-1B1 Nonimmigrant Visas: Specialty
	Occupation Nonimmigrant Visas for Citizens of
	Chile and Singapore
§ 50:26	TN Nonimmigrant Visa Available to Citizens of
	Canada and Mexico in Certain Professions

VII. F-1 STUDENT VISA WORK AUTHORIZATION

§ 50:27	Overview of F-1 Work Authorization
§ 50:28	Curricular Practical Training (CPT)
§ 50:29	Optional Practical Training (OPT)
§ 50:30	Process for applying for OPT
§ 50:31	STEM Optional Practical Training Extension (STEM OPT)
§ 50:32	Reporting responsibilities of the F-1 student
§ 50:33	Changing Employers, Temporary Absences, and Unemployment during OPT
§ 50:34	Dependents (F-2 Visa Category)

VIII. THE B-1/B-2 VISITOR VISA AND THE ESTA PROGRAM

§ 50:35	In general
§ 50:36	Business visitors
§ 50:37	Business visitor in lieu of employment authorized status
§ 50:38	
§ 50:39	Applying for ESTA

IX. THE EMPLOYMENT VERIFICATION SYSTEM

§ 50:40	Verifying identity and employment
	authorization—I-9 requirements
§ 50:41	The E-Verify system

Table of Laws and Rules

Table of Cases

Index