

Authors' Introduction

2026 Edition

The authors are pleased to provide the 2026 Edition of *O'Neal and Thompson's Close Corporations and LLCs: Law and Practice*. Regular users of this treatise are keenly aware of the visible trend in this area of the law toward greater reliance on contracts among participants in closely held entities. Delaware courts have long refused to provide special protection to minority shareholders in close corporations, reasoning that they have the opportunity to protect themselves via contract,¹ and Delaware's statutes allow participants in LLCs, LPs and partnerships to completely eliminate fiduciary duties via contractual agreements contained in their operating or partnership agreements, in contrast to the uniform acts governing those alternative entities in many states outside Delaware.² In addition, Delaware—long the dominant jurisdiction for publicly held companies—has seen a rising caseload of legal disputes regarding closely held entities, particularly LLCs. Given such trends, this introduction highlights not just recent cases deciding close corporations and LLC issues but also two significant changes in Delaware corporation statutes that can be expected to also impact the law relating to closely held entities.

In 2025 Delaware's legislature adopted a set of amendments to the state's corporation laws which, among other things, altered existing case law on cleansing conflicts of interests in corporations generally and also provide specific cleansing rules applied to controlling shareholders. These provisions were written for larger corporations but can be expected to also shape conflicts in LLC contexts. See section 144 of the Delaware code, discussed in § 5:16. This legislation also narrowed the documents available in a books and records request, another change that can also be expected to influence LLC disputes.

During the 2024 legislative session, significant changes were made to another part of Delaware law that also impacts closely held businesses. Prevailing Delaware corporate law generally empowers a corporation's board of directors to make governance decisions, with any deviation required to be set out in the company's articles of

¹ *Nixon v Blackwell*, 626 A.2d 1366, 1379-80 (Del. 1993) (rejecting judge-made rules to protect shareholders of close corporations and noting shareholders' ability to bargain for protections). See § 9:23 of this treatise.

² Compare, e.g., Del. Code Ann. tit. 6, § § 18-1101(b) ("It is the policy of this chapter to give the maximum effect to the principle of freedom of contract and to the enforceability of limited liability company agreements") and 18-1101(c) (allowing for elimination of fiduciary duties in LLCs except for the implied covenant of good faith and fair dealing) with Uniform LLC Act § 105(d)(3) (limiting the ability of an LLC operating agreement to modify the fiduciary duty of loyalty). See § 5:16 of this treatise.

incorporation, a change which usually would require consent of the majority of shareholders. Earlier in 2024 a widely-noted Delaware decision struck down an agreement between the corporation's founder and the company's board that allowed a contract to end-run this long-standing Delaware rule. In response, the Delaware legislature expanded the space for contractual changes. This legislative change was understood to be in response to renewed competition for Delaware for corporate charters from other states, notably from Nevada and Texas, which have instituted new business courts and changed their own corporate laws to provide features that, lawmakers hope will lead corporations to reincorporate there. While it is unclear what the full effect of all these changes will be for closely held firms, they clearly constitute important considerations for planners considering how and where to organize close corporations or LLCs. These changes, reflected in new section 122(18) of the Delaware corporate code, are discussed in § 4:6.

Among the dozens of new cases discussed in this new 2026 edition are:

- A Texas case where an appellate court upheld a supermajority provision in a close corporation agreement which effectively gave each shareholder a veto over removal of corporate officers, even though this led to corporate dysfunction after the shareholders had a falling-out. Parties in close corporations, the court observed, “remain free to contract for ‘odd results.’” § 4:32
- A Louisiana case which should remind attorneys of the importance of precise drafting. There, all a corporation's shareholders had signed an agreement captioned a “Unanimous Consent Resolution” transferring significant power to one shareholder. The court refused to uphold this because state statute requires such an agreement either state that it is a “Unanimous Governance Agreement” or that it is governed by the relevant statutory section, and this provision did neither. § 4:33
- Several cases illustrating that LLC members' remarkable contractual freedom can increase the possibility for incomplete or contradictory provisions. In one Delaware case, for instance, an operating agreement empowered an LLC's managing member to remove “non cash contributing members,” but was ambiguous as to how to categorize a member, which required the court to turn to extrinsic evidence to determine the category to which the plaintiff belonged. § 5:3
- A New York case in which an investor was tripped up by contradictory provisions between a contract the investor had signed with the LLC's founder and the LLC operating agreement. The court enforced a provision in the operating agreement which effectively allowed the founder to block the contract he had signed with the investor. § 5:31
- An Ohio case that allowed two signatories to a shareholder agreement to amend it over the third signatory's objections, finding that while the amendment may have disadvantaged the third signatory it had a “legitimate business purpose” in preventing a deadlock from forming in the corporation. § 7:12

HIGHLIGHTS

- An Indiana case stating that specific performance may be an appropriate remedy for breach of a contract for sale of close corporation stock. § 7:15
- A Louisiana case where a buy-sell agreement prevented a corporation's purported redemption of a shareholder's shares because the shares allegedly redeemed should first have been offered to other shareholders. § 7:17
- A Texas case where a professional corporation was allowed to amend its governing documents to purchase a departing shareholder's shares for \$1, the court noting there was no statutory requirement that a redemption price be reasonable. § 7:18
- A Louisiana case refusing to recognize a corporation's alleged redemption of shares because state statute required redemption to be paid out of surplus and the corporation lacked any legally available funds. § 7:20
- A North Carolina case where the court refused to order corporate dissolution even after finding plaintiffs were oppressed shareholders, because they also had an option to sell their shares back to the corporation at fair value, a step which would avoid shutting down the company and discharging its employees as might happen in a liquidation. § 7:25
- A Kansas case in which majority shareholders of a corporation avoided a buy-sell agreement by restructuring the sale of a corporation as a sale of assets. § 7:27
- A Texas case applying contract law and refusing to enforce a first option provision contained in a corporation's bylaws because the essential terms of the sale were not provided. § 7:43
- Cases demonstrating the variety of approaches court still take in veil-piercing cases. § 8:18
- A Michigan decision finding that the mere fact that a controlling shareholder and member of a corporation and related LLC employed his wife and children at the firms did not constitute oppression of other shareholders/members. § 9:7
- A New Jersey case involving an LLC where members were involved both personally and in the business, in which a court, in describing activities constituting oppression by the majority member, included not only removal of the minority member from the LLC but also acts of physical violence by the majority member. § 9:7
- An Illinois case where a court described two 50-50 shareholders as majority shareholders owing fiduciary duties akin to those of partners. § 9:7
- An Iowa case in which the reasonable expectations of shareholders in a family farm corporation were determined in part by the corporation's formation resolution, which spoke of the need to save the family farm from foreclosure. § 9:8
- A Delaware case where a plaintiff invoked a provision of the state's corporation statute allowing dissolution of "joint venture corporations," where the court declined to dissolve the corporation because it found it was not a joint venture corporation, noting that the defendant had never intended to form a joint

venture with the plaintiff, plaintiff had played no part in the corporation's formation, and had always been regarded by defendant as an employee. § 9:16

- A Maryland decision holding that, even in a corporation that has elected not to have a board and instead be run directly by shareholders, demand may still be required before a shareholder can file a derivative suit. § 9:26
- Cases where shareholders were not allowed to pursue derivative claims after courts found they could not fairly and adequately represent the interests of similarly situated shareholders. § 9:27
- A California case involving a close corporation where the court found that a minority shareholder's claim should be filed as a derivative claim, but noted a court could equitably distribute resulting damages to shareholders to avoid damages being returned to control of the alleged wrongdoing majority shareholder. § 9:29
- A North Carolina decision where the court refused to extend oppression doctrine from close corporations to LLCs, citing the fact that, due to its contractual nature, control in an LLC comes not from majority ownership but from what members have agreed to in the operating agreement. § 9:33
- A case in which the North Carolina Supreme Court dissolved an LLC after finding it was not reasonably practicable to carry on its business, observing that "not practicable" meant "unfeasible," not "impossible." § 9:37

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

Robert B. Thompson: thompson@georgetown.edu

Harwell Wells: harwell.wells@temple.edu

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