Agenda

First part (12:15-1:15)
- What is business law research?
- Examples of basic business law research questions
- “Real life” issues in business law research
- Research strategies and sources
- Keeping current
- Brainstorming on example questions

Second part (1:15-)
- Hands-on practice question
What is “business law”?  

- **Broad view:** anything to do with corporations  
  - Choice of business entity, formation, governance, M&A, etc.  
  - Contracts, banking, bankruptcy, securities law, corporate tax...  

- **Narrower view here**  
  - Basic corporate focus +  
  - A few securities research tools
Do business lawyers really do research?

- Summer and junior business associates often are asked to do business law research.
  - Advise client on legal implications of a proposed course of action
  - Prepare for business transactions
  - Help partner write an article or client alert
  - Create CLE or in-house training materials

- Litigators, bankruptcy lawyers, others may also do business law research.
Corporate client plans to run a short-term promotional contest on its website.
- Can the company do so legally?
- Are there any specific requirements that the company must meet?
Example research questions

- Find the “Black Box Incorporated” SEC no-action letter for me. I think it was issued in the early 1990s, so I’d also like you to find out whether it is still good law.
Example research questions

- Research and write the first draft of a firm “client alert” on a recently-amended SEC rule.
Example research questions

- For our monthly business department “lunch & learn,” please research how courts in Delaware, Massachusetts, New York, and California have interpreted “material adverse change” clauses.
“Real-life” concerns & tips

- Corporate clients are often sensitive to research costs
  - What does that mean?
“Real life,” cont.

- Firm may subscribe to alternatives to Lexis and Westlaw.
  - Still fee-based...
  - ...but often treated as overhead.
  - Examples include
    - CCH databases: securities, tax, among many others
    - SEC research: LivEDGAR (Westlaw Business), SECnet
More real life tips

- Ask for help
  - Availability of and instruction in using alternative sources
  - Constructing complex searches on Lexis or Westlaw
  - Recommendations for useful secondary sources
Research Strategies & Sources
LARW redux

- Everything you learned in LARW still applies, just re-purposed, specialized.
- What are your first steps?
  - Brainstorm:
    - “What is this question is asking me to do?”
    - Look for important facts, research leads, alternative terms, etc.
  - Consult a secondary source
    - “What kind would be useful to me?”
    - “Print or online?”
Starting with a secondary source

- Legal dictionaries & encyclopedias
- Journals
  - Law reviews
  - Practitioner-oriented newsletters & journals
- Treatises
- Practitioners’ resources
  - Less historical analysis; more focus on current state of the law
  - Practice pointers and checklists
- Sample documents ("forms" or "precedents")
Finding secondary sources

- Ask for recommendations
- Consult research guides
  - Cleveland-Marshall
    - Example of a guide with helpful state-specific (Ohio) references
  
- In print and often available on Lexis, Westlaw, and online alternatives
Finding primary and secondary sources by topic on Lexis
Finding primary and secondary sources by topic on Westlaw
Westlaw Directory

Search these databases:

- Finance & Banking
- First Amendment
- Government Benefits
- Government Contracts
- Health & Medicine
- Homeland Security
- Human Resources
- Immigration
- Insurance
- Intellectual Property
- International Law (see also International/Worldwide Materials)
- Labor & Employment
- Legal Ethics & Professional Responsibility
- Litigation
- Maritime Law
- Military Law
- Municipal Law
- Native American Law
- Pension & Retirement Benefits
- Products Liability
- Professional Malpractice
- Real Property
- Science & Computer Technologies Law
- Securities
- Taxation
- Tort Law
- Transportation
- Workers’ Compensation
Legal dictionaries & encyclopedias

- Garner, *A Dictionary of Business Law Terms*
- *Fletcher Cyclopedia of the Law of Corporations*
  - On Westlaw (FLTR-CYC)
- State legal encyclopedias
  - e.g., *Massachusetts Practice Series*
  - Often owned by firms and on Lexis or Westlaw
Journals

- *The Business Lawyer (ABA)*
  - Example of scholarly business journal
  - Online
    - On HeinOnline (1946-2007)
    - On Westlaw (BUSLAW) - selected articles since 1982
    - On Lexis – full text since Nov. 1981

- *The M&A Lawyer*
  - Example of practitioner-oriented newsletter
    - Updates of latest developments, practical tips
    - May be delivered in print or online
Corporate Law Treatises

- *Cox & Hazen on Corporations*
  - Example of a comprehensive treatise

- Examples of very specialized treatises
  - O’Neal & Thompson, *Oppression of Minority Shareholders & LLC Members*
  - Knepper, *Liability of Corporate Officers and Directors*
  - In-depth treatment of narrower issues

- ALI *Principles of Corporate Governance: Analysis and Recommendations*
  - Similar to a Restatement
  - Analyzes current law and makes recommendations for improvement
  - On Lexis
Favorite DE Corp. Law treatises

- Balotti & Finkelstein, *The Delaware Law of Corporations & Business Organizations*
  - Arranged by topic
  - Includes forms
  - On Westlaw (DELCBO)
  - In CCH Internet Research Network
Example of fee-based alternative to Wexis
Favorite DE treatises, cont.

- *Folk on the Delaware General Corporation Law, 5th ed.*
  - Originally written by one of the drafters
  - Includes text of the statute plus detailed commentary
  - Arranged by code section
  - Also in CCH Internet Research Network
  - On Lexis, but...
Source Information

Folk on Delaware General Corporation Law

FILE-NAME: FOLKGC


FREQUENCY: Not currently updated; This source does not contain the most current version of this treatise.

UPDATE-SCHEDULE: Not currently updated

HIER-LOC:
- Area of Law - By Topic/Corporate/Search Analysis, Law Reviews & Journals
- Area of Law - By Topic/Corporate/Search Analysis, Law Reviews & Journals/By State/Delaware
- Area of Law - By Topic/Corporate/Search Analysis, Law Reviews & Journals/By Subtopic/Corporate Formation & General Practice Guidance
- Secondary Legal/Aspen Publishers
- States Legal - U.S./Delaware/Search Analysis & CLE Materials/Business & Finance

Done

Look for a Source

Legal > Area of Law - By Topic > Corporate > Search Analysis, Law Reviews & Journals

Use checkboxes to select sources for searching across categories, pages, and tabs. Show Me... Combine Sources

- Corporate Governance: Law and Practice
- Corporations
- Critical Issues in the Sarbanes-Oxley Act: Public Company Accounting and Oversight
- Folk on Delaware General Corporation Law
- Illinois Jurisprudence - Business Relationships
- Kansas Corporation Law & Practice
- North Carolina Unfair Business Practices

By Subtopic

By State

Matthew Bender(R)

Law Reviews & Journals
Example practitioners’ resources

- *Practising Law Institute* materials
  - Treatises and seminar materials
  - Especially the Corporate Law & Practice Series and the Commercial Law & Practice Series
  - On Westlaw (PLI), 1984-present

- *ALI-ABA Course of Study* materials
  - Seminar materials on a variety of very specific business law topics
  - On Lexis
“Forms” or “Precedents”

- **In-house**
  - In “form file” or just in firm’s DMS
  - Benefits: consistent with the way your firm does business, institutional memory
  - Tip: Ask for background before using
    - e.g., Anything unusual about the deal? Was it completed?

- **In form books or treatises**
  - e.g., *Fletcher Corporation Forms Annotated* (Westlaw FLTR-FRM)
    - Includes forms themselves, annotations (“practice considerations”), cross-references, and checklists

- **Attachments to SEC filings**
  - Tip: Free at SEC.gov, but more search functionality with a fee-based source
Primary Sources
Delaware!

- Stats (from Finkelstein)
  - Over 40% of companies listed on the NYSE are incorporated in DE.
  - Majority of publicly traded Fortune 500 companies are incorporated in DE.
  - More than 80% of companies that have reincorporated in the last 25 years did so in DE.

- Why?
  - Companies whose HQ are not physically located in DE are still often incorporated in DE due to favorable corporate laws and court system.
Other states’ corporate statutes

- Found in their codes
- Convenient compilation in Corporations: Statutes (Aspen)
- Model Business Corporation Act Annotated, 4th ed. (ABA Committee on Corporate Law)
  - Includes commentaries, states that have adopted each section, and case citations
A few securities primary sources

- Firms often issue attorneys an annual paperback edition of current statutes & regs.
- More comprehensive compilations of primary sources
  - CCH *Federal Securities Law Reporter* & CCH *Blue Sky Law Reporter*
  - Include statutes, regs, SEC releases, no-action letters, etc.
  - In print
  - Online subscription
Favorite securities secondary sources

- Loss & Seligman, *Securities Regulation*
  - 3d ed. on Lexis; 4th ed. on CCH
- “Those blue books”
  - West’s Securities Law Series (binders)
    - Comprehensive treatise
    - Practitioner-oriented, detailed treatments of narrow subjects
Keeping current

- Daily & weekly newsletters
  - Print & email/web-based
  - Example: BNA Corporate Accountability Report
    - On Westlaw (BNA-CAR)

- Blogs
  - Business Associations Blog – UCLA prof on corporate law and governance and legal education
  - Business Law Prof Blog – scholarly commentary on business news and legal developments, includes links to free primary sources
  - Wall Street Journal Law Blog – “law and business and the business of law”; offers a business perspective on legal issues
Example questions & places to start
Example research questions

- For our monthly business department “lunch & learn,” please research how courts in Delaware, Massachusetts, New York, and California have interpreted “material adverse change” clauses.

- Why?
Getting started

- Consider: What kind of primary sources would I use to answer this question?
  - Cases

- Consider: What is this question asking me to do?
  - Compare and contrast cases on the same topic, but from different jurisdictions
Don’t start from scratch

- Don’t start full-text case searching on Lexis/Westlaw
- Start with a secondary source; lots of articles about “MAC” clauses
  - Context: MAC clauses are standard clauses in M&A agreements.
  - Cites to important cases
  - Alternative term: “material adverse effect” clauses
- Now start searching, but narrowly!
  - Topics & Key Numbers on Westlaw
  - Field search: sy,di(“material adverse change” “material adverse effect”)
What about comparing state statutes?

- Try a “50-state survey”
  - Example: *Martindale-Hubbell Law Digest*
    - Find cites to code sections by state, then subject
    - Available on Lexis
  - Example: *National Survey of State Laws*
    - Arranged in 50 topics, with cites to state codes
    - More focused on social & political issues
    - In the SURVEYS database on Westlaw
Select the SURVEYS database, then choose table of contents
Corporate Formation

50 STATE STATUTORY SURVEYS
BUSINESS ORGANIZATIONS
CORPORATIONS
Copr © 2007 Thomson/West
Thomson West October 2007

Corporate Formation

The right to conduct business as a corporation is a privilege granted by state law. Thus, the law governing a corporate entity is the law of the state where it was incorporated. Generally, most states provide for corporate formation through filing of articles of incorporation. Corporate existence typically begins upon the filing of the articles, or at a later date specified in the articles. Since it is the state that grants power to a corporation to conduct business, state law may also place terms and conditions on the right to do business in that form.

Most states provide for incorporation of non-profit corporations by separate statutes. Although the provisions for non-profit incorporation are not included in this survey, those provisions are generally located in the vicinity of the general corporate law statutes listed in this survey. Also, many states
Most states provide for incorporation of non-profit corporations by separate statutes. Although the provisions for non-profit incorporation are not included in this survey, those provisions are generally located in the vicinity of the general corporate law statutes listed in this survey. Also, many states have separate statutory provisions applicable to other special categories, such as close corporations, limited liability corporations, professional corporations, and banking and financial institutions.

**Alabama**

- **AL ST § 10-28-2.01** Incorporators
- **AL ST § 10-28-2.02** Articles of incorporation
- **AL ST § 10-28-2.03** Incorporation
- **AL ST § 10-28-3.01** Purposes

**Alaska**

- **AK ST § 10.06.205** Incorporators
- **AK ST § 10.06.208** Articles of incorporation
- **AK ST § 10.06.210** Articles of incorporation; optional provisions
- **AK ST § 10.06.213** Delivery of articles of incorporation
- **AK ST § 10.06.215** Disclosure of corporate purposes
- **AK ST § 10.06.218** Effect of issuance of certificate of incorporation

**Arizona**
$ indicates transactional charges apply
# LexisNexis 50 State Comparative Legislation / Regulations

## Liability of Corporate Directors and Officers (June 2007)

<table>
<thead>
<tr>
<th>STATE</th>
<th>Section Cite</th>
<th>Subject matter</th>
</tr>
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<tbody>
<tr>
<td>AL</td>
<td><strong>Statutes:</strong></td>
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<tr>
<td></td>
<td>Code of Ala. § 10-28-8.30</td>
<td>General Standards for Directors</td>
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<tr>
<td></td>
<td>Code of Ala. § 10-28-8.42</td>
<td>Standards of Conduct for Officers</td>
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<tr>
<td>AK</td>
<td><strong>Statutes:</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Alaska Stat. § 10.06.480</td>
<td>Liability of Directors and Shareholders</td>
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<tr>
<td>AZ</td>
<td><strong>Statutes:</strong></td>
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<td></td>
<td>A.R.S. § 10-830</td>
<td>General Standards for Directors; Presumption</td>
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<td>A.R.S. § 10-842</td>
<td>Standards of Conduct for Officers; Presumption</td>
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<td>AR</td>
<td><strong>Statutes:</strong></td>
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<td></td>
<td>Ark. Stat. Ann. § 4-75-210</td>
<td>Liability of Directors, Officers, Agents, etc. - Proof of unlawful intent</td>
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<tr>
<td>CA</td>
<td><strong>Statutes:</strong></td>
<td></td>
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<tr>
<td></td>
<td>Cal Corp Code § 309</td>
<td>Directors and Officers to Exercise Powers in Good Faith; Liability</td>
</tr>
<tr>
<td>CO</td>
<td><strong>Statutes:</strong></td>
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<td>C.R.S. 7-108-401</td>
<td>General Standards of Conduct for Directors and Officers</td>
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<tr>
<td></td>
<td>C.R.S. 7-108-402</td>
<td>Limitation of Certain Liabilities of Directors and Officers</td>
</tr>
<tr>
<td>CT</td>
<td><strong>Statutes:</strong></td>
<td></td>
</tr>
</tbody>
</table>
Favorite source for 50-state surveys

- Nyberg, *Subject Compilations of State Laws*
  - Refers you to 50-state surveys in books, websites, and law review articles.
  - Covers much narrower and more specific topics
Black Box

- Find the “Black Box Incorporated” SEC no-action letter for me. I think it was issued in the early 1990s, so I’d also like you to find out whether it is still good law.
- What’s a no-action letter?
  - [http://www.sec.gov/answers/noaction.htm](http://www.sec.gov/answers/noaction.htm)
- Where can I find them?
  - On Westlaw (FSEC-NAL) & Lexis, 1971-present
  - CCH Federal Securities Law Reporter, same
    - Also on other fee-based services
  - SEC’s website, early 2000s-present
FOR EDUCATIONAL USE ONLY

Original Image of this Document (PDF)


(SEC No-Action Letter)

*1 Black Box Incorporated

Publicly Available June 26, 1990
SEC LETTER

1933 Act / s 2(4), 4(2) / Rule 152, Reg D
1934 Act / s 10(b), 13(e), 14(e) / Rule 10b-6, 13e-4, 14e-1, Reg 14e

June 26, 1990
Publicly Available June 26, 1990
The AES Corporation,
7 WL 98529, (S.E.C. No - Action Letter),
January 09, 2007

From March 2001 through May 04, 7. IPL's last rate case was 1995, which was the result of a settlement that set base rates without specific new rates of return and fair issue. 8. The IURC entered into a

Burlington Northern Santa Fe Corporation,
4 WL 111640, (S.E.C. No - Action Letter), January 14, 2004

Keep it simple stupid. It is fundamental, one cannot be in the position of added extra

tical “links” and “black boxes”

Black Box Incorporated
June 26, 1990 (Approx. 16 pages)

1934 Act / s 10(b), 13(e), 14(e) / Rule 10b-6, 13e-4, 14e-1, Reg 14e

June 26, 1990
Publicly Available June 26, 1990

Re: Black Box Incorporated (the “Company”)

Incoming letter dated June 25, 1990

Based on the facts presented in your letter, the positions of the Divisions are stated below. You should note that the Division of Corporation Finance's positions relating to integration address only the specific integration issues raised. In this regard, the Division of Corporation Finance does not issue interpretive or no-action letters as to the availability of the Section 4(2) private offering exemption of the Securities Act of 1933 (see Release No. 33-6253, October 28, 1980).

1. Notwithstanding the Company’s proposed registered initial public offering of its common stock after the Participating Noteholders (as defined), Participating Senior Preferred stockholders (as defined), Odyssey Partners, L.P. (“Odyssey” and collectively referred to as “securityholders”) and the Company have executed the Recapitalization Agreement which involves private placement offerings to such Securityholders of specified securities of the Company and MICOM Communications Corp. (“MCC”), it is the Division of Corporation Finance’s view that the private placements need not be integrated with the later public common stock offering. In reaching this
William E. Morley, Esq.
Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549
Re: Black Box Incorporated

Gentlemen:

On behalf of our client, Black Box Incorporated, a Delaware corporation (the "Company"), we request that the Division of Corporation Finance (the "Division") concur with our view with respect to each of the following, or, in the alternative, advise us that the Division will not recommend any enforcement action to the Securities and Exchange Commission (the "Commission") if the following transactions are consummated as described herein, in reliance on our view that:

(i) if the Company files a registration statement relating to an initial public offering (the "IPO") of its common stock after the Company, the Participating Noteholders (as defined herein), holders of the Company's Senior Preferred (as defined herein) and Odyssey Partners, L.P. ("Odyssey") have executed a recapitalization agreement (the "Recapitalization Agreement") which involves the private placement to such shareholders of certain securities of the Company and MICOM Communications Corp., a wholly owned subsidiary of the Company ("MCC"), the "safe harbor" provisions of Rule 152 under the Securities Act of 1933, as amended (the "Securities Act"), will be
How do I update NALs?
- Can’t (yet) be KeyCited/Shepardized
- Run searches for references to them
  - Tip: Call Lexis/Westlaw 800#s for help.
- Consult secondary sources which can explain the subsequent history and treatment of specific NALs.

“Black Box” was clarified by a subsequent interpretive NAL, usually referred to as “Squadron, Ellenoff.”
Client alerts

- Research and write the first draft of a firm “client alert” on a recently-amended SEC rule.
- What’s a client alert?
  - Brief newsletter on legal developments of interest to groups of clients
  - Time-sensitive
Getting started

- First step: Look at other client alerts from your firm
  - Content, style
- “Recently-amended” rule
  - Need to look at regulatory history
  - Start with the proposed rule in *Federal Register* and articles about the perceived need for or reasons for the rule.
Website contest

- Corporate client plans to run a short-term promotional contest on its website.
  - Can the company do so legally?
  - Are there any specific requirements that the company must meet?
Getting started

- Ask yourself: “What topic does this question fall under?”
  - Internet law?
  - State laws on gaming, lotteries, sweepstakes, etc.?
- Ask yourself: “What kind of primary source would likely answer this question?”
  - Statute
- Starting with a secondary source
  - “Hot,” narrow topic like this is likely to be the subject of a PLI article
Questions?