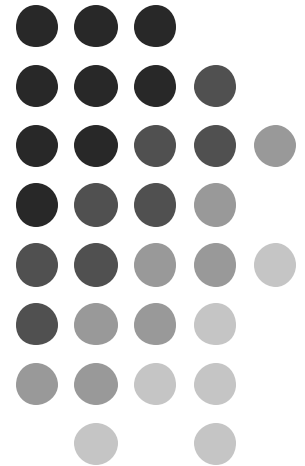


# Corporations

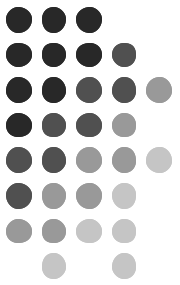
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Prof. Michael Abramowicz

Limited Liability Companies

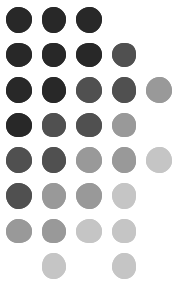


# Formation



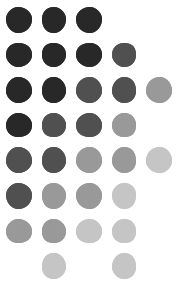
- File Articles of Organization in the designated state office [ULLCA §202(a)]
  - Required terms: §203(a)
    - (a) Articles of organization of a limited liability company must set forth:
      - (1) the name of the company;
      - (2) the address of the initial designated office;
      - (3) the name and street address of the initial agent for service of process;
      - (4) the name and address of each organizer;
      - (5) whether the company is to be a term company and, if so, the term specified;
      - (6) whether the company is to be manager-managed, and, if so, the name and address of each initial manager; and
      - (7) whether one or more of the members of the company are to be liable for its debts and obligations under Section 303(c).
  - Optional terms: §203(b)
    - (b) Articles of organization of a limited liability company may set forth:
      - (1) provisions permitted to be set forth in an operating agreement; or
      - (2) other matters not inconsistent with law.

# Formation



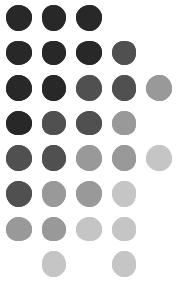
- Additional steps
  - Pay filing fees and franchise tax.
  - Choose and register name
    - ULLCA §105(a): The name of a limited liability company must contain "limited liability company" or "limited company" or the abbreviation "L.L.C.", "LLC", "L.C.", or "LC". "Limited" may be abbreviated as "Ltd.", and "company" may be abbreviated as "Co."
  - Designate office and agent for service of process.

# Formation



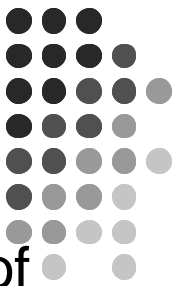
- Draft Operating Agreement
  - ULLCA §203(c): Articles of organization of a limited liability company may not vary the nonwaivable provisions of Section 103(b). As to all other matters, if any provision of an operating agreement is inconsistent with the articles of organization:
    - (1) the operating agreement controls as to managers, members, and members' transferees; and
    - (2) the articles of organization control as to persons, other than managers, members and their transferees, who reasonably rely on the articles to their detriment.

# Formation



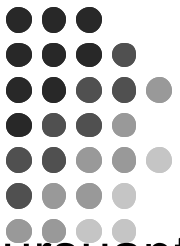
- Conversion of Partnerships: ULLCA § 902
  - (a) A partnership or limited partnership may be converted to a limited liability company pursuant to this section.
  - (b) The terms and conditions of a conversion of a partnership or limited partnership to a limited liability company must be approved by all of the partners or by a number or percentage of the partners required for conversion in the partnership agreement.
  - (c) An agreement of conversion must set forth the terms and conditions of the conversion of the interests of partners of a partnership or of a limited partnership, as the case may be, into interests in the converted limited liability company or the cash or other consideration to be paid or delivered as a result of the conversion of the interests of the partners, or a combination thereof.
  - (d) After a conversion is approved under subsection (b), the partnership or limited partnership shall file articles of organization in the office of the [Secretary of State] which satisfy the requirements of Section 203 and contain:
    - (1) a statement that the partnership or limited partnership was converted to a limited liability company from a partnership or limited partnership, as the case may be;
    - (2) its former name;
    - (3) a statement of the number of votes cast by the partners entitled to vote for and against the conversion and, if the vote is less than unanimous, the number or percentage required to approve the conversion under subsection (b); and
    - (4) in the case of a limited partnership, a statement that the certificate of limited partnership is to be canceled as of the date the conversion took effect.

# Formation



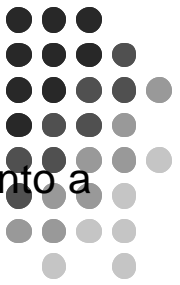
- Conversion of Partnerships (§ 902 cont'd)
  - (e) In the case of a limited partnership, the filing of articles of organization under subsection (d) cancels its certificate of limited partnership as of the date the conversion took effect.
  - (f) A conversion takes effect when the articles of organization are filed in the office of the [Secretary of State] or at any later date specified in the articles of organization.
  - (g) *A general partner who becomes a member of a limited liability company as a result of a conversion remains liable as a partner for an obligation incurred by the partnership or limited partnership before the conversion takes effect.*
  - (h) A general partner's liability for all obligations of the limited liability company incurred after the conversion takes effect is that of a member of the company. A limited partner who becomes a member as a result of a conversion remains liable only to the extent the limited partner was liable for an obligation incurred by the limited partnership before the conversion takes effect.

# Formation



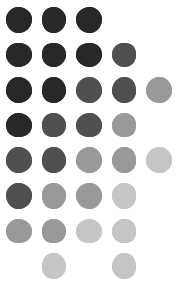
- Effect of Conversion of Partnerships (§ 903)
- (a) A partnership or limited partnership that has been converted pursuant to this [article] is for all purposes the same entity that existed before the conversion.
- (b) When a conversion takes effect:
  - (1) all property owned by the converting partnership or limited partnership vests in the limited liability company;
  - (2) all debts, liabilities, and other obligations of the converting partnership or limited partnership continue as obligations of the limited liability company;
  - (3) an action or proceeding pending by or against the converting partnership or limited partnership may be continued as if the conversion had not occurred;
  - (4) except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of the converting partnership or limited partnership vest in the limited liability company; and
  - (5) except as otherwise provided in the agreement of conversion under Section 902(c), all of the partners of the converting partnership continue as members of the limited liability company.

# Formation



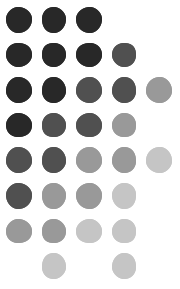
- Corporations – No provision for conversion [Can convert by merging the Corporation into a newly-formed LLC; §904 (merger of entities) would then govern procedure].
- (a) Pursuant to a plan of merger approved under subsection (c), a limited liability company may be merged with or into one or more limited liability companies, foreign limited liability companies, corporations, foreign corporations, partnerships, foreign partnerships, limited partnerships, foreign limited partnerships, or other domestic or foreign entities.
- (b) A plan of merger must set forth:
  - (1) the name of each entity that is a party to the merger; ...
- (c) A plan of merger must be approved:
  - (1) in the case of a limited liability company that is a party to the merger, by all of the members or by a number or percentage of members specified in the operating agreement;
  - (2) in the case of a foreign limited liability company that is a party to the merger, by the vote required for approval of a merger by the law of the State or foreign jurisdiction in which the foreign limited liability company is organized;
  - (3) in the case of a partnership or domestic limited partnership that is a party to the merger, by the vote required for approval of a conversion under Section 902(b); and
  - (4) in the case of any other entities that are parties to the merger, by the vote required for approval of a merger by the law of this State or of the State or foreign jurisdiction in which the entity is organized and, in the absence of such a requirement, by all the owners of interests in the entity.
- (d) After a plan of merger is approved and before the merger takes effect, the plan may be amended or abandoned as provided in the plan.
- (e) The merger is effective upon the filing of the articles of merger with the [Secretary of State], or at such later date as the articles may provide.

# Formation: Water, Waste & Land, Inc. d/b/a Westec v. Lanham



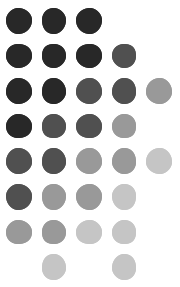
- Facts
- Lower court's approach
  - Clark's liability
  - Lanham's liability
- Review of agency law principles
- Holding
  - Common law approach
  - Relevance of LLC Act

# Operating agreement: Restrictions on terms



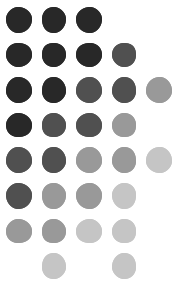
- Section 103(b) The operating agreement may not:
  - (1) unreasonably restrict a right to information or access to records under Section 408;
  - (2) eliminate the duty of loyalty under Section 409(b) or 603(b)(3), but the agreement may:
    - (i) identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable; and
    - (ii) specify the number or percentage of members or disinterested managers that may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty;
  - (3) unreasonably reduce the duty of care under Section 409(c) or 603(b)(3);
  - (4) eliminate the obligation of good faith and fair dealing under Section 409(d), but the operating agreement may determine the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable;
  - (5) vary the right to expel a member in an event specified in Section 601(6);
  - (6) vary the requirement to wind up the limited liability company's business in a case specified in Section 801(a)(3) or(a)(4); or
  - (7) restrict rights of a person, other than a manager, member, and transferee of a member's distributional interest, under this [Act].

# Operating Agreement: Elf Atochem North America v. Jaffari



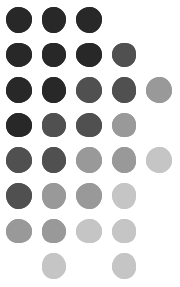
- Facts
  - Formation of LLC
  - Arbitration provision
  - The dispute
- Court of Chancery
- Holding
  - Policy of Delaware Act
  - Interpreting operating agreements

# Piercing the LLC Veil



- MBCA §6.22(b): “Unless otherwise provided in the articles of incorporation, a shareholder of a corporation is not personally liable for the acts or debts of the corporation except that he may become personally liable by reason of his own acts or conduct.”
- ULLCA §303(a): “... A member or manager is not personally liable for a debt, obligation, or liability of the company solely by reason of being or acting as a member or manager.”
  - No explicit exception that opens the door to piercing the veil.
  - Cf. Minn. Stat. §322B.302(2): “Case law that states the conditions and circumstances under which the corporate veil of a corporation may be pierced under Minnesota law also applies to limited liability companies.”
  - But cf. ULLCA §303(b): “The failure of a [LLC] to observe the usual company formalities... is not a ground for imposing personal liability on the members or managers for liabilities of the company.”

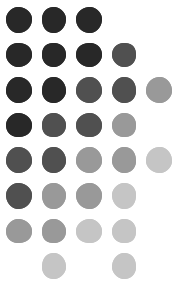
# Piercing the LLC Veil: *Kaycee Land & Livestock v. Flahive*



- Facts
- Certified question of law
- Analysis
  - Traditional basis of veil piercing
  - Wyoming legislature's intention
- Holding
- Application

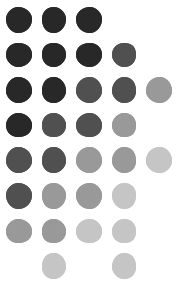
# Fiduciary obligation:

## *McConnell v. Hunt Sport Enter.*



- Facts
- Procedural posture
- Interpretation of agreement
  - Court's approach
  - Relevant provision
- Holding
  - Fiduciary duties in LLC
  - Mandatory or default rule?

# LLC Dissolution: *New Horizons Supply Coop. v. Haack*



- Facts
- Analysis
  - Alter ego theory
  - Appropriate procedures for dissolution
- Holding