# TABLE OF CONTENTS

## CHAPTER I
Choosing the Form of Business Entity

*Abbie G. Baynes – Charlotte*

PowerPoint Presentation Outline .................................................................................. I-1

## CHAPTER II
LLC Organization and Operations

*John W. Babcock – Winston-Salem*

<table>
<thead>
<tr>
<th>General Overview</th>
<th>II-1</th>
</tr>
</thead>
<tbody>
<tr>
<td>Limited Liability</td>
<td>II-1</td>
</tr>
<tr>
<td>Taxation of LLC’s</td>
<td>II-2</td>
</tr>
<tr>
<td>Organization; Annual Report</td>
<td>II-2</td>
</tr>
<tr>
<td>Governing Law</td>
<td>II-2</td>
</tr>
<tr>
<td>General Overview of Operating Agreements</td>
<td>II-3</td>
</tr>
<tr>
<td>Definition of “Operating Agreement”</td>
<td>II-3</td>
</tr>
<tr>
<td>Key Statutory Drafting Principle</td>
<td>II-3</td>
</tr>
<tr>
<td>Limits on Freedom of Contract</td>
<td>II-4</td>
</tr>
<tr>
<td>Other Key Statutory Terms</td>
<td>II-4</td>
</tr>
<tr>
<td>Company Officials</td>
<td>II-4</td>
</tr>
<tr>
<td>Key Business Topics to Cover in Operating Agreement</td>
<td>II-5</td>
</tr>
<tr>
<td>Key Business Issues</td>
<td>II-5</td>
</tr>
<tr>
<td>Key Business Issue #1 – Purpose</td>
<td>II-6</td>
</tr>
<tr>
<td>Key Business Issue #2 – Management Issues</td>
<td>II-6</td>
</tr>
<tr>
<td>Key Business Issue #3 – Compensation</td>
<td>II-9</td>
</tr>
<tr>
<td>Key Business Issue #4 – Capital Contributions</td>
<td>II-9</td>
</tr>
<tr>
<td>Key Business Issue #5 – Allocations of Income or Loss</td>
<td>II-11</td>
</tr>
<tr>
<td>Key Business Issue #6 – Distributions</td>
<td>II-12</td>
</tr>
<tr>
<td>Key Business Issue #7 – Transfers of Ownership Interests</td>
<td>II-12</td>
</tr>
<tr>
<td>Key Business Issue #8 – Buy-Sell Events</td>
<td>II-14</td>
</tr>
<tr>
<td>Key Business Issue #9 – Valuation and Payment Terms</td>
<td>II-14</td>
</tr>
<tr>
<td>Key Business Issue #10 – Exit Provisions; Unwinding</td>
<td>II-16</td>
</tr>
</tbody>
</table>

### Tax Issues

<table>
<thead>
<tr>
<th>General Overview</th>
<th>II-16</th>
</tr>
</thead>
<tbody>
<tr>
<td>Partnership Taxation</td>
<td>II-16</td>
</tr>
<tr>
<td>Allocations of Income or Loss</td>
<td>II-17</td>
</tr>
<tr>
<td>Substantial Economic Effect</td>
<td>II-17</td>
</tr>
</tbody>
</table>
CHAPTER III
Organizing and Operating a Corporation

Stephen F. Later – Pinehurst

Organizing a Corporation .......................................................... III-1
  North Carolina as State of Incorporation .................................. III-1
  Drafting and Filing of Articles of Incorporation ......................... III-2
  Corporate Bylaws ................................................................... III-4
  Shareholder Agreements ......................................................... III-5
  Organizational Resolutions .................................................... III-10
  Consideration for Shares ....................................................... III-11
  Designation of Officers ......................................................... III-11
  Subscriptions ........................................................................ III-12
  Initial Franchise Tax Return/Tax Elections ............................... III-12
  Corporate Kit ......................................................................... III-12

Capital Structure ........................................................................ III-13
  Fixing the Debt/Equity Ratio .................................................. III-13
  Fixing Characteristics of Equity Securities ............................... III-13
  Selling the Securities ............................................................. III-14

Shareholder Rights .................................................................... III-14
  Information About the Corporation ....................................... III-15
  Shareholders’ Meeting ............................................................ III-15
  Directors—Election and Removal ........................................... III-16
  Shareholder as Director: Rights and Liabilities ....................... III-18
  Redemption .......................................................................... III-19
  Dividends .............................................................................. III-19
  Compensation ....................................................................... III-20
  Rights of Appraisal ............................................................... III-20
  Suit for Dissolution or Alternative Relief ................................. III-20
  Business Judgment Rule ........................................................ III-21
  Disposition of Assets ............................................................. III-21

Certain Corporate Formalities .................................................. III-22
  General ................................................................................ III-22
CHAPTER IV
Basics of Business Taxation

Kristin King – Greensboro

Introduction ........................................................................................................ IV-1
Forms of Operating a Business – Tax Characterization ................................ IV-1
  C Corporation ................................................................................................ IV-1
  S Corporation ................................................................................................ IV-1
  Partnership ..................................................................................................... IV-3
  Sole Proprietorship ..................................................................................... IV-3
Taxation of Forms of Operating a Business ...................................................... IV-4
  Basic Taxation – Entity v. Pass-Through .................................................... IV-4
  Contributions to the Entity ....................................................................... IV-6
  Losses ........................................................................................................ IV-7
  Distributions of Appreciated Property....................................................... IV-8
  Sale of Interest in Entity ........................................................................ IV-8
  Employment/Self-Employment Taxes ....................................................... IV-9
20% Qualified Business Income Deduction under the Tax Cuts and Jobs Act... IV-11
  Background to the QBI Deduction ............................................................ IV-11
  Baseline Deduction and Qualified Business Income ................................ IV-11
  Limitations on QBI Deduction ................................................................. IV-12
  A Few Additional Points on the QBI Deduction ....................................... IV-16
Application of Rules – Choice of Entity Considerations .............................. IV-17
  What is the Right Tax Entity for my Business? ....................................... IV-17
  Illustrations – C Corporations vs. Pass-Through .................................... IV-17
  Additional Factors to Consider ............................................................... IV-20
Attachments .............................................................................................. IV-23
CHAPTER V
Anatomy of a Deal

Brandy B. Milazzo – Charlotte

Outline ................................................................. V-1
Fact Patterns .......................................................... V-2
Engagement Letters .................................................. V-3
Letter of Intent (LOI) .................................................. V-21
Due Diligence .......................................................... V-31
Definitive Agreement .................................................. V-62
Ancillary Agreements .................................................. V-86
Closing and Closing Items .......................................... V-114
Post-closing Items .................................................... V-115

CHAPTER VI
Intellectual Property Overview
Categories of Intellectual Property in the United States and How They are Protected

Clara R. Cottrell – Research Triangle Park

Patents ................................................................. VI-1
Trademarks ............................................................. VI-2
Copyrights ............................................................... VI-4
Trade Secrets .......................................................... VI-5
IP Cheat Sheet .......................................................... VI-7

CHAPTER VII
Basics of Employment Law

Benjamin R. Holland – Charlotte

Scope Note ............................................................. VII-1
At-Will Employment .................................................. VII-1
At-Will Employment .................................................. VII-1
Basic Federal Discrimination Laws ................................ VII-2
Title VII of the Civil Rights Act of 1964 ........................ VII-2
Discrimination under Title VII .................................... VII-2
Protecting Employers .................................................. VII-5
State Discrimination Laws – North Carolina ................... VII-5
Discrimination in Public Employment ........................... VII-5
North Carolina Persons with Disabilities Protection Act ...... VII-6
North Carolina Retaliatory Employment Discrimination Act (REDA) .... VII-6
Other North Carolina Laws .......................................... VII-6
CHAPTER VIII
Conflicts, Claims and Common Concerns for Business Law Practitioners

Troy G. Crawford – Cary