

## FOREWORD

*Advising Minnesota Corporations* is an important new treatise that will be an essential reference work for all who are concerned with corporate practice in Minnesota.

It is organized in a format which includes substantially the entire range of major questions that a corporation practitioner must deal with in the regular course of practice. The treatise deals not only with the internalities of corporate practice, especially corporate governance, that are covered in most other corporation law treatises; it also addresses the externalities that bear upon corporate law and practice. These include, but are not limited to, litigation, debtor/creditor law, employment law, environmental law, labor law, federal and state taxation, and estate planning. This integration of materials enables practitioners to have a source of reference for all of these subjects, rather than having to make piecemeal searches for legal materials to address a variety of problems.

The treatise enables practitioners to have an overview or sense of the relative importance of the materials. The organization of the work itself, beginning with a discussion of selecting the format of business organization, and continuing all the way through bankruptcy and dissolution, takes the reader through the full range of corporate practice encompassing four volumes and approximately 2000 pages. It is written in clear language, intended to be readable and usable to corporate practitioners, lawyers in other areas of practice, academicians, jurists and nonlawyers.

The treatise presents the doctrines, rules, and developments that corporate practitioners need to know. But the work is important also for those not regularly working with corporation law. The estate planning lawyer and matrimonial lawyer will be able to find answers to questions with a clarity and conciseness not present in many other materials.

There is a strong need for such a work in contemporary corporate legal practice. The Model Business Corporation Act, upon which our Minnesota corporation statute is based, has been subject to intensive

criticism in recent years from all sectors of corporate practice. In response to this, the American Law Institute and the American Bar Association have undertaken numerous studies. This activity recently resulted in the adoption of the Principles of Corporate Governance by the American Law Institute.

The present state of uncertainty in corporation law underscores the importance of this comprehensive statement of corporate law and practice. *Advising Minnesota Corporations* is the first treatise to so broadly and thoroughly codify state corporation law. We are fortunate to have it available for use by all who advise Minnesota corporations.

Robert A. Stein  
Dean, University of Minnesota  
Law School

## PREFACE

Since childhood, the concept of corporations has been fascinating to me. The corporation as an institution has an impact on our existence comparable to that perhaps of any other institution in society such as family or religion. For the most part, society's behavior is largely organized in a corporate manner or form. Human beings spend the better part of their time on planet Earth either indirectly working for entities or working within institutions or settings that are highly impacted by corporations. In a real sense, the power of corporations and their impact are as pervasive as lightness and darkness, and for that reason alone worthy of inquiry and study.

Corporations also are of great interest for a different yet related reason. The case can be made that human beings organizing together in a corporate format if subject to basic or threshold norms is a manifestation of, or a phenomenon very much associated with and akin to, the exercising of natural rights. Alexis de Tocqueville, in his *Democracy in America*, is quite explicit in commenting that the freedom, and ultimate elevation of the dignity of human beings which made our nineteenth century American experiment in democracy so remarkable, was very much based, if not mostly based, on freedom of association by its citizens. He made specific and emphatic reference to joint economic endeavors through the format of corporations. Finally, assuming that human beings (or at least their leaders), only a generation after the Holocaust, have not fully abandoned heinous proclivities, it very well may be that corporations are necessary institutions. Corporations, perhaps more effectively than most other institutions or alternatives, at least in Western civilization, accommodate and sublimate these human proclivities. This is a vital minimal role that corporations perform. Certainly, this sublimating process is in itself the source of much injustice and harm in many instances. However, again, from a broader perspective recognizing the fabled "Adam and Eve" selfish side of human nature, the institutions of corporations might be that great big "jungle gym" that

minimizes harm done. They might be, for many present cultural settings of human beings, the only alternative to absolute control.

More optimistically, capitalism and corporations also potentially serve as the decentralizers and balancers of power within human political power and authority organizations. They are a major source for creativity and potentially provide mechanisms of risk taking. Even nonprofit activities often are organized in a corporate format.

Unfortunately, as suggested later in this treatise, application of present historical and social science data and techniques has not advanced to the degree to enable us to confirm these observations with absolute confidence. Importantly, the rule making and much of the structure of the institution called corporations may presently be based on less than fully confirmed and analyzed assumptions. Hopefully, the mere format of this treatise, approaching corporation law and corporation governance as substantially more than narrow, particularized issues of internal corporation governance will help. There is presently much serious commentary indicating that the more narrow approach or format has increasingly created dysfunction, ultimately threatening the institution itself.

Richard A. Saliterman  
January 15, 1995

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ADVISING MINNESOTA  
CORPORATIONS AND OTHER  
BUSINESS ORGANIZATIONS



Richard Arlen Saliterman

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# At last, an authority on the "new law" governing Minnesota corporations.

by Richard Arlen Salterman

## REAL SOLUTIONS TO REAL WORLD PROBLEMS

### PRACTICAL GUIDANCE FROM START-UP TO DISSOLUTION

Shifting ground rules and the intrusion of external legal issues into everyday corporate life render The Model Business Corporation Act increasingly less helpful to today's practitioner of business law. In its place has sprung a "new law of corporations," expounded clearly, explicitly, and comprehensively for the first time in *Advising Minnesota Corporations and Other Business Organizations*. In four exhaustive yet conveniently capsulized volumes, author Richard Arlen Salterman lays out the real laws governing today's marketplace. One by one, he answers the critical questions that arise in a board room, at each stage in a business's hypothetical life:

- \* Incorporation;
- \* Governance;
- \* Litigation;
- \* Financial distress;
- \* Dissolution;
- \* Easy to understand tax and securities law analysis.

### A BRIDGE TO OTHER SPECIALTIES

*Advising Minnesota Corporations and Other Business Organizations* thoroughly considers the internal legal issues facing corporations, including those covered by the Model Business Corporation Act. But it also confronts the bundle of "externalities" that have so affected business activity as to be deemed the new corporate law. Now, firms must face legal questions pertaining to advertising, labor and employment, the environment, international trade, intellectual property, bankruptcy, even domestic relations. *Advising Minnesota Corporations and Other Business Organizations* answers these questions for business lawyers and general counsel in Minnesota and elsewhere, as well as for corporate executives and board members and Certified Public Accountants. Moreover, the book gives attorneys in other areas of practice an invaluable reference for business matters that involve their clients, such as:

- \* Trusts and estates;
- \* Real estate;
- \* Labor and employment;
- \* The environment;
- \* and much more.

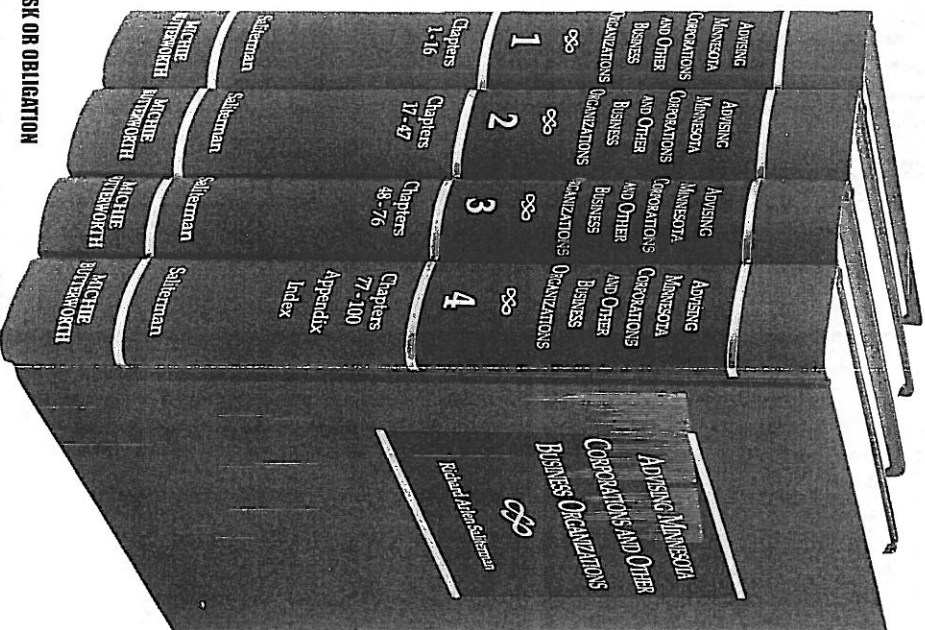
### GET A FRESH LOOK AT THE IMPORTANCE OF CAREFUL DRAFTING

Under the new corporate law, given the weakening and inconsistent application of the Model Business Corporation Act, what you put on paper is often more powerful than the law itself. Salterman shows in persuasive detail the significance of articles, bylaws, shareholder agreements, minutes, and other forms of corporate documentation. He analyzes corporate governance and accountability, and breaks new ground in a 172-page appendix on the public policy dynamics underlying corporate law. Find many other topics considered from a fresh perspective, including:

- \* Spousal rights to business property;
- \* Successor business liability;
- \* Criminal law (tax fraud and evasion);
- \* Trade associations;
- \* Non-profit corporations.

### TO ORDER

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Richard Arlen Salterman is a partner in Salterman & Salterman in Minneapolis, Minnesota, where he concentrates on corporations, corporate litigation, business planning, franchises, real estate law, trusts and estates, and complex business problem resolution. For several years he instructed a principal course offered in business planning, and a course on federal income taxation of business organizations at Hamline University School of Law. He served as Chair of the Hennepin Lawyer Committee (Hennepin Bar Journal) and as a member of a Governing Council of the Hennepin County Bar Association. Presently he is Trustee of the W. Harry Davis Foundation, Trustee of the Hopkins Education Foundation, and serves on the Boards of Directors of Pavak Museum of Broadcasting and the Minneapolis Downtown Kiwanis Club. For several years he was a Board Member of the Minneapolis Urban League. A graduate of Columbia Law School, Salterman received an LL.M. from the New York University School of Law in 1974. He worked on the legal staff of the U.S. Senate, Antitrust and Monopoly Subcommittee, before serving 3 1/2 years as a Lieutenant in the U.S. Navy during the Vietnam War. During his Navy service, Salterman was assigned detached duty as Acting Director of the Compliance and Enforcement Operations for Federal Region II. Upon conclusion of the war, Salterman served as a military attorney to the Presidential Clemency Board in the Ford White House. He has published many articles in law reviews and legal journals.

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