

**Business Law: Connecting the Threads II CLE  
Panel 6 (Fershée)**

- 1.) In Delaware, because the LLC is a creature of contract, what defines the Limited Liability company?
  - a. Articles of Incorporation
  - b. Operating Agreement
  - c. Bylaws
  - d. Articles of Organization
- 2.) Even with Delaware's LLC statute's inherent flexibility, what duty cannot be disclaimed away?
  - a. Contractual duty of good faith and fair dealing
  - b. Duty of Care
  - c. Duty of Loyalty
  - d. All of the above
- 3.) True/False? In DL, you can eliminate fiduciary duties by agreement without doing so expressly.
- 4.) True/False? The ability to eliminate fiduciary duties is a new concept.
- 5.) Fill in the blank: The ability to disclaim fiduciary duties provides the LLC the opportunity to express their intent to \_\_\_\_\_ against other parties.
- 6.) What did the first speaker believe *Dodge v. Ford and eBay v. Newmark* stood for?
  - a. These cases prove that you should not be able to disclaim fiduciary duties
  - b. Companies should never be able to change their business approach.
  - c. The possibilities of what companies could do if they could eliminate the fiduciary duties
  - d. These cases prove that you should be able to disclaim good faith and fair dealing.
- 7.) True/False? The first speaker was against the expansive freedom of contracts.
- 8.) What concept or perspective did Professor Plank (speaker number 2) discuss regarding fiduciary duties?
  - a. Voting requirements
  - b. Contracting rights
  - c. Valuation
  - d. None of the above
- 9.) Regarding a rule for eliminating or having a duty of loyalty, what does the Professor Plank (speaker number 2) think is the best rule?
  - a. Default rule where you have to opt in for duty of loyalty
  - b. Default rule where you have to opt out for duty of loyalty
  - c. Mandatory rule of duty of loyalty
  - d. Allow people to bargain over this
- 10.) True/False? Duty of loyalty is not an element in terms of whether something will be a bankruptcy remote special purpose entity.
- 11.) Fill in the blank: The state of \_\_\_\_\_ is crafting a similar LLC statute to Delaware.
- 12.) True/False? Online sites like Legal Zoom and Rocket Lawyer explicitly ask the creators whether or not they want to disclaim fiduciary duties.