

# CORPORATIONS

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## CORPORATIONS

statutory

almost always by State

very few by federal government

fed. corps. usually are banks

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## Hierarchy of laws and rules

controlling corporations:

U.S. Constitution

U.S. laws

State's Constitution

State laws

Articles of Incorporation

Corporate By Laws

Board of Directors' Resolutions

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**the corporation has unlimited personal liability**  
**the shareholders' have limited personal liability limited to investment**

perpetual existence is permissible  
corporation may have a pre-set duration

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**A promoter attempts to creates a corporation as a going concern.**

The promoter/agent attempts to appoint the agent when the corporation/principal does not legally or physically exist.

**assignment and delegation of contracts**  
parties  
disclosed versus undisclosed  
justifiable detrimental reliance  
corporation may, but has no duty to, any contracts offered by the promoter

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**Promoter's Liability**

Promoter is personally liable, at a minimum, until the contracts are offered to the corporation after its formation.

Usually, the promoter is personally liable if corporation rejects contracts.

**subscription contracts**  
who are the parties?  
subscribers also liable to other subscribers

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**TYPES OF CORPORATIONS**  
**domestic** (e.g., Nebraska)  
substantial minimum contacts  
**foreign** (e.g., Iowa)  
**alien** (e.g., Canada)

**close corporations**  
Shareholder Agreements  
proportional to legitimate business interests  
distinguish vote shares v. vote as Directors

**Corporation by Estoppel**  
*de facto* corporation  
*de jure* corporation

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**"DOUBLE TAXATION"**

single taxation of **two different legal persons**

avoid double taxation by

1. **having only one legal entity**  
sole proprietorship  
general partnership
2. **Pass through tax treatment**  
S Corporations  
LLC

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**Pierce the Corporate Veil**

often a derivative lawsuit

shareholder or director made personal liable

**lawsuit in equity**  
based on shareholder's or director's  
fraud, illegality, injustice

thinly capitalized

ignored formalities

commingled assets

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**CORPORATE SHAREHOLDERS**  
 owners of **undivided fractional interests**  
 income: i.e., dividends  
 management  
 assets

**SHAREHOLDER VOTING** (i.e., management)  
 Shareholder Agreements  
 Cumulative Voting  
 Constitutional right and requirement in Nebraska  
 Proxy Voting  
 sell right to management to increase income

**separation of ownership and control**

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**separation of ownership and control**  
**shareholders** lack knowing and voluntary  
 therefore  
**limited liability**

corporate **officers are agents**  
 members of **Board of Directors are not agents**  
**Board is the physical embodiment of the principal**  
 therefore  
**officers and directors have limited liability**

small business owners must waive limited liability  
 to obtain loans  
 do NOT waive  
 limited liability with every check you write  
**fully disclose the principal**

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**SHAREHOLDERS** elect the **Board** of Directors  
**BOARD OF DIRECTORS** appoints the **Officers**  
**OFFICERS** manage the corporation

**SHAREHOLDERS** approve **Articles of Incorporation**  
 and some **By Laws**

**SHAREHOLDER'S RIGHTS**  
 Preemptive Rights  
 Appraisal Rights  
 Dividend Rights  
 but, **personal liability** if  
 knowingly receive illegal dividends  
**Inspection Rights**  
 reasonable time and scope  
**Derivative Suit**

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**BOARD OF DIRECTORS**

Members of the Board are *not* agents.  
Rather, the *whole* Board of Directors  
is the *physical embodiment of the principal*.

**CORPORATE OFFICERS** are agents

Both Directors and Officers owe the corporation  
**Fiduciary duties**  
utmost good faith  
both subjective and objective  
*honesty in fact and personalized objective*

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**BUSINESS JUDGMENT RULE**

*immunizes* both Directors and officers  
but to different degrees

requires the Directors and officers to  
use their *best judgment*  
to obtain *corporation's best interests*

**no conflict of interests**  
Directors: *disclose and abstain*  
officers: *disclose and obtain approval*

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**BUSINESS JUDGMENT RULE, continued**

Directors and officers are *not insurers*  
no liability for *honest mistakes*  
of an *informed decision*  
(*i.e., required to seek out information*)  
made *within the scope of authority*  
upon a *reasonable basis*  
using the *care of ordinarily prudent person*  
in a *like position and circumstances*

**officers**  
**know or should know more**  
**than Directors**

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