

**Forms of Business,
Partnerships,
Corporations,
and
Boards of Directors**

Forms of Business

SOLE PROPRIETORSHIP
no distinction between the
natural person and the business entity

unlimited personal liability
for debts of the business

PARTNERSHIP LAW

borrows heavily from agency law
every partner is
simultaneously a principal and an agent
for the other partners

partnership and each of the partners
has **unlimited personal liability**

no person (for most purposes) so tax pass through

CORPORATION LAW

borrows heavily from agency law

adjusts for the facts
the principal has no physical existence
and
the principal can only act
through the actions of others

corporation is a separate legal person and
has **unlimited personal liability**
while
shareholders have limited personal liability

need "S" corporation to get tax pass through

**LLC
Limited Liability Company**

borrows heavily from limited partnership
and
corporation law

federal taxation pass through
4 of 6 rule dropped
so much easier to use LLC

LLC is a separate legal person and
has **unlimited personal liability**
while
shareholders have limited personal liability

PARTNERSHIP LAW

PARTNERSHIP LAW

general partnerships

common law

unlimited personal liability

partnership

each partner is a general partner

limited partnerships

statutory

unlimited personal liability in two locations

limited partnership

and

each general partner

limited personal liability

each limited partner

GENERAL PARTNERSHIPS

easy to form and dissolve

too easy

e.g., death, bankruptcy

common law

only need an agreement to enter commerce

and

share profits and losses

Presumed equal division of

management,

profit, and

losses

General Partnerships

Partners may agree to divide management, profits, and loses other than equally,

but this does not bind 3rd parties each partner always is primarily liable

each general partner is simultaneously a principal and an agent and has unlimited personal liability for partnership debts

LIMITED PARTNERSHIPS
statutory law formalities

similar to corporations filing requirements force the parties to resolve control questions

allows "limited partners" to limit personal liability to the extent of their investment

limited partners can lose limited liability protection

ULPA: easy to lose participate in management e.g., personal name in partnership name

RULPA: hard to lose 3rd party detrimentally relies

also limited partnerships must have at least one general partner most States allow a corporation to be the general partner

CORPORATIONS

CORPORATIONS

statutory
almost always by State
very few by federal government
fed. corps. usually are banks

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

The corporation
is a separate legal person and is the primary locus of
unlimited personal liability

The **shareholders'** have **limited personal liability**
that is **limited to the amount of their investment**

Corporations may have perpetual existence
or may have a pre-set duration.

A **promoter** attempts to **create 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,
accept
any contracts offered by the promoter

Promoter's Liability

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

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

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

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

"DOUBLE TAXATION"

there are **two legal persons**,
each of whom is subject to **single taxation**.

avoid double taxation by
1. **having only one legal entity**
sole proprietorship
general partnership
or
2. **Pass through tax treatment**
limited partnerships
S Corporations
LLC

Pierce the Corporate Veil

often a **derivative lawsuit**

shareholder and/or director made personal liable

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

thinly capitalized

ignored formalities

commingled assets

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

Due to the
separation of ownership and control
shareholders
lack knowing and voluntary
therefore
limited personal liability

Do the Directors and the Officers
also
have a claim to limited personal liability?

The corporate **officers are agents**
members of Board of Directors are not agents.

The **Board is the physical embodiment of the principal.**

Therefore
officers and directors have limited personal liability

Small business owners of corporations
must waive limited liability
to obtain loans

CAUTION: do NOT waive
limited personal liability
with every check you write

NOTE: fully disclose the principal

SHAREHOLDERS elect the **Board of Directors**.

BOARD OF DIRECTORS appoints the **Officers**.

OFFICERS manage the corporation.

SHAREHOLDERS elect the **Board of Directors**

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

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

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

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
