

GENERAL PRINCIPLES

- **Business Association forms:** means of organizing activity to reduce negotiating, monitoring and enforcement costs
 - o Hierarchical Notion v Mutuality Model
 - o Key Stakeholders: Equity Investors, Creditors, Managers, Employees, [Affected Groups: clients, suppliers, comp, comm.]
- To know if making money take revenue – expenses = profit
- **Bankruptcy** ← debt trumps equity!
 - o Secured assets: creditors get back specific security interests
 - o Exempt assets: tools of trade, vehicle for work
 - o Distributable assets: (go in order!)
 - Preferred creditors: govt (debenture kind of like a bond or loan technically not secured but kind of secured by integrity of person so go ahead of unsecured)
 - General creditors: divided rateably
 - Subordinated: debt/creditors go ahead of equity investors
 - Equity owners: if anything left
- **Extra-provincial registration mandatory!**
 - o LLP: s115 (PA)
 - o Corp: Reincorp: CBCA s187, 188, 190
 - o Co-op: s180 (CA)

AGENCY

Key Features	"person carrying on business (principal) may give another person (agent) legal authority to conduct various aspects of business on their behalf" <ul style="list-style-type: none"> - Incl. Partnerships & corporations - Creation: set out in K, does it develop through power? Or consent? - Termination: (1) act of parties – i.e. agreement, give notice and terminate; (2) operation of law – i.e. death, bankruptcy, frustration, insanity
Duties (implied) of Agent to Principal	General: perform obligations <u>under K</u> according to instructions of P Fiduciary <ul style="list-style-type: none"> - Duty of Loyalty: general duty to act in P's best interests SPECIFICALLY: <ul style="list-style-type: none"> o Conflict of interest: remedies – account profits, void K's, damages, injunction o Secret Profits: remedies – account profits - Reasonable Care: damages; standard = normal skill/diligence; pros = reasonable doctor - Duty Not to Delegate: damages, injunction <ul style="list-style-type: none"> o EXCEPTION: delegation expressly or implicitly permitted if reasonable (i.e. delegate ship repair to craftsman) - Duty to Keep proper accounts: remedy is evidentiary presumption against A
Duties of Principal to Agent <i>**IF A BREACHES AUTHORITY, P DOESN'T HAVE TO FULFILL DUTIES!!</i>	- Remuneration: usually express provision b/c agency can be free BUT implicit where free isn't reasonable <ul style="list-style-type: none"> o Performance: A perform all obligations o Effective clause: "exclusive agencies" don't require but if not exclusive then need effective clause for \$ from sale - Pay Expenses/Indemnify Losses: needs: <ul style="list-style-type: none"> o A within scope of actual authority [i.e. express or implied]; necessary o Expenses not b/c of A's fault, not unlawful - P liable for A's torts if A acted within scope of authority (just b/c P didn't grant authority for tort is no defence; rationale – deterrence, least cost avoidance, compensation, allocation of loss to activity causing harm)
Is there actual authority? (express or implied)	P bound if A has actual authority <ul style="list-style-type: none"> - Express: arising from words of agency agreement (explicitly or by reference) - Implied: (1) Usual: what this particular principal has allowed this particular agent to do in the past (2) Customary: authority type of agent has by custom - Express overrides implied (usual/customary)
Ostensible Authority <i>WAY FOR 3RD PARTY TO GO AFTER P</i>	If no actual authority, A can still act for P if: <ul style="list-style-type: none"> - Representation: P makes or permits representation that A had ostensible authority - Reliance: 3rd party reasonably relies on representation to their detriment <p>What representations made, bring in facts and policy considerations? – who should bear loss?</p> <ul style="list-style-type: none"> - Aimed at least cost avoidance of losses and protecting 3rd party reliance
Breach of Warranty of Authority <i>WAY FOR 3RD PARTY TO GO AFTER A</i>	If no ostensible authority, A may be liable: <ul style="list-style-type: none"> - A represents they have authority to bind P - Representation false - 3rd party relies on representation to detriment = expectation damages <p>*more appropriate where A's conduct has higher level of moral blameworthiness (lying/fraud)</p>

Ratification <i>*IF P RATIFIES THEN HAS TO FULFILL DUTIES TO A</i> <i>WAY FOR 3RD PARTY TO GO AFTER P</i>	P can ratify K A didn't have authority to make: Required Circumstances <ul style="list-style-type: none"> - party entering K claimed to be A of P - P in existence and ascertainable at time of K [i.e. can't be unincorporated corporation] - P must have legal capacity at times of K formation and ratification Ratification must be: <ul style="list-style-type: none"> - Express either by conduct or acquiescence (i.e. performance) <ul style="list-style-type: none"> o P shouldn't be allowed to wait and see whether good deal or not (b/c power – least cost avoider); waiting can be acquiescence o BUT silence doesn't mean acceptance (b/c consent – would P or A have consented to duties of agency relationship) - P must have knowledge of all relevant facts (doesn't have to incl. minor details) Consequences: K retroactively valid <ul style="list-style-type: none"> - Relates Back: to K formation so 3rd parties liable for breaches prior to ratification - Sue and Be Sued: P & 3rd party - No Breach of Warranty of Authority - A isn't liable to P for exceeding authority - Principal duties to remunerate/indemnify apply
Undisclosed Principal	Agency doesn't require P to be known to 3 rd party BUT sometimes 3 rd party wouldn't have entered into agreement with K if they knew who P was <i>Undisclosed P can't keep K A made w/ 3rd if:</i> <ul style="list-style-type: none"> - Circumstances 3rd party clearly intended to K with agent alone (personal aspect to K, 3rd would not have K'd with P) - Terms of K required only A perform Policy rationale <ul style="list-style-type: none"> - Protect mutual benefit of both parties - Prevent unjust enrichment of either party
Framework who should bear the cost?	If no actual authority → ostensible authority If no ostensible authority → breach of warranty of authority key focus should be looking at representations and focus on policies in place re: movement of goods and benefits if A breaches: can terminate w/o notice or remuneration/expenses, injunction etc OR can do nothing & ratify

SOLE PROPRIETORSHIP

Key Features Good Option b/c: simple & tax benefits	<ul style="list-style-type: none"> - 1 equity investor (sole proprietor/SP) - SP has legal title to assets and manages the business, decision-making control - SP personally liable but can insure against risks - Formation: no req, may need to register name s88 PA - Termination: SP decides to stop or dies - Tax Benefits: biz expenses deduct personal income
---	--

PARTNERSHIP

Partners? Formation Requirements <i>**if unsure formed look to statute p. 292</i>	No need to sign forms/formal agreement to be partners – just meet definition (s2 and s4) <ul style="list-style-type: none"> - 2+ equity investors (partners) - registration req. s81, within 3 months s82 S2 (PA) – Definition <ul style="list-style-type: none"> - partners are persons carrying on business in common with view of profit <ul style="list-style-type: none"> o Work in business together but separate parties o consider factors together in context: Persons; Carrying on Business; In Common; View of Profit (p.292)
Partner = equity	S4(PA) Factors to help determine if partners <ul style="list-style-type: none"> - S4(a): sharing property NOT partnership - S4(b): sharing gross returns NOT partners - S4(c): share profits (gross returns – expenses are profits) YES partnership but contingent profits doesn't [see 4(c)(i) – (v)] ← presume profits are partnership unless rebutted - **once sharing profits it is getting more organized so starting to look more like partnership
Creditor = debt/loan	Partner or Creditor? <ul style="list-style-type: none"> - If agency re: trade then likely partner (Cox) - Agreement: by parties that they aren't partners isn't determinative (Pooley, Martin) - Factors favouring partnership (Martin) <ul style="list-style-type: none"> o Right to be informed of business & consulted o Power to veto decisions (even if only risky) o Option to formally join partnership - Sharing profits creates presumption of partnership (Cox) but s4(c) on their own can rebut - When property isn't contribution s23

	<ul style="list-style-type: none"> - Factors suggesting loan is really partnership (Pooley) – more like debt or equity? s4(c)(iv) <ul style="list-style-type: none"> o Lenders receive interest in partnership capital/equity ← more risk BUT more potential profits o Lender can enforce partnership agr. (control) o ROI varying with size of investment o Terminate loan agreement on lenders bankruptcy o Loan term = partnership term (if one exists) - Policy Rationale (for partner or not) <ul style="list-style-type: none"> - 3rd party reliance: 3rd party assume K with all partners to hold jointly responsible for obligation [exception: unreasonable reliance AE Page] - 3rd party advances credit: assumes partnership b/c if partners really lenders then 3rd party can't access assets of lenders - unjust enrichment: can't have benefits of ownership w/o burdens of ownership; one person enriched at the expense of another in circumstances where did not intend to make that gift - least cost avoidance: who is in better position to avoid costs and make sure relationship clear <ul style="list-style-type: none"> o position to assess & control risk: ppl in biz/power can control, uninvolved lenders can't BUT if creditor can easily assess risk then need to (AE LePage) o lowering overall cost of credit: if ppl in best position control risk then overall cost of credit lower
Benefits of Partnership	- Flow through taxation: partnership isn't separate tax payer and profits taxed through individual partners
Governance & Default Provisions	<p>Default rules (vary by express or infer consent – s21)</p> <ul style="list-style-type: none"> - Assume equality and same contributions. rights to management and profit (if not same then variation can be inferred) - Partnership property (s23, 24) - Capital, profit, losses, new partners, vote records s27 ← rights & duties of partners [subject to agreement] <ul style="list-style-type: none"> o (a) share equally in capital, profit, loss o (b) firm indemnifies against some liabilities o (c) interest for capital contribution if over agreed \$ o (d) no interest for agreed capital contribution o (e) Management: every partner can take part o (f) not entitled to remuneration o (g) new partners can't be added w/o consent of all o (h) voting (majority=ordinary, unanimity=consent) o (i) records at location where all partners can access - Removal of partners: majority can't remove unless express and good faith power (s.28) - Assignment of partnership interests/share (s34) - Fiduciary duties, partners have duty to... <ul style="list-style-type: none"> o Act w/ fairness & good faith (s22) o Render accounts and full info (s31) o Account for benefits w/o consent (s32) <ul style="list-style-type: none"> ▪ Have to tell even if no proof of competing activity o If w/o consent carrying on similar business must account and pay over all profits (s.33) [if proof of competition] <ul style="list-style-type: none"> ▪ Rochweg: partner becomes director of a client, doesn't disclose entitlement to shares and stock options which affects partnership (s31); client was a client from business so concerns partners (s32) Held: not a conflict under s33 ▪ McKnight: lawyer director of client corp. he joins firm and corp. becomes firms client. Partner agreement allows for non-legal business outside firm if notice given. No notice & some business legal nature SO violates s31-33 & agreement - partners = agents for each other (s7/8) - CL & rules of equity presumed in PA as long as not inconsistent s91 - partners personally liable, partnership doesn't enter into agreements partners do (<i>Re Thorne</i>) - Specific Discussion of Liability: <ul style="list-style-type: none"> o liability in tort s14 o liability in K – authority s7, actual authority s8 o new & retiring partners s19 o joint liability for debts s11 o dormant partners, who don't manage liable (<i>Cox</i>) o liability for rep. to 3rd party s16 - If change in partnership: <ul style="list-style-type: none"> o S39 – continuing liability with notice o S84(b) – failure to register change - Dissolution: <ul style="list-style-type: none"> o Partner dissolution: one partner can end partnership w/ notice but won't dissolve partnership unless only two partners (s.29) o Act of partners (s.35) o On death, bankruptcy, partner dis. (s.36) o Court order (breach, loss, incapacity, guilt) (s.38)
Not separate legal entity (can't own property or party to k)	

Partner Retiring – Steps for Partner to Take	<p>Sections 39 and 84(b) place the onus on the retiring partner to take steps to protect himself from potential reliance.</p> <ul style="list-style-type: none"> - To rebut section 39(1), the partner should provide actual notice to all those with whom the firm has had prior dealings. Consider: <ul style="list-style-type: none"> o Firm's current creditors by examining financial records for existing accounts payable and loans o Check accounts payable in previous years and previous lenders to find non-current parties - To rebut section 39(2), notice of the retirement in the Gazette - To rebut 84(b), file revised regis. statement w/ name removed - Partner could also possibly rely on a s.19(3) agreement which relieves retiring partners from liability, but it would likely have to have been negotiated when the dealing occurred. - partnership to indemnify retiring partners for post-retirement debts of the firm could be agreed to in partnership agreement.
Governing Legislation!	<p>Partnership Act: Legislation enables relationship rather than lists rules; if don't make agreement for something else then PA applies</p> <p>BC Supreme Court Rules: Rule 20-1: sue any partner, can serve firm</p>

VARIATIONS OF PARTNERSHIP need to K for: LP & LLP

Limited Partnership	<ul style="list-style-type: none"> - 2+ equity investors BUT some partners = limited partners AND at least 1 partner = general partner (s50); must file certificate s51 - LP: liability limited to amount of investment (liability is personal liability), put in \$ and allowed to monitor only – no services (s55), no taking part in management (s64) ...LP is GP if: <ul style="list-style-type: none"> o If start taking control become GP (Houghton Graphic – more limited AB case) o no defence to say 3rd party didn't rely on personal liability of LP as officer in management (Houghton, Nordile) o If LP "acts solely in their capacity as officers of GP" not liable as LP, only officers (Nordile) o Get a share of profits or contribution return s59 but no return of capital if makes firm insolvent - GP: liability not limited, personally liable, can make GP a corporation for tax reasons - cautionary suffix s53(1), firm name s53(2) - listed partners, listed contribution s52 - assign interests s66 - new partners s51(4)(c), 54(2)(a), 56(d), 65 - share profits (61)
<p>LP is GP? Management threshold broader than control</p> <p><i>Separate Ownership & Control</i></p> <p>RISK: GP take advantage of LP; put protective terms in PA, s56, s58 (mandatory)</p>	
Limited Liability Partnership	<ul style="list-style-type: none"> - Outside BC: just professionals, inside BC: open anyone - 2+ equity investors AND full shield: partners not liable for acts of fellow partners or employees [UNLESS partial shield: directly supervising activity that caused the loss; BC full shield] s104 <ul style="list-style-type: none"> ▪ BUT, s.104(2) holds partners are not relieved of liability for: <ul style="list-style-type: none"> • Their own negligence or wrongful act or omission • Where they knew of the negligence or wrongful act of fellow partner and failed to take reasonable steps to prevent it. ▪ Full shield liability may be opted out of by agreement of partners in favour of partial shield liability [For tax reasons] - benefit: allows for flow through taxation with benefits of limited liability AND can take part in management of business - extra-provincial LLP's liable as GP's if not registered in BC s114 - need cautionary suffix s100 - registration req'd to be LLP according to act s94, app 95

CORPORATION

Key features	<ul style="list-style-type: none"> - Separate legal entity s15; corp owns assets not SH (Macaura); corp enters K's - Dissolution: can last forever but to dissolve see 211 - Drawback: separate taxpayer, taxes profits, dividend tax credit to avoid double tax - Structure: Shareholders elect BOD who appoint officers that manage day-to-day or hire employees - Salomon v Salomon: separate legal entity, doesn't look at substance but only form, lets Mr. S get ahead of other creditors b/c debenture [keep up veil!] - Profit motive 						
Must take formal steps for formation	<ol style="list-style-type: none"> 1. Meet registration req. under incorporation statute <ul style="list-style-type: none"> a. i.e. Joint Stock Corporation 2. Specific statute of parl./legis. forming corporation (i.e. CP Rail) 3. Granting charter from the Crown (monopoly like Hudson Bay) 						
Pre-incorp. K's	<table border="1"> <tr> <td>CL:</td> <td>BCBCA: 20</td> <td>BCBA: 14</td> </tr> <tr> <td>NO! corp. can't ratify K before corp. incorp. (b/c didn't exist!) but can adopt new K & promoter might have benefit/BWA</td> <td>YES! Enter into K's pre-incorp. IF 20(2)(a) & (b) *written or oral*</td> <td>YES! Corp. adopt pre-incorp K's (2), prom. liable pers. written K (1), but prom. not liable if express (4)</td> </tr> </table>	CL:	BCBCA: 20	BCBA: 14	NO! corp. can't ratify K before corp. incorp. (b/c didn't exist!) but can adopt new K & promoter might have benefit/BWA	YES! Enter into K's pre-incorp. IF 20(2)(a) & (b) *written or oral*	YES! Corp. adopt pre-incorp K's (2), prom. liable pers. written K (1), but prom. not liable if express (4)
CL:	BCBCA: 20	BCBA: 14					
NO! corp. can't ratify K before corp. incorp. (b/c didn't exist!) but can adopt new K & promoter might have benefit/BWA	YES! Enter into K's pre-incorp. IF 20(2)(a) & (b) *written or oral*	YES! Corp. adopt pre-incorp K's (2), prom. liable pers. written K (1), but prom. not liable if express (4)					

	<p>CL: approaches to determine promoter liability:</p> <ul style="list-style-type: none"> - Rule of law: promoter (signs K) automatically liable <ul style="list-style-type: none"> o <i>Kelner</i>: signed K on behalf of corp but no corp exists so person liable - Constructionist Approach: promoter liable for pre-incorp K if parties intended promoter to be liable for B.W.A. <ul style="list-style-type: none"> o <i>Wickberg</i>: employment K, intent was K w/ corp so no promoter liability via K but BWA liability intended (bankrupt) o <i>Newborne</i>: original intent of parties is key! <p>What can 3rd party who gets screwed do?</p> <ul style="list-style-type: none"> - 3rd party can argue B.W.A b/c not incorp. (Black) 	<ul style="list-style-type: none"> - Liabilities ← SH's misbehaving THEN pierce veil! <ul style="list-style-type: none"> o SH shielded from liability as SH s45, CBCA doesn't shield from liability arising otherwise (i.e. agency), so if corp like A of SH, then SH liable as P key words: "agency, alter-ego, puppet instrumentality, sham/cloak" <p>Shareholder Agreement</p> <ul style="list-style-type: none"> - These can be entered into by SH to help with organizing business - s146 CBCA provides unanimous SH agreements can restrict powers of directors etc and give to SH's but then SH becomes liable under s146(5) - Conduct of Business: how to run meetings, what is "special", conflicts of interest, access to info - Financing: share capital (equity) or loans (debt) - Restricting transferring shares/first right of refusal: pre-emptive rights etc. - Compulsory buy-outs: fair value for shares? - Transfer of Shares on Death: buy out or work with heir - Defaults (if SH don't perform obligations): suspension, forced sale of share, buyout, etc. - Dispute Resolution: agree to arbitration before court?
	<p>Structure Answer on Pre-Incorp: to ratify under CL, promoter needs to be A of corp but can't b/c no P to give authority ALSO need req. circum. Etc. SO try to see if can adopt K as pre-incorp K to be entitled to liabilities/benefits.</p> <p>CL: Rol corp can't but promoter can; Cons. ("on behalf" corp)</p> <p>CBCA: 14(1) promoter bound & benefits, 14(2) corp adopts K so bound/benefits, promoter nothing, 14(3) prom. Court order; <i>Horeak</i>: can't repudiate (back out) then try to get in again</p> <p>BCBCA: 20(2) written/oral; 20(2)(b) fac. BWA [no benefits], 20(2)(a)(i), (ii) corp existence RT & adopt K RT, 20(6) court order, 20(8)</p>	<p>Share Technicalities</p> <ul style="list-style-type: none"> - Held by SH's in certs., not tied to particular asset - Dissolution: default right to share in dissolution proceeds pro rata for SH's rights - Pre-emptive Rights [only if in articles, not presumed]: if corp issues more shares, existing SHs with pre-emptive right may purchase pro rata portion of new shares s28 - Share Certificates s49(1), 49(13) - Register SH's s50, s20 - Share Transfer: if want to restrict, put in articles; <ul style="list-style-type: none"> o BUT if SH dies can transfers in will, corp must accept due to s.51 where registered holder is heir and has evidence <p>Stated Capital [total # of shares actually issued] ← important in determining if can declare dividend [s26(1), s38(1),s42] or make fundamental changes if SH dissents and have to buyout</p> <p>Redemption: articles can allow corp. to redeem shares s.36 Corp repurchase shares (insolvency 34) but can't own shares s30</p> <p>Types of Shares</p> <ul style="list-style-type: none"> - Common: right to vote, right to share in dividends & dissolution on pro rata basis. No preferences. - Preferred: preference over subordinate shares <ul style="list-style-type: none"> o Shares with preference for fixed amount of dividends do not share in excess o Upon dissolution, preferred shares presumed to share equally in excess (Intl Power) - Non-voting common shares (popular if minority wants to retain control), special voting shares (more than one vote per share)
<p>How to Incorp. & Register?</p> <p>Giving birth to corp!</p>	<p>CBCA Apply for Incorp.: 5-12, 19(2), 106(1), 104 BCBCA Apply for Incorp.: starts at s10 Reincorp & Continuance CBCA: 187, 188</p> <p>Federal or Provincial?</p> <ul style="list-style-type: none"> - Fed: expensive to register each province where operate, name protection – prov can't stop feds registering, other lawyers know - Prov: BC lawyers know, easier deal w/ Vic over Ottawa, cheaper 	<p>Shares S24!!</p>
<p>GENERAL CBCA Provisions</p>	<p>Offence: s251 – summary conviction</p> <p>To make a change: director's resolution (102), amend bylaws (103), amend articles (106), unanimous shareholders (s146)</p> <p>A unanimous shareholder agreement is the preferred method for reallocating powers. The articles require a shareholder meeting, a special resolution, a filing, and a fee. They become public knowledge, and then are just as difficult to change in the future. By-laws are easier than articles because they are free and the directors of the board can change the by-laws (s. 103, unless modified), however they remain a public document. A unanimous shareholder agreement is a private, free, document that can be easily created and changed. Further, the articles and by-laws require a second agreement be made as to how the shareholders will vote; whereas, this can be included in the unanimous shareholder agreement. For this reason, the shareholders will use a USA.</p>	<p>Series w/in class s27</p>
<p>Shareholders</p> <p>SH's vote proportionate to # shares owned 140(1)</p> <p>SH of voting shares vote on: Directors by "ordinary resolution"; Approve changes to articles or certain major corporate transactions (amalgamation, continuance, dissolution) by special resolution</p>	<p>Administrative/Procedures</p> <ul style="list-style-type: none"> - Meetings: Annual – 133(1), Special 133(2) <ul style="list-style-type: none"> o Ordinary Business: elect directors s106(3), consider financial statements, appoint auditor s162(1) o Special: any business not ordinary s135(5) o Resolutions: ordinary = ½, special = ⅔ s2(1) o Place: in Canada, in bylaws, or outside s132 o Quorum: maj. Voting shares (sub. Bylaws) s132 o Notice: > 21 days <60 days, s135(1), Reg. 44 [record date – s134(1)(c), notice special bus. S134(6) 135(6)] o CONDUCT OF MEETINGS: Vote w/ show hands unless poll demanded s141(1), timing (2); Minutes signed by chair needed s20(1)(b); Chair must: (1) act in good faith; (2) impartial; (3) allow shareholders to speak for reasonable time (Wall) **see 132 for more. - SH can requisition meeting s143 (i.e. to remove D) - Voting: one share, one vote s140(1) <ul style="list-style-type: none"> o Votes can be weighted differently but presumption of equality within class; however, case law conflicts! o Policy for protecting SH voting, p. 115 o class voting rights – s176, 183(4), 189(7), 118, 211(3) o can pool votes if in written agreement s145.1 - Proxy: defn/rights/appointment s147, 148; mand. solicit. s149 (offence 149(3)); proxy circular 150, misrep. 154 - Financial Disclosure <ul style="list-style-type: none"> o Annual Statements: 155, 157, 158 o Auditor: 155, 161, 162, 163, 166, 169 o Audit Committee: 171(1), 171(3), 171(4), 158 - Access to Records: 20(1), 20(2), 21(1), 21(3), 21(9) <p>Responsibilities (directors, dividends, division on death)</p> <ul style="list-style-type: none"> - Control over Directors: <ul style="list-style-type: none"> o Elect board s106 ← key decision moment! o Amend Bylaws s103, proposals: s103(5) o SH's can't dictate mgmt decisions (Automatic Self-Cleaning) o If Directors deadlock unclear if SH's have residual power to make mgmt decisions (Barron – elect new board) - Fundamental Changes: by special res, s2(1), 2/3 majority <ul style="list-style-type: none"> o Listed changes to articles s173 o Other changes needing special res.: s183 – merge with another corp; s189(3) – sale/lease all or substantially all corp assets; s188 – continuance in another jurisdiction; 211 – liquidation, dissolution - Shareholder Proposals – s137 ← difference btwn unanimous shareholder vote and vote of ppl there 	<p>Directors & Officers</p> <ul style="list-style-type: none"> - Can't be director s105 (<18, unsound mind, not individual, bankrupt), must be resident - # Dir. Non-distrib>1, distrib>3, articles can set 102(2) – elected by shareholders s106 - cease holding office s108; fill vacancy 111(1), 109(3) - Meeting s114, after incorp need org. meeting 104 - If no meeting can only make resolutions s117 - Can delegate CBCA s115 BUT limits and can't make bylaws etc; BCBCA s137 no limits on delegation <p>Responsibility</p> <ul style="list-style-type: none"> - Best Interests of Corp!! s122(a) akin to agency, (b) - Duty to Manage: CBCA s102 [sub. Unanimous SH agreement], BCBCA s136 [sub. Act] - Designate Officers s121; compensation for officers s125 - Can Delegate s121, Can't Delegate s115(3) - Call Annual and Special Meetings of Shareholders s133 - Adopt, amend, or repeal bylaws s103(1)(3), 115(3)(j) - power to issue shares s25, authorized limit 6(1)(c); Directors liable if issuing share pursuant to 41 unreasonable 118(2)(b) but no liability if didn't know and couldn't reasonably know s118(6) - power to borrow: s189(1), s189(2) - MUST disclose conflict of interest s120 - CAN Dissent s123 <p>Director Liability – s118 (general), s119 (wages); defence s123(5); indemnify s124</p> <p>Declare Dividend</p> <ul style="list-style-type: none"> - Power of Directors: 102(a), 115(3)(d), 146 - Fiduciary Duty to think best interests of corp (s122) - cases - Can only be paid out of profits (incl. retained earning from previous years) - Insolvency Test – NO Dividends Paid/Declared – s42 [if do this then liable under s118(2)(c)] - Record date and ex dividend data s134 <p>Courts might pierce veil [if tort or K breach]</p> <p>IN GENERAL: Pierce Veil If:</p> <ul style="list-style-type: none"> - "veil shredding" – agency, puppet, sham, cloak - Liable if SH or directors disregard corp. entity: not following formalities, no suffix (s251), no register (Roydent), no corp. meet - Conduct Akin to Fraud reqs. unclear - Affiliated Enterprise Smith test – is sub really agent of

*courts don't like to look behind veil b/c compromises legal person of corp! s15/Salomon: corps separate BUT sometimes need to pierce veil of corp!	parent corp [A/P?]? (1) profits as profits of parent, (2) person appointed by parent co, (3) parent brain/operating mind, (4) parent governing ventures, (5) parent profit by its skill/ direction (6) parent in control – BUT if pass Smith test still need conduct akin to Fraud (Transamerica) <ul style="list-style-type: none"> o AGEC v MNR – keep veil, have to pay taxes o Courts more willing to pierce veil when only corporate entities are being made liable, less willing if individuals personally liable Gap-Filling & Implied Contractual Terms <ul style="list-style-type: none"> - Get result harmonious with K (overcome gap K language); fill gaps to reduce transaction costs and capture intent <ul style="list-style-type: none"> o SEDCO: lift veil and see doing what said wouldn't do Corp Formed to Avoid Statutory Requirements <ul style="list-style-type: none"> - Brit. Merch: act only allows one license, parent/subsidiary are the same pierce veil! TORT: Misrep and Non-Consensual Claimaint <ul style="list-style-type: none"> - Courts focus on corp formalities and misrep; in tort focus on compensation, sensitive to non-consensual engagement with corp, corps might incentivize risky behaviour ← might pierce veil for corp risk mitigation TORT: claim against director, officers, employees <ul style="list-style-type: none"> - If directors personally liable they may over spend corp. funds on excessive insurance to avoid personal liability better to limit director liability (indemnify) - Rafiki: director personally liable only if (1) acting outside scope of authority (2) personal interest (3) contrary to corp. interest
Remedies SH can't dictate mgmt b/c dir. s102 (Automated Self-Cleaning) BUT director limited by s122	SH Dissent [only if a fundamental change i.e. S173 amend articles, proposal s175; s174 constrain shares, s176 class vote, s183 Amalgamation, s188 Continuance, s189 Borrowing Powers] <ul style="list-style-type: none"> - S190: if SH dissents then under 190(3) entitled to payment of shares BUT can't pay if will make insolvent s190(26) - s192 no dissent in articles, can be overturned by court in s192(4) Director Dissent ← presumes consent unless say otherwise <ul style="list-style-type: none"> - s123(1) Present: (a) dissent in minutes; (b) written dissent to secretary; (c) registered mail; (3) Absent = presumes consent unless takes steps within 7 days of awareness Rectification <ul style="list-style-type: none"> - s243: can apply to court to have docs rectified - if small internal error: dir. resolution, SH vote Derivative Action [SH rely on this, harm to company] <ul style="list-style-type: none"> - procedural step for claim to be brought in the name of company [s239, 240]; after have to go to court etc. - pre-reqs: notice to dir, good faith, interests of corp Oppression [SH rely on this, harm to personal SH] <ul style="list-style-type: none"> - just show harm to you, no limiting prereq; if successful court has broad power to make just and equitable order - SH experiences unique personal harm not suffered by all SH (if indirect affect all SH i.e. inappropriate use of \$ then bring derivative action); can protect minority SH, cheaper, more private b/c don't need full trial! Deadlock [s214 ← claim for dissolution] <ul style="list-style-type: none"> - If court finds "just and equitable" to dissolve 214(b)(ii) Conflict of Interest <ul style="list-style-type: none"> - If there is a conflict must disclose using steps in s120 SH Meetings by Court Order – s.144 <ul style="list-style-type: none"> - Deadlock: Cdn courts don't like to intervene, BUT in UK if maj. SH wants to call meeting to exercise power (i.e. replace director) courts may order meeting if min. SH prevent it by not attending/ quorum (El Sombero) - Intervening in Battles for Control: won't intervene to put one of SH factions in control (Re Morris) - Intervention on Basis of Fault: if Chair acts inappropriate then court may call meeting on basis of fault [p.88] - Powers of SH at Court-Ordered Meetings: same, won't grant special powers against articles – Charlebois: articles elect at AGM, can't have special meeting to elect directors
Vary SH right	<ul style="list-style-type: none"> - Amend articles s173; SH's can dissent s190 - S192(3) if no other option of fundamental changes and not insolvent can ask court to approve arrange. to remove SH BUT expensive & can't squeeze out s194
Constrain Director's activities	<ul style="list-style-type: none"> - CBCA: SH can amend bylaws s.102, unanimous shareholder agreement s146, oppression/derivative - BCBCA: amend articles, mou, agreement
Remove Director	Option 1 s109(1): remove by ordinary resolution <ul style="list-style-type: none"> - Special meeting not AGM called by directors s133(2) - Ordinary resolution s2 - Shareholders can have requisition for meeting s143(1) - Can't have in articles more than ordinary majority s6(4) Option 2: Wait til AGM and don't re-elect directors [s135(5)]
Remove Officers	- dir. can remove officers s102 but, if employed, person may claim damages for breach of K (Re Paramount)
Closely Held Corp.	Key: few SH, SH active in management, no est. market for shares, restrict transfer of shares ← SH have big stake in business! Waive notice to meet s136, 1 SH meetingg s139, consent in writing no meeting s142, no auditor s163/171, no proxy 149; 102 Create unanimous SH agreement to constrain director power s146

COOPERATIVE

Key Feature	<ul style="list-style-type: none"> - corporate form of organization, governs BCCAA - members instead of shareholders, surplus in carrying on business returned to members through lower prices/fees for service or in benefits (not as dividends) s8(2)(e) - How to Make: s10 [3+ people] - Cooperative Basis s8; Memo reqs s12 [like articles] - No discussion of pre-incorp K so look to RoL and Constructionist common law approaches; Canada Co-op Act s19 pre-incorp K ← PL & benefits, can adopt - Sep legal entity s19 	
Key Principles	<ul style="list-style-type: none"> - Voluntary and Open Membership s8(2)(a) - Democratic Member Control - Member Economic Participation - Autonomy and Independence - Education, Training and Information s8(2)f - Co-operation among Co-operatives - Concern for Community 	
[Intl Co-op Alliance statement on Co-op Identity]		
Owner	COOPERATIVE Member: internal participate	CORPORATION Investor: partic. vote directors
Principle	Equitable democracy, slow	Hierarchy democracy, fast
Capital	Sticky, internal reliance	Liquid, outside debt/finance
Governance	Ppl before capital, mutuality, participation, accountability	Respond to capital needs, investors don't need to commit to bus. activities
People are...	individual/social balance	Motivated by \$, rational
Ppl to Create	at least 3	At least 1
Context	keep capital community generated, response to unfairness/values/principle	Stock companies export capital elsewhere
Directors & Officers	Directors: <ul style="list-style-type: none"> - members of co-op s72 - remuneration at general meeting s75; - responsibility to manage/supervise co-op s76; - mandatory duties (fiduciary, duty of care w/ reasonableness standard, duty to be lawful, internal rule following) s84 Officers: s105 (same as directors) <ul style="list-style-type: none"> End of term: not re-elected, resign, removed, no longer qualified under Act s80 	
Conflict of Interest (86-96)	S76: D's can enter into K's S94: K not invalid b/c not disclosed conflict of interest S92: can apply to court for director account for profits S89: obligation to account for profits if disclosable interests S86: what is conflict of interest S87: disclose nature and extent of disclosable interest S88: ways to give disclosure S90: even if conflict can still be director need general resolution OR consent res. OR special res. S91: report conflict at next AGM to membership	
Remove Director	S82: special meeting w/ special resolution (higher obligation than corporate context) <ul style="list-style-type: none"> Disqualified Director – s79 [not member, <18, managing affairs, undischarged bankrupt, conviction w/ limits] 	
Rem. Employee	S76: powers of director incl. firing	
Remove Member	S34: removal preconditions p 193 S36: 7 days notice membership termination proposed S37: right to appeal membership termination S38: redeem shares if leave co-op S39: special resolution reqd for readmission if terminated	

SOCIAL ENTERPRISE

Key Features	<ul style="list-style-type: none"> - for-profit corporation engaged in socially responsible activities carried on for combination of both profit and non-profit social, cultural or environmental objectives - s51.92 BCBCA: must put in articles - s51.91 BCBCA broad dfn community purpose - CCC part of name - Regs s4– dividend cap=40% of profits - multiple lines of accountability = social enterprise - community contribution company: asset lock, dividend cap, onerous annual reporting
Critical Perspectives	<ul style="list-style-type: none"> - tool of neoliberal agenda: marketize non-profit - no oversight - maybe increased privatization of things for social good should be govt responsibility