I. basic concepts/terminology

- **A. purposes of tax:**
  - 1. funding gov/public services
  - 2. wealth distribution from rich to poor
  - 3. reflects how society thinks we should function-what to encoruage/discourage
- **B. tax compared to other government collected payments**
  - 1. tax has 2 distinguishing characteristics: they are compulsory and unrequited (you don't receive anything for paying them)
  - 2. fines/penalties - they are compulsory, but imposed to deter/punish behaviour
  - 3. royalties - to the crown for extraction of natural resources, to a company for the right to use a piece of software
  - 4. prices - a "requited" or voluntary payment to the government in exchange for a good or service (ex. sport fishing licenses, bus transit pass, lottery tickets)
  - 5. tax can sometimes act as a substitute to regulation, in order to discourage behaviour (such as on alcohol, cigarettes) - called Pigovian taxes
- **C. tax expenditures**
  - 1. government subsidy for certain things that government wants to encourage
  - 2. tax credits, like credits for child care, eduction, RRSP deductions
- **D. classification of a tax**
  - 1. tax has 5 main components:
    - a) tax base - amount/transactin/property upon which tax is levied (ex income)
    - b) tax filing unit-person responsible for paying the tax
    - c) rates of tax-rate applied to base to arrive at amount owing
    - d) time period-except for when imposed on tranactions, there is a period over which the base is measured and tax collected
    - e) tax administration: in Ca, this is CRA
- **E. tax bases:**
  - 1. income
  - 2. consumption (ex GST)
  - 3. wealth (not used much in Ca - property tax is partial wealth tax)
- **F. rates of tax:**
  - 1. statutory: set out in s. 117 of ITA, offsets first $9,600 of income before taxed
  - 2. marginal: highest rate that applies to the last dollar of income for a year
  - 3. average: total tax divided by taxable income

- ☐ 4. effective: total tax divided by total income (including non-taxable income)
- ☐ 5. regarding rates, taxes are classified in 3 ways:
  - ☐ a) progressing: increasing proportion of income as income rises
  - ☐ b) proportional: constant proportional of income as income rises - basically regressive
  - ☐ c) regressive: take declining proportion of income as income rises, usually results from flat taxes like GST/PST where income not really factor

- ☐ **G. tax policy evalutative criteria**
  - ☐ 1. equity
    - ☐ a) tax premised on notion of equity/fairness, this is most important criterion
    - ☐ b) horizontal equity: people who are similarly situation should pay same amount of tax - this is reason why fringe benefits included in income
    - ☐ c) vertical equity: unequals should be treated appropriately differently
      - ☐ (1) those who have more pay more - idea behind progressive tax rates
  - ☐ 2. neutrality
    - ☐ a) taxes should aboid distorting workings of market mechanisms or personal decisions
    - ☐ b) hard to achieve in our system, because many taxes/deductions/credits are drafted to encourage/discourage certain behaviour
  - ☐ 3. simplicity
    - ☐ a) refers to variety of desirable administrative attributes of a tax system
    - ☐ *b) comprehensibility:* understandable to people to whom it applies
    - ☐ *c) certainty*: application of tax to transactions should be determinable and predictable and based on rule of law not tax collectors discretion
    - ☐ *d) compliance convenience*: should be able to comply without devoting undue time or incurring undue costs
    - ☐ *e) diffiult to avoid/evade*: must be easy to enforce to discourage tax avoidance (legal) and identify/prosecute tax evasion (illegal)

- ☐ **H. tax expenditures:**
  - ☐ 1. deductions: taxable income = total income - deductions...
    - ☐ a) RRSP/RESP contributions, movin expenses, childcare expenses, union dues
  - ☐ 2. credits: tax payable = total taxes-credits...
    - ☐ a) personal $9,600 tax credit, education credit
  - ☐ 3. evalutation expenditures:

- ☐ a) what gov objective is being served by expenditure
- ☐ b) are benefits distributed fairly, is program efficeint, does go have control over spending program and is politically accountable for it, can objective served by tax expenditure be better served by some other governing policy instrument

- ☐ **I. constitution on tax**
  - ☐ 1. prov and fed have concurring jurisdictino to impose direct tax
    - ☐ a) s. 91(3) fed has unlimited power to tax/raise money by any mode
    - ☐ b) s. 92(2) provs can impose direct taxes
  - ☐ 2. prov's and fed's can't tax each other's property (125)
  - ☐ 3. TCA's for individual tax, fed's collect and then distribute to provinces
- ☐ **J. interpretation of tax legislation (*Placer Dome)***
  - ☐ 1. if plain meaning is not clear (ie more than one reasonable interpretation)
  - ☐ 2. employ unified textual, contextual and purposive approach *(*Driedger)
  - ☐ 3. if still ambiguous (rare), there is rare residual presumption in favour of TP
  - ☐ 4. onus on TP to overturn/rebut an assessment (*Siftar*)

- ☐ **II. source concept of income: s. 3**
  - ☐ **A. legislative framework for determining taxable sources of income**
    - ☐ 1. s. 3: general structure for calculating income
      - ☐ a) s. 3(a): formula for things to include and how to compute income or loss to come up with total taxable income
        - ☐ (1) includes total of all amounts of income for a year from a source, inside or outside Canada, including without restricting, form each office, employment, business and/or property

          leaves room for new sources, however new 3(a) source has never been found by courts - Bellingham
      - ☐ b) s. 3(b): add in net capital gains
      - ☐ c) s. 3(c): add in deductions
      - ☐ d) s. 3(d): losses from other sources
    - ☐ 2. s. 4(1)(a): income from each source is calculated separately
      - ☐ a) ex calculate income/loss from property separate from income/loss from business
    - ☐ 3. s. 56: deems other types of payments of money to be sources of income, which based on s. 3 and case law, would not be subject to taxes

- ☐ a) pension benefits, payments made in lieu of pension benefit or retirement allowance, RRSP withdrawals, scholarships/bursaries (see s. 56(3)-actually not income), RESP amounts, workers comp pmts
- ☐ 4. s. 6(3) deems certain payment made during or after period of employment to be included in income unless employee can prove payment is not a hiring bonus, income that was owing/owed, a covenant to protect private/ confidential information
- ☐ 5. s. 248(1) definition of retiring allowance: amounts other than those mentioned in s. 6(3) which are received on or after retirement in recognition of service, in respect of loss of office or employment regardless of if paid voluntarily or court awarded payment
- ☐ 6. s. 248(1) definition of employment: position of individual in service of another person
- ☐ 7. surrogatum principal (*Tsiaprailis*): amounts received by a taxpayer in the place of income from a source may be included in income as if that payment were income from that source - 2 part test
  - ☐ a) what was the payment intended to replace? and provided the answer to this question is sufficiently clear,
  - ☐ b) would the replaced amount have been taxable in the recipient's hands?

- ☐ **B. case law on sources of income**
  - ☐ *1. Bellingham v. The Queen (1996 FCA)*
    - ☐ a) 3 amounts at issue: $377K disposition for expropriation of property, $181K in ordinary interest, $114K in additional interest
    - ☐ b) normally expropriation/sale of property is capital gain, not income from s. 3(a) source - here was source from business because B bought land with intention of flipping for a profit
    - ☐ c) ordinary interest also source of income under s. 3(a)
    - ☐ d) additional interest was not a source - ordered to be paid as punishment to city for offering such a low amount to taxpayer - considered windfall gain - not taxable (akin to punitive damages) - the source of this additional interest is the Expropriation Act, not the expropriating authority, and is unrelated to the fair compensation for expropriating the land
    - ☐ e) "source" doctrine narrows reach of s. 3(a) charging provision in ITA, however still leaves it quite broad
      - ☐ (1) courts have taken restrictive approach - new sources other than those enumerated in s. 3(a) have not been identified, other than specific sources listed in s. 56
      - ☐ (2) underlying source doctrine: income involves creation of wealth

- ☐ f) some exclusions and reasons
  - ☐ (1) gambling - unlesss professional - does not flow from source capable of producing income
  - ☐ (2) gifts and inheritances - these represent non-recurring amounts & transfer of old wealth
- ☐ *2. Schwartz (1996 SCC)*
  - ☐ a) S leaves firm to take in house counsel position, signs K, which the company then cancels and pays him $342K in compensation - question is wehther or not this is payment for lost salary/stock options
  - ☐ b) no lawsuit files/writ to show was the $342K was paid for, no evidence adduced at trial for what the payment was for
  - ☐ c) 2 main arguments of minister addressed in *obiter*
    - ☐ (1) payment was retiring allowance and in included in income per s. 56 - court rejects, S never started employment and was never "in service of" the company
    - ☐ (2) money was a surrogatum payment for loss of salary and loss of stock options and therefore an unenumerated source per s. 3(a) - rejected because at trial there was no evidence for what portion was paid for lossed earning, and what was paid for pain/suffering - cannot disturb trial finding of fact - also rejected because was not appropriate to deal with such a payment when there was a specific provision of hte act dealint with payments of these types
  - ☐ d) takeaway: a settlement amount is not taxable unless there is evidence to show what the amount is replacing
- ☐ *3. Tsiaprailis* (2005 SCC)
  - ☐ a) T disabled in car accident, was receiving insurance payments from employment benefits plan, which then stopped - sued insurer, and insurer provided lump sum payment in lieu of continued benefits - part was for amounts past due, and part for future payments discounted to present
  - ☐ b) s. 6(1)(f) includes payments under employee benefit programs which are intended to replace employment income as income from a source
  - ☐ c) amount in dispute is amount that was paid in arrears from time insurer stopped paying to settlement date - is this included in s. 6(1)(f)
  - ☐ d) surrogatum rule:
    - ☐ (1) the payment was to replace periodic insurance benefits that the T would have been entitled to
    - ☐ (2) insurance benefits such as these would be taxable under s. 6(1)(f)

- ☐ *4. Cartwright* (as discussed in *Bellingham*)
  - ☐ a) C was publisher of legal directory, had copyright on info in directory, contracted with Carswell to publish this directors
  - ☐ b) Carswell started publishing it's own directory, C sued
  - ☐ c) Carswell settled, agreed to pay royalties as well as lump sum of $7K - reason for $7K not disclosed
  - ☐ d) court found $7k lump sum didn't have income feature to it - it was akin to punitive damage award to compensate for Carswell's bad behaviour
  - ☐ e) just because money flows from one to another does not mean this is income form a source
- ☐ *5. Cranswick* (as discussed in *Bellingham)*
  - ☐ a) factors that may be relevant in assessing windfall gain:
    - ☐ (1) to enforceable claim to the payment
    - ☐ (2) no rganized effort by taxpayer to receive the payment
    - ☐ (3) payment was not sought after or solicited by taxpayer in any way
    - ☐ (4) payment not expected by the taxpayer, either specifically or customarily
    - ☐ (5) payment had no foreseeable element of recurrence
    - ☐ (6) payment not a customary souce of income for taxpayer
    - ☐ (7) payment not made in consideration or recognition of property, services or anything else provided to or to be provided by taxpayer, was not earned by taxpayer through activity or pursuit of gain
- ☐ *6. Fries* (as discussed in *Bellingham)*
  - ☐ a) union members offered strike pay equivalent to regular pay to strike in support of another union - argued this was providing the service of "picketing"
  - ☐ b) nothing in ITA includes or excludes strike pay - if this was from a source, source was union strike fund - court finds not income from source
  - ☐ c) criticism of case it there is no balance between includsions and deductions - union dues are deductible, yet strike pay is excluded as source of income
- ☐ *7. Savage* (as discussed in *Schwartz*)
  - ☐ a) S received $300 from employer as prize for completing a course she had taken outside of employment
  - ☐ b) ITA has provision including prizes for achievement of over $500 as income, but money could also be seen as a benefit of employment under s. 6(1)(a)

- ☐ c) general provisions cannot be used to include income which is exempt under a specific provision
  - ☐ (1) Martha's clarification - the principal is that if something is included under a specific provision, it is not appropriate to apply a general provision, NOT that where something is excluded under a specific provision, it is also excluded under the general provision
- ☐ *8. Curran*
  - ☐ a) C paid $250K by B to leave employer and work for B - payment in lieu of C's loss of future pensin rights, opportunities for advancement, foregone income
  - ☐ b) C signs agreement with B for employment
  - ☐ c) court found $250k payment was made to induce C to provide services to B's company - these services would require C to resign, and payment was in compensation for benefits C had under old employment
  - ☐ d) s. 6(3) doesn't apply - payment came from B, who never employed C
  - ☐ e) payment included under s. 3(a)
- ☐ **C. receipt and enjoyment of an amount of income as nexus**
  - ☐ 1. relationship/connection between source of income and recipient of income
  - ☐ 2. income must be from source, and must go to a specific taxpayer in order for the taxpayer to be liable for paying taxon it
  - ☐ 3. to be taxable on an amount received by a person, the person must have right to own and enjoy that amount
  - ☐ 4. s. 152(7)&(8)
    - ☐ a) CRA has power ro reassess other than based on how taxpayer has reported, allows CRA to look at bankruptcy statements, assets owned
    - ☐ b) CRA reassessment is valid/binding unless taxpayer can prove otherwise - see *Nigro* below
  - ☐ *5. Buckman*
    - ☐ a) lawyer embezzling from clients, paying them "interest" to make it look like he hadn't spent their money, when really was just giving back part of what he stole
    - ☐ b) CRA assessed B on amount stolen, less "interest" paid to clients
    - ☐ c) B argued that not source of income folowing GAAP rules
    - ☐ d) can't use wrongful conduct as a defense to avoid tax liability - income is taxable regardless of whether it was made legally or illegally
    - ☐ e) nexus was determined on intention of taxpayer to repay funds or not

- ☐ *6. Nigro (TCC 2003)*
  - ☐ a) N files tax return claiming no income - CRA investigates, finds vast amounts of $ going through N's bank accounts
  - ☐ b) assessed for $150k in bank that flowed in but not back out
  - ☐ c) N claimed he was holding money for loan repayments, and for a friend of his, M - could not explain why M didn't use his own bank account
  - ☐ d) N claims he used some of the money, but not $150k, and that he lived on money loaned to him by his mom which was put in same account
  - ☐ e) N could not meet standard to disprove assessment under s. 152(8)

☐ III. residence as primary basis of tax liability

☐ A. residence as a tax base

- ☐ 1. s. 2: residents pay tax on income earned inside and outside of Canada, non-residents pay tax on income earned inside Canada
- ☐ 2. residence used as a base because it emphasizes economic association with a country
- ☐ 3. s. 250(1)(a) deems person resident where the person has *sojourned* in Canada for more than 183 days of year
  - ☐ a) sojourn defined: to make temporary stay in a place - presumtion that there should be place to stay overnight - see *R&L Food Distributors*
  - ☐ b) note: other subsections of s. 250 deem other individuals resident, such as forces, ambassadors if resident in Canada prior to appointment, etc
- ☐ 4. s. 250(3) references to resident include people who were *ordinarily resident* in Canada for the relevant time period
  - ☐ a) ordinarily resident defined: narrower than "resident" by the wording of s. 250(3), includes a person who may not be living here all the time but may still be ordinarily resident - case law relevant - depends on facts and courts impression of taxpayer
- ☐ 5. Interpretation Buttetin IT-221R3 - how CRA will determine residence status *see text pages 163-167*
  - ☐ a) leaving Canada - does the taxpayer leave residential ties?
    - ☐ (1) primary residential ties: dwelling place available for taxpayer to return to, spouse or dependants still in Canada
    - ☐ (2) secondary residential ties: personal property, social/economic ties, landed immigrant status/work permits, seasonal dwelling, Canadian passport, membership in Canadian unions/professional organizations -

other items like PO box, mailing address, phone number (but only when taken together with other indicators - limited importance by itself)

- ☐ b) application of term "ordinarily resident":
  - ☐ (1) may be considered ordinarily resident where person has been absent for considerable period of time, but has not severed residential ties
  - ☐ (2) will consider evidence of intention to permanently sever ties, regularity and length of visits to Canada, residential ties outside Canada
  - ☐ (3) intention to return to Canada in and of itself not relevant to determining if one is ordilarily resident
- ☐ c) evidence of intention to permanently sever ties
  - ☐ (1) will be decided on facts of case, no requirement for specific amount of time spent abroad, whether or not returning to Canada was foreseen, whether or not individual complied with ITA provisions for people ceasing to be resident in Canada
- ☐ d) sojourners
  - ☐ (1) any part of a day is considered a "day" for purposes of the 183 days required per s. 250(1)(a) dealing with sojourners
  - ☐ (2) not considered to be sojourning just because in the country - nature of every stay is important - sojourning means to make temporary stay in sense of establishing a temporary residence
  - ☐ (3) someone who works in Canada but returns to normal place of residence outside Canada at end of each day is not sojourning

- ☐ *6. Thomson (1946 SCC)*
  - ☐ a) T assessed on income received in 1940 - claims not resident, ordinarily resident, or sojourning
  - ☐ b) T born in Canada, then moved to Bermuda and claimed it his domicile - then moved to US for 10 years, and then started coming back to Canada for extended period of time - sometimes up to 150 days/year, and bought house in NB
  - ☐ c) house is closed in winder months except for maids and wife's quarterd
  - ☐ d) US had started taxing T as resident in 1942
  - ☐ e) T found to be ordinarily resident - his home in NB was home for portion of time he was there, was available all year round, had friends in NB
  - ☐ f) ordinarily resident interpreted by case law to mean residence in customary mode of life, rather than special, occasional or casual residence
  - ☐ g) takeaways:
    - ☐ (1) residence is multi faceted inquiry - no one factor is determinative

- ☐ (2) residence is connected to one's general mode of life
- ☐ (3) everyone has a residence somewhere, and can be resident in more than one place
- ☐ (4) taxpayers intentions to be resident somewhere can be dismissed where taxpayers actions clearly go against this stated intention

- ☐ *7. Lee (1990 TCC)*
  - ☐ a) Lee born in England, worked on oil rig outside Canada, but visited Canada regularly for about 45 days
  - ☐ b) deposited money into Canadian bank account, married Canadian woman who was wholly dependant on him, signed bank agreement swearing in an affadavit that he was not non-resident
  - ☐ c) court gives several indicia of what factors that will determine residence - see text pages 157-158
  - ☐ d) Lee claimed not resident in 1981 because did not have immigration status and only allowed to stay in country for specified periods of time
  - ☐ e) by time case heard, Lee had been given landed immigrant status and was living full time in Canada - shows intent to be resident, and helps court because of hindsight
  - ☐ f) this case shows that citizenship and immigration status are not determinative as to residence
- ☐ *8. R&L Food Distributors*
  - ☐ a) R&L made deductions based on being CCPC per s. 125(1) - deduction disallowed on basis that corp not CCPC, because controlling shareholders not resident in Canada - R&L was wholly operated in Ontario and incorporated under Ontario legislation
  - ☐ b) 3 shareholders (1 share each) - 1 definitely not resident in Canada, the other 2, L & R, worked for R&L and commuted to Ontario each day - liven in Michigan with families, L would occasionally stay overnight
  - ☐ c) L: family decision to stay in US, no business ties in US, files returns in both countries, member of US synagogue
  - ☐ d) R: Canadian invstments, no business ties in US, member of social club in Windsor, member of US synagogue
  - ☐ e) both claiming they are resident under s. 250(1)(a) - they sojourn to Canada for more than 183 days per year
  - ☐ f) whie employment time adds up to more than 183 days - did not fit definition of sojourn because they did not make temporary stay
- ☐ **B. part year residence:**

- ☐ 1. s. 249(1)(b): taxation year for the individual is the calendar year
- ☐ 2. s. 114: special taxation rules for individual who is resident for part of year
- ☐ 3. this is exception to s. 2(2) which states that a person is resident in Canada at anytime in the taxation year is taxed on world-wide income for entire year
- ☐ 4. see handout explaining s. 144
- ☐ *5. Schuahn*
  - ☐ a) S US citizen, moved to TO for work, lived in Canada with family from 1954 to Aug 2 1957, then called back to head office in US permanently
  - ☐ b) wife/child staying in TO house after S moved back, in order to sell house
  - ☐ c) was S resident in Canada for all of 1957, or only until Aug 2?
  - ☐ d) evidence shows S severed as many ties as he could, resigned memberships, transferred personal belongings - while wife/child stayed behind, they only did so until house was sold
  - ☐ e) reasons for some ties (family) remaining satisfactorily explained, was part time resident per s. 144
  - ☐ f) case shows must easier to sever ties if not born in/citized of Canada
  - ☐ g) why CRA couldn't find him resident because he was sojourner: sojourning and ordinarily resident are mutually exclusive - sojouring is outside of ordinarily resident
- ☐ *6. Reeder*
  - ☐ a) R born and lived in Canada until 1972, got job with Michelin, but sent to France for training first which would last at least 6 months
  - ☐ b) he goes over, wife stores belongings and then joins him - once in France together they rent furnished apartment, get French bank account (but being paid into Canadian account), had child in France, total time of stay out of Canada was 8 months, never paid any income tax in France
  - ☐ c) court applies *Thomson*, finds R was highly mobile and was resident in Canada until he left for France, and was resident upon his return
  - ☐ d) while time in France was indefinite in a sense that it might be more than 6 months, it was temporary in that there was an intention to return to Canada where he would work for Michelin Canada

- ☐ **C. avoidance of dual-tax residence**
  - ☐ 1. s. 250(5): if a tax treaty determines you are non resident, then for Canadian tax purposes the taxpayer is also non-resident
  - ☐ 2. tax treaties deal with situation where person is deemed to be resident in 2 countries during a tax year, and if not for the treaties would be subject to paying taxes in both countries for the given year

- ☐ 3. Canada/US treaty: series of tests applied in order to determine residence:
  - ☐ a) deemed resident in contracting state where permanent home is available
  - ☐ b) where permanent home in both/neither place, deemed resident in contracting state where economic/person ties are stronger
  - ☐ c) where strongest ites cannot be determined, deemed resident where they have a habitual abode - where one spends more of their time
  - ☐ d) if there is habitual abode in both/neither, deemed to be resident in state where he/she is a citizen
  - ☐ e) if dual citizen/not a citizen of either country, then the CRA and IRS get together and decide where you are resident - this is lengthly process
  - ☐ f) this is a test which is to be interpreted/applied by courts in CA & US
- ☐ 4. Canada/UK treaty: similar to CA/US treaty
  - ☐ a) deemed resident of state where permanent home is available, and where permanent home in both states, deemed resident where personal and economic relations are strongest (different from CA/US - leaves out consideration of not having permanent home in either)
  - ☐ b) if state where personal/economic relations are stronger cannot be determined, or there is no permanent home, deemed resident in state where there is a habitual abode
  - ☐ c) if habitual abode in both or neither, resident in state where he is a national
  - ☐ d) if national of both or neither, competent authorities decide
- ☐ *5. Salt (2007 TCC)*
  - ☐ a) S lived in CA for 14 years, but UK citizen, had live in many countries, but in CA the longest
  - ☐ b) offered job with Alcan in AUS for at least 2 years - goes to work in AUG from Sept 1 '98 to Apr 1 '00 - during period CA club/association memberships resigned and memberships in AUS joined, cancelled most credit cards, phone/cable/subscriptions
  - ☐ c) rented out home for 22 1/2 months to person at arms length
  - ☐ d) filed AUS tax returns as AUS resident
  - ☐ e) CRA assess S as being ordinarily resident in CA as well as resident in AUS - used tax treaty tie breaker - had permanent home in AUS, no home to return to in CA - Aus resident for tax purposes
- ☐ 6. s. 128.1(1)&(4): technical provisions that apply when a taxpayer ceases, or commences, to be a resident of Canada

- ☐ a) ceasing to be resident: property deemed to be disposed of just before ceasing to be residentfor fmv, and then reacquired after becoming resident for same amount
- ☐ b) becoming resident: deemed to have acquired property for fmv - this value will be used as acb when resident disposes of property later

- ☐ **D. provincial residence**
  - ☐ 1. income rax regulation 2607: where resident in more than one province for a tax year, deemed to be resident in province which is reasonably regarded as principal place of resident - tie breaker rule
  - ☐ 2. s. 2(1)(a) BC ITA: income must be paid for each taxation year by every individual who was resident in BC on the last day of the tax year - ie, where on the last day of the year one had residence
  - ☐ *3. Mandrusiak v. Canada (BCSC 2007)*
    - ☐ a) M assessed as though BC resident - claims is Alberta resident - during tax year spent slightly more time in BC than in Alberta
    - ☐ b) court cites *Thomson* to determine if M was resident in BC at all, and therefore s. 2607 tiebreaker rule needs to apply
    - ☐ c) appellant had stronger ties in Alberta - family was there, grew up there, had rance - for purposes of tax was resident in Alberta
- ☐ **E. residence of corporations**
  - ☐ 1. s. 250(4): corporation incorporated in Canada after April 27, 1965 is deemed to be resident in CA throughout tax year
  - ☐ 2. s. 250(4)(c): corporations incorporated before April 27 1965 deemed to be resident only if at any time in tax year or any time in preceding tax year ending after April 27 1965 they were resident in Canada under case law principles, or carried on business in Canada
  - ☐ 3. case law principles:
    - ☐ a) corp is resident where central mgmt & control (ie board of directors) is located in Canada
    - ☐ b) where board is located elsewhere, but CA shareholder is making decisions for the corporation (directing board) from CA, deemed to be Canadian company (this happens with corps being set up in tax havens)
    - ☐ c) if central mgmt/control in more than one place, corp can be resident in more than one place
  - ☐ 4. CA-US treaties: where resident in both states, deemed resident in the country in which it was incorporated

- ☐ 5. CA-UK treaties: resident where central mgmt & control is - where reident of both countries competent authorities will determine residence

- ☐ **F. source as a basis of tax liability**
  - ☐ 1. s. 2(3): non-resident taxable in CA where employed by CA corp or carrying on business in Canada, or disposed of taxable CA property - taxable in accordance with Div D
  - ☐ 2. s. 212: imposes 25% income tax on certain types of payments made by Ca residents to non-residents
  - ☐ 3. s. 215(1): Ca residents have obligation to withhold and remit tax on behalf of non-resident
  - ☐ 4. s. 215(6): where Ca corp does not withhold and remit for non-resident, Ca corp is jointly/severally liable for the tax owing
  - ☐ 5. see handout: source taxation of non-residents

☐ IV. income from office or employment

- ☐ **A. the basics**
  - ☐ 1. for tax purposes, an individual retained to provide services is either an "employee" or an "independent contractor"
  - ☐ 2. independent contractor: business person/self-employed/sole proprietor - professionals (lawyers, doctor, architect etc) considered independent contractor
  - ☐ 3. employee: connotes servant/master relationship
    - ☐ a) s. 248(1) employee: includes officer
    - ☐ b) s. 248(1) employer: in relation to officer, person from whom officer receives the officer's remuneration
    - ☐ c) s. 248(1) employment: position of individual in service of another
    - ☐ d) s. 248(1) office: position of individual entitling individual to remuneration, includes public offices
    - ☐ e) can only be people, not corporations
  - ☐ 4. s. 5(1): income from office/employment includes salary, wages and other remuneration to the taxpayer
  - ☐ 5. s. 5(2): losses from office/employment are the amount of the loss from the source as computed by applying the allowable deductions to that source
  - ☐ 6. s. 6(1)(a) benefits received from office/employment are included in income
  - ☐ 7. s. 8: puts limits on what employees can deduct from income from employment/office
    - ☐ a) sub (2) limits deductions only to specific deductions listed in s. 8

- ☐ 8. s. 153: employer must withhold a proscribed amount from an employees paycheque and remit this amount to CRA on behalf of employee
- ☐ 9. differences between employee and independent contractor
  - ☐ a) tax withholdings: no need to withhold tax from independent K (they remit this themselves), need to withhold from and remit for employee
  - ☐ b) independent contractors don't pay into EI, can't claim EI if biz goes under
  - ☐ c) income from office employment calculated on cash basis, business income calculated on accrual basis
  - ☐ d) reporting: s. 249 deems employee tax year to be calendar year, business income reported on fiscal year per s. 249.1
  - ☐ e) deductions for employees limited to enumerated items in s. 8, independent contractos have wider scope to deduct income earning expenses under s. 9 & 20

- ☐ **B. test for employee vs. independent contractor**
  - ☐ 1. this is a question of fact: 4 tests (*Wiebe Door*) can be used to assess whether someone is an employee or independent contractor
    - ☐ a) control test (traditional CL test): what is the degree of director or control had by alleged employer over alleged servvant - control considered where "master" sets "employee" work shedule, control what they did, when they take breaks
      - ☐ (1) not best test - employers often do not have high control over very technically skilled workers, and sometimes K's for independent contractors can be very specific & controlling
    - ☐ b) ownership of tools test: where employer owns tools being used by the worker, worker likely an employee
    - ☐ c) opportunity for profit or risk of loss: where worker stands to lose/gain, rather than earning salary/hourly rate regardless of quality of work, likely independent contractor
    - ☐ d) organization/integration test: is the worker integral to the success of the business that pays them - if so, suggestion of employee
      - ☐ (1) FCA has rejected this test because it leads to always finding person to be employee - if a worker wasn't integral to success of business, the biz wouldn't have the person there
  - ☐ 2. *Wiebe Door*
    - ☐ a) leading case on determining employee or independent contractor
    - ☐ b) WD claimed installers were independent contractors, not employees

- ☐ c) contracted with each employee independently, workers could accept or refuse jobs when WD called, workers didn't go to WD premises for any purposes other than to pick up supplies, workers owned own trucks/tools, WD guaranteed work but if installer did bad job they had to go back and fix it on their own expense
- ☐ d) tests applied to this case:
  - ☐ (1) control: inconclusive - good indicator of IC, but should be used in conjunction with other tests
  - ☐ (2) ownership of tools: workers owned, suggests IC
  - ☐ (3) opportunity for profit/risk of loss: would lose paid jobs if have to fix bad job - suggests IC
  - ☐ (4) integration test: without installers WD has no business, but FCA rejects this test
- ☐ *3. Cavanaugh*
  - ☐ a) C was tutorial leader/market for university - not tenured employee, didn't have ongoing K with university - except for course outline & solution manual, provided his own supplies to complete work & was responsible for all off-campus expenses
  - ☐ b) university issued T-4, and C filed income tax return, as through he was an employee - later claimed this was a mistake and he was an IC - this is allowed - return not conclusive evidence of reality
  - ☐ c) C earned income based on number of students in tutorials, with payment being intermittent - also had another business as an accountant
  - ☐ d) application of 4 *Weibe Door* tests:
    - ☐ (1) control: minimal control by professors or university - not type of control expected in employer/employee relationship
    - ☐ (2) ownership of tools: C expected to provide majority of supplies
    - ☐ (3) opportunity for profit/risk of loss: C made more/less depending on accuracy of how many students would be in tutorials
    - ☐ (4) integration: important service for students/profs, but not integral in that university could carry on without his services/replace him/he could hire someone else to do the work if he wanted
- ☐ *4. Sagaz*
  - ☐ a) SCC affirms *Weibe Door* test: no one conclusive test that can be universally applied to determine whether a person is an employee or IC - must consider total relationship of the parties

- ☐ b) question is whether the person is performing the services as a person in business on his own account - the tests in *Weibe Door* help answer this question

- ☐ **C. avoiding office/employment characterization: personal service business & incorporated employees**
  - ☐ 1. interposing K for services:
    - ☐ a) employees may try to recharacterize employment as business by using form of K other than employment K
    - ☐ b) courts not bound by intention of parties to the K, can characterize the source of income on the basis of the "substance" of the relationship
  - ☐ 2. interposing a corporation or trust:
    - ☐ a) employees may attempt to alter relationship by interposing corp/trust owned by the "employee", thereby shifting income to the corporation which allows for greater tax planning
    - ☐ b) moves taxpayer one arms length away, because corporations cannot be employees of other persons
    - ☐ c) courts look at this by applying *Weibe Door* to situation where someone has inteposed a corporation - but for the corp, would the person be considered an employee?
  - ☐ 3. s. 125(7) definitions for this area
    - ☐ a) active business carried on by corporation: business carried on by corp other than specified investment business or personal service busienss
    - ☐ b) CCPC: for our purposes is a corp resident in Ca, shares not listed on exchange, and is not controlled by non-residents whose share are traded on a stock exchange - preferential tax rate only applies to corporations owned by residents who have active business income
    - ☐ c) personal services business: business carried on by corp as a biz providing services where an individual (or person related to incorporated employee) performs services on behalf of corp and the person is a specified sharehlder, and *would reasonably be regarded as an employee of the persons to whom the services are being provided but for the existance of the corp*, unless corp has 5+ full time employees
  - ☐ 4. s. 248(1) specified shareholder: person who owns more than 10% of stock - any stock owned by person with whom taxpayer does not deal at arms length is considered to be owned by taxpayer for purposes of this definition
  - ☐ 5. s. 251: identifies persons who are at arm's length & who are related
  - ☐ 6. s. 18(1)(p) limits deductions that can be made by personal service businesses

- ☐ 7. remember the RalphCo problem - see handout with calculations

☐ V. benefits, allowances & reimbursements

- ☐ **A. way to tackle question:**
  - ☐ 1. first - was it a benefit in some way? go through steps/tests below
  - ☐ 2. second - was it an allowance or a reimbursement?
- ☐ **B. benefits**
  - ☐ 1. s. 6(1)(a) ensures the value of all benefits, in cash & in kind, are included in computation of taxpayer's income - the benefit must be received or enjoyed in respect of, in course of, or by virtue of, office/employment
  - ☐ 2. what qualifies as a benefit:
    - ☐ a) economic advantage enjoyed by employee (*Lowe*)
    - ☐ b) economic advantage was connected with taxpayer's employment (*Savage)*
    - ☐ c) whether it is a gift/something external to employee/employer relationship will depend on employer's intention/purpose of the payment (*Phillips)*
  - ☐ 3. s. 6(19)-(23): benefits related to housing loss (following *Ransom*) - see handout as well
  - ☐ 4. policy for taxing benefits
    - ☐ a) revenue: potential for tax base to erode and taxpayers opt for more indirect benefits in lieu of cash remuneration
    - ☐ b) equity: unust to allow one person to avoid tax through benefits, which another person with no such benefit is taxed
    - ☐ c) some benfits are not taxed, where incremental cost of enforcing outweighs the revenue earned
    - ☐ d) political reasons: who is the government taxing, and how will it affect the government
  - ☐ 5. see handout on interpretation bulletin IT 470R
  - ☐ *6. Savage*
    - ☐ a) S received $300 from employer for completing series of exams that were relevant to her work - she voluntarily took the courses
    - ☐ b) prize was claimed as an expense of doing business/deducted by employer
    - ☐ c) question is whether payment made to S as employee, or S as individual
    - ☐ d) s. 56(1)(n) deals with receipt of prizes - S claimed it was not taxable becasue of s. 56(3)
    - ☐ e) minister claimed it fell within s. 3 & s. 5
      - ☐ (1) wording "benefit of any kind" is broad enough to capture $300 payment

- ☐ (2) wording "in respect of" imports meanings such as in relation to, in connection with - conveys connection between 2 related subject matters
  - ☐ i) hard to conclude payment to S not connected to her employment
- ☐ f) payments made in respect of employment, makes them income from source under s. 3

- ☐ 7. *Lowe (1996 FCA)*
  - ☐ a) L & wife received all expenses paid trip to go to New Orleans on a business trip to entertain cliens
  - ☐ b) CRA claims this is taxable benefit, assessed L at 62% of trip, & Mrs. L at 75% of her trip
  - ☐ c) L claims he had to go to New Orleans for work, and wife came because her presence was part of this job, to be involved with entertaining
  - ☐ d) while in New Orleans they had fun, but had no time to themselves, were busy with activities whole time
  - ☐ e) only employees who had brokers going to New Orleans got to go - was some sort of incentive to sell more policies to have brokers be in NO - so in some ways this was reward for boosting sales
  - ☐ f) test for determining taxable benefit
    - ☐ (1) does item under review provide employee wiht economic advantage that is measurable in monetary terms
    - ☐ (2) if there is an advantage, does primary advantage enure to the benefit fo the employee or employer?
- ☐ 8. *Huffman (1990 FCA)*
  - ☐ a) H was plainclothes officer, purchased clothing items specifically with employment requirements in mind, clothing onl worn at work
  - ☐ b) had he been regular officer, uniform would be provided
  - ☐ c) was reasessed for not including as income payment for $500 towards clothing
  - ☐ d) based on s. 6(1)(a) and *Savage*, the wording "in respect of" gives a meaning to what is included as a taxable benefit, and the $500 should be taxed as it was related to his employment
  - ☐ e) court rejects this: while payment in respect of employment, did not confer economic benefit on employee - clothing was equivalent to uniform and therefore not a benefit
  - ☐ f) side note: consider if taxpayer could deduct the cost under s. 8 (employee allowable deductions) - likely if not reimbursed for cloting, taxpayer could claim a deduction

- ☐ *9. Ransom*
  - ☐ a) note: this case came before decision in *Savage* defined benefits as payments made to taxpayer in his/her capacity of employee
  - ☐ b) R sold his house to move for his employer - portion of the loss on the sale of his house reimbursed by employer
  - ☐ c) taxpayer claimed expenses incurrered were caused wholly by the terms of his employment, which his company reimbursed to him
  - ☐ d) court found not a benefit of employment, but rather compensation for a loss incurred due to employment
  - ☐ e) s. 6(3) didn't apply: already employed, not a payment for services, not a payment for a consideration or a covenant
  - ☐ f) s. 6(1)(a) has broad language
    - ☐ (1) compares moving expenses to regular travel expenses where an employee will be reimbursed so they are not out of pocket - this is a similar situation as R is out of pocket by being required to move
    - ☐ (2) any payment up to amount employee is out of pocket will be considered a reimbursement, not a benefit
- ☐ *10. Phillips (1990 FCA)*
  - ☐ a) P moves as part of employment with CNR - sold house and purchased new one, given $19k from CNR as compensation for increased housing costs in Winnipeg
  - ☐ b) this comes after *Savage* - payments in connection with employment are benefits
  - ☐ c) payment was for P's continued employment, hard to say this is not connected with his employment - CNR's motivation was to protect economic interests of both parties & avoid labour dispute
  - ☐ d) court distinguishes *Ransom* on the facts:
    - ☐ (1) there the payment was made in connection with a loss suffered on the house sale, here the payment was made to allow for higher housing prices in new location
    - ☐ (2) R's net worth didn't increase with the payment - P's net worth would increase because he will have a house worth more
- ☐ **C. valuation of employee benefits**
  - ☐ 1. s. 6(1)(a) includes the "value" of the benefit in income - value in Canada is generally the fmv
  - ☐ 2. fmv: the amount a person not obliged to buy would pay to a person not obliged to sell

- ☐ a) this means value is what employee would pay to acquire the same item, not what he/she could sell the "used" item for
- ☐ 3. see IT 470R (handout) for how CRA will assess frequent flyer program - basically follows *Giffen*
- ☐ *4. Giffen (1995 TCC)*
  - ☐ a) G required to travel in course of employment, air fares paid by employer, and G collects air miles on the flights, which he uses later for personal trips
  - ☐ b) use of these points for family trips was a benefit under s. 6(1)(a), and the value of the points was the price which the employee would have to pay for a ticket allowing him to fly on the same flight with all the same restrictions as the ticket bought on points
- ☐ *5. Dunlap (1998 TCC)*
  - ☐ a) CRA assessed Christmas party held for employees as a taxable benefit, for the amount per employee of putting on the party
  - ☐ b) D argued hotel room should not be included as benefit because of public policy reasons - court rejects
  - ☐ c) D argued there was no acquisition and no material benefit - court rejects this, assessed on what employer paid
  - ☐ d) good case for showing the onus is on taxpayers to rebut their assessment
- ☐ **D. allowances & reimbursements**
  - ☐ 1. subject to certain exemptions in s. 6(1)(b)(i)-(ix), an allowance is taxable under paragraph 6(1)(b) if it is *an allowance for personal or living expenses or as an allowance for any other purpose*
  - ☐ 2. allowances defined (*MacDonald*)
    - ☐ a) arbitrary, predetermined amount received without specific reference to any actual expense/cost
    - ☐ b) includes, but is not limited to, personal & living expenses
    - ☐ c) no need to account for how it is spent-at discretion of recipient
  - ☐ *3. Huffman (1990 FCA)*
    - ☐ a) plain clothes officer case again- court considers whether payment for work clothing was allowance or reimbursement
    - ☐ b) taxpayer received $500 per year, but had to submit receipts for only $400 because reimbursement amount increased, administrative decidion made not to require receipts for the extra $100
    - ☐ c) payment not an allowance - was predetermined amount, but was not paid to employee to use at his discretion

- ☐ d) reimbutsement only given upon showing receipts with exception of $100 - change in circumstances does not change nature of payment
- ☐ *4. Phillips*
  - ☐ a) could have also seen $10k payment for moving as an allowance - P didn't have to account for the payment in any way
- ☐ **E. special & remote worksites**
  - ☐ 1. s. 6(6)(a): reasonable allowances for room&board not taxable where employee is at temporary worksite for at least 36 hours
    - ☐ a) if an employer pays for room/board at special worksite, this is not considered a benefit of employment
    - ☐ b) if an employer provides daily/weekly/monthly amount to employee to cover reasonable expenses for room/board while at remote sity this is not consdiered a benefit of employment
  - ☐ 2. s. 6(6)(b): allowance for transportation expenses not taxable in connection with s. 6(6)(a)
    - ☐ a) even where employee is not resident of Canada, but brought into worksite by employer, they are still eligible to receive subsidies under this section without being subject to tax
- ☐ **F. automobile & travel allowances**
  - ☐ 1. ss. 6(1)(b)(v), (vii), (vii.1): describes reasonable travel allowances
  - ☐ 2. ss. 6(1)(b)(x), (xi): what will be deemed as not a reasonable travel allowance
  - ☐ 3. Reg 7306: gives rules for determining the amounts allowable for the purposes of s. 18(1)(r)
    - ☐ a) rule only applies to employers, for employees it is just a policy statement
  - ☐ 4. s. 18(1)(r): deductions can only be made in accoradance with reg 7306
- ☐ **G. deductions in computing income from employment**
  - ☐ 1. s. 8 provides for, and limits, the types of deductions that employees can make
  - ☐ 2. s. 67 further limits all deductions (made under s. 8 & other deductin sections) in requiring they be reasonable
  - ☐ 3. s. 67.1: deductions for food consumption are limited
  - ☐ 4. travel deductions: ss. 8(1)(f), (g), (h), (h.1), 8(4)
    - ☐ *a) Renko (2002 TCC)*
      - ☐ (1) BC Ferries employees claim deductions for meals during 8-10 hour shifts
      - ☐ (2) claimed deduction under ss. 8(1)(g)(ii) & 8(4) - they were travelling in and out of municipal area

- ☐ (3) for s. 8(1)(g)(ii) deductions, there must be meals *and* lodging expenses - section is conjunctive
- ☐ *b) Martyn (1962 TAB)*
  - ☐ (1) pilot with AC, tried to deduct travel cost of driving to and from airport - 27 miles round trip
  - ☐ (2) employee is responsible for costs of getting to and from work, considered part of personal/living expenses of taxpayer
- ☐ *c) Hogg (2002 FCA)*
  - ☐ (1) H was judge, occasionally required to travel to other court locations, given non-taxable allowance to cover travel
  - ☐ (2) H then started claiming deductions for travel between home and normal court location, claimed for security purposes should be a deduction
  - ☐ (3) no deduction - security concerns have no bearing on s. 8(1)(h.1)
  - ☐ (4) travelling in course of employment involves performing service, travelling to/from work is simply getting oneself to work
- ☐ 5. legal expense deductions:8(1)(b) (Bill C-10 amendment)
  - ☐ a) employee can deduct legal expenses incurred in order to collect/establish a right to salary or wages owing by current or former employer
  - ☐ b) applies to amounts received/paid - not amounts payable/receivable
  - ☐ c) legal expenses can be deducted regardless of the success of the claim
  - ☐ d) Bill C-10 amendment: bill died on table in 2008, would have only allowed deduction for legal expenses where incurred to establish right to/to collect amounts owed which, if received, would be included as income by this subdivision
- ☐ 6. cost of supplies:
  - ☐ a) s. 8(1)(i)(iii); costs of supplies consumed directly in performing duties of office/employment are deduction where not covered by employer
  - ☐ b) s. 8(10) to deduct an amount under this s. 8(1)(i)(iii), it must be presented in proscribed form, signed by employee certifying the conditions set out were met, and filed with taxpayer's return
- ☐ 7. home office expenses:
  - ☐ a) s. 8(13) deductions for maintaining office in same space where taxpayer resides can only be made where this space is either:
    - ☐ (1) the palce where the taxpayer normally works
    - ☐ (2) used exclusively by taxpayer for work, and used continually to meet customers or others in course of ordinary business

- ☐ b) deductions made under this section cannot exceed amount claimed as income

☐ VI. income from business

☐ A. business as a source of income:

- ☐ 1. s. 3(a): business is an enumerated source for income
- ☐ 2. s. 9(1): rules for calculating income from business
- ☐ 3. s. 20(1)(c)(i): interest payments can only be deducted were connected to money borrowed for earning income from business/property and/or for acquiriing property which will gain/produce income from itself/from being used in business (*Stewart*)
- ☐ 4. s. 248(1): "business" is defined in case law as an *organized activity* that is carried on *in the pursuit of profit*
- ☐ 5. profit has been defined by courts as net amount between total receipts & expenses, according to GAAP rules
- ☐ 6. organized activity:
  - ☐ a) was there some level of skill/organization involved in earning the income that takes activity beyond being a "habit" (gambling cases)
  - ☐ b) was there substantial effort devored to the activity to make it qualify as a business even though it would normally be seen as a habit
  - ☐ *c) Graham (1925 TCC)*
    - ☐ (1) betting horses in large and substantial scale, and making living from doing so is not considered a profit or gain due to irrational nature of the underlying activity
    - ☐ (2) there is no tax on a habit, gambling considered a habit
    - ☐ (3) note: future gambling cases will consider organization of taxpayer and efforts devoted to gambling to determine if it was business
    - ☐ *(4) Walker:* facts of case, involved in racing for 10+ years, access to insider jockey info - carrying on business, winnings taxable
    - ☐ *(5) Morden*: gambling activities intense=business, but occastional gambling in other years was a hobby and not taxable
  - ☐ *d) Luprypa*
    - ☐ (1) L played pool for living, got support from family/friends - filed tax returns for 3 years with no income
    - ☐ (2) court found pool playing was a busienss: he played regularly M-F each week, spent afternoons practicing his skills, won most of the time about $200 daily, was calculated& disciplined, only played drunk players to

minimize risks, didn't drink himself while playing, was primary source of income which he relied on

- ☐ *e) LeBlanc*
  - ☐ (1) won large sums in sports lotteries using computer system which created lots of risk - only won 5% of time, but winnings were substantial
  - ☐ (2) this betting not organized activity: betting on games of pure chance, given odds against winning no evidence to show taxpayers had system to win - lacks badge of trade
  - ☐ (3) taxpayers compulsive gamblers - winnings were non-taxable gains
- ☐ 7. pursuit of profit:
  - ☐ a) old test: reasonable expectation of profit (REOP) rejected by court in *Stewart*, because it equates expecting profit with source of income
  - ☐ b) now there is a 2-stage test for purposes of s. 3(a) & s. 9:
    - ☐ (1) is there a source? is the activity in the pursuit of profit, or is it a personal endeavor?
      - ☐ i) ie is it done for pleasure only, or clearly commercial?
    - ☐ (2) categorize the source:
      - ☐ i) where activity could be classified as personal, is it being carried on in a sufficiently commercial manner to constitute a source of income
  - ☐ c) 2-stage test evaluates the nature of the activity, not the taxpayer's business accumen
  - ☐ d) the existance of aloss alone is not determinative of whether business exists
  - ☐ *e) Stewart (2002 SCC)*
    - ☐ (1) S was real estate investor, purchased 4 condos with intent of renting them out - mortgaged them at high interest rate which meant for first 10 years or so there would be a loss on the condos
    - ☐ (2) minister denied interest deductions stating there was no REOP and therefore no source of income for purpose of s. 9
    - ☐ (3) REOP is *sufficient* for something being a soruce of income, but REOP is not a *requirement*f or something to be a source of income
      - ☐ i) ex.: if you have REOP there is probably a business, but still could have business without REOP
    - ☐ (4) better approach is to decide if there is a source of income based on act
      - ☐ i) is activity comercial, or a personal endeavor?
      - ☐ ii) if activity can be seen as personal endeaor, is ti carried out in sufficiently commercial manner to be considered a source?

- ☐ (5) S was engaged in property rental activities, to persons at arms length - property rentals lack a personal nature, activity clearly commercial activity and constitutes a source of income
- ☐ (6) what if properties bought to realise capital gain later on, rather than to earn rental income? (interest not deductible where purpose is cg)
  - ☐ i) the tax motivation, nor the intent to eventually sell property and realise cg, does not preclude the taxpayer from also having a purpose of earning income (even if purpose not realised)

- ☐ **B. adventure or concern in the nature of trade (ANT)**
  - ☐ 1. ANT deemed to be part of definition of "business" for tax purposes
  - ☐ 2. most litigated area - is money gained/lost due to business or from capital
  - ☐ 3. business: organized activity
  - ☐ 4. capital: gains/losses from buying/selling property (presumably for profit)
  - ☐ 5. real estate investments classic ANT - where people buy and flip houses for living, should gains be income, or capital gains?
  - ☐ 6. characterizing as ANT or capital gain: (*Taylor*)
    - ☐ a) did person deal with property purchased in same way as a dealer would
    - ☐ b) does the nature and quality of subject matter of transaction exclude the possibility that the sale was the realization of an investment or could have been disposed of otherwise than as a trade transaction
  - ☐ 7. purchase/sale of corporate shares presumed to be capital transaction, not ANT (*Irrigation Industries)*
  - ☐ 8. Interpretation Bulletin IT-459 (text pages 547-550)
    - ☐ a) given more weight than other bulletin's - SCC has said it is convenient summary of the law
    - ☐ b) bulletin on page 548 basically lays out test from *Taylor*
  - ☐ *9. Taylor*
    - ☐ a) T worked for co that needed supply of lead - T purchased himself on futures market, then sold to company and and made a profit
    - ☐ b) question was whether the transaction was ANT and therefore taxable as income form business, or whether it was disposal of capital (and cg)
    - ☐ c) the purchase of 1500 tons of lead was ANT:
      - ☐ (1) bold adventrue taken by T to come up with idea
      - ☐ (2) took 22 truck loads to deliver all the lead
      - ☐ (3) commodities such as lead generally known not to generate profit themselves, therefore excluded from understanding of captial

- ☐ (4) taxpayer bought lead with purpose of selling, rather than earning income from lead itself
- ☐ (5) lack of motivation to make profit when selling to company doesn't matter, because he did make a profit

- ☐ *10. Regal Heights*
  - ☐ a) taxpayer formed pship to purchase piece of land for a shopping centre
  - ☐ b) plan doesn't work out, taxpayer sells land in 3 lots, making profit which pship claims were capital gains - minister reassessed gains as income from business
  - ☐ c) evidence showed there was intent to create shopping centre - had list of potential tenants, working to get land rezoned for commercial use, had sketches of shopping centre - evidence shows ANT
  - ☐ d) the fact that the initial purpose for buying the property failed does not recategorize the subsequent disposal of the property as capital gains or income from property
  - ☐ e) where there is an element of speculation that land will increase in value, the assessment by CRA wil be that there is secondary intention to sell at a a profit - ANT
- ☐ *11. Irrigation Industries*
  - ☐ a) II incorporated to operate alfalfa mill, which was never carried out
  - ☐ b) years later, II purchased shares in mining co using a line of credit from the bank
  - ☐ c) then sold some of shares for a gain 3 weeks later to pay back bank, and sold the rest later - is sale ANT or disposal of capital property?
  - ☐ d) applies ANT test from *Taylor*
    - ☐ (1) did person deal with property purchased in same way as a dealer would
      - ☐ i) only operation was purchase and sale of shares from treasury - not the sort fo trading normally done by someine in securities tradign business - purchase was not an underwriting, nor a participation in underwriting process
    - ☐ (2) does the nature and quality of subject matter of transaction exclude the possibility that the sale was the realization of an investment or could have been disposed of otherwise than as a trade transaction
      - ☐ i) nature of property is shares - no one reported case where one isolated purchase and sale of shares, by person not engaged in business of trading in securitie, has been claimed to be ANT
      - ☐ ii) purchase of shares is, in and of itself, an investment

- ☐ e) legacy of this case: presumption that purchase and sale of shares is capital transaction, not ANT
- ☐ f) Martha's comments: when you put all the facts together it is clear this is ANT - likely shareholders of II got inside info about the mining co and were told if they buy the shares through the corp they will have no personal liability for the loan

- ☐ *12. Arcorp Investments*
  - ☐ a) AI was investment & mgmt company, on return climed monies earning on disposition of securities as capital gains & was reassessed
  - ☐ b) from *Irrigation Industries*: presumption that sale of securities is capital gain unless taxpayer is in business of buying/selling securities
  - ☐ c) securities of AI were of substantial number, mostly in private placements of speculative penny stocks, directing mind of AI was H who was also employed by securities brokerage firm who had underwritten/made public some of securities AI invested in, securities transactions were frequent, stock not held for any length of time, transactions in one company often included buys & sells within one month
  - ☐ d) H said intent was to hold securities, but then sold them because of unexpected prsonal expenses that came up (divorce, bought house)
  - ☐ e) profits are ANT: transactions carried out in same way as a securities trading business would carry out the transactions, and there was no intention to hold the securities long term
  - ☐ f) general rule: you can change your investmetn without engaging in ANT

- ☐ **C. comparison of carrying on business to earning income from property and realisation of capital gains**
  - ☐ 1. income from business vs. from employment
    - ☐ a) important because of scope of deductions allowed by taxpayer
    - ☐ *b) Weibe Door* test
  - ☐ 2. income from business vs. capital gains
    - ☐ a) when taxpayer engaged in business of buying/selling properties, profit of sale of property is income from business
    - ☐ b) when taxpayer buys property, then eventually sells it, profit of sale is a capital gain
    - ☐ c) when transaction results in loss, taxpayer will argue it was loss from busines, rather than capital loss, because of wider scope of losses from busines than capital losses
  - ☐ 3. income from business vs. income from property

- ☐ a) context is important here
- ☐ b) income from property generally seen as production of revenue from the property itself without the active and busienss like intervenion of it's owner or someone on the owner's behalf (*Hollinger*)
- ☐ *c) Walsh & Micay*
  - ☐ (1) taxpayer lawyers had interest in rental property
  - ☐ (2) provided ancillary services to tenants like heating, appliances, janitorial services to common areas
  - ☐ (3) such services that are expected by renters as part of renting that are related to upkeep of property itself will not recharacterize income from proeprty as income from business
  - ☐ (4) where a corp is in business of renting properties, rental revenue will be seen as income from a business

• ☐ VII. income from property

• ☐ A. concept of property & liability to tax

- ☐ 1. s. 248(1) property includes rights of any kind (includes shares), money, generally anything of value including contingent rights
- ☐ 2. s. 9(3): income from property does not includes capital gains from sale of the property, and loss from property does not include capital losses from sale
- ☐ 3. income from property generally derived from ownership of property
- ☐ 4. teh same analysis (*Stewart*) regarding source of incoem and REOP applies to property income as well as business income

• ☐ B. interest income:

- ☐ 1. interest is compensation for use of money belonging to another - must be referable to a principal amount & must accrue daily
- ☐ 2. interest accrues to debt obligation (more than just loans)
- ☐ 3. late payment charges equivalent to interest (even though no actual money is extended - value of credit equivalent to extending money)
- ☐ 4. blended payment/capitalized interest
  - ☐ a) defined: where taxpayer receives payment under a K that includes both repayment of capital plus interest - per s. 16(1) taxpayer must separate and claim the interest portion of the payment
  - ☐ b) whether or not payment is blended is a question of fact
- ☐ 5. s. 16(1): where payments are made overtime, part of these payments will be deemed to be interest, regardless of the form or arrangement expressed in the K

- ☐ 6. timing of interest inclusions:
  - ☐ a) s. 12(1)(c): interest is included in income when it is received or receivable, depending on method regularly followed by taxpayer in computing profit (corporations-accrual/receivable, individuals-cash/received)
  - ☐ b) s. 12(3): modified s. 12(1)(c) to require certain pships/corps/trusts to include in income all interest accrued during the year, with interest accruing daily
  - ☐ c) s. 12(4): individual who holds debt obligation is to include in income for a tax yaer all interest accrued to the anniversary date
  - ☐ d) s. 12(11): interest has to be reported at anniversary date of K (anniversary date=one year after obligation issued, plus every year thereafter, plus date of dispositin of obligation) - until debt obligation is 1 year old there is no obligation to report interest
- ☐ *7. Groulx*
  - ☐ a) taxpayer sold property for $395k - in compensation for the higher price (purchaser offered $350k) taxpayer agreed to forego interest
  - ☐ b) part paid up front, balance paid in installments over 7 years
  - ☐ c) interest only to be paid in the event of a default
  - ☐ d) relevant facts:taxpayer had suggested foregoing interest for a higher price, fmv value was lower the price G received
  - ☐ e) taxpayer deemed to have received part of each installment as interest
- ☐ **C. rents and royalties**
  - ☐ 1. s. 12(1)(g): amounts received dependant on the use or production from property are rents/royalties
  - ☐ 2. rent: fixed payment for use of property for given period of time after which right to use property expires - generally paid in respect of real/tangible prop
  - ☐ 3. royalties: include mineral royalties and payments for use of intangible proeprty (like copyrights, patents, trademarks)
  - ☐ 4. distinguish from sale: a sale transfers all legal rights to the property - rent/ royalties transfer something less than all of the legal rights to the property (the something less transfer is a lease/license, and money is royalty/rent)
  - ☐ 5. note: where non-resident licenses patent to Ca co, the Ca co must withhold and remit 25% of payment to CRA - recall s. 212 taxation of non-residents
  - ☐ *6. Spooner*
    - ☐ a) S owned land in Alberta - sold 20 acres to Oilco for $5k case, 25000 share and 10% of oil extracted - she then accepted lump sum payment in lieu of the oil

- ☐ b) minister reassessed taxpayer - sought to tax her for payment received in lieu of oil
- ☐ c) court found she has sold property and realised CG
- ☐ d) this case resulted in current wording of s. 12(1)(g)
- ☐ 7. payments from computer software
- ☐ a) computer software falls in category of copyrights & is a property right
- ☐ b) payment for standard software will be considered as a purchase
- ☐ c) payment for custom software will be considered royalty payment

- ☐ **D. dividends**
- ☐ 1. case law definition: any pro rata distribution from corp to shareholders, unless the distribution is made upon liquidation of corp or on an authorized reduction of corp capital
- ☐ 2. dividends are included in income when received, not when receivable
- ☐ 3. s. 12(1)(j) & (k): dividends from resident and foreign corporation are to be included in income
- ☐ a) s. 83(2) allows dividends from certain private corps, paid from tax free income (ex. non taxable portion of capital gain) to be exempt from tax
- ☐ 4. s. 84 (not in selected provisions): dividend is deemed to be made where a corporation increases paid-up capital in respect of a class of shares, distributes funds on widing up/discontinuance/reorganization of property, redeems or repurchases shares
- ☐ 5. dividends can be made in cash, in kind or with new stock
- ☐ 6. due to double taxation on dividends, act provides shareholders with divident credits: s. 82(1)(b) & 121 (not in selected provisions) allow for tax credits in calculating tax payable, s. 112 allows corporate shareholders to receive dividends on tax free basis

☐ VIII. deductions in computing income from business/property

- ☐ **A. structure of ITA:**
- ☐ 1. s. 9(1): income from busines or property is the "property therin for the year" - profit determined according to GAAP unles overrided by act or case law in specific situations
- ☐ 2. s. 18 puts limitations of certain types of deductions/kinds of expenses
- ☐ a) s. 18(1) restricts deductions that might otherwise be claimed under s. 9(1)
- ☐ b) s. 18(1)(a): deductions must be made for purpose of producing income
- ☐ c) s. 18(1)(b): deductions may not be made for capital outlays
- ☐ d) s. 18(1)(l): restricts deduction for specific "entertaiment" outlays

- ☐ e) s. 18(1)(p): restricts deductions in relation to personal services businesses
- ☐ f) s. 18(1)(r): restricts deductions for automobile expenses
- ☐ g) s. 18(1)(t): amounts payable under act are not deductible (other than tax)
- ☐ h) s. 18(12): restricts amount and provides limitations on when deductions can be made in relation to workspace in a home being used for business
- ☐ 3. s. 20 provides for specific allowable deductions, nothwithstanding s. 18 restrictions
  - ☐ a) s. 20(1)(a)&(b) allow for capital outlay deductions based on 4% each year
  - ☐ b) s. 20(1)(c) allows interest deductions (notwithstanding s. 18(1)(b))
- ☐ 4. s. 67 general limitation on deductions: they must be reasonable

- ☐ **B. approach to deductions: income earning purpose test**
  - ☐ 1. s. 18(1)(a) restricts allowable deductions to those made for the purpose of producing income
    - ☐ a) courts have interpreted this to mean expenses/losses in curred *in the process* of earning income, rather than for the purpose of earning income
    - ☐ b) where liabilities are part of normal, forseeable risks associated with carrying on business they will be considered expenses incurred for purpose of earning busienss
    - ☐ c) while section implies that expenditures should be made for purpose of earning income, it is not a condition of deductibility that an expenditure actually does earn income (*Imperial Oil)*
  - ☐ 2. taxpayer will rely on s 9(1) as guide for deductions
  - ☐ 3. taxpayer makes deductions according to s. 9(1) of Act, and then minister will restrict according with s. 18(1)
  - ☐ 4. recurring business expenditures (salaries, office supplies) are costs of business
  - ☐ 5. courts will generally allow a deduction so long as the expense was connected in some way to the purpose and the carrying on/risks of the business
  - ☐ *6. Daley (1950)*
    - ☐ a) is payment of bar fees considered capital outlay or deductible expense?
    - ☐ b) expenditure properly deducted under GAAP (s. 9(1)) will be deductible for tax purposes, unless prohibited by the act
    - ☐ c) expenditures not deductible under GAAP are not deductible unless the act specifically provides a deduction
    - ☐ d) outlay for bar fees not deductible - one time payment, capital outlay (did not help that D tried to deduct expense over 3 years instead of all at once)
  - ☐ *7. Canderel (1998)*

- ☐ a) SCC confirms principal from *Daley* that the concept of profit in s. 9(1) is a net principal
- ☐ *8. Imperial Oil (1947)*
  - ☐ a) IO had collision at sea between IO's boat and another - paid settlement
  - ☐ b) IO's business was manufacturing, marketing and (they argued) transporting petroluem
  - ☐ c) damages expense incurred in course of and for purpose of marine operations part of business
  - ☐ d) court allowed deduction: where a loss is incidental to one's trade then the amount so paid is deductible
  - ☐ e) note: likely relevant that had IO received the damages claim to repair the ship, payment would be considered as expense, and if settlement was to repair ship would have been considered as capital - surrogatum rule
- ☐ *9. Royal Trust Co*
  - ☐ a) company required employees to join social clubs/other organizations and claimed these club fees as expenses - claimed they were essential and gave company competitive advantage
  - ☐ b) expenses would be deductible under GAAP, and therefore should be deductible under s. 9(1)
  - ☐ c) this cse led to s. 18(1)(l) which prohibits deductions for these expenses
- ☐ **C. personal or living expenses**
  - ☐ 1. generally not deductible because living expenses do not accord with GAAP (s. 9(1) requirement)
  - ☐ 2. s. 18(1)(h): expenses for personal/living expenses not deductible unless taxpayer is away from home in the course of carrying on business
  - ☐ 3. s. 18(12) allows for home office deductions where office space is principal place of business/space used for sole purpose of business
  - ☐ 4. s. 248(1) personal or living expenses: gives list of things that fit within definition, list is not exhaustive
  - ☐ 5. s. 67.1: any allowable entertainment expense can only be deducted at 50% of the reasonable amount
  - ☐ 6. tax act provides specific deductions for some personal expenses:
  - ☐ 7. s. 63 allows deduction for childcare expenses with some restrictions
  - ☐ 8. s. 62 allows deduction for moving expenses for eligible relocations
    - ☐ a) s. 248(1) elibigle relocation: relocations for employment, business, or school where taxpayer has moved 40km closer to work/school

- ☐ b) test for moving expenses: business or empoyment has been commenced & taxpay is moving by reason thereof (*Bayette)*
- ☐ c) maximum deduction for expenses is the amount equivalent to the total amount of income for the year from the new employment - any unclaimed amount can be rolled over to next year
- ☐ d) note: due to operation of s. 56(3) & 56(1)(n), where deductions for moving expenses for students can match taxable scholarship amounts, students cannot deduct moving expenses because scholarships no longer taxable

- ☐ 9. see also IT-470R para's 33 & 34
- ☐ *10. Benton*:
  - ☐ a) B carried on farm by himself, hired housekeeper to do milking, housekeeping, and to have company incase he fell ill
  - ☐ b) deducted payments to housekeeper as an expense of farm operations - deductions denied on basis of exclusion per s. 18(1)(h)
  - ☐ c) part of the deduction, for work housekeeper did on farm, was allowed
  - ☐ d) case shows difficulties that arise when one's personal needs are intertwined with the business
    - ☐ (1) likely, had B hired a farm hand to do harm work and he cooked his own meals, he could have deducted full amount paid to farm hand
- ☐ *11. Symes (SCC 1994)*
  - ☐ a) S partner in TO firm, has full time nanny to care for kids, caims a business deduction for child care expense - deductions denied as being personal rather than business expenses
  - ☐ b) court split along genders for this decision
  - ☐ c) majority denied deduction: child care may be necessary to allow her to work, but need child care exists regardless of S's business activity
  - ☐ d) court notes strong policy reasons for allowing child care deductions, but does not make decision based on this, because s. 63 provides for child care deductions and is a specific provision that limits use of the general provision of s. 9(1)
  - ☐ e) possible policy for avoiding issue
    - ☐ (1) was discrimination argument, didn't want to find s. 63 limitation was discriminatory because if removed this would create other problems and leave no deduction at all for employees
    - ☐ (2) potential to allow a business person to deduct more (under 9(1)) than employee (63) would create hardship for employees

- ☐ (3) allowing full deductibility of childcare for business people allows more wealthy people to deduct much more than low income person - violates tax principals of equality & neutrality

- ☐ *12. Scott*
  - ☐ a) S is on-foot courier, in or to make service work/be profitable he had to deliver as many packages as fast as possible
  - ☐ b) due to high level of activity he consumed additional food & water, and sought to deduct these additional expenses
  - ☐ c) makes analogy to fuel that a competitor delivery person in a truck would use - S's fuel is the additional food/water he needs each day above & beyond what the average person would consume
  - ☐ d) where there are competitors providing same services and deducting expenses for traditional fuel, S should be allowed to made deductions for additional food & water consumption
- ☐ *13. Ross Henry*
  - ☐ a) RH works at hospital (DR) and has office downtown which he travels to for related busines, and also travelled home several times a day
  - ☐ b) expenses for trips between office & hospital allowed, but not for trips between hospital and home
  - ☐ c) everybody has to go to their place work whether they are an employee or business person - travel between home & office not part of carrying on business
- ☐ *14. Bayette:*
  - ☐ a) B commutes 110km round trip to work each day, did this for 5 years, then moved closer to place of employment and claimed deduction
  - ☐ b) test for moving expenses: business or empoyment has been commenced & taxpay is moving by reason thereof
  - ☐ c) test is satisfied - does not matter that B had been with company for 5 years before moving
  - ☐ d) integrate this case with *Ransom* and *Phillips:*
    - ☐ (1) if moving for work and employer pays for all/part of move this is not considered benefit of employment, not taxable, but then moving expenses cannot be deducted (*Ransom*)
    - ☐ (2) where employer provides allowance for moving, this will be considered a benefit of employment, and taxable, but then moving expenses can be deducted (*Phillips*)

- ☐ **D. deduction of interest expense**

  for more detail see handout on this

  - ☐ 1. s. 20(1)(c): interest deductible where legal obligation to pay interest on money borrowed for purpose of earning income from business/property or money borrowed to purchase assets used to earn busines/property income
  - ☐ 2. courts take strict approach to this section/deduction, because it is an exception to the general restriction on capital deduction in s. 18(1)(b)
  - ☐ 3. s. 20(1)(c) has 4 parts: (*Shell Canada* - confirmed in *Singleton* below*)*
    - ☐ a) year of deduction must correspond to year interest is paid/payable
    - ☐ b) amount is being paid pursuant to legal obligation to pay interest
    - ☐ c) borrowed funds used for purpose of earning non-exempt income from business or property (eligible use)
    - ☐ d) amount must be reasonable, as assessed by refering to first 3 requirements
  - ☐ 4. rules for deducting interest/determining eligible uses: (*Bronfman)*
    - ☐ a) it must be an eligible use of the money
    - ☐ b) the current use of the money is what is relevant
    - ☐ c) deductions only allowed for the direct use of the funds, not some indirect purpose
  - ☐ 5. test from *Ludco:* test to determine the purpose of interest for deductibility under s. 20(1)(c)(i) is whether, in light of all circumstances, the taxpayer had a reasonable expectation of income at the time the investment was made
  - ☐ 6. where property/busienss the loan was used to finance no longer exists, related interest expense no longer deductible
  - ☐ 7. ability to deduct on a loan continues to long as the taxpayer reinvests the proceeds into an elibigle use of property and the replacement property can be traced to entire amount of loan (*Bronfman)*
  - ☐ *8. Bronfman Trust (1987 SCC)*
    - ☐ a) leading case on requirement that borrowed funds be used for income earning purpose, and addressing direct vs. indirect use of borrowed funds
    - ☐ b) trustees made payment to B from the trust - instead of selling assets to make payment, borrowed to finance allocations
    - ☐ c) trust then tried to deduct interest expenses on the loan - this is rejected
    - ☐ d) loan was not used for eligible business/property use it was used to make trust allocation
    - ☐ e) the current use of the funds is important - trust did not apply funds to an eligible use

- ☐ f) trust argued loan was taken to avoid selling investments and was therefore indirectly used to finance valid business/property uses - indirect use of funds not sufficient to get deduction
- ☐ g) while trust could have made allocations from selling assets, and then used loan to repurchase the same assets, and then claimed a deduction, this doesn't matter - the court must consider what the taxpayer actually did, rather than what they might have done

- ☐ *9. Attaie*
  - ☐ a) A moved to Canada and bought home with borrowed funds - house originally rented out and A deducted the interest expense
  - ☐ b) A then moves into house, shortly after received $200k, and rather than pay off mortgage invested it in term deposits
  - ☐ c) then declared interest on term deposit and wanted to deduct interest from mortgage to offset this
  - ☐ d) claim denied - interest was being paid due to mortgage on house which was his residence (ineligible use) - indirect use of mortgage doesn't matter
- ☐ *10. Singleton (2002 SCC)*
  - ☐ a) S partner in firm, withdrew $300k from partner equity account to buy a house, and then got a loan for $300k to refinance his partnership account
  - ☐ b) claimed the interest deduction under s. 20(1)(c)(i)
  - ☐ c) minister rejected deduction: the loan was used to buy the house and the true economic purpose (rather than specifics of transactions) was relevant
  - ☐ d) court: absent provisions in act to the contrary, or finding a sham, taxpayers legal relationships must be respected and economic realities cannot be used to recharacterize transaction/relationship as something else
  - ☐ e) where there is a dirct link between the borrowed money and eligible use, the interest is deductible, regardless of some ineligible indirect use
  - ☐ f) taxpayers are entitled to structure affairs in manner that will reduce taxes
  - ☐ g) no evidence transactions here were a sham (although they were complicated)
  - ☐ h) borrowed money was used for eligible use of refinancing S's capital account, which is an eligible use within meaning of s. 20(1)(c)(i)
- ☐ *11. Ludco (2001 SCC)*
  - ☐ a) taxpayers borrowed money to purchase shares in 2 companies resident in tax hvens - these companies invested in CA & US government debt obligations which were exempt from withholding tax and earning interest on these debt obligations

- ☐ b) interest income of corps not subject ot CA tax, dividends were paid out & taxpayers used interest expenses to offset dividends
- ☐ c) tax act then changed to eliminate tax benefits under this scheme and taxpayers sold shares & realized $9million CG
- ☐ d) minister reassessed and denied interest deductions claiming the borrowed money was for purpose of realising capital gain rather than earning income
- ☐ e) direct use of money was to buy shares, but was purpose to earn income?
- ☐ f) s. 20(1)(c)(i) can apply where taxpayer uses borrowed money to make investment for more than one purpose, provided one of the purposes is making income - ancillary purpose of income is sufficient
- ☐ g) while taxpayers did not have primary purpose of earning income, they did have reasonable expectation of earning income from nature of investment, company's investment strategy and dividend policy
- ☐ h) rate of return from shares was in line with comparable companies
- ☐ i) interest amoung being paid was reasonable - consistent with normal rates of interest

- ☐ **E. public policy consideration/reasons for limiting deductions**
  - ☐ 1. expenses of carrying on an illegal business
    - ☐ a) the income from an illegal business, if it can be found, is taxable, and as a result the expenses from that business are also deductible
    - ☐ *b)* *Eldridge*: court allows for deductions of expenses that the taxpayer can prove were incurred in the course of earning income
  - ☐ 2. bribery of certain officials - see handout
    - ☐ a) s. 67.5 prohibits deductions of expenses or outlays for the purpose of doing anything that is an offense under certain sections of the *Corruption of Foreigh Public Officials Act* or the *Criminal Code*
    - ☐ b) basically prohibits deductions of illegal payments
    - ☐ c) purpose was to prevent companies from industrialized and developed countries from going into under-developed countries and bribing the officials in that country, which they were not able to do in their own country
    - ☐ d) this was then extended to prohibit deductions for bribes made to officials in Canada - see handout
  - ☐ 3. fines & penalities
    - ☐ a) s. 67.6 prohibits deductions for fines or penalties (other than a prescribed fine or penalty) imposed under the law

- ☐ b) shouldn't be able to deduct fines and penalties, because it frustrates the purpose of the fine/penalty
  - ☐ (1) reduces the amount of the fine by the amount of the taxpayers marginal (personal or corporate) rate

☐ IX. computation & timing

☐ A. capital vs. current expenditure

- ☐ 1. capital outlaws not deductible (s. 18(1)(b)) even though they are expenses made/incurred for the purpose of gaining income from a business/property (s. 18(1)(a))
- ☐ 2. basic test: does expense constitute an enduring benefit, or does it occur on a repeated basis
- ☐ 3. repair of tangible assets
  - ☐ a) repairs of equipment generally deductible as current expense so long as they are not considered an upgrade that changes the nature of the asset
  - ☐ b) where repairs become larger and repair parts bigger, with greater cost and capable of independent use, expenditure migh be capital outlay
  - ☐ c) cause of/need for repairs (ie vandalism or wear/tear) not important
  - ☐ d) test of improvement not definitive, because a repair by definition will improve the asset (*Gold Bar*)
- ☐ 4. way to address on exam:
  - ☐ a) cases contradict each other as to what is capital vs. current expense
  - ☐ b) identify arguments for why it would be capital and/or expense
  - ☐ c) consider if it is an improvement, or if it is replacing something due to wear and tear/damage, vandalism/shoddy work/latent defect
- ☐ *5. British Insulated*
  - ☐ a) BI made large lump sum payment to pension for employees, and then deducted the sum as a current expense
  - ☐ b) where expenditure is made to bring into existance an asset there is a good reason (unless special circumstances to the contrary) to treat expenditure as property attributable to capital instead of income
  - ☐ c) payment for pension fund was to form nucleus of fund, which would provide pensions for it's employees over time
- ☐ *6. Canada Steamship Lines*
  - ☐ a) CSL made expenditures on it's ships: replaced floors and walls of cargo holds that were worn through wear & tear, and replaced boilers in one of the ships

- ☐ b) replace of floors: deductible as expense given that it was replacement rather than upgrade
  - ☐ (1) replacement of work or damaged board that is an *integral part of an asset* used in business is a repair and the cost of the repairs are recurring business expenses that can be deducted
  - ☐ (2) costs of repairs do not cease to become repairs and current expenditures simply because of the size or expense related to the repair
- ☐ c) the boilers were considered to be capital assets and not deductible
  - ☐ (1) things used to earn income (building, machinery, ships) are capital assets and the purchase of these are capital outlays, and money spent to upgrade an asset (ie make it something different than it was before) is also a capital outlay
  - ☐ (2) in case of plant, each piece of machinery is a capital asset - boiler could be considered integral part of ship, but could also be seen as a separate pirce of machinery separate & distinct from ship
  - ☐ (3) court felt bound by previous case to find boiler to be a capital asset

- ☐ *7. Shabro Investments (1979)*
  - ☐ a) SI replaced substantial part of first floor in 2-storey building that was damaged as a result of it being build upon garbage with no supports
  - ☐ b) damaged floor could not be repaired, and in order to ensure next floor didn't break, pilings had to be driven into the ground first for support
  - ☐ c) claimed cost of replacing floor as an expense - minister reassessed saying the replacement was a capital outlay
  - ☐ d) no single test to distinguish improvement from repair
    - ☐ (1) sinking of piles capital outlay, because they were not there before
    - ☐ (2) new floor, despite replacing old floor, canot be considered separate from steel piles underneath, so the whole things is a capital outlay
    - ☐ (3) replacement of wiring, weeping riles, pipes were allowed as expenses because they were pure replacements
  - ☐ e) when repairs are required they can be done using new technology provided the work being done is a repair and not a improvement
- ☐ *8. Gold Bar Developments (1987)*
  - ☐ a) brick veneer on building owned by GBD started losing it's bricks, inspection revealed entire wall was unsound and GBD replaced the wall with metal cladding instead of brick based on advice of prof. engineers
  - ☐ b) replacement of wall was deducted as an expense and minister reassessed
  - ☐ c) what was purpose of outlay?

- ☐ (1) was it to improve, made different or better the capital asset?
- ☐ (2) was the outlay elective? a choice or option is not present in the genuine repair crisis
- ☐ d) evidence showed wall needed to be replaced - nothing in repair attemptedt o change the structure of the building, all that GBD dd was replace a deteriorating brick condition
- ☐ e) once a repair is forced upon a taxpayer, they may use new advances in technology and building techniques to carry out the work

- ☐ **B. amounts receivable**
  - ☐ 1. s. 12(1)(b): amounts deemed receivale on the day the bill is sent, or on the day the invoice should have been sent
  - ☐ 2. s. 12(2): s. 12(1)(b) is for greater certainty only, doesnt' necessarily exclude amounts not specifically referred to under the section
  - ☐ 3. test for whether amounts receivable has the quality of income:
    - ☐ a) is his right ot it absolute, and under no restriction contractual or otherwise, as to it's disposition, use or enjoyment
  - ☐ *4. J Colford Contracting*
    - ☐ a) JCC is subcontractor who is in processsing of finishing job for contractor
    - ☐ b) 10-15% of payment withheld until architects certificate issued (condition precedent) - after this happens, the amount becomes due and JCC entitled to receive within 35 days
      - ☐ (1) all of this happened over 2 year period
    - ☐ c) JCC arguing amount was receivable in 54, not 53
    - ☐ d) according to the K, the withheld amount comes due when architects certificate released, and becomes amount receivable within next 35 days
  - ☐ *5. Benaby Realties*
    - ☐ a) crown expropriated land from BR during one tax year, and payment was made in following tax year
    - ☐ b) only amounts received/receivable are to be included in income - amount became receivable when expropriated which would put it into 54, but crown said not receivable or received until 55
    - ☐ c) the amount of the expropriation payment was not determined until 55, so amount was receivable in 55 - can't have an amount receivable until the amount is known
- ☐ **C. amounts payable**
  - ☐ *1. J.L. Guay Ltee*

- ☐ a) taxpayer was contracter, and withheld 10% of the amount due to subcontractors until the work was completed and certificate of completion was issued
- ☐ b) deducted $227K as holdbacks as an expense, and was reassessed
- ☐ c) minister said that the contractor can't deduct these amounts that he is holding back from his sub-contractors, because the condition precedent to make him liable to his sub-contractors (certificate not issued yet)
- ☐ d) where there is substandard work, the subcontractor will still receive payment, but not the full amount
- ☐ e) because the architect has not yet certified that the work is completed and acceptable, the amount payable to the subcontractors is still contingent
  - ☐ (1) the amount due is not known because it is now known if the certificate will be issued
  - ☐ (2) the date which the amount becomes payable is also unknown
  - ☐ (3) the subcontractors at this point do not have a corresponding receivable before the certificate is given
- ☐ f) can't deduct contingent liabilities

☐ X. capital gains

☐ A. intro

- ☐ 1. s. 3(b): income from tax year includes net of taxable capital gains less allowable capital losses
- ☐ 2. s. 3(c): income in sub (a) & (b) is added together, and then deductions based on sub (e) are claimed (sub (e) deductions including moving expenses, child care and other expenses that are not deducted in computing income under subs a or b
- ☐ 3. s. 9(3): income/loss from a source that is not property does not include capital gains or losses from the disposition of that property - clarifies how s. 3 (a) & (b) operate/separate capital gains and income from sources
- ☐ 4. ss. 39(1)(a) & (b) - definitions of capital gains and losses - defined as gains/ losses from the dispositin of any property
  - ☐ a) s. 39(1)(b)(i) cannot have capital loss on depreciable property
- ☐ 5. calculation of capital gain/loss: s. 40(1)(a) & (b)
  - ☐ a) CG= proceeds of disposition - acb - outlays connected with disposition
- ☐ 6. acb: includes the cost of acquiring the capital property, including taxes fees and other fees incurred to complete acquisition (IT-285R2 para 8-9)
- ☐ 7. ss. 38(a)&(b): taxable capital gain and allowable capital loss

- ☐ a) capital gains/losses are included in income at 50% of actual loss/gain
- ☐ 8. s. 38(c) capital losses can only be used to offset capital gains - can't be used to reduce other sources of income
- ☐ 9. if capital loss can't be used in full one year, it can be carried forward to another year, or carried back 3 years, to offset other capital gains

- ☐ **B. policy reasons for preferential treatment of capital gains**
  - ☐ 1. because only 1/2 of gain included in income, cg's have marginal rate of half of other types of income
  - ☐ 2. until 1971 capital gains not taxable & capital losses not deductible
  - ☐ 3. taxing capital gains results in greater equity
    - ☐ a) horizontal equity - earning $1k on stock market treated more closely to earning $1k from employment
    - ☐ b) vertical equity: rich investors earning large part of income from stock market made to assume more appropriate burden of taxation as compared to poorer taxpayer earning livelihood through employment
    - ☐ c) capital gains tend to favour primarily higher wealth taxpayers
  - ☐ 4. taxing capital gains makes tax system more neutral
    - ☐ a) reduces incentives for taxpayers to structure tranactions to look like capital gains than income-producing transactions
    - ☐ b) taxes should distory economic choices as little as possible so that money is put where the best return is
  - ☐ 5. taxing capital gains makes tax system more certain
    - ☐ a) remember that distinction between income from property vs. capital gains one of most litigated areas of tax law (*Irrigation Industries, Regal Heights)*
    - ☐ b) if cg's taxed at full rate, distinction between cg's and income would not be significnt, and would render obsolute guidelines created to determine what is in taxpayer's mind to decide if something is cg or income
  - ☐ 6. benefits of capital gains:
    - ☐ a) lower effective rate of tax
    - ☐ b) not taxed until actually realised

- ☐ **C. definitions**
  - ☐ 1. property s. 248(1): real and personal, tangible/intangible, etc
  - ☐ 2. capital property s. 54: includes depreciable property, and property that when disposed of would give the taxpayer a capital gain or loss

- ☐ *a)* *Regal Heights*: land can be considered not capital property for tax purposes where was bought/sold in way consistent with ANT rather than view of disposing of for a profit later on
- ☐ *b)* *Irrigation Industries:* presumption that shares are capital property
- ☐ *c)* *Arcorp*: receipts upon disposal of property will be classified as capital or income from property based on the nature of the transaction(s) being made and the taxpayer's intentions for the property
- ☐ 3. s. 54: cost, capital cost, adjusted cost bast
  - ☐ a) cost/capital cost not defined in ITA
  - ☐ b) acb: amount laid out/given in exchange for acquisition of property, including commissions/other expenses related to acquiring the property
- ☐ 4. s. 43(1): adusted cost base of part of property
  - ☐ a) where part of capital property sold, acb will be based on value of property being sold in proportion to value of entire property
- ☐ 5. s. 47(1)(a) & (b): acb of identical properties
  - ☐ a) identical properties: property that is identical in every way - assume this only applies to shares/trust units of the same class - real property, even condo air space, is never identical
  - ☐ b) where taxpayer acquires identical property at different acb's, the acb's are averaged
  - ☐ c) for exam: do not need to calculate actual cost base, just explain that there are identical properties and acb is averaged based on varying prices
- ☐ 6. s. 248(1) definition of disposition: not dependent on a desire to dispose fo proeprty, nor of receiving proceeds from a disposition (ex. if property destroyed there is a disposition)
  - ☐ a) disposition does not include: transfers where there is no change in beneficial ownership, transfers of property for purpose of securing loan...
- ☐ 7. s. 54 proceeds of disposition occurs wherever compensation is given fr a disposition, including payment under an insurance policy for loss of property (ex house burns down) and also for damages in relation to claims of a loss of value of property
- ☐ *8.* *Compagnie Immobiliere BCN litee (SCC)*
  - ☐ a) definition of disposition given very broad interpretation
  - ☐ b) here, transaction where an interest in real property disappeared and merged with someone else's interest, qustion was if disposition occurred
  - ☐ c) disposition will likely occur whenever someone loses control over, or right to, an asset for whatever reason

- ☐ d) definitions of "dispositon of property" and "proceeds of disposition" are not exhaustive - expressions bear normal and statutory meaning

- ☐ **D. deemed disposition and deemed proceeds**
  - ☐ 1. s. 128.1(4), (1): on ceasing to be, or on becoming, a resident of Canada
    - ☐ a) immigration: moment before becoming resident deemed to have disposed of all property (except Canadian property), and then to have reacquired the property immediately after becoming Canadian resident, for fmv - this deemed acquisition value is taxpayer's new acb
    - ☐ b) emigration: moment before ceasing to be Canadian resident deemed to have disposed of all property, except for real property in Canada, for fmt, and then a moment later after ceasing to be resident deemed to reacquire property at same fmv
    - ☐ c) deemed disposition upon emigration is so Canada can tax the gain the taxpayer received from the property while resident in Canada
  - ☐ 2. s. 69(1)(b)&(c): gifts and sales below fmv to non-arms length persons
    first question is whether the person is at arms-length - needed to trigger this
    - ☐ a) where taxpayer gifts/sells property to person related/not arms length for less than fmv, proceeds of disposition are deemed to be equal to fmv
    - ☐ b) where taxpayer receives property from a person related/not arms length for less than fmv, the acb is deemed to be the price that the property was stated to be transferred at (amount below fmv)
    - ☐ c) anti-avoidance rule to prevent people from avoiding tax by transfering property to non-arms length/related persons
    - ☐ d) catch in these provisions: if property is transferred at price below fmv, transferor is deemed to have disposed of at fmv and will have to pay tax on this amount, and the transferee will be deemed an acb of only what was actually paid, which means a lower acb, and therefore the difference between these 2 amounts gets taxed twice
    - ☐ e) s. 251(1) & (2): arm's length and related persons
      - ☐ (1) related persons deemed to not deal with each other at arms length
      - ☐ (2) it is a question of fact of whether people in fact dealing at arm's length
      - ☐ (3) related persons:
        - ☐ i) individuals connected by blood, marriage, CL partnership, adoption
        - ☐ ii) a corporation and
          - ☐ (a) the sole controller of the corporation
          - ☐ (b) a gorup of related people who control the corporation

- ☐ (c) a person related to: either the sole controller of the corp, or the group of related people who control the corp
- ☐ iii) any 2 corporations if they are controlled by the same person/group of persons

- ☐ 3. s. 70(5)(a)&(b): disposition on death
  - ☐ a) sub 5(a): right before death, person is deemed to have disposed of all capital property for fmv
  - ☐ b) sub 5(b): people named in will deemed to receive willed property at fmv
- ☐ 4. deemed cost and proceeds
  - ☐ a) s. 40(2)(f): the cost and gain of lotteries are deemed to be nil
    - ☐ (1) can't deduct the cost of a lottery ticket as a capital loss, when the chance of winning is disposed of because the ticket didn't win
    - ☐ (2) conversely, there is no capital gain where the lottery ticket wins
  - ☐ b) s. 52(4): adjusted cost base of lottery winnings
    - ☐ (1) acb will be actual fair market value of property, rather than price paid for chance to win
    - ☐ (2) ex. if $100 lottery ticket is bought, and a house is won, the fair market value of the house will be the acb, not the $100 ticket

- ☐ **E. rollovers: transfer of capital property to spouse/clp *inter vivos* and on death**
  - ☐ 1. called rollover because there is no gain or loss
  - ☐ 2. s. 73(1) and (1.01): inter visos transfers by individuals
    - ☐ a) where spouse/clp or former spouses/clp's (when settling property in divorce settlement/at end of relationship) transfer property, the proceeds of disposition are deemed to be equal to the acb of the transferor
    - ☐ b) transferee is deemed to have an acb equal to acb of transferor spouse
    - ☐ c) result is that acb rolls over from one spouse to the other
    - ☐ d) where spouses sell property to each other for fmv, it is still deemed that proceeds/purchase price will be original acb, unless transferor opts out of this section - then s. 69(1)(b) applies and transferor deems to dispose of property for fmv, and transferee spouses acb is fmv
    - ☐ e) why would you opt out?
      - ☐ (1) where spouses actually transferring property at fmv
      - ☐ (2) where capital loss left over from another year and spouse can transfer to realise capital gain and use up the capital loss
      - ☐ (3) where relationship breaking down, to transfer and realise a capital gain that can be used to offset other capital losses

- ☐ 3. s. 74.2(1)(a): spousal attribution rule
  - ☐ a) upon disposition of the transferred property, this section attributes the entire amount of the actual gain back to the spouse who originally owned the proeprty
  - ☐ b) anti-avoidance rule that catches direct & indirect transfers, applies once property is disposed of, prevents spouses from transferring property to lower income spouse before selling it to 3rd party
  - ☐ c) rule applies regardless of whether s. 73(1) applies or has been opted out of
  - ☐ d) rule does not apply where spouses no longer together, where one of the spouses has died, or where transferor spouses ceases to be resident in Ca
- ☐ 4. s. 70(6) spousal rollover upon death
  - ☐ a) generally where person dies, deemed to have disposed of property at fmv
  - ☐ b) upon death of spouse, spouse is deemed to have disposed of property, and surviving spouse deemed to have acquired property, at original acb
  - ☐ c) this rule is to ensure that when one spouse dies, inheriting spouse doesn't have to pay capital gains on the gains of estate becasue it means they might not be able to support him/herself after paying taxes
  - ☐ d) taxable gains will be attributed back to dead spouse where property is transferred upon death
  - ☐ e) can elect out of this section, and have s. 70(5) apply instead, where can choose to have some property transferred at fmv and gains deemed & therefore taxable - would do this where there are losses to offset these gains
- ☐ 5. s. 111(2)(a): in year in which taxpayer dies, all capital losses not claimed in another tax year can be deducted from all sources of income, not just cg's, from the current tax year, plus previous tax year

- ☐ **F. personal use property (pup) and listed personal property (lpp)**
  - ☐ 1. s. 54 definition of pup: property used primarily for personal use or enjoyment of taxpayer or persons related to taxpayer, or where taxpayer is a trust, the beneficiaries of the trust - includes lpp
  - ☐ 2. s. 54 definition of llp: definition is exhaustive, means: prints, etchings, paintings, sculptures or other similar works of art, jewellery, rare folio, rare manuscript, or rare book, stamp, or coin
    - ☐ a) lpp usually seen as being for personal enjoyment, but also has potential to increase in value/be an investment
  - ☐ 3. s. 40(2)(g)(iii): limitations to capital losses
    - ☐ a) can't have loss on pup, unless it is lpp - reason is becasue pup deemed to lose value as individual consumes/enjoys the property

- ☐ b) exception is given for lpp because these are assets that don't on their own produce income, and are a *store of value* that can be used both for enjoyment and as an investment
- ☐ 4. s. 3(b)(i)(A): lpp gains carved out from other capital gains
- ☐ 5. s. 3(b)(B): lpp losses can only be used to offset lpp gains, not other capital gains
- ☐ 6. gains on the disposition of pup are generally taxable (even though losses not deductible) - s. 46(1) exempts pup that are bought and sold for less than $1000
  - ☐ a) how: acb will be deemed to be greater of actual acb and $1000, and fmv at disposition deemed to be greater of actual fmv and $1000
  - ☐ b) reason: simplicity and administrative efficiency
- ☐ 7. s. 46(3): where there is a disposition of the parts of a "set" of pup in separate transactions, that would normally be sold as a set and would have a value of greater than $1000 if sold as a set, the pup will be deemed to have been disposed of as a set for the greater of $1000 and the fmv of the set
- ☐ 8. s. 41(2): net gain from disposition of lpp
  - ☐ a) calculate total gains from lpp, less total losses from lpp within year
  - ☐ b) oldest losses need to be deducted first, can only be deducted once (obv.)

- ☐ **G. principal residence exemption**
  - ☐ 1. policy for this exemption
    - ☐ a) if paid cg taxes when selling house, this would inhibit transaction in housing market
    - ☐ b) could mean people less willing to move for jobs/biz opportunities
    - ☐ c) lack of cg's tax probably boosts market prices somewhat
    - ☐ d) because gains not taxable, mortgage interest payments also not taxable, and there is less incentive for people to get largest mortgage possible
  - ☐ 2. s. 40(2)(b) allows an exemption for a taxpayer's principal residence
    - ☐ a) to determine the exemption, the total capital gain is calculated, and then the exemption is based upon the amount of years which the property is designated as the principal residence during the total amount of time the property was owned
    - ☐ b) formula: A - (A x B)/C
      - ☐ (1) A=actual capital gain, proceeds less acb

- ☐ (2) B=one plus number of years property is owned, including year bought (can also include year sold, but often don't need to if the property is designated for every year sold)
- ☐ (3) C=number of tax years ending after acquisition date (want to make this number equal B to get full exemption)
- ☐ (4) note: due to s. 257, if the solution is a negative, it is deemed to be nil
- ☐ c) ex. if property is owned for 30 years, and 15 of those 30 years it was designated as the principal residence, then one half of the capital gains quality for the principal residence
- ☐ d) see problem in capital gains handout, page 10

- ☐ 3. exemption allows spouses and family unites (parents/kids under 18) to claim the exemption on one residence per year, during which the residence is owned and ordinarily inhabited by the nuclear family
- ☐ 4. s. 54 definition of principal residence has several parts
  - ☐ a) definition doesn't just consider if it was a principle residence in the year it is sold, but looks back over the years owned to see which years it qualified as a principle residence
  - ☐ b) sub (a): housing unit must have been ordinarily inhabited by family during year, meaning it must have been lived in, for at least one night probably, in an ordinary way, at some point in the year - ski cabins etc qualify, but inhabiting must be done in ordinary way (ex can't roll out sleeping bags onto the floor and say a place has been ordinarily inhabited)
  - ☐ c) sub (c): the taxpayer must designate the property to be the principle residence for the year
  - ☐ d) sub (e): only the 1/2 acre or less around house is part of princle residence, unless it can be established more land was necesary for use and enjoyment
    - ☐ (1) test: taxpayer must establish on balance of probabilities that without the area of land for which they contend constituting the sbujacent and immediately contiguous land component of their housing unit they could not practically have used and enjoyed the unit as a residence
    - ☐ (2) necessary to use and enjoyment includes driveway that is used to access house and this driveway extends the amount of land over 1/2 hectare, or where zoning does not allow for parcels of land smaller than 1/2 hectare
    - ☐ (3) use and enjoyment does not include lifestyle decisions, like having acreage to ride horses, or large garden to grow own fruit/vegetables
    - ☐ *(4)* *Stewart Estate* - page 603 text
      - ☐ i) widow sold 3 acres of land subject to condition that buyer could get subdivision approval, which he did

- ☐ ii) could not designate more than 1/2 hectare as principal residence - at time of sale because of zoning approval the 3 acres was no longer necessary to her use and enoyment
- ☐ iii) argument she needed land for growing food (based on *Carlisle* rejected) - personal lifestyle choices not sufficient for land to be deemed necessary

- ☐ **H. deduction of losses**
  - ☐ 1. s. 111(1)(a): unused non-capital losses can be applied to non-capital income in other years - can carry back three and carry forward 20
  - ☐ 2. s. 111(1)(b): unused capital losses can be applied to capital losses in other years - can carry back three and carry forward 20
  - ☐ 3. s. 111(2)(a): in years of taxpayer's death, and year before taxpayer's death, unused capital losses can be used to offset capital and non-capital gains

☐ XI. depreciable property and capital cost allowance (cca)

- ☐ **A. context**
  - ☐ 1. depreciable property has 2 aspects to it:
    - ☐ a) it is capital property within definition of s. 54
    - ☐ b) it has an impact on computing income or loss from a source
  - ☐ 2. remember that under s. 18(1)(b) deductions for capital outlays prohibited
  - ☐ 3. s. 20(1)(a) allows for part of the capital cost of property to be deducted as an expense each year
  - ☐ 4. for tax purposes, the maximum cca deduction per year is 35% - under financial reporting, corps can amortize differently/faster if they want
  - ☐ 5. s. 13(21) defines depreciable property as the physical assets that are capital in the sense that they have a long term value, are not bought and sold as part of the business, and are not consumed in process of carrying on business
  - ☐ 6. exclusions to depreciation: inventory, land (value of land excluded when calculating depreciation on buildings), property not acquired for purpose of gaining or poroducing income - reg 1102(1)(b)&(c), (2)
  - ☐ *7. Ben's Ltd*
    - ☐ a) case stands for property ing to be used for business purposes to have depreciation deductions
    - ☐ b) taxpayer operated bakery, purchased 3 residential properties adjacent to bakery, then sold houses on the properties for $400 each so he could expand bakery

- ☐ c) at the time the land was purchased the land was not zoned for commercial, but Benz got it rezoned
- ☐ d) the taxpayer on its tax return claimed the price of the building as $38,600, and then amortized the houses at 10%
- ☐ e) the court found that Benz had no intention of using the houses to earn income from business, and the small amount of rent earned from one of the houses during the period where Benz owned the houses did not change the true purpose of acquiring the houses - for the land underneath

- ☐ **B. depreciation rules & mechanisms**
  - ☐ 1. undepreciated capital cost (UCC) s. 13(21)
    - ☐ a) the amount of depreciable proeprty of a specific class that has not yet been depreciated
    - ☐ b) cca works on declining balance system - based on a percentage of remaining ucc taken each year, which means balance will never get to 0
    - ☐ c) formula given in s. 13(21) : (A+B) - (E+F)
    - ☐ d) A= total of all assets of property of the class from the beginning of the business, for all assets even those that have been sold
    - ☐ e) B=recapture, which happens when a property has been sold, and at the end of the tax year E+F equals more than A+B - see below
    - ☐ f) E=total cca deducted for the class before the time of calculation
    - ☐ g) F=and proceeds of disposition of assets in a class, but only up to the value of the original cost - anything over and above is capital gain
  - ☐ 2. cca is called an allowance because there is no requirement to deduct all of the available depreciation in a given year
  - ☐ 3. schedule II to regulations: provides different classes and rates of depreciation
    - ☐ a) all property in a specific class is calculated together, rather than property by property
  - ☐ 4. s. 39(1)(b)(i) cannot have capital loss on depreciable property
  - ☐ 5. half -year rule: reg 1100(2) - not in selected provisions
    - ☐ a) this rule prevents a taxpayer from claiming full uss from new acquisitions in the year
    - ☐ b) when a new property is added to a class, in calculating the uss for the class, only have the calue of the asset can be used for that first year
    - ☐ c) calculation: ucc as otherwise determined - 1/2(acquisitions - dispositions)
    - ☐ d) purpose of this is to prevent companies from acquiring assets at the end of the year, and getting full year's cca deduction

- ☐ 6. disposition of depreciable assets and terminal losses
  - ☐ a) s. 20(16): terminal losses occur when (A+B) exceeds (E+F) and the taxpayer has no property left in the specific class
    - ☐ (1) see example page 521
  - ☐ b) terminal losses replace capital losses as the way to recognize a loss from depreciable property, where a capital loss is not allowed
  - ☐ c) terminal losses must be deducted as a capital loss for that year, and no deduction from income (ie a cca deduction) can be made in respect of that class
- ☐ 7. recapture
  - ☐ a) occurs where the taxpayer has claimed capital cost allowance deductions faster than the asset is actually worn out, and (E+F) is greater than (A+B)
  - ☐ b) recapture is an inclusion in income, to make up for previous deductions from income
  - ☐ c) occurs whenever the ucc's balance at the end of a class is negative at the end of the year - generally happens where all the assets of the class are sold, but not necessarily
  - ☐ d) to avoid including recapture in income, businesses will generally buy another asset for the class
  - ☐ e) recapture can never exceed the amount of cca previously deducted, becasue F is the lesser of the proceeds of disposition less the expense of the disposition, and the original capital cost
  - ☐ f) if the building had been sold for more than the original cost, the surplus is a capital gain and accounted for in the normal way
    - ☐ (1) ex. building bought for $100K, and then sold for $120K, F will be $100K - the $20K is a capital gain and $10K of this is taxable