

COMM 315
MIDTERM 2 NOTES 2

- Law vs. Ethics
 - Law: sets minimum standards adopted by the government and enforced by the courts
 - Ethics: ideas & beliefs, subjective, not enforceable by the courts
 - Society's ethical views can lead to changes in the law

3 Ethical Articles (first class)

Ethics and the Conduct of Business

- 2 realms of thought: law prevails in public life and ethics is a private matter
- Law provides more precise and detailed rules than ethics
- It is nice to be ethical but our conduct has to be legal
- Other thought is that law embodies the ethics of business
 - There are ethical rules that apply in business and they have been enacted into laws
- Courts are there to enforce these rules and also interpret difficult wording
- In well-developed countries most legal systems are complete
 - Much of what is unethical is illegal
- But in many countries globally, they have under-developed legal systems so ethics becomes the main source of guidance
- Relative lack of international law leaves ethics as an important guide for global business
- Managers need to consider only the law in making decisions
- The law is inappropriate for regulating certain aspects of business activity
- Not everything that is immoral is illegal (making crazy demands on subordinates)
- Not every legal competitive maneuver is ethical (hardball tactics)
- The law is often too slow to develop in new areas of concern
- The law itself often employs moral concepts that aren't precisely defined, so sometimes you must consider matters of morality to understand the law
 - Ex: good faith
- For a course of action to be decided if it is legal it must be decided by the courts and the courts often are guided by moral considerations
- Ethics and law are interrelated
- Where there is doubt about law, morality is a good measure of how the courts will decide
- Some of the landmark enactments (Occupational Safety and Health Act, Consumer Protection) were passed in response to public outrage over well-documented failure of businesses to act responsibly

A Framework for Universal Principles of Ethics

- Personal ethics: stuff we try to instill in our kids, expect from one another without formally articulating it
 - Concern for well-being of others, respect for the autonomy of others, trustworthiness and honesty, willing compliance with the law, fairness, not taking advantage, going good, preventing harm
- Professional ethics: added burden of ethical responsibility. Doctors, lawyers, shrinks, accountants. Required behaviour within the context of a professional practice
 - Impartiality, objectivity, openness, full disclosure, confidentiality, due diligence, duty of care, fidelity to professional responsibilities, avoiding conflict of interest
- Global ethics: the most controversial, least understood, open to wide interpretation, can generate heated debates

- o Global justice (as reflected in international laws), society before self, social responsibility, environmental stewardship, interdependence and responsibility for the “whole”, reverence for place
- Limiting the application of ethical principles negates their value, they must all be applied to everyone

Resolving Ethical Dilemmas in the Workplace

- Discussion, analysis, problem solving and decision making are critical to the ethical resolution of conflicts

CHAPTER 5

Chapter 5

Theory in the book and class notes

Articles of the Civil Code to focus: 2130, 2132 to 2148, 2151, 2154 to 2161, 2163, 2184, 2185

Case of Piec (accessory to mandate or not?): (main facts, notion of the power of attorney on the various accounts and how the caisse applied, main decision)

Case of Dowell (scope of mandate of the Notary, should he be responsible or only Joseph?): (main facts, the notary had a mandate to check the invoices as well and is responsible too, main decision)

CCQ: Mandate

2130. Mandate is a contract by which a person, the mandator (principle), empowers another person, the mandatary (agent), to represent him in the performance of a juridical act with a third person, the mandatary by his acceptance, binds himself to exercise the power.

- A contract between 2 people
- Not employment
 - o Employment law: I hire you to work for me under fixed conditions = subordination
- No subordination or control in mandates
- Outside of Quebec: called agency
- Agent has the power to “sign” or make decisions for the principle
- MUST BE IN WRITING
- Need documentation to prove agency or power
- Agent has to prove this and not that they are the owner or else they can be just as liable
- Juridical act = contract
- Power of attorney is a written contract of a mandate
- The principle and agent have to sign. You don’t have to have a notary except for marriage contract, mortgage, will
- Oral testimony is insufficient

2132 (acceptance). Acceptance of the mandate may be express or tacit. Tacit acceptance may be inferred from the acts and even from the silence of the mandatary

- Tacit is subject to interpretation = understood or implied without being said

2133 (gratuitous or onerous). Mandate is either by gratuitous title or by onerous (paid) title. A mandate entered into between two natural persons (humans) is presumed gratuitous title but a professional mandate is presumed to be given by onerous title

2134 (remuneration). Remuneration (, if any, is determined by the contract, usage or law or on the basis of the value of the services rendered

- How much you are getting paid should be in the contract

2138 (fiduciary duty). A mandatary is bound to fulfill the mandate he has accepted, and he shall act with prudence and diligence in performing it

He shall also act honestly, and faithfully in the best interests of the mandator, and avoid placing himself in a position that puts his own interest in conflict with that of his mandator

- Fiduciary duty = acting in someone else's best interests

2139 (inform principle). During the mandate, the mandatary is bound to inform the mandator, at his request or where circumstances warrant it, of the stage reached in the performance of the mandate

- An obligation to keep the principle up to date and to inform him as soon as mandate is completed

*A real estate broker is not an agent. A broker just finds you a buyer then has to ask your permission

2142 (delegation). In the performance of the mandate, the mandatary, unless prohibited by the mandator or usage, may require the assistance of another person and delegate powers to him for that purpose

The mandatary remains liable towards the mandator for the acts of the person assisting him

- Delegation: can an agent hire another agent? Yes = subagent
- If the subagent does anything wrong the agent is liable

2143 (double agent). A mandatary who agrees to represent, in the same act, persons whose interests conflict or could conflict shall inform each of the mandators, unless he is exempted by the usage of the fact that each of the mandators is aware of the double mandate; he shall act impartially towards each of them

Where a mandator was not in a position to know of the double mandate, he may have the act of the mandatary declared null if he suffers injury as a result

- Have to get consent from both parties
- Not a good idea to represent 2 parties in a transaction
- Null: never existed
- Cancellation: stops as of today's date

2146 (confidential information). The mandatary may not use for his benefit any information he obtains or any property he is charged with receiving or administering in carrying out his mandate, unless the mandator consents to such use or such use arises from the law or the mandate

If the mandatary uses the property or information without authorization, he shall, in addition to the compensation for which he may be liable for injury suffered, compensate the mandator by paying, in the case of information, the amount equal to the enrichment he obtains, or in the case of property, an appropriate rent or the interest on the sums used

- Cannot use confidential info without consent or for personal benefit
- Must have it in writing

2147 (party to act). The mandatary may not, even through an intermediary, become a party to an act which he has agreed to perform for his mandator, unless the mandator authorizes it or is aware of his quality as a contracting party

Only the mandator may avail himself to the nullity resulting from the violation of this rule

2148. Where the mandate is by gratuitous title, the court may, after assessing the extent of the mandatary's liability, reduce the amount of damages.

2149 (cooperation). The mandator is bound to cooperate with the mandatary to facilitate the fulfillment of the mandate

- You must cooperate, however the agent is getting paid so they must fulfill their job

Mandatary agent has 2 jobs. MUST:

1. *Act within the scope of the mandate*
2. *Disclose the mandate – disclose the fact that you are the agent*

2151. The mandator owes interest on expenses incurred by the mandatary in the performance of his mandate from the day they are disbursed.

2152 (exceeding mandate). The mandator is bound to discharge the mandatary from the obligations he has contracted

towards third persons within the limits of the mandate

The mandator is not liable to the mandatary for any act, which exceeds the limits of the mandate. He is fully liable however, if he ratifies such act or if the mandatary, at the time he acted, was unaware that the mandate had terminated

- Must fulfill the mandate
- Ratification (acceptance/acknowledgment): if agent acted outside of the mandate, it is up to the principle to choose to ratify or not
- In working with mandates: have time limits, concessions and circumstantial written documents

2153 (ratification). The mandator is presumed to have ratified an act which exceeded the limits of the mandate where the act has been performed more advantageously for him than he had indicated

- Agent benefited from it

2154. Where the mandatary is not at fault, the mandator is bound to compensate him for any injury (damages and expenses) he has suffered by reason of the performance of the mandate.

2157 (liability of agent). Where a mandatary binds himself, within the limits of his mandate, in the name and on behalf of the mandator, he is not personally liable to the third person with whom he contracts

The mandatary is liable to the third person if he acts in his own name, subject to any rights the third person may have against the mandator

2158 (liability of agent). Where a mandatary exceeds his powers, he is personally liable to the third persons with whom he contracts unless the third person was sufficiently aware of the mandate, or unless the mandator has ratified the acts performed by the mandatary

- If the third party (buyer) knew that you had no authority to do what you were doing, and still let you continue, then you may not be held liable

2160 (liability of principle). A mandator is liable to third persons for the acts performed by the mandatary in the performance and within the limits of his mandate unless, under the agreement or by virtue of usage, the mandatary alone is liable

The mandator is also liable for any acts which exceed the limits of the mandate, if he has ratified them

2161. The mandator may repudiate the acts of the person appointed by the mandatary as his substitute if he suffers any injury thereby, where the appointment was made without his authorization or where his interest or the circumstances did not warrant the appointment.

2163 (apparent mandate). A person who has allowed it to be believed that a person was his mandatary is liable, as if he were his mandatary, to the third person who has contracted in good faith with the latter, unless, in circumstances in which the error was foreseeable, he has taken appropriate measures to prevent it

- Ex: a cashier is acting as an agent of the store. You are allowed to assume that this person is authorized by the store to sell you merchandise
- If something wrong happens, the store is responsible/liable
- Good faith: not selling TVs in the parking lot of the mall

2164 (vicarious liability). A mandator is liable for any injury caused by the fault of the mandatary in the performance of his mandate unless he proves, where the mandatary was not his servant, that he could not have prevented the injury

- The principle is not liable for the agent's acts unless: employed or could've prevented it

2184 (termination of mandate). Upon termination of the mandate, the mandatary is bound to render an account and return to the mandator everything he has received in the performance of his duties, even if what he has received was not due to the mandator (tips)

The mandatary owes interest, computed from the time he is default, on any balance in the account consisting of sums he has received

- Companies should have policies on what you can and cannot accept (restaurant tips)

2185 (termination of mandate). A mandatary is entitled to deduct what the mandator owes him by reason of the mandate from the sums he is required to remit

The mandatary may also retain what was entrusted to him by the mandator for the performance of the mandate until payment of the sums due to him

CHAPTER 6

Chapter 6

Definition of enterprise art. 1525

Civil Code art. 298, 300, 301, 302, 313, 316, 322 to 327, 335, 337, 2186, 2188, 2198 to 2201, 2204, 2236, 2238, 2244, 2246, 2248

The different forms of business, their characteristics, advantages and disadvantages

Which forms of business create a legal person ?

The corporate structure, shareholders/members elect directors who appoint officers

Responsibility of directors (deductions at source, GST/QST, lifting of corporate veil)

The elements of the share capital

Different types of cooperatives

7 principles of cooperation

What is common and different between corporation with share capital, NPO and cooperative?

CCQ: Corporations

Sole proprietor

- Revenue is your personal income
- Simplest form of business
- Owner is responsible for debts of the business
- All your personal assets are subject to debts of the business

Partnership

- 2+ persons for a common profit carrying on business
- No separate legal entity
- Roles of partners are set out in the beginning
- Partners are liable for debts
- Complicated administration
- Should have buy-sell agreements in case of dissolution

Corporation/Company

- The norm
- Easiest to administer
- A separate legal entity
- Easier to sell your share
- Everyone incorporates
- Responsible for own debts/makes its own decisions

- A corporation cannot die

301. Legal persons have full enjoyment of civil rights

302. every legal person has a patrimony which may to the extent provided by law be divided or appropriated to a purpose. It also has the extra-patrimonial rights and obligations flowing from its nature.

305. Every legal person has a name which is assigned to it when constituted, and under which it exercises its rights and performs its obligations

It shall be assigned a name which conforms to law and which includes, where required by law, an expression that clearly indicates the juridical form assumed by the legal person

- Inc. ltd corp.
- Numbered companies are regular companies
- \$400 to buy a name for the organization instead of simply a number. Names must not be confusing, must not be conflicting or portray the same idea as another company

Representation: officers, director, shareholders

321 (directors). A director is considered to be the mandatary of the legal person. He shall, in the performance of his duties, conform to the obligations imposed on him by law, the constituting act or the by-laws and he shall act within the limits of the powers conferred on him

- Agents of the company
- Elected by shareholders (who own the company)
- Shareholders do not run the business, they elect senior administrators who are the directors
- Directors run the company
- They delegate their day-to-day tasks to officers
- They make the serious decisions (policies, shares)

322. A director shall act with prudence and diligence.

323. no director may mingle the property of the legal person with his own property nor may he use for his own profit or that of a third person any property of the legal person or any information h obtains by reason of his duties, unless he is authorized to do so by the members of the legal person.

324. A director shall avoid placing himself in any situation where his personal interest would be in conflict with his obligations as a director.

325. A director may even in carrying on his duties, acquire, directly or indirectly, rights in the property under his administration or enter into contracts with the legal person.

326. where the director of a legal person fails to give information correctly and immediately of an acquisition or a contract, the court, on the application of the legal person or a member, may, among other measures, annul the act or order the director to render account and to remit the profit or benefit realized to the legal person.

327. Minors, persons of full age under tutorship or curatorship, bankrupts and persons prohibited by the court from holding such office are disqualified for office as directors.

312 (officers). A legal person is represented by its senior officers who bind it to the extent of the powers vested in them by law, the constituting act or the by-laws

- A corporation acts through a mandate
- Officers: president (CEO), treasurer (CFO)
- Secretary: officer in charge of all corporate documentation
- Day-to-day functions
- Agents of the company

309 (shareholders). Legal persons are distinct from their members. Their acts bind none but themselves, except as provided by law

- Have a limited liability: can only lose what you put in
- Unlike debt, when you lose your equity that is all you can lose
- Member = shareholder

313. the by laws of a legal person set out the contractual relations existing between the legal person and its members.

316 (fraud). In case of fraud with regard to the legal persons, the court may, on the application of an interested person, hold the founders, directors, other senior officers or members of the legal person who have participate in the alleged act or derived personal profit therefrom liable, to the extent it indicates, for any damage suffered by the legal person

- Courts can hold anyone who is involved in the fraudulent act
- Interested persons can be directors, officers. Usually the ones looking out for the best interests of the company
 - Anyone who has a valid interest to stop fraud (according to the court)
 - Not an interested party (officer of competitor, activist)
 - If the people in charge aren't willing to do anything and you prove you have a vested interest in the company you can be granted power to do something
- Derivative action: when someone else asks the company to sue the wrong do-er
- Anyone who participates in fraud is liable

317 (corporate veil). In no case may a legal person set up juridical personality against a person in good faith if it is set up to dissemble fraud, abuse of right or contravention of a rule of public order


- Courts can go after shareholders, officers, subsidiary of the company
- You cannot use a company for fraudulent purposes
- Well established law that goes over 100 years (cannot hide behind a company)
- If you make a fraudulent decision, company can lift the corporate veil
- Cannot stand behind the company in illegal activities when acting in bad faith

320 (pre-incorporated contract). A person who acts for a legal person before it is constituted is bound by the obligations so contracted, unless the contract stipulates otherwise and includes a statement to the effect that the legal person might not be constituted or might not assume the obligations subscribed in the contract

- You can represent a principle who doesn't exist (normally you can't)
- If principle dies, mandate ends
 - This provision allows you to go around that
 - If you sign for a non-existent principle its like you are signing your own name
- You can sing for a company that has not yet been incorporated, which may never be incorporated, if you specifically ratify it therefore, if the company never exists, you will not be liable
- Exception to the rule of mandate
- You can set up company for limited liability to protect your assets
- Landlords may or may not accept those kinds of signatures

322 (fiduciary duty). A director shall act with prudence and diligence

He shall also act with honesty and loyalty in the interest of the legal person

- The agent (director/officer) must act in the best interests of the company
- Officers: 312  2138

323 (confidential information). No director may mingle the property of the legal person with is own property nor may he use for his own profit or that of a third person any property of the legal person or any information he obtains by reason of his duties, unless he is authorized to do so by the members of the legal person

- Cannot use info for own personal benefit

324 (conflict of interest). A director shall avoid placing himself in any situation where his personal interest would be in conflict with his obligations as a director

a director shall declare to the legal person any interest he has in an enterprise or association that may place him in a situation of conflict of interest and of any right he may set up against it, indicating

their nature and value where applicable. The declaration of interest is recorded in the minutes of the proceedings of the board of directors or equivalent

- Should declare in writing and in advance of the conflict
- Should not participate in that decision
- Directors are not allowed to have a conflict of interest
- Real or apparent, you are not acting objectively in the best interest of your company
- You are acting on behalf of the company but you have a personal interest in that contract
 - The supplier you sign a contract with to supply you with smthg is owned by your cousin

327 (directorship). Minors, persons of full age under tutorship (sound mind) or curatorship (mentally handicapped), bankrupts and persons prohibited by the court from holding such office (ppl who have been convicted of securities fraud) are disqualified for office as directors

However, minors and persons of full age under tutorship may be directors of associations constituted as legal persons that do not aim to make pecuniary profits and whose objects concern them

- Anyone can be a director as long as you're alive and a human

328 (indoor management rule). The acts of a director or senior officer may not be annulled on the sole ground that he was disqualified or that his designation was irregular

- If someone was not validly elected as director (votes were counted wrong) but everyone thought, in good faith, that he was properly hired, then the actions that were made while he was in the role should not be erased
- Without it corporations would go very slowly and nothing would get done

Business corporations act (Quebec) pg. 58 replacement handout

Federal vs. provincial incorporations are the same. Both are equally valid

- If you have a name or trademark in Quebec, it will not be shown federally. Someone else in the country can use it
- Provincial trademarks are only provincial, a search in another province will not show
- Federal databases will
- Trademarks have value = first to use. Have preference
- Names = first to register
- Get a federal incorporation so your name is safe

119 (duties of directors & officers). Subject to this division, the directors are bound by the same obligations as are imposed by the Civil Code on any director of a legal person

Consequently, in the exercise of their functions, the directors are duty-bound toward the corporation to act with prudence and diligence, honesty and loyalty and in the interest of the corporation

In their capacity as mandataries of the corporation, the officers are bound, among other things, by the same obligations as are imposed on the directors under the second paragraph

- Clear and to the point
- Directors and officers have a fiduciary duty to act in the best interests of the company

154 (liability for wages). *Unpaid wages of employees.* Directors of a corporation are solidarily liable to the employees of a corporation for all debts not exceeding six months' wages payable to each such employee for services performed for the corporation while they are directors of the corporation respectively.

However, a director is not liable unless the corporation is sued for the debt within one year after it becomes due and the writ of execution is returned unsatisfied in whole or in part or unless, during that period, a liquidations order is made against the corporation or it becomes bankrupt within the meaning of that expression Bankruptcy and Insolvency Act and a claim for the debt is filed with the liquidator or the syndic.

- Director or officer will be personally liable for unpaid wages

- If the company doesn't have money, director is personally liable for unpaid wages for up to 6 months while you were the director
- All directors are responsible for 100% of the wages
 - If \$3000 is owed and there are 3 directors, can go for \$1000 each or \$3000 from one
- All commercial contracts have a solidarity agreement
- Opposite of solidarily = joint
- Pay your employees first, if the company is going bankrupt, as you do not want to personally pay wages
- Shareholders cannot come after you for money
 - Want to be paid out in dividends
- Always sue the person who has the money

156 (liability for dividends). Directors of a corporation who vote (majority) for or consent to a resolution (no meeting, sign contract) authorizing any of the following are solidarily liable to restore to the corporation any amounts involved and not otherwise recovered by the corporation:

(4) A payment of a dividend contrary to section 104

- **104:** a corporation may not declare and pay a dividend, except by issuing shares or options or rights to acquire shares, if there are reasonable grounds for believing that the corporation is, or would after the payment be, unable to pay its liabilities as they become due
 - Means insolvent: inability to make the payment on ongoing debts

224 (liability of shareholders). Shareholders are not, as shareholders, liable for any act of the corporation

However, they are debtors to the corporation for any unpaid amount on shares they hold in its share capital

- General rule: shareholders are not responsible for debts of the company
- Officers are liable for GST and QST
 - Sales taxes that we pay of goods and services
 - Employer has right to withhold 1/3 of paycheck and give it to the government

Canada business corporations act (federal law)

122 (duty of care).

(1) Every director and officer of a corporation in exercising their powers and discharging their duties shall

- Act honestly and in good faith with a view to the best interests of the corporation
- Exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances
 - FIDUCIARY DUTY: obligation as director or officer to act in favor of the company

Duty to comply

(2) Every director and officer of corporation shall comply with this Act, the regulations, articles, by-laws and any unanimous shareholder agreement

- Buy-sell agreements are unanimous shareholder agreements
- After you are publicly traded company there is no such thing as a unanimous shareholders agreement
- Where obligations are set out in the law, directors and officers are liable for that

No exculpation

(3) Subject to subsections **146(5)**, no provision in a contract, the articles, the by-laws or a resolution relieves a director or officer from the duty to act in accordance with this Act or the regulations or relieves them from liability for a breach thereof

- All this is standard across Canada

- Any time you vote against
 - Decent: vote against and confirm in writing
- If a unanimous shareholder agreement restricts the directors to manage, then the directors are “off the hook” and the power is to the shareholders which means they are liable, directors are not

146(5) (liability of shareholders).

Basically, if the shareholders take away power from directors and act like directors, they are liable as if they were the actual directors

CASES

Piec Estate (BREACH OF FIDUCIARY DUTY)

- Piec sold her house to her friend
- Nephew came into town from Poland
- Piec went to Poland
- Nephew got power of attorney while she was away
- She ended up passing away in Poland
- He was the only one who knew
- He withdrew her entire estate
- When her niece found out she sued the nephew
- The 1000\$, cant do anything about it, he had a proper mandate
- The \$26000 is what is at stake
- At first, the bank said that the mandate he had transfers to the 26000 as well
 - Any human being over the age of 18 can have power of attorney, even if you are not a citizen
- Under the bills of smthg act, when there is a forgery it is the banks responsibility

BANK

- They have the duty to check signatures
- If they don't, they are liable
- A contract between the client and the bank
- They have no right to cash a term deposit. Only Piec can do that
- Bank is negligent for accepting forged document
- The bank didn't respect their fiduciary duty
- The fact that he took ALL the money in cash in small bills should've raised questions
- There is negligence on the part of the bank
- Breached fiduciary duty
- They are absolutely liable

Dowell (BREACH OF FIDUCIARY DUTY S.2138)

- Dr. Dowell knows a guy called Joseph
- Joe came up with an interesting deal
 - A piece of commercial real estate which he thinks is greatly undervalued and is for sale
- The owner is giving him money to take the building off his hands
- He cant put the building in his own name cuz he declared bankruptcy and its not allowed
- So he talks to Dowell, they've known each other for a long time
- Paid Dowell 15000\$ to put his name on the paper but Joseph will manage the product

- o If u are property owner, u are responsible for mortgage and liable for everything
- 150000 put into notary's trust account
 - o Money to be used for maintenance of the building
 - o He will release it to Joseph who is "maintaining the building"
- Notary says that he had no obligation to Dowell
- The fact that the money the notary received was for the management of the property only created an obligation on his part
- Notary had a duty of care towards Dowell
- Notary became a mandatary to Dowell
- After Dowell's lawyer changed the power of attorney, it said that all Joseph was allowed to do was purchase, sell or otherwise alienate the property in terms that he saw proper
- He gets a letter from the bank saying he owes 90000
 - o They say pay it or we'll sue you
- Dowell calls notary: pay the mortgage you have the money
 - o He says no, don't have the money Joseph spent it all
- 68 000 was spent inappropriately which had nothing to do with managing or maintain the building
- The law of mandate says that the principal is the client and is the only one who can authorize spending the money
- If money was to spent outside the mandate (maintenance of the building) then u have to ask the client (Dowell)
- The notary is liable for the 68000\$
- Did not fulfill his professional fiduciary duty
- Prudence and diligence
- S.2138
- Never investigated cheques
- Nature of the mandate was that the notary was allowed to release money only for maintenance
 - o If there was a bill for a horse ranch he has to ask Dowell
- Joseph is technically liable but he cant pay (don't waste time suing someone who cant pay)
- This is a claim against the notary for not fulfilling his professional duties according to the standards imposed by the law
- SUE PPL WITH MONEY

Sample Question:

#1 Which of the following will be considered a mandatary?

- A, a member of the BOD
- b. A hockey player hiring an agent
- c. Stock broker buying securities for a client
- d. A and C**

#2

4 questions on chapter 2

8-9 questions on chapter 5

11-12 questions on chapter 6

- No network transport on the exam Is excluded from any answer on the exam!

For the three legal people (corporation, NPO, and cooperative) they are all creating a legal person

Similarities:

- The **corporate structure** is common (OfficersàDirectorsàMembers (Shareholders))

- Members elect the directors which is a board that takes decisions collectively and they have the legal power to make decisions for a legal person
 - The officers (CEO) are the people who are responsible for the day to day operations of the legal person and they report to the directors
 - The directors appoint the officers
 - If it has to come to a final decision the people who have the **legal power** are the board of directors
 - The limited liability
 - And the rights and responsibilities of directors
 - All 3 legal persons will have a document called the **by-laws**: the internal rules of the legal person
 - In law the by-laws are a contract (article 313 of the Civil Code) and if someone doesn't respect it, you can go to court!
- Creates contractual relations!

Corporation

- Shareholders for corporation, members for the other 2
 - Share holders get elected with 1 share=1 vote
- § The powers of the share= **share capital**
- § Common Share: all the power
- § Inside your share capital you must find who will have the power to do 3 things
- ú **1. Elect Directors** (Common Shares)- voting shares
 - ú **2. Dividend**- when you take some of the assets and you send it back to your shareholders. The BOD will decide which amount to declare as a dividend and who gets what to the physical person
 - ú **3. Rights Upon Dissolution**: If the company dissolves itself voluntarily you must pay all the liability
- ú **NOTE: DOUBLE TAXATION**
- ú However you have a lot of flexibility, you can choose what date to pay in the fiscal year
- Sometimes you will want to have exceptions to the corporate structure in the corporation, you need 2 types of documents
- § **Shareholder agreement**: defines the relationship of the shareholders between themselves, also tells you what happens when the shareholder dies (deal within themselves)
- § **Unanimous Shareholder agreement**: when the shareholders decide that the legal person will function differently than the normal corporate structure, it will remove certain powers of the directors and give them to the shareholders (shareholders assume powers of the BOD)

NPO

- Advantages: exempted from pay income tax
 - All the money has to remain in the legal person!
 - Members who are at the base of the corporate structure, in the by-laws you will have a definition of the members & how you become a member
 - 2 categories of NPO and that depends on your definition of membership is in the by-laws
- § Closed: Eg. Family foundation, are in control who are the members, apply the standard definition that members need to be approved by the BOD
- § Open: the people who run the NPO don't really have the control who the members are. Eg. CASA

Cooperative

- Same structure as NPO except that their members are not defined in the by-laws they're defined by the type of cooperative that you have (TYPES OF COOPS)
- § **1. Consumer cooperative**: The consumer who are the members Eg. Desjardin
- § **2. Producer cooperative**: The producers are the member Eg. Farmers
- § **3. Workers cooperative**: The people who work there will decide how the coop is done
- § **4. Housing cooperative**: The people who live there run the coop

§ 5. **Solidarily cooperative:** Mixed model, workers, housing

- Once you know the type of coop you have then you know who your members are
- A coop is run differently than a cooperation
- There are 7 Principles on how a coop is run (VALUES)

§ 1. **Free Adhesion:** a coop can not prevent your from joining from discriminatory factors and you can leave whenever you want. You enter by getting a qualitative share

§ 2. **Equality:** the members are all equal when they participate in the democratic structure of the coop (1 member, 1 vote)

§ 3. **Equity:** how the profit (called a surplus) is split, the return (aka dividend), the general meeting of the members, how it will be split between each member will be decided on the principle of equity and will be decided based on your economic participation in the coop

§ 4. **Autonomy/ Independence:** you need to retain your autonomy to make your own decision, each case how's their own BOD and free to make their own decisions

§ 5. **Education:** the coop has a duty to educate their employees

§ 6. **Cooperation with cooperatives:** some coops will compete with one another, but sometimes you will help each other

§ 7. **Community Concern:** a coop will be involved and conscious of it's community

Differences:

- The reason why you're choosing a corporation NPO and cooperative
- Main reason you start a corporation is to get PROFIT with share capital
- NPO a goal other than profit
- Cooperative- start a coop to answer a need that is not currently being provided

Rights and **responsibilities of directors:** for ALL 3 when you are a director you are a mandatory of the legal person. When you do this you are not legally responsible, but there are a few occasions when you can get in trouble, you MUST be:

- Prudent
- Diligent
- Act with loyalty and honesty
- Doesn't mean you have to be at every meeting, but you have to get informed and get legal advice
- You can risk getting yourself personally responsible if you are negligible

Specific situations where you can be personally responsible, How do you protect yourself??

- **Conflict of interest:** make sure that you disclose it as soon as possible and recorded in the minutes in the next meeting of the BOD & you cannot participate in the discussion and vote
- **You have to ensure that government money** goes to the government (Deductions at source at the taxes GST, QST)
- If you're late to pay from 1-7 days penalty of 7% of amount
- 8-14 10%
- 15-++ 15%
- && taxes
- They can go into your account
- If your company goes under theres an order in which creditors are paid, the first people on the list is the government
- If all of the first 3 are not enough they can go collect the money from the people by the members of the BOD, and the obligation is a solidarity obligation and they have 2 years to collect
- How do you protect yourself? Show the government that you took all the measures
- **Get an D&O** Directors and officers liability insurance: protect yourself
- If you are in a BOD meeting and there's a decision that your don't agree with it, you have to ensure that your disagreement is included in the minutes. Once a decision is taken by a BOD all the directors who are present are deemed to have approved it

