

# Contracts

## Chapter 5 – Introduction to Contracts

### A Contract:

- A deliberate and complete agreement between two or more competent persons
- That is enforceable in the court of law.
- In oral and in writing
- Supported by mutual consideration, to do some act voluntarily

### Elements of a Contract:

1. **Agreement:** In writing or oral.
2. **Complete:** Key elements of the contract are presented.
3. **Deliberate:** Both parties must want to enter into a contractual relationship
4. **Voluntary:** Agreement must be fairly chosen. Not obliged or threatened.
5. **Between two or more competent persons:** Parties of the contract
6. **Supported by Mutual Consideration:** A contract involves a bargain or exchange between two parties
7. **Not necessarily in writing:** Could be oral or written.

Why do women wearing engagement rings but men do not? Because when a woman had a ring, she was not allowed to speak to other men. Other men would not approach her with respect to the ring. The fiancé was not forced to abide by this notion until married.

### Elements of a Contract:

1. **Commitment Of The Obligation**
  - Do you have all the information for the obligations?
2. **Objective Standard Test**
  - A test on how a reasonable person would view the matter
3. **Equal Bargaining Power**
  - The legal assumption that parties of the contract are able to look out for their own interests.
  - Able to negotiate your own terms
4. **A Contractual Business Relationship**
  - Duty of faith
  - A vulnerable position
  - Business people always breach contracts.
  - Example, a supplier may be late with delivery, which is an example of breaching the contract. Instead of a lawsuit, they will have to pay for the compensation of loss.

## 5. Economic Reality

- Contract Law exists to create legally binding commitments; it is not always the best decision of the party to keep that commitment.
- Example: A business in a contract for a year can get out of the contract and pay the rest of the money.
- The conditions in which the agreement is made. (Boom, recession..)

## 6. Management Reputation

- Look at past practices to see if they meet requirements
- A business that has a past of breaching contracts due to bad planning will certainly be within its legal rights to breach and pay damages.
- Such a business will acquire a reputation as an unreliable and undependable company.

## Chapter 6 – Forming Contractual Relationships

This chapter sets out the legal ingredients to transfer an “Agreement” into a “Legal Contract”

### Elements of a Contract:

#### 1. Offer

- A promise to execute an obligation.
- The boss writes employment offers. If you don't know what is written, you're the one losing. (Termination clause)
- Certainty of Offer: All essential terms need to be set out in the contract or else it will fall under uncertainty.
- Invitation to Treat: An expression of willingness to do business. (Display of goods, marketing)
- You have to be aware of the details of the offer (ticket clause)
- Standard Form of Contract: A take it or leave it contract, where the customer agrees to the set of terms established by the other party.

#### 2. Acceptance

- An unqualified willingness to enter into a contract on the terms in the offer.
- Accepting the terms as they are presented (terms have to be clear)
- The Communication of Acceptance: Is the key because when you accept the offer that is when the contract is formed. As a result, this is when you apply the legal regime of the system.
- If the customer sends its acceptance in the mail, but it gets lost. Was there an acceptance to begin with? No, This is a problem that may occur.
- Acceptance is only valid when COMMUNICATED.

### 3. Consideration

- The price paid for a promise.
- Has to be fair market value, otherwise it is a gift
- Gratuitous promise: A promise which no consideration is given
- An engagement ring is not a promise, it is a gift

## Chapter 7 – The Terms of a Contract

This chapter is about the content, and the terms of a contract and how the courts interpret these terms. The terms of a contract simply refer to the promises made by one party to another by offer and acceptance.

### The Content of a Contract:

- Contractual terms can be expressed or implied.
- **Express terms:**
  - A provision in a contract that states a promise/term explicitly.
  - The terms are spelled out in a formal way
  - Vague or Ambiguous language: When we deal with express terms, there are always problems with language and ambiguity.
  - Who ever drafts the information has to make it clear, and the ambiguity will always be against the person drafting it.
  - If asked for a deposit, you can give something of the same value. If you have a safe in the room and someone broke in it, the hotel is not responsible. If you're in a hotel and you "forget" the key to your ex girlfriends room, and you ask the cleaner to open it. She is liable
  - If it is not properly accessed, it goes against the individual and it becomes "rules of construction"
  - Rules of Construction: Guiding principles for interpreting or constructing the terms of contract.
- **Implied terms:**
  - A provision in a contract that is not explicitly stated but is necessary to give effect to the contract.
  - They are not spelled out
  - Without implied terms, we would not be able to work the relationship
  - What are examples of implied terms?
    - **Business Efficacy:** You work in a retail store and you ask for milk, "white milk?" People do not need to qualify for milk. A judge is entitled to imply terms in order to make the contract workable.
    - **Customs in the Trade of Transaction:** The foundation of the senators make these social events, do the players need to show up? No they don't, they just do it to "participate" Relying on trade customs to imply a term is rarely successful.
    - **Previous dealing with the parties:** If we have done things a certain way in the past, based on previous practice, there

is no problem. Let's say I order 3 eggs regular. I don't have to ask because he always comes here. If parties contracted in the past, it is possible to imply that their current contract contain the same terms.

- **Statutory Requirements:** The law provides for these conditions so they are already part of the contract issue. Example: Partnership agreement. They wanted to lease canoes because it got to a certain point where they don't use it anymore.

### Specific Clauses of Contracts

- **Entire Contract Clause**
  - A term in a contract in which the parties agree that their contract is complete as written.
  - There has to be written elements in the contract or these verbal promises are not enforceable.
  - If someone says I love you, make them sign, because when you're **in love, you have to sign everything.**
- **The Parol Evidence Rule**
  - A rule that limits the evidence a party can introduce concerning the content of the contract
  - Parol means "oral"
  - You cannot add a verbal statement to complete the written statement unless it was agreed that that would be allowed.
  - Why is it important to understand that? Business and marketing promise a lot of things but it needs to be spelled out so that people are actually applying the terms that they are promising.
  - You cannot bring someone to court based on an ORAL promise.
- **Contractual Quantum Meruit**
  - The reasonable sum we pay for goods and services.
  - Awarding one party a reasonable sum for the goods and services provided under the contract.
  - Your toilet gets clogged, you have to call someone to do it. Although it is \$300, it is not worth to pay and you can do it yourself.
  - Why do plumbers get paid 60/70 per hour while accountants get the minimum wage? Because plumbing needs a certain technique, the notion of necessity, the fact that you are dealing with specific labor. Anyone can be in marketing, but who wants to be a plumber? You have to have a certification and do something no one wants to do.
  - Trade is being paid more than the bulk of people graduating from university. It doesn't have status.

- **Condition Subsequent**
  - An event or circumstance, when occurs, brings a contract to an end.
  - Anything that will be after the contract.
  - Tiger woods story, the gold balls of the 12 women tiger woods had an affair with. Your photo appears everywhere, it is not an acceptable conduct. If you had a contract, would you be happy to have be an agent to that company? Bill Cosby was an icon, now the icon has dropped because of his rape charger.
  - We need to have the conditions that justify the termination of employment.
  - A woman got fired for posting nudes on Facebook, but she filed a notion saying it is none of their business, how far does the condition precedent really go?
  - Example: An employee is to work for an organization unless her sales drop below a certain amount
- **Condition Precedent**
  - An event that, until it occurs, suspends the parties obligation to perform their contractual obligations
  - What you do will affect your professional contract
  - It is a condition or event that must happen before a contract is in an effect. If you are interested in buying a house, but you have to inspect it first. Afterwards, you find that it is damaged, then there is no binding agreement.
  - Example: Purchasers of real estate awaiting customers approval
- **Exemption Clause**
  - A term of a contract that identifies events causing loss for which there is no liability
  - Example: bungee jumping or watching the Senators game: they are not liable for a puck thrown at your face.
  - The exemption clause is only valid if it is not abusive.
  - Remember the story about the individual who gets paid \$50 to get hit? Supposed you sound a waver. It is still against public order. So they limit the liability.
  - In Ontario, the bill has passed to lower the insurance premiums.

### Chapter 8 & 9 – Non-Enforcement of Contracts

- **Age of Majority:**
  - The age at which a person becomes an adult for legal purposes.
  - Those under the age are in a very different position in entering contracts
  - To protect minors from entering a contract that is not in their best interest, there is a general rule that they are not obligated by the contracts they make
  - A minor can sign a contract unless it causes a hardship for necessities.
  - It can revoke any contract except necessities of life.

- **Legal Capacity**
  - The ability to make binding contracts
  - Where they are legal to sign, example; mental illness and children
- **Duress:**
  - The threat of economic harm that coerces the will of the other party and results in a contract.
  - Contracts being made as a result of one of the parties being threatened with physical harm are obviously not enforceable.
  - Someone will take advantage of your situation through a threat
  - “Anonymous” is not something funny to play with, supreme court got their site back but police did not.
- **Undo Influence:**
  - Unfair manipulation that compromises someone’s free will
  - When you are dealing with someone that is going to threaten you because of their position of authority, they are compromising with your free will.
- **Misrepresentation:**
  - A false statement of fact that causes someone to enter contract.
- **Illegal Contract**
  - A contract that cannot be enforced because it is contrary to legislation or public policy.
  - Such as paying someone to hack computer systems.
- **Non-Competition Clause**
  - A clause forbidding competition for a certain period of time
- **Non-Solicitation Clause**
  - A clause forbidding the contact with business customers
  - A clause that will sign away the right to work at a certain period time
  - It cannot be distributed; it is restricted to a specific time and zone.
- **Written Requirements**
  - As a general rule, contracts do not have to be in writing to be enforceable. An oral contract needs witnesses.
  - Writing requirements involve guarantees
  - **Guarantee:** A promise to pay a debt of someone else, should that person default on the obligation.
  - A guarantee should be evidenced by writing.
  - The NHL player and his mom was in charge of his money and she wasted all the money and went into bankruptcy.

## Chapter 17 & 19 - Personal Property

- **Personal Property**
  - All property, other than land and what is attached to land, that can be identified by its mobility
  - All the property other than land that would compose the assets
  - So when we say land, we include everything that is attached such as fruits, crop, trees, etc.
  - You go to the bank and say you are a farmer and you need money to plant crops. The bank will sign a document where they have a lean on your land and the crops. If you cut the crop it will not be mean anymore so the bank will put a second lean on the crop because when it is no longer attached to the land you will have no protection.
  - There are two types of personal property:
- **Tangible Property**
  - Personal property, the value which comes from its physical form
  - Anything that is mobile for which there is value and it is in physical form.
  - Example: chalk
- **Intangible Property**
  - Personal property, the value which comes from its legal right
  - An example of that is intellectual property
  - Lets say you become famous and you want people to have photos of you when you were young? Celine Dion did so much to hide all photos of her.
- **Notion of Possession and Ownership**
  - Possession is the usage of the good without legal title
  - What does that mean? You may have the computer of someone else in your possession but you do not own the actual computer. You are not the ownership of the title.
  - First key thing, you have the right to use it with reasonable care
  - It entails that normal usage would qualify.
  - What is normal usage? I have a tenant and it is his 7<sup>th</sup> time replacing the door handle. The tenant says it is not reasonable and now I have to pay for it.
  - The second key thing is that it can be transferred to another person
  - Third key thing is that possession does not allow you to use it as a security but can be subject to a lean.
  - I can bring the car you lent me to the garage. The garage has the legal right to lean until you pay the invoice.
  - The fourth key thing, the possession allows for usage that may be more than what was originally intended unless stated otherwise.
  - I have a snow blower and I use it to clean my driveway and my neighbors. I see that you did not blow your snow and I see your garage opened so I do it. Then it hits your window, am I liable? No I'm doing a good deed.

- Ownership allows you to transfer the title
- First key thing, when you are dealing with the transfer it means you have ownership and that deals with intellectual property rights.
- Today we are students of the university; 20 years from now we are CEO. Are we allowed to sell your photo? Absolutely.
- Story: Guy in class took pictures of girl naked at a bar. He has the right to show photos for the next 50 years. If you do not want your photos to be taken, you should subject.
- **Notion of Bailment**
  - Temporary transfer of possession of personal property from one person to another
  - The idea behind a temporary transfer is between one person to another
  - Example: I need bail to cover of John Comesh. You bring me title of a property that is worth \$100,000. The bailment can be for value or no value
  - Example: Short-term rent of a vehicle or a long term lease
  - Valet service: they are responsible for everything since they are being paid. If they say they are not responsible then you cannot have a claim.
- **Bailment for Value**
  - Bailment involving payment for use of property of service
- **Gratuitous Bailment**
  - Bailment that involves no payment
  - There is no compensation involved
  - It means that we will subject to a reasonable behavior.
  - I decide to park your car, what happens then? If I dent your car unless you prove I was NEGLIGENT, then the damage comes from you. It is important if someone is doing it without ANY FEES that you accept the consequences.
- **Interest in Ownership:** 3 categories must exist in order for certain kinds of property interests to be created.
  1. **Fee Simple:** You have the legal interest in the total property. That means when you buy a property, you are entitled or both you and your wife. Land owned in fee simple is owned completely, without any limitations or conditions.
  2. **Tenancy in Common:** Tenants in common each have a separate and divisible interest in the property even though the property is not physically divided. They are each issued a separate title reflecting separate ownership interest. For example, with land, two tenants in common there will be two titles to that piece of land. There is no right of survivorship in this. A tenant in common may deal with their interest in the property as they wish without the permission of the power. They can have unequal shares

3. **Joint tenancy:** None of the owners has a separate or divisible share in the property. They acquire the same interest, in the same way, at the same time, and they have the same possession in the whole land. This means when one joint tenant dies, his or her interest in the property DISAPPEARS and the surviving joint tenant becomes sole owner of the property. Must have equal shares.

### Chapter 10, 11 & 12 – Personal & Professional Torts

- **Tort:** A harm caused by one person to another, other than a breach of contract, where the law provides a remedy. Which means there is a mechanism to correct things.
  
- **Let us give examples of Torts**
  - **Tress Pass of the Land**
    - Wrongful interference with someone's possession of land
  - **Deceit or Fraud**
    - A false representation intentionally or recklessly made by one person to another that causes damage
    - Example: purchasing a vehicle because it was advertised to have a new engine, when in fact, it does not.
  - **Negligence**
    - Unreasonable conduct, including a careless act or omission that causes harm towards someone.
    - Example: you commit a wrong doing because you did not handle the vehicle properly when driving.
  - **Assault**
    - The threat of physical harm without there being any physical contact
  - **Battery**
    - Intentional infliction of harmful or offensive physical contact
    - When the bouncer escorted jimmy out of the bar for being too drunk, he committed an intentional tort of "battery"
    - You can yell at someone to stop doing that but the person cannot spit on your face because it is a crime in Canada.
    - You go to the doctor, does he examine you in places no one else knows? Yes. How come he is entitled to do that? You're the one who books the appointment and requests to check your results. When you say no for a certain thing, then you end up with a disease, you lose insurance coverage because you said NO.
    - Battery is also popular in sports
    - "Volenti non fit injuria" you accept the risk that comes with the sport.

- **Liability in a Tort**
  - **Vicarious Liability**
    - The liability an employer has on the tortious actions of the employee committed in the ordinary course or scope of employment
    - As an employer, you are responsible of the conduct of your employees.
    - During the ordinary scope of business you are responsible of how people conduct themselves but we need to understand there is negligence by the other party.
    - The other party is going to be partially liable for the harm that occurred
    - This weekend, two guys were wrestling and one got hurt really badly. The first guy is not fully liable because the second guy accepted the fight. It will be 50/50

### **Damages in a Tort**

The primary purpose of a tort remedy is to compensate the victim for loss caused by the defendant

- **Non-Pecuniary Damages**
  - Compensation for pain and suffering, loss of enjoyment of life, and loss of life expectancy
  - It will deal with issues with costs associated with these issues and the quality of life
  - How do you measure the quality of life?
  - Girl wants to switch majors because professors said, “with your migraine, you cannot handle children” is this acceptable? No. Because there are medications for migraines. The guy gets into a fight and gets between the legs. How do you value that? You have to find a rational way in explaining it.
  - Guy getting hit is not out-of-pocket expenses, rather it is real and damaging and suffering. The QUALITY of his life has diminished because of his mobility. The courts look at these facts.
- **Pecuniary Damages**
  - Compensation for out-of-pocket expenses, loss of future income, and cost of future care
  - You keep someone on a wheel chair, for insurance companies, they would rather have someone dead than a wheel chair since it lasts you another 9 years.
  - If the guy got hit and lost the ability to move his legs, he will gain future care for the rest of his life, also the future income he will receive since he cannot work anymore, and special damages such as mowing the lawn, ambulance costs, etc.

- **Punitive/Exemplary Damages**
  - An award to the plaintiff to punish the defendant for malicious, oppressive, and high-handed conduct
  - For example, if the bouncer fails to call the ambulance for the seriously injured, punitive damages may be awarded.
  - This is where the conduct is so oppressive that it defeats the actual reasonable conduct that you expect from a person.
  - Example: slapping seniors when they do not want to go to bed at 6pm. You need extra money to get extra care, if you don't have that money; you need to build your pension.
- **Aggravated Damages**
  - Compensation for intangible injuries such as distress and humiliation caused by the defendant's reprehensible conduct
  - Example: Harry Potter sleeping under the staircase, it is embarrassing. Or when stores falsify customers.

## **Negligence**

- The careless act done by one person that caused damage or harm
- Carelessness failed to show reasonable care
- Reasonable care: The care a reasonable person would exhibit in a similar situation
- ***There are four steps in negligence:***
  1. **Does the defendant owe the plaintiff a duty of care?**
    - Duty of care is the responsibility owed to avoid carelessness causes harm to others.
    - The defendant would owe duty of care to whoever is affected by its conduct. This is called the notion of neighbour
    - An example would be a chair, if it has 4 legs it needs to be in the garbage.
  2. **Did the defendant breach the standard of care?**
    - The defendant's conduct is judged according to the standards of behavior that would be observed by the reasonable person in society.
    - A reasonable person is an ordinary human with normal intelligence who uses ordinary prudence to guide his conduct.
    - In scary movies, how much blood or pain are we supposed to show? We are not supposed to show any pain that shows criminal behavior. The TV show True Detective, when they showed what was going to happen to the little girl, they skipped the scene since you are not allowed to show VIOLENCE and BRUTALITY.
  3. **Did the defendant's careless act cause the plaintiff's injury?**
    - Is it because I was careless when the event occurred?
    - They usually ask if you had your glasses when the incident occurred.
    - Causation: The relationship between the defendant's conduct and the plaintiff's injury.
    - If you are not careless you cannot create liability.

- Do you blame McDonalds for their obesity? No. Because you chose to go you cannot blame the market for good advertising
- 4. Was the injury suffered by the plaintiff too remote?**
- How far will the legal liabilities of the defendant stretch?
  - **Remoteness of Damage:** The absence of close relationship between the defendant's action and the plaintiff's injury.
  - **Thin Skull Rule:** The principle that the defendant is liable for the full extent of the plaintiff's injury even where a prior vulnerability makes the harm more serious than it ought to be.
  - Example: Travel insurance/ Medical insurance
  - Example: If I broke my leg and it takes a longer time to heal because of my previous iron deficiency, my damages will NOT be reduced.

## **Special Types of Torts**

### **1. Occupiers Liability**

- **Occupier:** Someone who has a degree of control over land or buildings on the land
- Occupiers liability is the liability occupiers have to anyone who enters their land or buildings
- You come to university and expect class to be in vanier but it changed to demerai. This is your class so they have to bring you here. You are the "invitee" so that means the university has an obligation to make sure there is no possible negligence.
- **Contractual Entrant:** someone who has paid the right to enter the premises
- **Invitee:** Any person who comes to the property who gives the occupier a benefit. Such as store customers
- **Licensee:** you have no benefit to the occupier but the occupier has no objection.
- They have foreseen the structure of the classroom and if everything is okay and running smoothly.
- Florist lost her place in st. Laurent because they were auctioning it and someone bid a higher price?

### **2. Trespasser**

- Any person who is not invited onto the property and whose presence is unknown to the occupier or is objected by the occupier.
- When someone enters your land, you are not allowed to create traps.
- If the occupier does any harm to the trespasser, he will be liable.
- Would you hit someone for \$50? If you don't regulate it, it will be done illegally

- **Self Defense:** The defense of one physical self or personal interest especially through the use of physical force
- It is a notion of proportionality. My job is not to fight the guy, it is to run.
- Where do you draw the line for physical course when you are threatened? In the eyes, that's how you get away with it.

### 3. The Tort of Nuisance

- Any activity on an occupier's property that unreasonably and substantially interferes with the neighbor's rights to enjoyment of the neighbor's own property
- Example: Playing music outside, swimming too loud, bad smell, etc.
- The focus on the nuisance is on one's right to enjoy the benefits of their land interrupted by the actions of neighbors

### 4. False Imprisonment

- Unlawful detention or physical restraint by psychological means
- Example: leaving a shop and it starts to ring. Are you forced to shop? You can continue walking, you are not required to stop. If they tell you to go to the counter, you can say no and force them to come to you.
- If you go to a restaurant and there are bugs on your food, how much damage can you claim? Free food.
- Occurs most of the time in retail selling

### 5. Deceit

- Misrepresentations that are made fraudulently or recklessly, causing loss
- A false misrepresentation in order to take advantage on a factual base of individuals
- You would present facts and elements that would attract people to behave in a certain direction
- Take pills and viagra to get thinner and bigger.
- Takes the pill at school and could not teach, had to go home.

## Chapter 15&16 – CORPORATIONS

- Partnerships are essential when you are required to do it by law, but when it is not a requirement of law you should avoid doing it
- Why should we avoid partnerships?
- Because you are liable to your partner, and the business, and the liability of someone bringing you down
- **Jack King Story:** Lorie Douglas, and her husband, Jack King, have taken naked pictures. Jack King, being a lawyer, has a client named Alex Chapman who he has showed the naked pictures to. Mr. Chapman was sent naked pictures and tried to lure him into a sexual encounter with his wife. Jack King then paid Chapman off to keep silent. She was a lawyer at the beginning, but then became a judge. As soon as she did, Chapman filed an order against her for having pictures online and getting a higher position. Now her lawyer is filing a motion to get the pictures back and keep her position as a judge. How many of you would believe your boyfriend would take naked pictures of you and send it to your client?
- Is it appropriate for a judge to take naked pictures of herself? Would that not put in jeopardy the administration of justice? Even if its your private life, you should be careful because you are in the political field. In partnership: whatever you do in the PAST, will come back and haunt you, that is why you should be careful on who you make business with.

### Pre-Incorporation Issues

- Whether to incorporate federally or provincially
- What type of shares will be given and to whom
- What to name the corporation
- In our society, consent is absolute; if it is not clear consent then it is sexual assault. Consent must be absolute, clear and if it is not then the answer is NO.
- We as managers have a duty that whenever there is discrimination or hate, we must step up and NOT HIDE, CONCEAL OR AVOID.
- Consensual Sex: Which means sex given permission of both parties. CBC news reported showed a video of individuals having sexual interactions then showed bruises to show a form of consensual

## Corporations – Certain Attributes: Why should I Incorporate?

- The corporation is the most important part of a business today
- **SEPARATE LEGAL ENTITY:** A corporation has the same rights and obligations under Canadian Law as a natural person. Which means they can acquire assets, debt, enters contracts, be sued, and even be found guilty of committing a crime. A corporation's money and assets belong to the corporation, not the shareholders. When a business is incorporated, its separate legal status, rights and liabilities exist until the corporate dissolves; shareholders & directors die, sell, or leave.
- **LIMITED LIABILITY:** Provides limited liability to its shareholders. The shareholders of a corporation are not responsible for debts, if the corporation goes bankrupt, a shareholder will not lose more than his investment. Creditors cannot even sue shareholders for liabilities incurred by the corporation, unless the shareholder is a director in ANOTHER corporation.
- If you look at Mcdonalds application, they want a list of your assets, details about your spouse. For what? So they can know that you can work any time during the day even though you are sick. They want all information so that they would not lose a penny.
- **LOW CORPORATE TAX RATES:** Because corporations are taxed separate from its owners, the corporate tax is much lower than the individual tax.
- **GREATER ACCESS TO CAPITAL:** it is often easier for corporations to raise money than it is for other forms of business. Corporations have the option of issuing bonds or share certificates to investors and they can borrow. Corporations also borrow money at lower rates because financial institutions find corporations to be less risky.
- **CONTINUOUS EXISTENCE:** A corporate exists whether every shareholder and director were to die. This is because; ownership of the business would simply transfer to the shareholders heirs. This continuous existence gives a corporation greater stability and to live a longer term, and be more favorable in financing.

What do I need to do once the corporation has been completed?

**1. Corporate Name\***

- It must be distinctive
- Not cause any confusion with any existing name or trademark
- Must be both English and French
- It must not include any unacceptable terms
- It must include a legal element, in order to separate its identity from a partnership and show the world it has a limited liability
- Or you can choose a business number
- You cannot have the same name or wording

**2. The Province or Territory in Canada where the registered office is situated**

- Indicate the province or territory in which your registered office will be situated.

**3. Notion of Shares/ Classes & max. number of shares allowed to issue\***

- A share represents an ownership interest in the corporation
- It does not give the owner of the share any right to the assets, or to manage the corporation, but it gives the owner the rights that come with the share.
- You can have as many classes of shares as you want
- Shares show who has power and who does not.
- If there is more than one class of shares, you need to indicate the rights, privileges, restrictions and conditions that apply to that class. At least one class must have:
  - Vote at all meetings
  - To receive dividends
  - Receive the remaining property of the corporation upon dissolution
- The 3 rights do not have to be attached to the same class, however there is only ONE class of shares that all 3 rights apply to, Class A.

"The corporation is authorized to issue Class A and Class B shares with the following rights, privileges, restrictions and conditions:

1. Class A shares, without nominal or par value, the holders of which are entitled:
    - a. to vote at all meetings of shareholders except meetings at which only holders of a specified class of shares are entitled to vote; and
    - b. to receive the remaining property of the corporation upon dissolution.
  2. Class B shares, without nominal or par value, the holders of which are entitled:
    - a. to a dividend as fixed by the board of directors;
    - b. upon the dissolution or liquidation of the corporation, to repayment of the amount paid for such share (plus any declared and unpaid dividends) in priority to the Class A shares, but they shall not confer a right to any further participation in profits or assets.
  3. The holders of Class B shares shall not, subject to the provisions of the *Canada Business Corporations Act*, be entitled to vote at any meetings of shareholders."
- A dividend can be paid only when the directors declare a payment of dividend. We can easily never declare dividends and the money will go back to the business.

- Share Redemption: If a fixed price is not stated, a redemption formula that can be determined in dollars will be used.

#### 4. **Restriction on Share Transfers\***

- You want to sell your shares to someone but if the leader runs the majority and says no, he controls you
- "No shares of the capital of the corporation shall be transferred without either (a) the authorization of a majority of the directors of the corporation or alternatively (b) the sanction of the majority of the shareholders of the corporation."
- Sometimes we restrict the transfer of shares to meet the requirements of another law.
- Example, you do not want many non-Canadian to have shares. When the limits are passed, the CBCA provides a mechanism to force the sale of shares to lower the percentage of non-Canadian shareholders.

#### 5. **Maximum and Minimum number of directors**

- Every corporation must have at least one director, except for distributing corporations. A distributing corporation should have none less than 3. If a corporation is to have cumulative voting, then the number of directors must be fixed

#### 6. **Restrictions, if any, on the business the corporation may carry on**

- Indicate any restrictions on the business that the corporation may carry on
- "the business of the corporation shall be limited to the following..."

#### 7. **Other Provisions\***

- Include any other provisions your corporation would like to have in its articles
- Examples would be:
  - ✚ **Restrictions on the transfer of securities other than shares, "Non-convertible debt securities" – you cannot convert them to shares**
  - ✚ **Borrowing powers**
  - ✚ **Cumulative voting for directors**
  - ✚ **Increase the majority of vote by shareholders**
  - ✚ **Foreign corporate name**
  - ✚ **Fractional shares**
  - ✚ **Pre-emptive rights**
  - ✚ **If you are driving and your car gets stuck, what will you do?**
  - ✚ The corporation's securities, other than nonconvertible debt securities, shall not be transferred without either:
    - the sanction of a majority of the directors of the corporation, or
    - the sanction of a majority of the shareholders of the corporation, or alternatively
    - if applicable, the restriction contained in security holders' agreements.

## By-Laws

- **Rules made by a company to control the actions of its members**
- A by-law relating generally to the transaction of the business and affairs of “name”
- **CALLING OF AND NOTICE OF MEETINGS:** You give meeting within 48 hours before the time when meeting will happen
- **VOTES TO GOVERN:** At all meetings of the board, every question shall be decided by a majoring of the votes cast of the question

## Liability doing:

- **Criminal and Civil doings**
- Criminal: Anything defined with a criminal record
- **There are two types of criminal infractions**
  1. **Regulatory Infractions:** As soon as you commit the offence, you are found guilty. Selling food that is unfit for consumption. How many stores do you think change the date of their food? The machine is dirty and it made the meat dirty
  2. **Mens Rea:** Involves the intention of a crime, example FRAUD. That is why it is very hard to prove fraud because there should be proof of the intention.
- **Civil doings:**
  1. You have the duty to work at the best interests of the client, your duty is with the corporation
  2. You are there to serve the CORPORATION not the shareholders
  3. If the corporation succeeds, it takes care of the shareholders
  4. If you are not there to serve the board, you will need an expertise to serve on the board
  5. You will need the expertise of a diligent person and act in a reasonable care.
  6. Out there, we all make mistakes.
  7. Example, I decide to make a merger, there is a company that wants to purchase 60 billion, as long as they are diligent in their approach then im fine with it.

## Statutory Obligations

- A requirement that employers are required to provide their employees as determined by the law of the province in which the employer operates.
- You need to pay your salaries
- You have to pay taxes, HST and employment insurance
- BREACH IN HEALTH AND STANDARDS: Over 20 people died during Quebec city because of the damaged AC, releasing polluted air for them to breathe. They did not properly use the system, if the directors did not do their job properly, they are liable
- HANDLING DANGEROUS GOODS: you will see a lot of equipment, so when you are dealing with goods you have to be careful. What happens to the needles in the hospitals? What do we do with the skin of the boy being circumcised? Hospitals sell them because that is what we use to make wrinkle cream. Story: Do you sign all those papers when you give birth? Do you care where your placenta goes? There are no standards for cat and dog food.
- INSIDER TRADING: We cannot take advantage of information we possess in order to make deals. That will give us a financial benefit. Example: you are an accountant so you know shares will be higher so you go and buy right now.
- TOXIC CONTAMINANTS: You cannot release toxic contaminants unless authority releases it. On the beach they always put a sign saying if you are allowed or not and this is because there was a huge rainstorm and all the dirt came in the beach.
- ANTI-COMPETITIVE BEHAVIOR: Certain business practices that limit or prevent competition are against the law. Example: dumping of goods. McDonalds use all left overs to make chicken nuggets. As long as you are not killing competition then you are okay.
- FALSIFY ITS PROSPECTIVES: change the content so we financially look good. Everyone wants to see growth.