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Chapter 5: Mandate

- **Mandate:** Contract between two persons; the mandator and the mandatary. The mandator empowers the mandatary to represent him in dealing with an outside 3rd party.
 - **Representation:** When you represent someone else. When you make the deal, the represented is bound.
 - **Agent:** Mandatary; Steps into your shoes
 - **Principle:** Mandator; Person who empowers the agent
 - **Power of Attorney:** Writing evidence of Mandate. (verbal = mandate)
- **Acceptance:** May be expressed or Tacit. Tacit acceptance may be inferred from acts or silence of mandatary.
 - Ex: Ask your friend to sell your dog for at least 200\$, and I will give you 10%
 - Expressive acceptance: nods, says yes or no, signs contract
 - Tacit acceptance: Friend takes the dog away without a word
- **Onerous/Gratuitous:** Gratuitous title is that entered by 2 people in the mandate. Onerous title is entered by 2 people in the mandate, but one is a professional mandatary and thus is being done for money.
 - If the mandate is not in writing or done by professional, then the presumption is you are doing it for free.
- **Remuneration:** Money paid, should be determined by contract, usage or on basis of value of services rendered.
- **Duty of Agent**
 - **Fiduciary Duty:** Mandatary is bound to fulfil mandate he accepted and shall act with prudence & diligence in performance and honestly & faithfully in the best interest of mandator. Avoid placing himself in a position that puts his own interest in conflict with mandator.
 - Duty of care and diligence. and Duty to act in best interest of agency b/c your being paid
 - **Inform Principle:** During mandate, Mandatary is bound to inform the mandator of the stages reached in the performance of mandate and inform them without delay when the mandate was fulfilled.
- **Delegation:** Performance of mandate may require the mandatary-unless prohibited-to get assistance from another person and delegate powers to him for that purpose. However, the mandatary remains liable towards mandator for the acts of person assisting him.
 - Sub agent of agent; but Agent would still be liable to principle if anything occurs.
 - If the mandate is transferred to someone else by the principle then agent is not liable. but if principle agrees or she transfers it herself, then she is still liable.

- **Double Agent:** Mandatary who agrees to represent both parties has to inform the mandators unless they already know or he is exempted. He shall act impartially towards each other.
- **Principle of Nullity V.S Cancellation**
 - Annulled: never existed
 - Cancelled: stops
- **Confidential Information:** Mandatary cannot use for his benefit any information he obtains in any property he is charged with receiving or administering in carrying out mandate unless mandator consents to such use or it arises from law or mandate
 - Use information given to generate a personal profit. (not focused on job at hand)
 - if property is used without authorization, he will not only be liable for any damages but have to pay the mandator any profits or interests earned.
 - Company hires a woman to buy a bunch of farmland, to make a manufacturing plant. She realized the land around it will also increase in value and buys a plot for herself, she is not allowed to. Any profits she makes goes to the company. Also, is she tells anyone and as a consequence the company does not buy the lands, any damages incurred to company, she will be liable.
- **Party to Act:** Mandatary cannot even through intermediary, become a party to act (buyer) which he agreed to perform for him mandator, unless authorized by principle or mandator is aware of it. The nullity of contract can only be performed by the Mandator.
 - She cannot secretly buy the land, or get someone to do it for her.
 - Old car in garage, Guy wants you to sell it for 5K, you know its worth 50K, so you get someone to buy it for you without the guy knowing. You don't tell him. You then find out there is no engine and car is actually worth 5K. You cannot try to null the contract.
- **Cooperation:** Mandator is required to cooperate with mandatary to facilitate the fulfilment of mandate.
 - Answer questions pertinent to sale
- **Exceeding Mandate:** Mandator is bound to discharge mandatary from obligations he contracted towards 3rd party with limits of mandate. Mandator is not liable unless he ratifies (forgives) the act, mandatary was unaware that mandate was terminated.
 - Selling a dog for 200 and gets 10%; is she sells for 180, the mandator can sue her because it exceeds the mandate.
 - But if she sells for 180\$ because that is the best price, mandator can say you are the dog person, I trust you . = RATIFICATION
- **Ratification:** Mandator has ratified the mandatary when acts performed are more advantageous for him than anticipated and also if he chooses to forgive
 - Buyer can sue the mandatary if she did not disclose the relationship between herself and mandator and that she was just the Agent. If anything happens, the buyer can sue you unless you can prove the relationship was disclosed.
 - Sold the dog for 250\$, you do not need permission from mandator.
- **Liability of Principle:** Mandator is liable for acts which exceed mandate and if he ratifies them.

- **Liability of Agent:** Liable to 3rd party for acts performed by mandatary in the performance and within limits of mandate unless, under agreement, or by virtue of usage, mandatary is liable. mandatary is also liable if he acts in his own name and can be subject to any rights 3rd party might have to mandator.
 - Exceeds powers, he is personally liable to 3rd person whom he contracts with unless they were aware or if he was ratified.
- **Apparent Mandate:** Person who has allowed to believe that person was his mandatary is liable, as if he were his mandatary, to the 3rd party who has contracted in good faith with the latter, unless an error was foreseeable and appropriate measures were taken to prevent it.
 - Go to Sears and buy jeans, you go pay and leave, when your leaving the bouncers say you shoplifted. She cashier was actually a janitor but did not look like it and was behind the counter. You did not know and could not have known.
 - Sears is liable because it has an obligation to manage it's employees and supervise.
- **Vicarious Liability:** Mandator is liable for any injury caused by fault of mandatary in performance of his mandate unless he proves that the mandatary was not his servant and that he could not have prevented the injury.
 - Liable for damages caused by someone else with no fault to them, principle is not liable unless he could have prevented the injury.
 - Parents liable for children, Employers liable for employees
- **Termination of Mandate:** Upon termination, mandatary is bound to render an account and return to mandator everything he has received in performance of his duties, even if it is not due to mandator. Mandatary is entitled to deduct what the mandator owes him by reason of the mandate from the sums he is required to remit. He may also keep what was entrusted to him until payment for mandator is given.
 - Agent has to give everything to principle (that which is owed and not owed but received) : Receives a car as a bribe= given to principle, may be charged with interest for money not given for a period of time.
 - Agent can keep any property from principle until money owed to agent is given.
- **CASES**
 - **PIEC ESTATE V.S CAISSE D'ECONOMIE POLONAISE**
 - 3 separate mandates:
 - 1. The niece was the liquidator of the aunt's estate upon death
 - 2. The nephew was in charge of managing the aunt's money & dealing w/ bank
 - 3. The bank was in charge of protecting the aunt's money
 - The aunt went for a trip to her native Poland. During her trip, she passed away.
 - When the niece learned about the death of her aunt, she began liquidating her estate.
 - At her great surprise, she realized that her aunt's term deposit certificates of \$27,000 were withdrawn.
 - The nephew, who learned about his aunt's death before everyone else, created a forged letter from his aunt instructing the "Caisse D'Économie Polonaise du Québec" to pay her nephew the sum of \$27,000.

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- The bank accessed the aunt's term deposit certificates, turned them into cash, and gave them to the nephew.
- The plaintiff (the niece) is excessively upset, and wishes to properly liquidate her aunt's estate (the way she was asked to by her aunt).
- The bank should have asked itself questions because the redemption of the term deposit certificates involved the renunciation of an important amount of accrued interest. Further investigation should have been conducted.
- The court is of the opinion that a number of factors should have alerted the bank to the possibility that the nephew was exceeding the mandate his aunt had given him.
- For these reasons, the Court condemns the bank to pay the niece a sum of \$27,000 with interest from the date of service.
- **BREACH OF FIDUCIARY DUTY: Article 2138** applies to this case – a mandatary (the bank) is bound to fulfill the mandate he has accepted, and shall act with prudence and diligence in performing it.
- **DOWEL VS. HAY ELIS**
- Joseph had money, but a lot of debt.
- Joseph wishes to go bankrupt, but cannot do so because he has money to his name.
- Joseph decides to purchase an apartment building under the name of Dr. Anthony Dowell, with whom he had previously undertaken transactions such as this one.
- By purchasing the apartment building, Joseph no longer has money.
- Joseph decides to mortgage the building under Dr. Anthony Dowell's name, but takes the cash proceeds from the mortgage of the building.
- Dr. Anthony Dowell is increasingly concerned by his participation in the scheme.
- Dr. Anthony Dowell became suspicious when he found that an amount held in trust for
- The maintenance of the property was taken by Joseph.
- After the papers signed, Dr. Dowell became the owner of the property incurred, and had substantially large obligations toward innumerable third parties, such as the mortgage creditor, tenants, and municipal/school authorities.
- During the initial period, Joseph became the mandatary, and was in charge of all day-to-day administration of the property.
- Dr. Dowell hired a notary (the defendant) to manage the property's trust account, and make sure that all cheques were properly justified. The defendant was in charge of ensuring that all amounts taken by Joseph were put towards the maintenance of the property.
- - In other words, Dr. Dowell (the mandator) hired Notary Edgar Hay-Ellis (mandatary) to take care of the property's trust account.
- In this case, there are 2 mandates;
 - one between Dr. Dowell and Joseph (administration of the property),
 - one between Dr. Dowell and the notary (administration of the trust account aimed at covering expenses associated with the maintenance of the property).
- The mandate of interest in this case is the one between Dr. Dowell and the notary.

- Many cheques were used for purposes in no way related to the property. Some cheques had even disappeared.
- Article 1458 (from the Civil Code of Quebec, Civil Liability) – Every person has a duty to honour his contractual undertakings. Where he fails in his duty, he is liable for any bodily, moral, or material injury he causes to the other contracting party and is liable for reparation of the injury.
- **Article 2130 (from the Civil Code of Quebec, Mandates)** – 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.
- As a result, Dr. Dowell won the case.

Chapter 6: Forms of Business Ownership

- **Organized Economic Activity:** Operation of business involving a series of transactions with the objective of earning a profit.
- **Enterprise:** Organized under one of several different ownership structures/forms; Sole Proprietorship, Partnership, Corporation
- **Sole Proprietorship:** All enterprises with a single individual who remains ownership and has full authority to manage administration of enterprise
 - **Simplicity:** Simplest Form
 - **Name:** Business name is your name
 - **Registration:** Special form filled out with required fee. Annual renewal required
 - Don't have to register if it is your own name; but it builds credibility & you need to be registered to open a business bank account
 - **Liability for Debts:** Unlimited & personal liability for business debts,
 - Creditors have a right to owners personal items and assets.
 - Debts remains even after death an must be paid out before assets are distributed to heirs.
 - **Personal Income:** Profits are considered personal income of business owner, taxed along with any other income.
 - **Termination:** Upon death or personal decision. Declaration should be registered in case someone else does business in your name and then you will be liable.
- **Partnership:** Two or more individuals carrying out common commercial business. Each partner agrees to contribute something to their common venture & in return share profits.
 - **Partnership agreements:** Write down details of their business relationship. Decided who gets what and who does what.
 - **Buy-Sell Provisions;** if one dies or defaults, who gets the assets, compensation for giving it up, etc.
 - Generally not used, only when necessary.

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- **Registration:** Require partnership declaration; name, address & type of business.
- **Liability for Debt:** Each partner is 100% liable for debts; unlimited personal liability. Thus personal and business assets are subject to claims. No protection.
 - **Solidarity:** any one or more partners are required to pay all part of any debt owed by business.
- **Share of Profits:** Equal or unequal share of profits is written in partnership agreement. Everyone **MUST** get a portion of profit.
- **Limited Partnership:**
 - **General Partners:** Partners are solidarity liable for debts to an unlimited, personal extent.
 - **Special Partners:** Liable for debts only to extent of stipulated amount contributed to partnership, as stated in partnership declaration.
- **Corporation:** Separate legal entity represented through Directors & officers, owned by shareholders. (Most favourable due to tax laws).
- **Incorporation:** Federal has better name protection & comes on nation-wide search, Provincial is now better but the name protection is not great
 - 2 companies have the same name in different provinces. The issue arises when they want to expand and who would be more preferred for the name.
 - Incorporated with an English name, you need a French one; KFC= PFK. But trademarks can remain the same: McD, Tim Hortons, Best Buy
- **Civil Code of Quebec:**
 - **Separate Legal Entity:** Legal persons are endowed with judicial personality. Legal persons are established in public & private interest. (legal persons have full enjoyment of civil rights)
 - **Registration:** Application is filled out and sent to government to be approved. With approval, the corporation is brought to life in terms of law.
 - **Name:** Legal person has name which is assigned to it when contributed & under which it exercises rights & performs obligations.
 - Assigned name which conform to law & includes an expression that clearly indicates judicial forms assumed by legal person.
 - **Numbered Company:** Company is assigned a number.
 - **Representation:**
 - **Directors:** Considered to be the mandatory level (AGENT) of legal person. Has to conform to obligations imposed on him by law and act his duties within limits of powers given to him.
 - Managers that make all business decisions. Manage and operate corporation & elected by S/H. Delegate day-to-day task to officers.
 - Owed Fiduciary duty to company & not to S/H because what may be best for company (LT) may not be what is best for S/H now.
 - Mandate is how corp. operates; Principle = company, Agent = officer

- **Officers:** Appointed by directors; senior employees of corp= CEO, COO, CFO
 - Legal person is represented by senior officers, who bind it to extent of power vested to them by law.
- **Ownership:**
 - **Shareholders, Limited Liability:** Owners of business, they give money and gain equity. Do not run or manage the business. They have one task and it is to elect the BoD.
 - S/H, Director & officer = 1 person
 - **Common Shares:** Equity Financing
 - Have a right to vote, receive dividends & portion of surplus assets.
 - **Preferred Shares:** Debt Financing
 - Guaranteed dividend every year.
 - Selling shares are better B/C if you participate in debt financing, you have to pay them back, but w/ equity financing, you're giving them a portion of the company & giving up control.
- **Fraud:** Court may hold individual liable to extent indicated for any damages suffered by the corp. (founders, directors, officers, etc.)
 - Company is defrauded or assets are misappropriated; usually director/ taking action against person since they are the only ones who can sue.
 - But if it is the Directors or officers doing fraud, then authorized people can get permission from court to ask & investigate. (rights of minority S/H are protected)
 - **Derivative Action:** File a motion claiming Directors/Officers are doing so & so, & it is not in the best interest of corp. Thus authorization may be granted to sue/launch an investigation. However, the corp. pays for the court expenses.
- **Corporate Veil:** Cannot set up a company to set-up fraud, or abuse public order.
 - If you set up a fraudulent corp. you cannot hide behind it and say it was the corp. who ripped off the customers if you are the sole S/H, Director, Officer, Founder, Employee. Cannot claim to be representing the corp. All this is BS & you will be held liable.
 - If you make a bad business decision, then the corporation takes responsibility.
 - Ex: 1000 Scratch & Win Scam.
- **Pre-Incorporation Contract:** Person who acts for a legal person before it is constituted is bound by the obligations, unless contract stipulates otherwise & includes statement to effect that legal person might not be constituted or right not am obligations subscribed in contract.
 - Can represent a corp before it's incorporated.
 - If you sign for non-existing person, you are personally liable.
 - You not allowed to sign for a company that has not yet corporate with the stipulation that corp. may not reincorporated & person holds no personal liability.

- **Fiduciary Duty:** You have the duty to operate in best interest of principle; exception to rule of mandate.
- **Confidential Information:** May not use corp. information for his own profit or that of a 3rd person unless authorized to do by member of legal person.
- **Conflicts of Interest:** Director shall avoid placing himself in a situation where his personal interest would be in conflict with his obligation as a director.
 - Part of fiduciary duty,
 - Cannot use corporation information for personal interest. If there is potential conflict you have to disclose it.
- **Director Qualifications:**
 - Minors, persons of full age under tutorship/ curatorship, bankrupts & person prohibited by the court from holding such office are disqualified for office are not allowed to be directors.
- **Indoor Management Rule:**
 - Acts of director/senior officers may not be annulled on sole ground that he was disqualified or that his designation was irregular.
 - Ex: SEARS GUY VS. Buying from someone's car truck
 - Assume teacher is teacher b/c he has access to information.
 - Interview story: Fake employee, he gets the story
- **Business Corporation Act (Quebec):**
 - **BoD:** Composed of one or more directors
 - Public issuer: BoD is composed of not fewer than 3, at least 2. (Not required to be S/H)
 - **Qualifications of Directors:** Any natural person, unless those previously stated
 - **Elections of Directors:** Elected by S/H, in manner & for term not exceeding 3 yrs.
 - **Duties of Directors & Officers:** Act in best interest of corporation.
 - Directors are duty bound towards the corp. to act with prudence & diligence, honestly & loyalty & in interest of corp.
 - Officers are bound, among other things, by same obligations as are imposed on the directors.
 - **Liability for Wages:** Directors are Personally Liable
 - Solidarily liable to employees of corporation of all debits not exceeding 6 months wages payable to each employee for services performed for corp.
 - Director is not liable unless corp. is sued for bet W/1 year after it becomes due.
 - **Liability for Dividends:** Directors are Personally Liable
 - Directors of corp. who vote for a consent to a resolution authorizing any of the following are solidarity liable to restore corp.
 - Liability for distribution of dividends rendering the company insolvent (not capable of paying liabilities)

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- **Officers:** BoD designates the officers of cop. appoint directors or other persons as officers & specify their functions.
 - Mandatory of corp.
- **S/H:**
 - **Right to Vote:** 1 Share = 1 vote;
 - **Liability:** Not liable for any acts of corp. However, they're debtors to corp for any unpaid amount on shares they hold in it's share capital.
 - Liable for Unanimous S/H Agreement.
- **Unanimous S/H Agreements:** Subject to Unanimous S/H agreement, the BoD exercise all powers necessary to manage & supervise management of business & affairs of corp.
 - Extent that Unanimous S/H agreement restrict powers of BoD to manage / supervise business & affaires of corp. or withdraws all such powers from BoD.
 - Take powers away from directors b/c you want the power yourself or with min. shareholders %. They are scared that their rights may not be protected or used for dealing with rights of S/H
 - Who has to do what; what happens if you don't follow the rules, Buy/Sell shares= offer to S/H first.
 - Usually Directors rights are taken away since they approve who gets S/H
- **Canadian Business Corporation Act (CBCA):**
 - **Management:**
 - **Directors:** Subject to any Unanimous S/H agreement. Directors shall manage / supervise management of business & corp. affaires.
 - **Officers:**
 - **Conflict of Interest:**
 - **Duty of Care:**
 - **Liability of S/H / Unanimous Agreement:** Extent S/H takes for themselves power of Directors. They also inherent the directors personal liabilities of Wages & Dividends.

CASE: 146400 CANADA INC. VERSUS NETWORK TRANSPORT LTD.

- Plaintiff = 146400 Canada Inc.
- Defendant = Network Transport Ltd.
- The plaintiff took over the lease that Network Canada Ltd. had for a certain industrial property owned by Claridge Properties Ltd.
- The offer to lease was signed by the president of Network Transport Limited, not on behalf of Network Transport Limited, but rather on behalf of its wholly owned subsidiary in Quebec.
- Prior to the expiry of the lease term, Network Transport Limited abandoned the leased premises without leaving the remaining amount due in rent.

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- When 146400 Canada Inc. moved in, there was a substantial amount still due in rent. The owner of Claridge Properties Limited was now asking 146400 Canada Inc. to cover for the unpaid rent.
- Network Transport Limited refuses to pay the amounts claimed by 146400 Canada Inc.
- Network Transport Limited claims not being responsible for the unpaid rent because the plaintiff was actually dealing with the wholly owned subsidiary that is now closed.
- However, the plaintiff claims to have believed that, at all times, it was dealing with Network Transport Limited as a lessee. There was no evidence of the contrary.
- The president of Network Transport Limited induced the lessor to believe that it was dealing with the parent company rather than its subsidiary.
- By doing so, the president committed a fraud, under Article 317.
- Article 317: In no case may a legal person (or company) 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.
- Although Network Transport Limited and its subsidiary are two legal entities, the Court retains the fact that their activities are united.
- 146400 Canada Inc. seeks a condemnation against the defendant for the total rent due, with interest, as well as additional indemnity contemplated by Article 1619.
- Article 1619: An indemnity may be added to the amount of damages awarded for any reason.