

# Comm 315 Final Review

## Chapter 6 : Forms of Business Ownership

- 6.1 To understand that there are various legal forms that can be used for the ownership of a business.
- 6.2 To become familiar with the two principal personal forms of business ownership, the sole proprietorship and the partnership
- 6.3 To distinguish between the general commercial partnership and the limited partnership
- 6.4 To describe why the development of an objective form of business ownership was necessary and to explain its early development.
- 6.5 To understand the concept of corporate legal personality and the characteristics of the corporation.
- 6.6 To develop an understanding of the legal procedures used to start a business using any of the forms of ownership discussed.

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### Section 6.1 | Introduction

Article 1525 of the civil code, we find the following explanation:

*“The carrying on by one or more persons of an organized economic activity, whether or not it is commercial in nature, consisting of producing, administering or alienating property, or providing service, constitutes the carrying on of an enterprise.”*

### **Forms of business ownership most frequently used in Canada**

- A. Sole Proprietorship
- B. Partnership
- C. Corporation

Authority given to govern, regulate and make laws on business and commercial transactions is found in our Constitution. Section 92 (13) of the *Constitution Act, 1867* gives provinces the right to make laws about “Property and Civil Rights in the Province.”

- Provincial government regulates sole proprietorships and partnerships, which are both “personal” forms of business.
- Personal: Business is owned and operated by a person who undertakes the risks and keeps the profits “personally” — either alone or with others.

## Section 6.2 | The Sole Proprietorship

### 6.2.1 Description (pg. 186)

A sole proprietorship is the most common form for business start-ups. It encompasses any and all enterprise undertaken by one single individual, retains full authority to manage the administration. I.e: *Entrepreneur*

- Least complex form of business
- Person can start enterprise with their own name, in Quebec, without any formalities.
- May need to obtain licence from municipal authorities.

A married person can open their sole proprietorship, however, the legal right for each consort to dispose of property he or she owns personally may be restricted by the provisions governing their marriage regime.

A minor engaged in any type of business is considered to be of full age as regards any transaction related to that business.

- Minors cannot use the defence of lesion (claiming they were taken advantage of because of their age).

### 6.2.2 Characteristics (pg. 187)

#### 6.2.2.1 Start-Up (Registration pg. 187)

Any person who carries on business is required to register this fact with the Quebec Govn't authorities. Special Form provided is then filed. Annual update and fee required.

- *Exception:* Person who using only his or her own personal name as the name of business is not required to register but may do so voluntarily.

*Registraire des Entreprises*

*Act Respecting the Legal Publicity of Enterprises (Appendix 6-A)*

These registrations of the business's name gives the owner permanent rights to its use and prevents anyone else from using the same name.

Your name and info are then public for people, organizations and creditors can then find who is behind enterprise name.

### **6.2.2.2 Ownership (pg. 188)**

#### **(i) The Owner**

Sole proprietor is one individual who maintains, one hundred percent, financial control and interest over the enterprise. (An agreement can be made to make partnership or corporation and is then exposed to different rules and regulations)

#### **(ii) Transfer of Ownership**

Transfer of ownership is NOT POSSIBLE. Because the enterprise and sole proprietor are considered to be ONE in the eye of the law, ownership cannot be passed on to another person. (i.e: If owner dies and an heir wishes to continue the activity, they must either inherit the asset or buy them from the estate and then register a new business ownership in their name.)

### **6.2.2.3 Liability for Debts (pg. 188)**

Sole proprietor has unlimited and personal liability for the debts. Therefore all property owned by sole proprietor can be seized and sold.

If the business is bankrupt, so is the owner whose personal assets are not sufficient to pay off the business debts.

- All debts must be paid off before a division of assets can take place amongst surviving heirs.

### **6.2.2.4 Management (pg.189)**

Owner makes all decisions about every aspect of the business.

### **6.2.2.5 Profits (pg.189)**

Owner takes all risk, therefore takes all profits.

### **6.2.2.6 Termination (pg. 189)**

When business owner dies or wishes to cease doing business.

## 6.2.3 Advantages and Disadvantages (pg. 189)

### 6.2.3.1 Advantages (pg. 189)

- Simple Registration — easily done by owner
- Inexpensive to start — costs under \$50 to register
- All profits belong to the owner
- All decisions made by the owner
- Flexibility
- Simple to dissolve
- Enjoyment and challenge of personal involvement
- Operations and results can be kept secret

### 6.2.3.2 Disadvantages (pg.189-190)

- Owner is personally liable for all debts — unlimited liability
- Difficult to obtain outside financing (e.g., capital for growth)
- Depends only on skills of owner — may be too specialized
- lack of continuity
- No legal distinction between owner and business
- Restrictions on hiring members of owner's family including spouse and children under 19, under income tax regulations.
- May be difficult to sell "good will" if reputation depends very heavily on the personality of the owner
- All profits are considered to be earned by the sole proprietor personally and are taxed at full personal income tax rates.

## 6.3 | The Partnership

### 6.3.1 Description (pg. 190)

When two or more people agree to operate a business together, this agreement forms a contract between them known as the **Contract of Partnership**. ([Appendix 6-B](#))

Each partner agrees to contribute something to their common venture, and in return they share the profits (and also the losses, if there are any) resulting from their efforts.

**Partnership Agreements** ([Appendix 6-C](#)) are common for partners to agree upon. They reduce the potential future disagreements as to what partners decided.

### 6.3.2 Characteristics (The General Partnership)

#### 6.3.2.1 Start-Up (Registration) (pg. 191)

Requires to register a Partnership Declaration.

*Act Respecting the legal Publicity of Enterprises*, ([Appendix 6-A](#))

#### 6.3.2.2 Ownership (pg. 191)

##### (i) The Owners

Division of ownership does not have to be equal amongst all existing partners. (i.e: Three partners may agree that one of them holds 50% of share while the other two hold 25%—each “A) 50% B) 25% C) 25% = 100%”)

##### (ii) Transfer of Ownership

Transfer of ownership in a partnership is possible, but within limits.

#### 6.3.2.3 Liability for Debts

Also a “personal” form of business ownership.

Partners are **solidarity** liable for the partnership debts. Partners are permitted to agree between themselves, that one or more of the partners will not have to contribute to the debts of the partnership debts; unless these debts are directly owed to creditors, partner will be required to pay them back and then ask fellow partners for payment.

#### 6.3.2.4 Management (pg. 192)

Partners agree between themselves as to how the business is to be managed. Every aspect of management may be included in Partnership Agreement.

- How much time each partner will devote to the business.
- What responsibilities each partner will have, e.g: sales, production, financial management.
- What happens if one of the partners becomes too ill to work in the business

#### 6.3.2.5 Profits (pg.192)

Partners may agree between themselves.

There is only one arrangement not permitted by the *Civil Code* — an agreement which excludes a person from any share of the profits. Null Arrangement.

#### 6.3.2.6 Termination (pg. 192)

Can be terminated by: Agreement of partners, Bankruptcy or upon accomplishment of its objective.

#### 6.3.3 Characteristics (The Limited Partnership) (pg. 192-193)

A special form of Partnership is permitted for situations where some partners want to invest in the business, but they are prepared to leave the management to the other partners.

<p><b>General Partners</b> Main manager of venture (Fund, acquisition etc..)</p>
<p><b>Limited Partner</b> Investor in venture with low/no liability for debt payments</p>
<p><b>Special Partners</b> Just like limited partner but is liable for the debts to the extent of a stipulated amount they have contributed.</p>

### 6.3.4 Advantages and Disadvantages

#### 6.3.4.1 Advantages

- Simple Registration —easily does by the partners themselves.
- Inexpensive to start —costs under 50\$ to register
- Profits are shared between partners
- Partners are able to assist each other
- Partners pool their talents —one has skills the other(s) lack
- Quite Flexible
- Simple to dissolve
- More scope for specialization among the partners
- Enjoyment of personal involvement
- Limited Partnership allows for some limitation of liability

#### 6.3.4.2 Disadvantages

- Partners are personally liable for all debts and the liability is solidary.
- Potential conflict between partners
- Lack of continuity
- Difficult to transfer ownership
- may be difficult to recover one's investment
- Requires a written agreement if partners do not share equally or if some partners are to be excluded from carrying out some of the functions of the business
- Partner's share of the profits taxed at full personal income tax rates
- Restriction on hiring members of partners' families.

## **Section 6.4 | The Corporation**

### **6.4.1 Background (pg. 194)**

Talks about the risk of having \$500,000- \$10M business and how stress of debt may be to high for “personal” type of business, therefore the concept of Corporations were first seen in the 1670’s ‘The Governor and Company of adventurers trading into Hudson’s Bay.’

### **6.4.2 Description (pg. 194-195)**

Corporations are created by the government as separate **legal persons**. They may engage in in any activity or undertakings that are not prohibited by the law or by the *Articles of Incorporation*.

The principle, that the personality of a corporation is separate and distinct from the personality of the of the individual members or shareholders, has been recognized in many cases, therefore owners of a corporation can even sue the company, if necessary, to protect their rights.

Also, if the corporation were to go bankrupt, no creditor can claim debts to the owners, thus no liability towards owners.

*“A corporation is an artificial being, invisible, intangible, and existing only in contemplation law. Being the mere creatures of law, it posses only those properties which the charter of its creation confers upon it, either expressly, or as incidental to its very existence. These are such as are supposed best calculated to effect the object or which it was created. Among the most important are immortality, and, if the expression may be allowed, individuality...” ~ American Chief Justice John Marshall*

### **6.4.3 Characteristics**

#### **6.4.3.1 Start-Up (Application) (pg. 195-198)**

The most complex and expensive process so far.. Generally, services of lawyers/ notaries are needed.

#### **(i) Federal or Provincial Incorporation? (pg.196-197)**

First decision is whether to incorporate under federal or provincial law. In Canada there are eleven laws under which the corporation may be formed.

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Federal Law is the *Canada Business Corporations Act (CBCA)*. The law in the province of Quebec is the *Quebec Business Corporations Act (QBCA)*.

- A provincially incorporated company may carry on business in other provinces; however if it wishes to open a branch in an other province, it will be required to obtain and pay for a license from each province in which it wishes to operate, subject to the exception noted below.

The power to incorporate companies comes from the provision in the *Constitution Act, 1867*.

Under the *Quebec Act Respecting the Legal Publicity of Enterprises*, it is required that any business incorporated outside of Quebec must, if it wants to do business in this province, register and pay a separate fee to operate in Quebec.

A company under the CBCA , has the capacity to carry on business in all parts of Canada. A request for a **Federal Incorporation** requires the completion and filing of a document called the *Articles of Incorporation*. (**Appendix 6-D**)

Articles of Incorporation may be filed by any person or persons who are:

- Over 18 years of age;
- Of sound mind;
- Not a bankrupt

Corporations need to register, obtain the necessary licenses, pay all applicable taxes, file annual reports, etc.. These documents are submitted, with the current filing fee, to *The Director, Canada Business Corporations Act* in Ottawa. If all is well, then the gov'n't issues a *Certificate of Incorporation*.

### **(ii) Determine By-Laws (pg. 197)**

Every corporation is required to prepare a set of internal rules, called by-laws. These rules state how the company may borrow money, issue bonds or debentures, elect directors and officers, and hold meetings of share holders.

By-laws are proposed by Board of Directors (BOD) and approved by the shareholders. They then form the basis on which the company will carry on its business activities. Any other changes, require shareholder approval.

**(iii) Identify Principal Place of Business (pg. 197-198)**

A corporation must maintain, under the CBCA, a registered office within Canada. Under the QBCA, the corporation must maintain a head office within Quebec.

*Head office is too provide a place where the important documents of the corporation are to be kept. These include:*

- The Articles of Incorporation and by-laws;
- The Certificate of Incorporation;
- Any unanimous shareholder agreement;
- Minutes of shareholder and directors' meeting; (minutes = interpretation of meeting)
- The register of the corporation's securities (shares)
- The official company seal if any.

**(iv) Select Name of the Corporation (pg. 198)**

The name of a corporation must respect certain rules in order to be acceptable.

- The name must not be deceptive or misleading;
- The name must not be the same or sufficiently similar (in its written form or in its sound) to that of any other business to permit confusion to occur;
- Must not invoke a relation to a government body, educational institution, professional association (i.e Quebec Bar Association) and non-profit organizations;
- The last word of the corporate name must be any one of the following — Corporation or Corp., Incorporated or Inc., Limited or Ltd./Ltée., or Société par actions de régime fédéral (SARF)
- Under the CBCA, the name may be either French, English or a combination or both, which then must use Inc.;
- Under the QBCA the name must be in French, and may be accompanied by versions in any other language(s); it should be noted that for a company incorporated in any other jurisdiction, it must have a name in French in order to register in Quebec.

Sections from the QBCA (**Appendix 6-E**) and sections from the CBCA (**Appendix 6-F**)

### 6.4.3.2 Ownership

#### (i) The Owners - Common vs. Preferred Shares (CS vs. PS) (pg. 199-200)

Ownership in a corporation results from the purchase, by the investors, of **shares**, the term used for the small units into which the ownership is divided.

Law requires that there must be at least one “class”, or group, of common shares. If the incorporation wishes, it may also choose to have one or more “classes” of preferred shares.

Ownership rests in the hands of Common Shareholders. (One share = One vote)

- Most matters usually require approval by majority vote, but certain matters such as amalgamation, amendment of the articles of incorporation or dissolution of the corporation require, by law, the approval of at least two-thirds (2/3) of the common shareholders.

Common Shareholders (CS) share in profits as dividends are declared by the BOD.

- Dividends can be distributed by monetary compensation or by a form of stock dividend (handing more shares to share holders)
- There is no obligation for BOD to declare dividends
- The BOD decides what portion of profits is distributed throughout shareholders
- Even if the company is making outrageous amounts of profits, common shareholders have no basis for legal action against the Board. (The only recourse CS have is to vote in new Board members at the next general meeting)
- The price of a company's shares trading on the stock exchange may be different from the book value of the shares, as stock exchange prices reflect the supply and demand for the shares in the market place.
- *Also important to note, corporate dividends are taxed twice. Because the company pays income tax as it makes profits each year. When the BOD pays out dividends, this money becomes “income” to the shareholders who are required to pay tax on it again. (Investor might be able to declare dividend revenues and get tax brake)*

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Preferred Shares offer ownership in the corporation, but in a limited form.

When a company is looking for external funding, 2 problems may arise (there's obviously more than 2, but this is what the *textbook* says).

1. CS may not want issuance of other common shares because this would mean their voting power decreasing.
2. The people who are looking to invest in the company may want more security on their investment returns.

This is why PS were basically invented.

The term "preferred" indicates that these shares provide for special rights and priorities as well as restrictions that do not apply to the common shares.

- They are guaranteed a certain dividend on their investment, which will be paid from the company's profits, before any dividends are paid out to CS
- They are cumulative (if company doesn't pay our dividends one year, they have to pay what they missed + the dividend for present year)
- They are first in line to get their par value investment if corporation is to liquidate.
- There can be an agreement between investor and company to have 'convertibility' (if wanted, investor can convert PS into CS)
- The main restriction is that PS do not get the right to VOTE;
  - Except If, company were to not make profits for 2 years in a row, then PS get to vote.
  - As soon as their dividends are all settled, they once again become non-voting shares, until another default.

*Under section 24 of the CBCA and section 44 of the QBCA, incorporated companies no longer use the terms CS and PS. Instead, they are classified as Class A and Class B shares, etc..)*

**(ii) Transfer of Ownership (pg. 201-202)**

The transfer of ownership is easier than any other business types, seeing that ownership is not a 'personal' matter, but an 'objective' matter. (When you own a vast amount of shares for one company, you do not own equipment, land or trucks.)

The *evidence of ownership* in a corporation is the **share certificate**. (**Appendix 6-G**)

- In this modern day and age, the transfer of shares has become incredibly easy and is performed mostly through internet trading.

Any Company proposing to sell securities (shares or bonds) to the public must file a **prospectus** with the appropriate securities regulatory commission in the province concerned and in federally (SEDAR).

- Prospectus is intended to provide a full disclosure of the business so that prospective investors may make fully informed decisions.

*Sometimes when companies look for external funding, they might not look at issuing shares, but instead they would go to financial institutions or private lenders. These lenders need security for their investment.*

- Companies may issue bonds or debentures.
- A **Debenture**: A guarantee to repay, giving the creditor a preferred right to collect his or her debt.
- A **Bond**: \*Another word for debt\* Provides greater security to the lender because it usually provides for specific security such as a pledge or mortgage on all or part of the company's assets.
- Bonds or Debentures agreements are found in a document called *Trust Indenture* or *Trust Deed*.

**6.4.3.3 Liability for Debts (pg. 202)**

There exists a shielding or **corporate veil** between the investor and the corporation. This limitation of liability encourages individuals to invest their money in business corporations, secure in the knowledge that their maximum possible loss is the amount they have already paid as their investment in the purchase of shares.

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- In certain circumstances, though, this protection afforded to the shareholders may be mitigated due to their actions, which then allows creditors to pursue the shareholders personally. 4 possible actions may be worth noting:
  1. Shareholders might promise to make contributions to prove their commitment. Should they fail their promise, the company or creditors on behalf of company may hold the shareholder personally liable and pursue them for their promised contribution.
  2. Shareholder may be held accountable if they have participated in fraud against the corporation. Any interested party such as creditors or other shareholders, may ask a court to hold shareholder personally liable for a certain amount, plus damages.
  3. If a shareholder/employer/employee commits fraud while hiding behind corporation (using corporate veil to protect themselves) the court can be asked to lift the 'veil' and have them personally liable.
  4. A shareholder could be held accountable for commitments he undertook before the corporation was constituted and received its *Certificate of Incorporation*. (A person who creates a start-up requiring a leased office space and necessary supplies could be liable because this was performed before the constitution of the corporation.)

#### **6.4.3.4 Management (pg. 203)**

Shareholders, persons who own corporation. They elect the directors of company, and directors act as mandatories and manage, the affairs of the corporation.

Both the Federal and provincial laws require that the common shareholders of every corporation meet periodically.

#### **(i) The Board of Directors (pg.203-204)**

In a small company with only a few shareholders, the BOD may be composed of all shareholders.

If the corporation is made up of one main shareholder, he may decide not to have a BOD.

Directors have requirements:

- Human Beings
- Over 18 years old
- Apt (not under protective supervision)
- Not bankrupt
- Not prohibited by a court from holding such a position
  - It is important to note that decisions or contracts made by a director, who fails to meet these requirements, does NOT automatically nullify these acts.

**(ii) Responsibility of Directors (pg. 204)**

Section 122 of the Canadian Business Corporations Act states:

*Sec. 122. Duty of Care of Directors and Officers.*

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

*A. Act honestly and in good faith with a view to the best interests of the corporation; and*

*B. Exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.*

Failing to meet these standards, a director may be held personally liable under federal and provincial law:

1. For mixing his personal property with that of the company or benefiting personally from use of company property without permission;
2. For failure to disclose any conflict of interest which he may have;
3. For failure to disclose personal acquisition of corporation property or contracts entered into with the corporation;
4. For up to six months of unpaid wages to employees of the corporation;
5. For payment of any dividend which would render the corporation insolvent or impair the capital of the corporation;

6. For the difference, if they have issued shares for a consideration other than money, between the consideration received and the fair market value of the shares.

Except for the acts, as a general rule, a director cannot be held responsible for losses sustained by the corporation. As long as they acted in good faith and not fraudulently or negligently.

### **(iii) Operation of the Corporation (pg. 205)**

BOD establishes what the policy of the company will be.

Once the BOD has made its decisions, the CEO and other officers have the responsibility to implement this policy in the most effective way.

### **(iv) Unanimous Shareholders' Agreement (pg. 206)**

**Unanimous Shareholders' Agreement:** This agreement enables the shareholders to restrict the powers of the directors. This agreement enables the shareholders to restrict the powers of the directors.

*It should be noted that if shareholders take over certain management rights through a Unanimous Shareholder Agreement, they will then be held accountable to the same legal standards as the BOD.*

### **6.4.3.5 Profits (pg. 206)**

Either paid out as dividends or reinvested into company.

### **6.4.3.6 Termination (pg. 206)**

The life of the company is perpetual (infinite). The company will exist forever, unless the shareholders decide to end its existence by surrendering its charter.

It's existence may also be terminated by bankruptcy or by order of a court for violation of a provision of law.

## **6.4.4 Advantages and Disadvantages (pg. 206)**

### **6.4.4.1 Advantages**

- Created as a separate legal entity (a fiction of the law)
- Limitation on the liability of the owners (shareholders) for the debts of the business — no personal liability
- Easier to attract professional managers
- Easier to obtain outside financial support
- Long life — does not depend on life or intention of shareholders
- Ease of transfer of ownership
- May be incorporated under federal or provincial law.

### **6.4.4.2 Disadvantages**

- More complex form and financial structure — usually requires lawyers and/or other professional assistance
- Expensive to start
- Must observe government reporting requirements
- Lack of shareholder interest and participation in day-to-day matters
- Double taxation
- Difficult to keep operations and results secret.

## Chapter 7 : Employment Law

- 7.1 To understand the different bodies of law governing employment contracts.
- 7.2 To identify, analyze, and understand, the essential elements of an individual contract employment.
- 7.3 To comprehend the rights and obligations of employees and employers
- 7.4 To understand the purpose and interpretation of restrictive (non-competition) clauses.
- 7.5 To become familiar with the minus standards in the *Quebec Labour Standards Act*.
- 7.6 To understand the difference between an employee and a contractor.
- 7.7 To recognize what is meant by psychological harassment and what it entails.
- 7.8 To understand the different forms of termination of an employment contract.

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### Section 7.1 | Introduction

The relationship between employee and employer has long been the subject of legal regulation. This relationship takes the form of a contract between the parties. The contract may be verbal or written, but it must conform to the rules of contracts, which will be examined in the next chapter.

The subject of employment contracts must be considered under two broad areas of study as a means of gaining a better understanding:

1. The **individual contract**. The terms of which are negotiated and agreed to between an employee and an employer. The conditions agreed upon apply on to this particular employment relationship, and between these two parties.
2. The **collective agreement**. This is a contract between an employer and a group of employees. The group may be called a union, brotherhood, syndicate, etc. Several members of the group form a negotiating team and meet with the employers representatives.

*In this chapter, we only examine **individual contracts** of employment.*

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## Section 7.2 | The Individual Contract of Employment

### 7.2.1 Introduction

This contract is governed principally by the rules found in the:

- *Civil Code of Quebec;*
- *Quebec Labour Standards Act;*
- *Quebec Charter of Human Rights and Freedoms.*

All of these laws of the province must be considered in order to draw a complete picture of the individual contract employment.

Other Quebec laws that relate to employment matters include the:

- *Act Respecting Occupational Health and Safety;*
- *Act of respecting Industrial Accidents and occupational Diseases*
- *Pay and Equity Act*
- *Employment Equity Act*

### 7.2.2 The Civil Code of Quebec

The *Civil Code* defines and outlines what constitutes an employment contract, the term, form, renewal and termination, restrictive covenants and non-competition clauses and the distinction between an employee and a contractor.

The Basic rules are set out in articles 2085 to 2097 of the *Civil Code* reproduced in the **(Appendix 7-A)**

### 7.2.2.1 The Contract

The legal contractual relationship between an employer and employee is defined by article 2085 of the *Civil Code*, which includes these essential elements:

1. It is a contract, subject to all the general rules of contract;
2. It is bilateral, i.e., it requires both parties to undertake to do something for the other:
  - The employee undertakes to do work
  - The employer undertakes to pay the employee for the work;
3. The contract requires the work to be done continuously until the termination of the contract;
4. The work must be done according to the instructions and under the direction of the employer, which requires the employee to be subordinate. This subordination is of the essence to the contract of employment. The fact that the employee's activity is under the control of the employer is reasonable, since the work is being done for the benefit of the employer.
5. The employee must personally carry out the work to be done — it cannot be delegated to someone else;
6. The contract must be for a limited time—a person cannot bind him or herself forever (unlimited duration): this would be the equivalent of slavery, and this idea is abhorrent to our society.

### 7.2.2.2 Term

This contract may be fixed term or for an indeterminate term.

A contract for a **fixed term** has a clearly agreed termination date. When this date arrives, the contract is ended. No notice or other formality is required.

If work is completed early, employer cannot just fire employee, he has to complete the term of contract.

Employer could end contract early by paying employee full amount of contract before the end of term. (Of course they can agree to a smaller amount seeing that employee can go and work and earn more money for the time saved)

A contract of **indeterminate term** must not be confused with a contract of unlimited duration. (Unlimited duration contracts are prohibited)

The parties have agreed not to set a specific termination date. It will continue until it is terminated by one of the parties. In this case, the party wishing to terminate the contract must give notice to the other party.

If The employer wants to create a “pause”, the employee may be “laid-off” but no more than 6 months.

### **7.2.2.3 Form**

Aside from having to meet the requirements of a valid contract, there is no specific form required for a contract of employment. It may be verbal or written. It may be set out in a letter written by the employer to the employee or it may be a formal contract with many pages of conditions. The law leaves it entirely to the parties determine what form they want to take.

### **7.2.2.4 Employer / Employee Obligations and Rights**

Main obligations of the employer are to Allow the employee to carry out their work, to Pay the wage or salary and to Ensure that the work can be done safely and without danger to the employee.

Disciplinary measures generally begin with a verbal and subsequently a written warning to the employee.

Penalties may be applied in the form of **suspension** without pay for a day, week, or more; transfer from one position to another; or demotion to a lower position. The ultimate disciplinary measure is to fire (terminate) an employee.

- An employee who puts the employer or co-workers in danger can be fired on spot without any warnings. “Dismissed for Cause”

Employee is obliged to do work carefully, promptly and to the best of his/her abilities; to be honest in dealing with the employer; and loyal, not divulge (give away) confidential information.

### 7.2.2.5 Restrictive Covenants & Non-Competitive Clauses

It is not unusual for an employer to have a clause restraining employees from revealing confidential information, even after leaving the service of the employer. Other clauses like this such as “not working for a competitor” or “setting up a similar business in the proximities” can also be found in contracts. These types of clauses are called **non-competitive clauses** or **restrictive covenants**. Covenant = Agreement

*The reasonableness of these clauses is measured in terms of time and space.*

*(Cannot cover too long of a period of time and must not restrict the person from working over too wide of an area)*

It is to be noted that if an employer fires (terminates your contract) you, it prohibits him from invoking the non-competition clause according to Article 2095 of the *Civil Code*.

### 7.2.2.6 Renewal & Termination

At the expiry of a contract, with a fixed term, normally the relationship between the parties is terminated. It may be agreed to the continuity of the employment activity.

- If nothing is said/mentioned by the employer, there is the possibility of “tacit renewal” of the contract, if the employee keeps working for 5 days after the original contract expires.

The period of notice to be given to cancel a contract with an indeterminate term is not stated in the *Civil Code*, Article 2091 simply states that the notice shall be given in “reasonable time” and this expression is not defined. So depending on the difficulty of finding a job in the same sector is the usual amount of time allocated.

Under the *Labour Standards Act*, there are a minimum periods of notice, based upon length of service.

In Article 2097 the *Civil Code* states that when a business is sold or its legal form changed, the employees who work there are not terminated as a result. Even if the legal form of business were to change from sole proprietorship to a partnership, or form a corporation, all the employees continue to be employees of the business structure.

When a contract employment is terminated, the employer is required to give the employee a document called a **Certificate of Employment** stating the length of employment. If employee wants a reference letter, it should be a separate document.

### **7.2.2.7 Contractors**

Someone who undertakes to perform a job for someone. Many firms hire contractors to carry out a specific operations within their plant.

The nature of work for contractors is not like employer/employee, the parties agree on a **Contract of Enterprise** or **Contract for Services**.

The difference between an employer/employee relationship is summarized as follows:

1. Subordination and control — the employer has control over the work to be done, whereas a client comes to an agreement with a contractor as to what work will be done, and it is the contractor who controls the job.
2. Tools and equipment — an employer owns and provides tools used by an employee; a contractor owns his or her tools and brings them to the job.
3. Profit— an employee earns wages or salary and no more; a contractor can increase profit by being more efficient, taking less time, using less material, etc.
4. Risk of loss — if an employee takes more time than the employer had estimated or uses more material, the employer bears the loss and must pay the employee for whatever number of hours he worked; under similar circumstances, where, for example, a contractor had estimated his cost would be \$2000, and in the end the cost was actually \$3000, it is the contractor, not the client, who suffers the loss.

Employer is responsible of paying income tax on employee's part when sending out pay checks.

Contractor is responsible of being honest when he declares income tax his employees must pay.

### **7.2.3 The Quebec Labour Standards Act (pg. 250)**

This Quebec law provides for several minimum conditions of work, does not apply to upper management.

These minimums, which concerns:

- Wages,
- hours of work,

- vacations,
- statutory holidays
- breaks, etc..

Are declared to be **Public Order**. (The employer may not offer an employee any wage or other condition that is less than the minimum condition set out in the law.

### **7.2.3.1 Wages (pg 250-251)**

\*Many technicalities, definitely refer to the book for the details\*

DISCLAIMER: You should really read the book from sections **7.2.3.1** to **7.2.3.10** because there are many references towards the *Labour Standards Act*

### **7.2.3.2 Hours of Work (pg. 251)**

The regular work week in Quebec, for the purpose of calculating overtime is 40 hours. Overtime rates (for hours in excess of 40) are paid at 1.5x. (If regular rate is 12\$ per hour, overtime rate is 18\$ per hour).

- An employee may request to be compensated for their overtime work by getting paid vacation. (Time off = overtime hours worked + 50%)
- The vacation must be taken during the 12 months following the overtime at a date agreed upon between the employer and the employee — or else it is cash.

An employee is considered at work when:

- Available at the place of employment and required to wait for work to be assigned
- During the break periods permitted by the employer
- Travelling as required.

If an employee comes into work for less than two hours and is then forced to leave (i.e: Fire alarm goes off), the employee is entitled to 3 hours of work pay.

An employee may refuse to work more than 4 hours of overtime or than 14 hours within a 24 hour window.

### **7.2.3.3 Paid Vacations (pg. 252)**

There are two elements tot the legislation relating to vacations.

1. The employee is entitled to be absent while taking an annual vacation without fear of losing his or her job.
2. The employee is entitled to vacation pay while on holiday, based on the employee's gross wages during the past year.

The vacation period is determined by the length of time the employee has worked continuously for the employer.

- If an employee has worked for less than one year for an employer, the employee is entitled to one day of vacation for every month worked during the reference year.
- An employee who has worked for one year or more, up to five years, is entitled to TWO weeks of vacation.
- An employee who has worked five years or more is entitled to THREE weeks of vacation. (Employer may give longer vacation period if they wish to do so, but no less!
- An employees is entitled to know their vacation date at least four weeks in advance.
- The employee must take the vacation days within 12 months following the end of the reference year.
- An employee who receives a vacation of two weeks or less is entitled to vacation pay of 4% of the gross wages (before deductions).
- An employee who receives a vacation of three weeks or less is entitled to vacation pay of 6% of the gross wages (also before deductions).

### **7.2.3.4 Paid Statutory Holidays**

- I. January first
- II. Good Friday or Easter Monday (employers' choice)
- III. The Monday before May 25th

- IV. The National Holiday - 24 June (or 25 June if the 24th is a Sunday)
- V. July 1st (or 2 July if the 1st is a Sunday)
- VI. Labour Day (first Monday in September)
- VII. Thanksgiving (second Monday in October)
- VIII. December 25th

*For each statutory holiday the employer must pay 1/20 of the wages earned during the four complete week of pay before the holiday, excluding overtime.*

If an employee is asked to work on a statutory holiday, this person is paid like a regular work day plus extra wages required under section 62 (overtime).

To benefit from a statutory holiday, an employee must not be absent from work on the day before or on the day after the holiday.

#### **7.2.3.5 Rest Periods (pg. 253)**

Employees are entitled to various rest periods, such as an unpaid 30 minute lunch break for every 5 hours of work and one day off every week.

Contrary to common belief, coffee brakes are not required by law and therefore an employer is not obliged to provide one.

#### **7.2.3.6 Other Leaves (pg. 253)**

Employee maybe absent for following reasons:

- Weekly rest — an employee is entitled to 32 consecutive hours of rest each week.
- Meal break — an employee is entitled to a 30 minute meal break after 5 consecutive hours of work. This is not paid, unless the employee is not permitted to leave the work station.
- Sickness or accident leave — after three months of service, an employee can request, in writing, up to 26 weeks of unpaid leave.
- Family Responsibilities — up to 10 days per year, unpaid, may be requested by an employee to look after matters concerned with the car, health or education of a child, or the health of any other family member.

Tuesday, December 4, 2018

- One day paid, on the death of consort (significant other), child, parent, brother, or sister. An additional four days, without pay, may be taken at this time.
- One day unpaid on the death of a son/daughter-in-law, brother/sister-in-law, grandparent, or grandchild.
- Five days off for the birth or adoption of a child. The first two of these days will be paid if the employee has been working for this employer for at least 60 days. If less than 60 days service, the employee can take 5 days off, unpaid.

#### **7.2.3.7 Maternity Leaves (pg. 253)**

An employee may take maternity leave for not more than 18 weeks, unpaid, to begin no sooner than 16 weeks before the expected date of birth, and ending not later than 18 weeks after the week of delivery. The employer must be notified as to the start and end date of the leave. At the end of the maternity leave, the employee is entitled to return to her job and receive any increased wages or benefits put in place while she was on leave.

#### **7.2.3.8 Parental Leave (pg. 254)**

Parents of a newborn or adopted child may have leave of 52 consecutive weeks, but unpaid. It is possible, however, to obtain benefits through the *Quebec Parental Insurance Plan*. Employer must be warned for start and end of leave.

An employee who doesn't return after leave is considered resigned.

#### **7.2.3.9 Psychological Harassment (pg. 254)**

**Employees** entitled to a work environment that is free from any vexatious behaviour in the form of repeated and hostile or unwanted conduct, comments, actions or gestures that affects their dignity, physical integrity or psychological integrity.

### **7.2.3.10 Notice of Termination of an Employment Contract (pg. 254)**

An employer must give written notice to terminate the employment contract of an employee who has been staff for more than three months.

The length of the notice period depends on the of the employment period:

*There is no notice required if contract has a fixed term or if an employee commits a serious fault and is fired for "cause".*

Some employers prefer that some employees are not present during the notice period and pay the employee 4% of all gross wages earned during the current reference year as vacation pay.

The *Quebec Labour Standards Act* creates a body called "**Commission des normes, de l'équité, de la santé et de la sécurité de travail**" Its function is to supervise the implementation and application of the Labour Standards.

### **7.2.3.11 Dismissal not made for Good and Sufficient Cause (pg. 255)**

An employer wishing to dismiss an employee, who has been working for the employer for at least two years without interruption, must give the employee a valid reason for his dismissal. In general Jurisprudence identifies three main reasons justifying a dismissal:

1. An employee's incompetence
2. Restructuring of a business; and if
3. The business is dealing with financial difficulties.

I.e: If an employee were fired so that employer can make favour to his son/daughter/ brother/sister, the employee could claim unjustified dismissal.

- Employee has 45 days to file his complaint with the Commission or within a time from allotted by a collective agreement.

**7.2.4 The Québec Charter of Human Rights and Freedoms (pg. 255)**

This important law was considered in chapter 3. Sections 10-20 of the law can be found in that chapter. These sections deal with matters relating to employment contracts, such as the issue of discrimination in matters of employment, employment applications, and employment agencies.

<b>Length of Employment</b>	<b>Notice Required</b>
<b>Less than 3 months</b>	<b>None required</b>
<b>between 3 months and 1 year</b>	<b>1 week</b>
<b>between 1 year and 5 years</b>	<b>2 weeks</b>
<b>between 5 years and 10 years</b>	<b>4 weeks</b>
<b>over 10 years</b>	<b>8 weeks</b>

\*It is suggested that the reader review these sections at this time\*

## Chapter 8 : Civil Liability

- 8.1 To understand the difference between contractual responsibility and civil liability.
- 8.2 To understand why civil liability is an important concept in our society.
- 8.3 To appreciate the fault concept and its role in civil liability
- 8.4 To identify the various forms of civil liability that a person might encounter.
- 8.5 To understand the defences available to a person being sued for civil liability.
- 8.6 To identify the limits of civil liability as set by law towards balancing collective versus individual rights.

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### Section 8.1 | Introduction

#### 8.1.1 Description (pg. 293)

Along with an understanding of contracts and the obligations that arise between parties to an agreement, it is essential that the reader also have a solid comprehension of **Civil liability** or **Civil responsibility** — These two terms are used ***interchangeably***.

Civil liability holds that people must be held accountable or liable for their actions and for the consequences of their actions.

In some cases, some people can be held accountable for injuries caused to others even though they are not the ones to have performed it. Also known as **Vicarious Liability**. — This may take place with children (under your supervision) or with vehicles (also under your supervision).

#### 8.1.2 Contractual vs. Extra-Contractual Liability (pg. 294)

Article 1458 of the *Civil Code* declares “Every person has a duty to honour his contractual undertakings.”

It may happen, however, that a person causes damage to someone else, through his or her fault, even though there is no contract between them .

- Since damage has been caused, and is due to the fault of another person, the one at fault is held “civilly liable” for the resulting damage.
- This liability will exist whether the damage was caused deliberately or unintentionally.

The principle is clearly stated in article 1457 of the *Civil Code*:

*“Every person has a duty to abide by the rules of conduct which lie upon him... not to cause injury to another.”*

*“Where he is endowed with reason and fails in this duty, he is responsible for any injury he cause to another person, an is liable to reparation for the injury.”*

Whether damage results from failure to respect the obligations in a contract (contractual damage), or from the fault of someone where there is no contract (extra-contractual damage), the law clearly sets out the limitations that apply when an injured person seeks to be compensated for damages suffered.

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## Section 8.2 | Personal Liability

### 8.2.1 Conditions (pg. 295)

Theses conditions, found in article 1457 of the *Civil Code*, require the person who caused the damage be endowed with reason, that he or she is at fault and as a result of this fault real damages were caused to another person.

#### 8.2.1.1 Endowed With Reason (pg. 295)

Person being sued must be endowed with reason, capable of discerning right from wrong. This means that the person has a sufficient level of intelligence and be of an age old enough to appreciate the consequences of their actions.

- In the case of children, jurisprudence has found that the child must be at least 7 years old to be held responsible.
- Circumstances and characteristics of the child will determine if this rule is strictly applied.
- If it is proven person can't defer right from wrong, their actions are considered “force major” or **superior force** over which they have no control.

#### 8.2.1.2 Fault

The person being sued must have committed a fault. To determine if a person is at fault, their actions, or in some cases **inaction**, must be compared to that of a reasonable prudent and diligent person within the context of the case at hand.

*Each person at fault can be held liable for 100% of the damages.*

### **8.2.1.3 Damages (pg. 296)**

A relationship between the act (fault) of the person being sued and the damages suffered by the plaintiff must exist.

The damages may be:

- **Bodily** — Physical Injury
- **Moral** — Psychological or mental illness or damage to a person's reputation,
- **Material** — Medical expenses or damage to property, such as clothing, cars, houses, merchandise, or causing loss of income.

Damages must be certain and in present form, as highlighted in article 1611 of the *Civil Code*, but can also be *Future Damages*.

In addition to bodily, moral and material damages, a victim may also demonstrate the need for punitive damages.

*It must be noted that if defendant were trialed under the criminal law and were found guilty, the victim would be foreclosed from requesting punitive damages in civil trial.  
(Cannot be punished twice for same damages.)*

### **8.2.1.4 The Causal Link (pg. 296)**

The casual link is the Fourth element required to satisfy the Court that a person is to be held liable for damages is to show a "causal link" between the person's act or omission and the damages that was caused.

### **8.2.2 Defences (pg. 297)**

Law offers a person being sued for civil liability some possible defences, which may exonerate them partially or totally from having to compensate another person for damages resulting from a personal act.

#### **8.2.2.1 Victim's Actions (pg. 297)**

It is possible for the defendant to argue that the injuries sustained by the victim are directly linked to the victim's fault, the victim's acceptance of the risk or that the victim aggravated the damages suffered.

Under certain circumstances the victim may be partially responsible for his damages where the court applies **contributory negligence**.

The victim may also have accepted the risk when undertaking an activity or action which involves the occurrence of foreseeable and possible damages. This acceptance of risk may be possible through three different methods.

1. Signing a contractual waiver absolving the defendant of having to compensate the victim for material damages in case of injury.
2. Displaying a notice, such as those that we see in a bar or restaurant, requiring all customers to deposit their coats in a coat-check room and stating that the owner will not be liable for any loss or damage to the coats.
3. Posting a warning sign on your property, ie: posting a "no trespassing, beware of dog"

#### **8.2.2.3 The Good Samaritan (pg. 298)**

If someone cause damages in the process of helping others is free of any responsibility if the injury was not intentional and could not be foreseen.

Must show the interest of the general public.

#### **8.2.2.3 Superior Force (pg. 298)**

Damages not caused within the control of the person being sued. Earthquakes, floods, lightning and ice storms.

#### **8.2.2.4 Another Person made it Worse (*Novus Actus Interveniens*) (pg. 298)**

The person being sued may be found totally or partially free of liability because the fault of another weighs heavier than their own fault.

#### **8.2.2.5 Improper Use (pg. 299)**

A defence may arise based on the fact that the object was improperly used, or used in a manner that it was not designated for.

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### **Section 8.3 | Indirect Liability**

#### **8.3.1 Liability of Parent (pg. 299)**

A person who suffers damages due to the act or fault of a child has two possible recourses 1) sue the child or 2) sue the parents. (Child and Parents may be sued at same time)

To sue the parents, Three conditions have to be met:

1. Child must be a minor;
2. Parents must have parental authority over the child;
3. Damages must be the result of an act or fault of the minor.

(Parents may free themselves by demonstrating that they exercised sufficient surveillance or that they provided proper education to install good values.)

If the court does not hold parent liable, they will then hold child accountable. But big chance of not receiving compensation for the victim since child may not have any assets (liquid/tangible) to allocate.

#### **8.3.2 Liability of a Non-Parent**

A person, other than the parent (e.g. baby-sitter or teacher), may also be held liable for damages caused by a child. Similar to the responsibility of a parent, the victim has to demonstrate the existence of three conditions. The parent must have delegated authority over the child to the non-parent.

### **8.3.3 Liability for Employees (Agents or Servants) (pg. 300)**

A business or organization may be held responsible for damages caused by their employees while they are carrying out their duties.

In order for a victim to prove their right to compensation, in such an incident, the injured party needs to demonstrate that the person causing the damage was an employee, the employee was at fault, it took place during the course of their employment, and the control over the employee by the employer.

In such a case, if an employer can prove that the employee was acting for his own benefit, not within his employment functions and outside of the workplace, the employer will be free of any responsibility for damages caused to another.

### **8.3.4 Liability for Acts of an Animal (pg. 300)**

The owner of an animal, which has injured another party, or caused damage to property, may be held liable for such damages.

Victim must demonstrate that the owner, or the person having custody of the animal, failed in their surveillance.

3 points of interest must be considered:

1. The Animal must be domesticated
2. Both the owner and any other person given custody over the animal may be held responsible at the same time;
3. The damages caused by the animal need not be the result of direct contact.

### **8.3.5 Liability for Damage due to Ruin of an Immovable (pg. 300)**

The owner of an immovable (building, elevator, land, etc.) may be held responsible for any damages caused by its partial or total ruin.

The victim would sue the building owner for failure of repairs or defects of construction.

The onus then rests on the owner, who can rebut (contradict) the allegation fault by providing the damages were the result of the victim's fault, who may have failed to inform the owner of necessary repairs or through improper use cause the ruin resulting in his injuries.

### **8.3.6 Liability of Manufacturer, Distributor and Seller for Safety Defects in Movable (pg. 301)**

An important business consequence of civil responsibility relates to the liability of a manufacturer, distributor and seller of movable property for damage caused by safety defects in the product. Safety defects can occur for several reasons:

- A. Product may cause damages stemming from being improperly manufactured.
- B. The design of the product itself may lead to damages when being used.
- C. A safety defect could be the result of improperly preserved or presented products.
- D. Civil liability may occur when the product causes damages due to improper use as a result of a lack of information or indications of safety precautions on how the product should be handled.

The more complex the product, the greater the need for the manufacturer and seller to include detailed labels and safety instructions.

If an object is shown to have a safety defect, that is, it cannot be used as safely as a person should be able to expect, the liability for damage caused may rest on all of the following:

- A. The manufacturer of the object;
- B. the person who distributes it under his name
- C. Any wholesaler or retailer of the object.

The manufacturer, distributor may also free themselves of responsibility by claiming the damages were the result of a superior force.

### **8.3.7 Responsibility for Acts of a Thing (pg. 301)**

A victim of damages caused by a thing, movable or immovable, may sue those persons who have the thing under their custody.

## **Section 8.4 | Limiting Civil Liability (pg. 302)**

In an attempt to balance individual rights and the well being of the collective society, government have on occasion limited the rights of the former by enacting legislation in support of the latter. The reasoning for such a n approach vary from govnt to govnt, but general ideals such as reducing individuals' insurance costs and curtailing excessive litigation that could burden the court system are a few.

I.e: The case with bodily damages resulting from an automobile accident, under the *Automobile insurance Act*, and an employment accident, under the *Workers' Compensation Act* and the *Act Respecting Industrial Accidents and Occupational Diseases*.

These laws create a 'no-fault' system in Quebec, bye which the govnt directly provides compensation to victims and removes their right to sue the person who was responsible for causing the damage.

## Chapter 9 : Ethics

- 9.1 To develop an understanding of the principle of ethics
- 9.2 To distinguish between “ethics” and “law”
- 9.3 To Identify important ethical issues faced by Canadian companies doing business outside Canada
- 9.4 To appreciate the importance of professional standards and corporate codes of conduct
- 9.5 To understand the fundamental steps involved in the ethical problem resolution process
- 9.6 To introduce the concept of responsible investing
- 9.7 To become familiar with the principle of corporate.

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### Section 9.1 | Introductions to Ethics

#### 9.1.1 Definition (pg. 341)

People should act in an ethical fashion. From this writer’s experience, while most people would agree with this statement if asked, each person questioned would come up with a different interpretations as to what the expression ethical behaviour entails.

What is considered acceptable behaviour in one country may be considered unethical or even illegal in another country. What is considered immoral behaviour today in one country might ne considered ethical ten years from now in the same country.

#### 9.1.2 Fundamental Principles of Ethic (pg. 342)

From a personal perspective when dealing with one’s peers, one should take into consideration ethical principles including but not limited to the following:

- Be respectful of others;
- Act honestly and fairly;
- Comply with the law
- Do not act maliciously
- Inspire Trust

In one’s business dealings with one’s employer, employees, clients, competitors and other parties, one should take into consideration ethical principles including but not limited to the following:

- Maintain objectivity and impartiality

- Act prudently and diligently;
- Ensure confidentiality and full disclosure
- Avoid actual or potential conflicts of interest;
- Comply with professional standards of practice, company policies and the law.

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## Section 9.2 | Law Vs Ethics

It is important to remember that laws and ethics reflect two very separate yet interrelated and interdependent principles.

While many ethical principles may have been incorporated into legislation and therefore have acquired a legal status that all must respect, ethics is not law.

Law sets out specific standards that all must respect, however the mere compliance with legal standards may not meet the ethical demands placed on business today by society.

(Pretty Straight Forward in the book)

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## Section 9.3 | International Business Ethics

### 9.3.1 New Frontiers (pg. 343)

It is a well-recognized principle of international law that one is always subject to the laws of the country in which one is operating (host country), and as a general rule the laws of Canada do not apply outside of the sovereign borders of Canada.

Should a Canadian company, free from legal constraints of its home country, operating in strict compliance with the less stringent laws of the host country, be considered a good corporate citizen? **(Is a Canadian company operating in China for cheap labor okay?)**

If a Canadian company were to adopt stronger protections for workers and the environment in another country it may in fact be counterproductive and may lead to accusations of “imperialist/colonialist behaviour” whereby Canadian company is accused of trying to forcefully impose outside “western values” on the host country.

### 9.3.2 United Nations Global Compact (UNGC)

The United Nations Global Compact (UNGC), launched in the year 2000, is an example of an international initiative whereby over 8,000 companies and 4000 non-business entities from over 170 countries have voluntarily agreed to adopt a set of ethical business standards on a world-wide basis.

The UN Global Compact's ten principles in the areas of human rights, labour, the environment and anti-corruption enjoy universal consensus and are derived from:

- The Universal Declaration of Human Rights
- The International Labour Organization's Declaration on Fundamental Principles and Rights at Work
- The Rio Declaration on Environment and Development
- The United Nations Convention Against Corruption

<b>Human Rights</b>	
Principle 1	Business should support and respect the protection of internationally proclaimed human rights;
Principle 2	Make sure that they are not complicit in human right abuses.
<b>Labour</b>	
Principle 3	Business should uphold the freedom of association and the effective recognition of the right to collective bargaining;
Principle 4	The elimination of all forms of forced and compulsory labour;
Principle 5	The effective abolition of child labour; and
Principle 6	The elimination of discrimination in respect of employment and occupation.
<b>Environment</b>	
Principle 7	Business should support a precautionary approach to environmental challenges;
Principle 8	Undertake initiatives to promote greater environmental responsibility; and
Principle 9	Encourage the development and diffusion of environmentally friendly technologies
<b>Anti-Corruption</b>	
Principle 10	Businesses should work against corruption in all its forms, including extortion and bribery.

### **9.3.3 Extra-Territoriality (pg. 346)**

**Extra Territoriality:** Whereby Canadian courts can assert jurisdiction and prosecute in Canada actions taken by Canadian outside of Canada.

*An exception to the general rule that a court only has jurisdiction for actions taken within its sovereign territory.*

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## **Section 9.4 | Resolving Ethical Issues**

\*Blah blah blah do the right thing\*

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## **Section 9.5 | Professional Standards and Corporate Codes of Conduct**

Ethical behaviour is very important in the business community and helps to install confidence and trust in the minds of clients, employees and employers.

### **9.5.1 Professional Standards of Practice (pg. 348)**

Professional standards of practice promote fair and ethical business practices and strive to protect the reputation of the professional organization in the eyes of general public.

#### **9.5.1.1 Objectivity**

A professional should use his/her own judgement and make decisions based on his/her own sound analysis of the relevant business problem.

#### **9.5.1.2 Compliance with the Law**

Professionals must respect all regulatory and licensing requirements that govern their profession and all civil and criminal laws governing society in general.

#### **9.5.1.3 Inappropriate Conduct**

A professional must not only respect the law, but must also act in a manner that does not bring disrepute to the profession as a whole.

#### **9.5.1.4 Confidentiality**

Professionals are not permitted to use confidential information belonging to a client or to one's employer for personal profit, or for the profit of a third party, without having obtained the prior express consent of the client and/or employer.

#### **9.5.1.5 Duty of Care**

There is no requirement in ethics or law that states that a professional's decision must always in hindsight have been the "best/right" decision, as long as the professional can demonstrate that his/her decision was based on a reasonable and adequate examination of the various options available.

**Fiduciary Duty:** Requires a professional not only to act in a reasonable manner, but to act in the best interest of the client.

#### **9.5.1.6 Conflict of Interest**

Best practices would indicate that the professional decline to perform the task in the event of an actual or an apparent conflict of interest.

### **9.5.2 Corporate Codes of Conduct**

It is a valuable tool to educate employees as to what types of behaviour, while not illegal, will not be tolerated within a corporate environment.

When implementing a code of conduct for a company, it is important to ensure that employees view this corporate document as an important and serious commitment.

\*In the class, the section Code of Conduct is mainly focused with **Gifts and Whistle Blowing**.\*

#### **9.5.2.1 Gifts**

A code of conduct should clarify what types of incidental gifts employees will be permitted to receive in the performance of their job.

Acceptable gifts must not exceed a specified dollar value and must be only offered to employees as a demonstration of business etiquette and courtesy.

### 9.5.2.2 Whistle Blowing

Corporate codes of conduct should include whistle blowing provision by which clearly defined reporting channels are provided for employees to report any inappropriate business activities that they may become aware of within their organization

**Whistle Blowing:** The disclosure of inappropriate business practices by a member of an organization.

1. Normally, a concerned employee's first reaction will be to report a wrongdoing or dangerous situation to his/her supervisor.
  - What happens when the employee's disclosure falls on to deaf ears and nothing is done to correct the problem?
  - Should the employee say nothing and forget about the problem, or should the employee disclose this information outside of the normal corporate channels?
2. The next step usually involves circumventing the corporate chain of command, going around the supervisor, and reporting the problem to higher administration. Also know as **internal whistle blowing**.
  - Should senior administration fail to address the problem?
3. The next step that the employee could take is referred as **external whistle blowing**.
  - External whistle blowing is the process by which the employee takes the problem public and discloses all of the facts to the govnt.
4. If everything seem to fail because of there seems to be collusion with company and govnt, the final step is to go to the media/public.

## **Section 9.6 | Responsible Investing**

One important strategy employed in responsible investing is the principle of refusing to invest in certain types of industries or in companies with poor ethical track records.

I.e: Toxic Chemicals, alcohol, tobacco, gambling, munitions, and industries generating harmful emissions.

Also to make sure there's no endorsement of child labour, slavery, discrimination into the sector of investment.

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## **Section 9.7 | Corporate Governance**

\*Blaah blah blah be TRANSPARENT)