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BUSINESS LAW

Business law is the body of law which governs business and commerce and is often considered to be a branch of civil law and deals both with issues of private and public laws. Commercial law regulates corporate contracts, hiring practice, and the manufacture and sales of consumer goods. Many countries have adopted civil codes which contain comprehensive statements of their commercial law.

Various regulatory schemes control how commerce is conducted, privacy laws, safety laws, food and drug laws are some examples.

Corporate law (also corporations law or company law) refers to the law of a separate legal entities known as the company or corporation laws and governs the most prevalent legal models for firms, for instance limited companies (Ltd , publicly limited companies plc) or incorporated businesses (Inc). It is a subset of companies' laws which depending on the legal system may cover the wider spectrum of partnerships, trusts, unincorporated associations, guilds or sole proprietorships. Technically, a company is juristic person which has a separate legal identity from its shareholding members, and is ordinarily incorporated to undertake commercial business. Although some jurisdictions refer to unincorporated entities as companies, in most jurisdictions the term refers only to incorporated entities. It has been judicially remarked that the word company has no strictly legal meaning, but is taken to mean a specific form of entity created under the laws of the relevant jurisdiction. Because of the limited liability of the members of the company for the company's debts and the separate personality and tax treatment of the company, it has become the most popular form of business vehicle in most countries in the world.

However, companies have a number of other uses. They are not normally subject to rules against perpetuity as are trusts, and may have perpetual existence. Companies are often used in tax structuring. Companies, being commercial entities, are often easier to utilize in financing arrangements than partnerships and individuals. Companies have an inherent flexibility which can let them grow; there is no legal reason why a company initially formed by a sole proprietor cannot eventually grow to be a publicly listed company, but a partnership will generally always be limited as to the maximum number of partners.

In the United States, a company may or may not be a separate legal entity. Any business or for profit economic activity may be referred to as a company, examples of this include my company, our company, the company, and their company. A corporation may accurately be called a company. However, a company should not necessarily be called a corporation, which has distinct characteristics. According to Black's Law Dictionary, in the U.S. a company means a corporation or less commonly, an association, partnership or union that carries on industrial enterprise.

There are various types of company that can be formed in different jurisdictions, but the most common forms of company are:

- A company limited by shares. The most common form of company used for business ventures.
- A company limited by guarantee. Commonly used where companies are formed for non commercial purposes, such as clubs or charities. The members guarantee the payment of certain (usually nominal) amounts if the company goes into insolvent liquidation, but otherwise they have no economic rights in relation to the company.
- *A* company limited by guarantee with a share capital. A hybrid entity, usually used where the company is formed for non commercial purposes, but the activities of the company are partly funded by investors who expect a return.
- An unlimited liability company. A company where the liability of members for the debts of the company are unlimited. Today these are only seen in rare and unusual circumstances.

The foregoing types of company are generally formed by registration under applicable companies' legislation. Less commonly seen types of companies are:

- Charter corporations. Prior to the passing of modern companies' legislation, these were the only types of companies. Now they are relatively rare, except for very old companies that still survive (of which there are still many, particularly many British banks), or modern societies that fulfill a quasi regulatory function (for example, the Bank of England is a corporation formed by a modern charter).

- Statutory companies. Relatively rare today, certain companies have been formed by a private statute passed in the relevant jurisdiction.

- Companies formed by letters patent. Most corporations by letters patent are corporations sole and not companies as the term is commonly understood today.

In legal parlance, the owners of a company are normally referred to as the members. In a company limited by shares, this will be the shareholders. In a company limited by guarantee, this will be the guarantors.

Some offshore jurisdictions have created special forms of offshore company in a bid to attract business for their jurisdictions. Examples include segregated portfolio companies and restricted purpose companies.

There are however, many, many sub categories of types of company which can be formed in various jurisdictions in the world.

Companies are also sometimes distinguished for legal and regulatory purposes between public companies and private companies. Public companies are companies whose shares can be publicly traded, often (although not always) on a regulated stock exchange. Private companies do not have publicly traded shares, and often contain restrictions on transfers of shares. In some jurisdictions, private companies have maximum numbers of shareholders.

In almost every jurisdiction in the world, a company must have a corporate constitution, which defines the existence of the company and regulates the structure and control of the company.

By convention, most common law jurisdictions divide the corporate constitution into two separate documents:

- The Memorandum of Association (in some countries referred to as the Articles of Incorporation) is the primary document, and will generally regulate the company's activities with the outside world, such as the company's objects and powers and specify the authorized share capital of the company.

- The Articles of Association (in some countries referred to as the by laws) is the secondary document, and will generally regulate the company's internal affairs and management, such as procedures for board meetings, dividend entitlements and etc.

In many countries, only the primary document is filed, and the secondary document remains private. In other countries, both documents are filed. Some countries provide statutory forms of basic corporate constitution which a company may adopt.
In civil law jurisdictions, the company's constitution is normally consolidated into a single document, often called the charter.

It is quite common for members of a company to supplement the corporate constitution with additional arrangements, such as shareholders' agreements, whereby they agree to exercise their membership rights in a certain way. Conceptually a shareholders' agreement fulfills many of the same functions as the corporate constitution, but because it is a contract, it will not normally bind new members of the company unless they accede to it somehow. One benefit of shareholders' agreement is that they will usually be confidential, as most jurisdictions do not require shareholders' agreements to be publicly filed.

Another common method of supplementing the corporate constitution is by means of voting trusts, although these are relatively uncommon outside of the United States and certain offshore jurisdictions.

Some jurisdictions consider the company seal to be a party of the constitution (in the loose sense of the word) of the company, but the requirement for a seal has been abrogated by legislation in most countries.

Companies generally raise capital for their business ventures either by debt or equity. Capital raised by way of equity is usually raised by issued shares (sometimes called stock or warrants).

A share is an item of property, and can be sold or transferred. Holding a share makes the holder a member of the company, and entitles them to enforce the provisions of the company's constitution against the company and against other members. Shares also normally have a nominal or par value, which is the limit of the shareholder's liability to contribute to the debts of the company on an insolvent liquidation.

Shares usually confer a number of rights on the holder. These will normally include:

- Voting rights
- Rights to dividends declared by the company
- Rights to any return of capital either upon redemption of the share, or upon the liquidation of the company
- In some countries, shareholders have preemption rights, whereby they have a preferential right to participate in future share issues by the company

Many companies have different classes of shares, offering different rights to the shareholders. For example, a company might issue both ordinary shares and preference shares, with the two types having different voting and/or economic rights. For example, a company might provide that preference shareholders shall each receive a cumulative preferred dividend of a certain amount per annum, but the ordinary shareholders shall receive everything else.

The total number of issued shares in a company is said to represent its capital. Many jurisdictions regulate the minimum amount of capital which a company may have, although some countries only prescribe minimum amounts of capital for companies engaging in certain types of business (e.g. banking, insurance etc.).

Similarly, most jurisdictions regulate the maintenance of capital, and prevent companies returning funds to shareholders by way of distribution when this might leave the company financially exposed. In some jurisdictions this extends to prohibiting a company from providing financial assistance for the purchase of its own shares.

Adhesion contract

A standard form contract (sometimes referred to as an adhesion contract or boilerplate contract) is a contract between two parties that does not allow for negotiation, i.e. take it or leave it. It is often a contract that is entered into between unequal bargaining partners, such as when an individual is given a contract by the salesperson of a multinational corporation. The consumer is in no position to negotiate the standard terms of such contracts and the company's representative often does not have the authority to do so.

There is some debate on a theoretical level whether, and to what extent, courts should enforce standard form contracts. On the one hand they undeniably fulfill an important efficiency role in society. Standard form contracting reduces transaction costs substantially by precluding the need for buyers and sellers of goods and services to negotiate the many details of a sale contract each time the product is sold. On the other hand, there is the potential for inefficient, and even unjust, terms to be accepted by those signing these contracts. Such terms might be seen as unjust if they allow the seller to avoid all liability or unilaterally modify terms or terminate the contract. They might be inefficient if they place the risk of a negative outcome, such as defective manufacturing, on the buyer who is not in the best position to take precautions. There are a number of reasons why such terms might be accepted:

- Standard form contracts are rarely read**.** Lengthy boilerplate terms are often in small print and written in complicated legal language which often seems irrelevant. The prospect of a buyer finding any useful information from reading such terms is correspondingly low. Even if such information is discovered the consumer is in no position to bargain as the contract is presented on a take it or leave it basis. Coupled with the often large amount of time needed to read the terms, the expected payoff from reading the contract is low and few people would be expected to read it.
- Access to the full terms may be difficult or impossible before acceptance. Often the document being signed is not the full contract; the purchaser is told that the rest of the terms are in another location. This reduces the likelihood of the terms being read and in some situations, such as software end user license agreements, can only be read after they have been notionally accepted by purchasing the good.
- Boilerplate terms are not salient. The most important terms to purchasers of a good are generally the price and the quality, which are generally understood before the contract of adhesion is signed. Terms relating to events which have very small probabilities of occurring or which refer to particular statutes or legal rules do not seem important to the purchaser. This further lowers the chance of such terms being read and also means they are likely to be ignored even if they are read.
- There may be social pressure to sign. Standard form contracts are signed at a point when the main details of the transaction have either been negotiated or explained. Social pressure to conclude the bargain at that point may come from a number of sources. The salesperson may imply that the purchaser is being unreasonable if they read or question the terms, saying that they are just something the lawyers want us to do or that they are wasting their time reading them. If the purchaser is at the front of a queue (for example at an airport car rental desk) there is additional pressure to sign quickly. Finally, if there has been negotiation over price or particular details then concessions given by the salesperson may be seen as a gift which socially obliges the purchaser to respond by being co operative and concluding the transaction.
- Standard form contracts may exploit unequal power relations. If the good which is being sold using a contract of adhesion is one which is essential or very important for the purchaser to buy (such as a rental property or a needed medical item) then the purchaser might have no choice but to accept the terms. This problem may be mitigated if there are many suppliers of the good who can potentially offer different terms.

Some contend that in a competitive market, consumers have the ability to shop around for the supplier who offers them the most favorable terms and are consequently able to avoid injustice. As noted, however, many people do not read or understand the terms so there might be very little incentive for a firm to offer favorable conditions as they would gain only a small amount of business from doing so. Even if this is the case, it is argued by some that only a small percentage of buyers need to actively read standard form contracts for it to be worthwhile for firms to offer better terms if that group is able to influence a larger number of people by affecting the firm's reputation.

Another factor which might mitigate the effects of competition on the content of contracts of adhesion is that, in practice, standard form contracts are usually drafted by lawyers instructed to construct them so as to minimize the firm's liability and not by managers making competitive decisions. Sometimes the contracts are written by an industry body and distributed to firms in that industry, increasing homogeneity of the contracts and reducing consumer's ability to shop around.

As a general rule, the common law treats standard form contracts as any other contract. Signature or some other objective manifestation of intent to be legally bound will bind the signor to the contract whether or not they read or understood the terms. The reality of standard form contracting, however, means that many common law jurisdictions have developed special rules with respect to them. In general, courts will interpret standard form contracts contra proferentem (literally against the proffering person) but specific treatment varies between jurisdictions.

For a contract to be treated as a contract of adhesion, it must be presented on a standard form on a take it or leave it basis, and give the purchaser no ability to negotiate because of their unequal bargaining position. The special scrutiny given to contracts of adhesion can be performed in a number of ways:

- If the term was outside of the reasonable expectations of the person who did not write the contract, and if the parties were contracting on an unequal basis, then it will not be enforceable. The reasonable expectation is assessed objectively, looking at the prominence of the term, the purpose of the term and the circumstances surrounding acceptance of the contract.

- Section 211 of the American Law Institute's which has persuasive though non binding force in courts, provides.

Where the other party has reason to believe any party manifesting such assent would not do so, if he knew that the writing contained a particular term, the term is not part of the agreement.

This is a subjective test focusing on the mind of the seller and has been adopted by only a few state courts.

The doctrine of unconscionability which is a fact specific doctrine arising from equitable principles. Unconscionability in standard form contracts usually arises where there is an absence of meaningful choice on the part of one party due to one sided contract provisions, together with terms which are so oppressive that no reasonable person would make them and no fair and honest person would accept them.

Corporate law

Corporate personality as one of the key legal features of companies is their separate legal personality. However, it is now largely accepted throughout the world that companies are legally separate and distinct entities.

Separate legal personality often has unintended consequences, particularly in relation to smaller, family companies.

- In *B v B* [1978] Fam 181 it was held that a discovery order obtained by a wife against her husband was not effective against the husband's company as it was not named in the order and was separate and distinct from him.

- In Macaura *v* Northern Assurance Co Ltd [1925] AC 619 a claim under an insurance policy failed where the insured had transferred timber from his name into the name of a company wholly owned by him, and it was subsequently destroyed in a fire, as the property now belonged to the company and not to him, he no longer had an insurable interest in it and his claim failed.

However, separate legal personality does allow corporate groups a great deal of flexibility in relation to tax planning, and also enables multinational companies to manage the liability of their overseas operations.

There are certain specific situations where courts are generally prepared to pierce the corporate veil, to look directly at, and impose liability directly on the individuals behind the company. The most commonly cited examples are:

- Where the company is a mere façade.
- Where the company is effectively just the agent of its members or controllers.
- Where a representative of the company has taken some personal responsibility for a statement or action.
- Where the company is engaged in fraud or other criminal wrongdoing
- Where the natural interpretation of a contract or statute is as a reference to the corporate group and not the individual company.
- Where permitted by statute (for example, many jurisdictions provide for shareholder liability where a company breaches environmental protection laws).
- In many jurisdictions, where a company continues to trade despite inevitable bankruptcy, the directors can be forced to account for trading losses personally.

As artificial persons, companies can only act through human agents. As was once memorably remarked, It has no body to kick and no soul to damn.

The main agent who deals with the company's management and business is the board of directors, but in many jurisdictions other officers can be appointed too. The board of directors is normally elected by the members, and the other officers are normally appointed by the board. These agents enter into contracts on behalf of the company with third parties.

Although the company's agents owe duties to the company (and, indirectly, to the shareholders) to exercise those powers for a proper purpose, generally speaking third parties' rights are not impugned if it transpires that the officers were acting improperly. Third parties are entitled to rely on the ostensible authority of agents held out by the company to act on its behalf. A line of common law cases reaching back to Royal British Bank v Turquand established in common law that third parties were entitled to assume that the internal management of the company was being conducted properly, and the rule has now been codified into statute in most countries.

Accordingly, companies will normally be liable for all the act and omissions of their officers and agents. This will include almost all torts, but the law relating to crimes committed by companies is complex, and varies significantly between countries

Members of a company generally have rights against each other and against the company, as framed under the company's constitution. In relation to the exercise of their rights, minority shareholders usually have to accept that, because of the limits of their voting rights, they cannot direct the overall control of the company and must accept the will of the majority (often expressed as majority rule). However, majority rule can be iniquitous, particularly where there is one controlling shareholder.

Accordingly, a number of exceptions have developed in law in relation to the general principle of majority rule.

- Where the majority shareholders are exercising their votes to perpetrate a fraud on the minority, the courts may permit the minority to sue.

- Members always retain the right to sue if the majority acts to invade their personal rights, e.g. where the company's affairs are not conducted in accordance with the company's constitution (this position has been debated because the extent of a personal right is not set in law). Macdougall v Gardiner and Pender v Lushington present irreconcilable differences in this area.

In most jurisdictions, directors owe strict duties of good faith, as well as duties of care and skill to safeguard the interests of the company and the members.

The standard of skill and care that a director owes is usually described as acquiring and maintaining sufficient knowledge and understanding of the company's business to enable him to properly discharge his duties.

Directors are also strictly charged to exercise their powers only for a proper purpose. For instance, was a director to issue a large number of new shares, not for the purposes of raising capital but in order to defeat a potential takeover bid that would be an improper purpose.

Directors also owe strict duties not to permit any conflict of interest or conflict with their duty to act in the best interests of the company. This rule is so strictly enforced that, even where the conflict of interest or conflict of duty is purely hypothetical, the directors can be forced to disgorge all personal gains arising from it. In Aberdeen Ry v Blaikie (1854) 1 Macq HL 461 Lord Cranworth stated in his judgment that:

“A corporate body can only act by agents, and it is of course the duty of those agents so to act as best to promote the interests of the corporation whose affairs they are conducting. Such agents have duties to discharge of a fiduciary nature towards their principal. And it is a rule of universal application that no one, having such duties to discharge, shall be allowed to enter into engagements in which he has, or can have, a personal interest conflicting or which possibly may conflict, with the interests of those whom he is bound to protect. So strictly is this principle adhered to that no question is allowed to be raised as to the fairness or unfairness of the contract entered into”

However, in many jurisdictions the members of the company are permitted to ratify transactions which would otherwise fall foul of this principle. It is also largely accepted in most jurisdictions that this principle should be capable of being abrogated in the company's constitution.

Liquidation is the normal means by which a company's existence is brought to an end. It is also referred to (either alternatively or concurrently) in some jurisdictions as winding up and/or dissolution.

Liquidations generally come in two forms, either compulsory liquidations (sometimes called creditors' liquidations) and voluntary liquidations (sometimes called members' liquidations, although a voluntary liquidation where the company is insolvent will also be controlled by the creditors, and is properly referred to as a creditors' voluntary liquidation).

As its names imply, applications for compulsory liquidation are normally made by creditors of the company when the company is unable to pay its debts. However, in some jurisdictions, regulators have the power to apply for the liquidation of the company on the grounds of public good, i.e. where the company is believed to have engaged in unlawful conduct or conduct which is otherwise harmful to the public at large.

Voluntary liquidations occur when the company's members decide voluntarily to wind up the affairs of the company. This may be because they believe that the company will soon become insolvent, or it may be on economic grounds if they believe that the purpose for which the company was formed is now at an end or that the company is not providing an adequate return on assets and should be broken up and sold off.

Some jurisdictions also permit companies to be wound up on just and equitable grounds. Generally, applications for just and equitable winding-up are brought by a member of the company who alleges that the affairs of the company are being conducted in a prejudicial manner, and asking the court to bring an end to the company's existence. For obvious reasons, in most countries, the courts have been reluctant to wind up a company solely on the basis of the disappointment of one member, regardless of how well founded that member's complaints are. Accordingly, most jurisdictions which permit just and equitable winding up, also permit the court to impose other remedies, such as requiring the majority shareholders to buy out the disappointed minority shareholder at a fair value.

Where a company goes into liquidation, normally a liquidator is appointed to gather in all the company's assets and settle all claims against the company. If there is any surplus after paying off all the creditors of the company, this surplus is then distributed to the members

Corporation

A corporation is a legal entity (technically, a juristic person) which has a separate legal personality from its shareholders. The defining legal rights and obligations of the corporation are:

(i) The ability to sue and be sued.
(ii) The ability to hold assets in its own name
(iii) The ability to hire employees.
(iv) The ability to sign contracts.
(v) The ability to make by laws, which govern its internal affairs. Other legal rights and obligations may be assigned to the corporation by governments or courts. These are often controversial.

Currently, the modern business corporation is the dominant type of corporation. In addition to its legal personality, the modern business corporation has at least three other legal characteristics:

(i) Transferable shares (ownership can change without affecting its legal entity existence).
(ii) Perpetual succession capacity (its possible continued existence despite shareholders' death or withdrawal).
(iii) limited liability (including, but not limited to: the shareholders' limited responsibility for corporate debt, insulation from judgments against the corporation, shareholders' amnesty from criminal actions of the corporation,

and depending on the jurisdiction the entity is registered is, limitation of the liability of officers and directors for criminal acts of the corporation).

The modern business corporation's prevalence often obscures the fact that for years other corporate business entities existed, before the emergence of the modern business corporation. Investors and entrepreneurs often form joint stock companies and then incorporated them to facilitate conducting business, as this business entity now is prevalent; the term corporation often is used to specifically refer to such business corporations.

Corporations may also be formed for local government municipal corporation, political, religious, and charitable purposes or for government programs (government owned corporation). As a generic legal term, 'corporation' means any group of persons with a legal personality. Historically, the modern business corporation emerged from the blending of the traditional corporation with the joint stock company

The existence of a corporation requires a special legal framework and body of law that specifically grants the corporation legal personality, and typically views a corporation as a fictional person, a legal person, or a moral person as opposed to a natural person. As such, corporate statutes typically give corporations the ability to own property, sign binding contracts, pay taxes in a capacity that is separate from that of its owners or shareholders who are sometimes referred to as members.

The legal personality has two economic implications. First it grants creditors to the firm priority over the firm's assets over the creditors of the owners of the firm. The second feature is that the assets of the corporation cannot be withdrawn by its shareholders, nor can the assets of the firm be taken by personal creditors of its shareholders. The second feature requires special legislation and a special legal framework, as it cannot be reproduced via standard contract law.

In common law countries, classic statement of this principle is found in Lennard's Carrying Co Ltd v Asiatic Petroleum Co Ltd [1915] AC 705, where Lord Haldane said:

“My Lords, a corporation is an abstraction. It has no mind of its own any more than it has a body of its own; its active and directing will must consequently be sought in the person of somebody who is really the directing mind and will of the corporation, the very ego and centre of the personality of the corporation.”

The regulations most favorable to incorporation include:

Limited liability: Unlike in a partnership or sole proprietorship, shareholders of a modern business corporation have limited liability for the corporation's debts and obligations. As a result their potential losses cannot exceed the amount which they contributed to the corporation as dues or paid for shares. Limited liability regulations enable corporations to socialize their costs for the primary benefit of shareholders. The economic rationale for this lies in the fact that it allows anonymous trading in the shares of the corporation by virtue of eliminating the corporation's creditors as a stakeholder in such a transaction. Without limited liability, a creditor would not likely allow any share to be sold to a buyer of at least equivalent credit worthiness as the seller. Limited liability further allows corporations to raise tremendously more funds for enterprises by combining funds from the owners of stock. Limited liability reduces the amount that a shareholder can lose in a company. This in turn greatly reduces the risk for potential shareholders and increases both the number of willing shareholders and the amount they are likely to invest.

Perpetual lifetime: Another favorable regulation, the assets and structure of the corporation exist beyond the lifetime of any of its shareholders, bondholders, or employees. This allows for stability and accumulation of capital, which thus becomes available for investment in projects of a larger size and over a longer term than if the corporate assets remained subject to dissolution and distribution. This feature also had great importance in the medieval period, when land donated to the Church (a corporation) would not generate the feudal fees that a lord could claim upon a landholder's death. In this regard, It is important to note that the perpetual lifetime feature is an indication of the unbounded potential duration of the corporation's existence, and its accumulation of wealth and thus power. In theory, a corporation can have its charter revoked at any time, putting an end to its existence as a legal entity. However, in practice, dissolution only occurs for corporations that request it or fail to meet annual filing requirements.

Ownership and control

Humans and other legal entities composed of humans (such as trusts and other corporations) can have the right to vote or share in the profit of corporations. In the case of profit corporations, these voters hold shares of stock and are thus called shareholders or stockholders. When no stockholders exist, a corporation may exist as a non stock corporation, and instead of having stockholders, the corporation has members who have the right to vote on its operations. If the non stock corporation is not operated for profit, it is called a non profit corporation. In either category, the corporation comprises a collective of individuals with a distinct legal status and with special privileges not provided to ordinary unincorporated businesses, to voluntary associations, or to groups of individuals.

There are two broad classes of corporate governance forms in the world. In most of the world, control of the corporation is determined by a board of directors which is technically elected by the shareholders. In practice, with the exception of takeovers, the board members are determined by the previous board. In some jurisdictions, such as Germany, the control of the corporation is divided into two tiers with a supervisory board which elects a managing board. Germany is also unique in having a system known as code termination in which half of the supervisory board consists of representatives of the employees.

The CEO, president, treasurer, and other titled officers are usually chosen by the board to manage the affairs of the corporation.

In addition to the influence of shareholders, corporations can be controlled in part by creditors such as banks. In return for lending money to the corporation, creditors can demand a controlling interest analogous to that of a member, including one or more seats on the board of directors. In some jurisdictions, such as Germany and Japan, it is standard for banks to own shares in corporations whereas in other jurisdictions such as the United States and the United Kingdom banks are prohibited from owning shares in external corporation.

Members of a corporation except for non profit corporations are said to have a residual interest. Should the corporation end its existence, the members are the last to receive its assets, following creditors and others with interests in the corporation. This can make investment in a corporation risky, however, a diverse investment portfolio minimizes this risk. In addition, shareholders receive the benefit of limited liability regulations, making shareholders liable for only the amount they contributed. This only applies in the case of profit corporations, non profits are not allowed to have residual benefits available to the members.

Formation

Historically, corporations were created by special charter of governments. Today, corporations are usually registered with the state, province, or national government and become regulated by the laws enacted by that government. Registration is the main prerequisite to the corporation's assumption of limited liability. As part of this registration, it must in many cases be required to designate the principal address of the corporation as well as a registered agent a person or company that is designated to receive legal service of process. As part of the registration, it may also be required to designate an agent or other legal representative of the corporation depending on the filing jurisdiction.

Generally, a corporation files articles of incorporation with the government, laying out the general nature of the corporation, the amount of stock it is authorized to issue, and the names and addresses of directors. Once the articles are approved, the corporation's directors meet to create bylaws that govern the internal functions of the corporation, such as meeting procedures and officer positions.

The law of the jurisdiction in which a corporation operates will regulate most of its internal activities, as well as its finances. If a corporation operates outside its home state, it is often required to register with other governments as a foreign corporation, and is almost always subject to laws of its host state pertaining to employment, crimes, contracts, civil actions, and the like.

Naming

Corporations generally have a distinct name. Historically, some corporations were named after their membership. For instance,(The President and Fellows of Harvard College). Nowadays, corporations in most jurisdictions have a distinct name that does not need to make reference to their membership. In Canada, this possibility is taken to its logical extreme; many smaller Canadian corporations have no names at all, merely numbers based on their Provincial Sales Tax registration number (e.g. Ontario Limited).

In most countries, corporate names include the term corporation, or an abbreviation that denotes the corporate status of the entity. Of course, these terms vary by jurisdiction and language. In some jurisdictions they are mandatory, and in others they are not. Their use puts all persons on constructive notice that they have to deal with an entity whose liability remains limited, in the sense that it does not reach back to the persons who constitute the entity; one can only collect from whatever assets the entity still controls at the time one obtains a judgment against it.

Certain jurisdictions do not allow the use of the word company alone to denote corporate status, since the word company may refer to a partnership or to a sole proprietorship, or even, archaically, to a group of not necessarily related people (for example, those staying in a tavern).

Types of corporations

Most corporations are registered with the local jurisdiction as either a stock corporation or a non stock corporation. Stock corporations represent ownership of the corporation by shares of stock. A stock corporation is generally a for profit corporation. A non stock corporation does not have owners, but may have members who have voting rights in the corporation.

- Profit and non profit: In modern economic systems, conventions of corporate governance commonly appear in a wide variety of business and non profit activities. Though the laws governing these creatures of statute often differ, the courts often interpret provisions of the law that apply to profit making enterprises in the same manner or in a similar manner when applying principles to non profit organizations, as the underlying structures of these two types of entity often resemble each other.

- Closely held and public: The institution most often referenced by the word corporation is a public or publicly traded corporation, the shares of which are traded on a public market (Stock Exchange) designed specifically for the buying and selling of shares of stock of corporations by and to the general public. Most of the largest businesses in the world are publicly traded corporations. However, the majority of corporations are said to be closely held, privately held or close corporations, meaning that no ready market exists for the trading of ownership interests. Many such corporations are owned and managed by a small group of businesspeople or companies, although the size of such a corporation can be as vast as the largest public corporations. Closely held corporations have a few advantages over publicly traded corporations. A small, closely held company can often make company changing decisions much more rapidly then a publicly traded company. A publicly traded company is also at the mercy of the market, having capital flow in and out based not only on what the company is doing but the market and even what the competitors are up too. Publicly traded companies also have advantages over their closely held counterparts. Publicly traded companies often have more working capital and can delegate debt throughout all share holders. This means that people invested in a publicly traded company will each take a much smaller hit to their own capital as opposed to those involved with a closely held corporation. Publicly traded companies though suffer from this exact advantage. A small corporation can often voluntarily take a hit to profit with little to no repercussions (as long as it is not a sustained loss). A publicly traded company though often comes under extreme scrutiny if profit and growth are not evident to stock holders, thus stock holders may sell, further damaging the company. Oftentimes this blow is enough to make a small public company fail.

Oftentimes communities benefit from a closely held company more so then from a public company. A closely held company is far more likely to stay in a single place that has treated them well, even if going through hard times. The owners can incur some of the damage the company may receive from a bad year or slow period in the company profits. Workers benefit in that closely held companies often have a better relationship with workers. In larger, publicly traded companies, often when a year has gone badly the first area to feel the effects are the work force with lay offs or worker hours, wages or benefits being cut. Again, in a closely held business the owners can incur this profit damage rather than passing it to the workers. Closely held businesses are also often known to be more socially responsible than publicly traded companies.

The affairs of publicly traded and closely held corporations are similar in many respects. The main difference in most countries is that publicly traded corporations have the burden of complying with additional securities laws, which may require additional periodic disclosure with more stringent requirements, stricter corporate governance standards, and additional procedural obligations in connection with major corporate transactions, mergers or events elections of directors and so on.

- A mutual benefit non profit corporation is formed solely for the benefit of its members. An example of a mutual benefit non profit corporation is a golf club. Individuals pay to join the club, memberships may be bought and sold, and any property owned by the club is distributed to its members if the club dissolves. The club can decide, in its corporate by laws, how many members to have, and who can be a member. Generally, while it is a non profit corporation, a mutual benefit corporation is not a charity. Because it is not a charity, a mutual benefit non profit corporation cannot obtain (c) status. If there is a dispute as to how a mutual benefit non profit corporation is being operated, it is up to the members to resolve the dispute since the corporation exists to solely serve the needs of its membership and not the general public.

- Multinational corporations: Following on the success of the corporate model at a national level, many corporations have become transnational or multinational corporations: growing beyond national boundaries to attain sometimes remarkable positions of power and influence in the process of globalizing. The typical transnational or multinational may fit into a web of overlapping ownerships and directorships, with multiple branches and lines in different regions, many such sub groupings comprising corporations in their own right. Growth by expansion may favor national or regional branches, growth by acquisition or merger can result in a plethora of groupings scattered around and/or spanning the globe, with structures and names which do not always make clear the structures of ownership and interaction. In the spread of corporations across multiple continents, the importance of corporate culture has grown as a unifying factor and a counter weight to local national sensibilities and cultural awareness.

- Limited Liability Company: A limited liability company in the law of many of the United States is a legal form of business company offering limited liability to its owners. It is similar to a corporation, and is often a more flexible form of ownership, especially suitable for smaller companies with a limited number of owners. Unlike a regular corporation, a limited liability company with one member may be treated as a disregarded entity, so the member is often singled out as a person performing the actions of the LLC. A limited liability company with multiple members may choose. An LLC can elect to be either member managed or manager managed.

Management structures

Choosing to operate by member management creates a flat member or partnership structure. Choosing member management creates a two tiered management structure potentially convertible into a corporation, with the attendant tax consequences. LLCs use IRS Form 1065 (if taxed as a partnership) and Schedule SE (Self Employment Tax). It is often incorrectly called a limited liability corporation, instead of company. LLCs are organized with a document called the articles of organization, or the rules of organization specified publicly by the state, additionally, it is common to have an operating agreement privately specified by the members. The operating agreement is a contract among the members of a LLC governing the membership, management, operation and distribution of income of the company.

Managing members are the individuals who are responsible for the maintenance, administration and management of the affairs of a LLC. In most states, the managers serve a particular term and report to and serve at the discretion of the members. Specific duties of the managers may be detailed in the articles of organization or the operating agreement of the LLC. In some states, the members of an LLC may also serve as the managers.

Members are the owner(s) of a LLC. Unless the articles of organization or operating agreement provide otherwise, management of an LLC is vested in the members in proportion to their ownership interest in the company.

LLCs can lose their tax advantage without the partnership structure. The possible label disregarded entity for income tax purposes singles out the one member owner of an LLC as actually earning income and deductions directly. It is the owner, then, who reports as a business proprietor, rather than as an LLC operating an active trade or business. An LLC passively investing in real estate and owned by a single member would have its income and deductions reported directly on the owner's individual tax return on a Schedule E tax form. And an LLC owned by a corporation in other words, an LLC with a single corporate member would be treated as an incorporated branch and have its income and deductions reported on the corporate tax return, creating double taxation.

Advantages

- No requirement of an annual general meeting for shareholders.
- No loss of power to a board of directors.
- Much less administrative paperwork and recordkeeping.
- Pass through taxation.
- Limited liability, meaning that the owners of the LLC, called members, are protected from liability for acts and debts of the LLC.
- Using default tax classification, profits are taxed personally at the member level, not at the LLC level.
- Check the box taxation. An LLC can elect to be taxed as a sole proprietor, partnership, or corporation, providing much flexibility.
- LLCs in some states can be set up with just one natural person involved.
- Membership interests of LLCs can be assigned, and the economic benefits of those interests can be separated and assigned, providing the assignee with the economic benefits of distributions of profits/losses (like a partnership), without transferring the title to the membership interest.
- LLCs in some states are treated as entities separate from their Members. Whereas in other jurisdictions case law has developed deciding LLCs are not considered to have separate juridical standing from their members.

Disadvantages

- It may be more difficult to raise capital for an LLC, as investors may be more comfortable investing funds in the better-understood corporate form with a view toward an eventual IPO.
- Although there is no public requirement for an operating agreement, members who operate without one may run into problems.
- Some people, such as new business people, may not be familiar with the governance of LLCs. Unlike corporations, they are not required to have a board of directors or officers.
- The principals of LLCs use many different titles e.g., member, manager, managing member, chief executive officer, president, partner some of which are not correct. As such, it can be difficult to determine who actually has the authority to enter into a contract on the LLC's behalf.
- All income members receive is taxed at ordinary income rates and subject to FICA tax.

Variations

- A Professional Limited Liability Company (PLLC or P.L.L.C.) is a limited liability company organized for the purpose of providing professional services. Usually, professions where the state requires a license to provide services, such as a doctor, lawyer, accountant, architect, or engineer, require the formation of a PLLC. Exact requirements of PLLCs vary from state to state.

- A Series LLC is a special form of a Limited liability company that provides extra protection for personal assets comprised of multiple business entities.

Arbitration

Arbitration is a legal technique for the resolution of disputes outside the courts, wherein the parties to a dispute refer it to one or more persons the arbitrators or arbitral tribunal, by whose decision the award they agree to be bound. In the United States and other countries, the term is sometimes used in the context of describing alternative dispute resolution (ADR), a category that more commonly refers to mediation, a form of settlement negotiation facilitated by a neutral third party. It is more helpful, however, simply to classify arbitration as a form of binding dispute resolution, equivalent to litigation in the courts, and entirely distinct from the various forms of non binding dispute resolution, such as negotiation, mediation, or non binding determinations by experts.
Arbitration is today most commonly used for the resolution of commercial disputes, particularly in the context of international commercial transactions and sometimes used to enforce credit obligations. It is also used in some countries to resolve other types of disputes, such as labour disputes, consumer disputes or family disputes, and for the resolution of certain disputes between states and between investors and states.
Arbitration is a proceeding in which a dispute is resolved by an impartial adjudicator whose decision the parties to the dispute have agreed will be final and binding.
Arbitration is not the same as:

- Judicial proceedings, although in some jurisdictions, court proceedings are sometimes referred as arbitrations
- Alternative dispute resolution (ADR)
- Expert determination
- Mediation

Advantages of arbitration:

1. Parties often seek to resolve their disputes through arbitration because of a number of perceived potential advantages over judicial proceedings:
2. When the subject matter of the dispute is highly technical, arbitrators with an appropriate degree of expertise can be appointed
3. Arbitration is often faster than litigation in court
4. Arbitration can be cheaper
5. Arbitral proceedings and an arbitral award are generally private
6. The arbitral process enjoys a greater degree of flexibility than the courts
7. In most legal systems, there are limited avenues for appeal of an arbitral award, which can mean swifter enforcement and less scope for a party to delay matters.

However, some of the disadvantages of arbitration can be that:

1. The parties need to pay for the arbitrators, which adds an additional layer of legal cost

2. Although usually thought to be speedier, when there are multiple arbitrators on the panel, juggling their schedules for hearing dates in long cases can lead to delays
3. In some legal systems, arbitral awards have fewer enforcement remedies than judgments
4. Arbitrators are generally unable to order interlocutory measures against a party, making it easier for a party to take steps to avoid enforcement of an award (such as the relocation of assets offshore)
5. Rule of applicable law is not binding, and arbitrators not subject to overturn on appeal may be more likely to rule according to their personal ideals.

Arbitrability: By their nature, the subject matter of some disputes is not capable of arbitration. Matters relating to crimes, status and family law are generally not considered to be arbitrable. However, most other disputes that involve private rights between two parties can be resolved using arbitration. In some disputes, parts of claims may be arbitrable and other parts not. For example, in a dispute over patent infringement, a determination of whether a patent has been infringed could be adjudicated upon by an arbitration tribunal, but the validity of a patent could not as patents are subject to a system of public registration, an arbitral panel would have no power to order the relevant body to rectify any patent registration based upon its determination.

Seat of the arbitration in most legal systems recognize the concept of a seat of the arbitration, which is a geographical and legal jurisdiction to which the arbitration is tied. The seat will normally determine the procedural rules which the arbitration follows, and the courts which exercise jurisdiction over the seat will have a supervisory role over the conduct of the arbitration.

Arbitration is a consensual process; parties will only ever arbitrate where they agree to do so. Such agreements are generally divided into two types:

1. Agreements which provide that, if a dispute should arise, it will be resolved by arbitration. These will generally be normal contracts, but they contain an arbitration clause
2. Agreements which are signed after a dispute has arisen, agreeing that the dispute should be resolved by arbitration sometimes called a submission agreement

The former is the far more prevalent type of arbitration agreement. Sometimes, legal significance attaches to the type of arbitration agreement. For example, in certain Commonwealth countries, it is possible to provide that each party should bear the own costs in a conventional arbitration clause, but not in a submission agreement.
In keeping with the informality of the arbitration process, the law is generally keen to uphold the validity of arbitration clauses even when they lack the normal formal language associated with legal contracts. The courts have also upheld clauses which specify resolution of disputes other than in accordance with a specific legal system.

These include provision indicating:

- That the arbitrators must not necessarily judge according to the strict law but as a general rule ought chiefly to consider the principles of practical business.
- Internationally accepted principles of law governing contractual relations.

Agreements to refer disputes to arbitration generally have a special status in the eyes of the law. For example, in disputes on a contract, a common defense is to plead the contract is void and thus any claim based upon it fails. It follows that if a party successfully claims that a contract is void, then each clause contained within the contract, including the arbitration clause, would be void. However, in most common law countries, the courts have accepted that:

- A contract can only be declared void by a court or other tribunal.
- If the contract is valid or otherwise contains an arbitration clause, then the proper forum to determine whether the contract is void or not, is the arbitration tribunal.
- Arguably position is potentially unfair, if a person is made to sign a contract under duress, and the contract contains an arbitration clause highly favorable to the other party, the dispute is still referred to that arbitration tribunal. Nonetheless, the general rule does allow for commercial expediency; any other solution where one first had to go to court to decide whether one had to go to arbitration would be self defeating.

Copyright

Copyright is a set of exclusive rights regulating the use of a particular expression of an idea or information. At its most general, it is literally the right to copy an original creation. In most cases, these rights are of limited duration. The symbol for copyright is ©, and in some jurisdictions may alternatively be written as either (c) or (C).

Copyright may subsist in a wide range of creative, intellectual, or artistic forms or works. These include poems, theses, plays, and other literary works, movies, choreographic works (dances, ballets, etc.), musical compositions, audio recordings, paintings, drawings, sculptures, photographs, software, radio and television broadcasts of live and other performances, and, in some jurisdictions, industrial designs. Designs or industrial designs may have separate or overlapping laws applied to them in some jurisdictions. Copyright is one of the laws covered by the umbrella term intellectual property.

Copyright law covers only the form or manner in which ideas or information have been manifested, the form of material expression. It is not designed or intended to cover the actual idea, concepts, facts, styles, or techniques which may be embodied in or represented by the copyright work. For example, the copyright which subsists in relation to a Mickey Mouse cartoon prohibits unauthorized parties from distributing copies of the cartoon or creating derivative works which copy or mimic Disney's particular anthropomorphic mouse, but does not prohibit the creation of artistic works about anthropomorphic mice in general, so long as they are sufficiently different to not be deemed imitative of the original. In some jurisdictions, copyright law provides scope for satirical or interpretive works which themselves may be copyrighted. Other laws may impose legal restrictions on reproduction or use where copyright does not such as trademarks and patents.

Copyright laws are standardized through international conventions such as the Berne Convention in some countries and are required by international organizations such as European Union or World Trade Organization from their member states.
Typically, a work must meet minimal standards of originality in order to qualify for copyright, and the copyright expires after a set period of time some jurisdictions may allow this to be extended. Different countries impose different tests, although generally the requirements are low; in the United Kingdom there has to be some skill, originality and work, which has gone into it. However, even fairly trivial amounts of these qualities are sufficient for determining whether a particular act of copying constitutes an infringement of the author's original expression. In Australia and the United Kingdom it has been held that a single word is insufficient to comprise a copyright work. In the UK, however, single words or a string of words, usually less than eight, can be registered as a Trade Mark instead.

In the United States, copyright has been made automatic in the style of the Berne Convention) since March 1, 1989, which has had the effect of making it appear to be more like a property right. Thus, as with property, a copyright need not be granted or obtained through official registration with any government office. Once an idea has been reduced to tangible form, for example by securing it in a fixed medium such as a drawing, sheet music, photograph, a videotape or a letter, the copyright holder is entitled to enforce his or her exclusive rights. However, while a copyright need not be officially registered for the copyright owner to begin exercising his exclusive rights, registration of works where the laws of that jurisdiction provide for registration does have benefits it serves as prima facie evidence of a valid copyright and enables the copyright holder to seek statutory damages and attorney's fees whereas in the USA, for instance, registering after an infringement only enables one to receive actual damages and lost profits). The original holder of the copyright may be the employer of the actual author rather than the author himself if the work is a work for hire. Again, this principle is widespread, in English law the Copyright Designs and Patents Act 1988 provides that where a work in which copyright subsists is made by an employee in the course of that employment, the copyright is automatically assigned to the employer.

Copyrights are generally enforced by the holder in a civil law court, but there are also criminal infringement statutes. Criminal sanctions are generally aimed at serious counterfeiting activity, but are now becoming more commonplace as copyright collectives such as the RIAA are, more and more, targeting the file sharing home Internet user. Thus far, however, most such cases against file sharers have been settled out of court for several thousands dollars.
Copyright notices

Use of a copyright notice consisting of the letter C inside of a circle that is, ©, or the word Copyright, followed by the year of the first publication of the work and the name of the copyright holder was part of previous United States statutory requirements. Note that the letter C inside of parentheses (c) has never been an officially recognized designator.) But in 1989, the U.S. enacted the Berne Convention Implementation Act, amending the 1976 Copyright Act to conform to most of the provisions of the Berne Convention. As a result, the use of copyright notices has become optional to claim copyright, because the Berne Convention makes copyright automatic. However, notice of copyright using these marks does have consequences in terms of allowable damages in an infringement lawsuit in some places.

It is important to understand that absence of the copyright symbol does not mean that the work is not covered by copyright. The work once created from originality through mental labor is instantaneously considered copyrighted to that person.

The phrase, all rights reserved was once a necessary formal notice that all rights granted under existing copyright law are retained by the copyright holder and that legal action may be taken against copyright infringement. It was provided as a result of the Buenos Aires Convention of 1910, which required some statement of reservation of rights to grant international coverage in all the countries that were signatory to that convention. While it is commonplace to see it, this notice is now superfluous, as every country that is a member of the Buenos Aires Convention is also a member of the Berne Convention, which holds a copyright to be valid in all signatory states without any formality of notice.

This phrase is sometimes still used even on some documents to which the original author does not retain all rights granted by copyright law, such as works released under a copyleft license. It is, however, only a habitual formality and is unlikely to have legal consequences.

Several exclusive rights typically attach to the holder of a copyright:

- To produce copies or reproductions of the work and to sell those copies (including, typically, electronic copies)
- To import or export the work
- To create derivative works (works that adapt the original work)
- To perform or display the work publicly
- To sell or assign these rights to others
- To transmit or display by means of digital audio transmission (XM Satellite Radio)

The phrase exclusive right means that only the copyright holder is free to exercise the attendant rights and others are prohibited using the work without the consent of the copyright holder. Copyright is often called a negative right, as it serves to prohibit people (e.g. readers, viewers, or listeners, and primarily publishers and would be publishers) from doing something, rather than permitting people (e.g. authors) to do something. In this way it is similar to the unregistered design right in English law and European law. The rights of the copyright holder also permit him/her to not use or exploit their copyright for its duration. This means an author can choose to exploit their copyright for some of the duration and then not for the rest, vice versa, or entirely one or the other.

There is however a critique which rejects this assertion as being based on a philosophical interpretation of copyright law, and is not universally shared. There is also debate on whether copyright should be considered a property right or a moral right. Many argue that copyright does not exist merely to restrict third parties from publishing ideas and information, and that defining copyright purely as a negative right is incompatible with the public policy objective of encouraging authors to create new works and enrich the public domain.

The right to adapt a work means to transform the way in which the work is expressed. Examples include developing a stage play or film script from a novel; translating a short story; and making a new arrangement of a musical work.

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