



Business Law and Bankruptcy

Class 1



Sources of Business Law

- **Federal**

- SEC Acts
- SEC Regulations
- SEC administrative rulings
- Federal case law

(Securities and Exchanges Commission is a federal administrative agency formed to regulate securities trading)



Sources of Business Law

- **State**

- All states have detailed state codes that deal with corporations and other business associations
- Examples of key state codes:
 - Delaware Corporate Code
 - New York Business Corporation Law
 - California Corporations Code
- State case law, especially **Delaware**



Sources of Business Law

• **The Uniform Acts**

- Uniform Partnership Act (and Revised Uniform Partnership Act)
- Uniform Limited Partnership Act
- Uniform Limited Liability Company Act
- Various other Restatements and Uniform acts



Open vs. Close Corporation

- Definitions:

- **Close (or “Closed”) Corporation:** Small group of people entirely own the corporation
- **Open Corporation:** The corporation is open to ownership by anyone and is owned by many people



Open vs. Close Corporation

- **Advantages** of each corporation type:

- **Close Corporation:**

- Controlled by only a few people
- Easier to make decisions
- Limited accountability to shareholders
- Not so heavily regulated

- **Open Corporation:**

- Much easier to raise money
- Excellent liquidity (resale market) for the shares



Formation of a Corporation

- **Important Note:** Corporations are “creatures” of **STATE LAW**, not federal law. While federal law may help govern how a corporation must be run, it’s the state law that must be looked to in determining its formation and existence.
- Formation requires 3 elements:
 - People
 - Paper
 - Acts



Formation: People

- The person who actually starts the corporation is called the “**incorporator**”.
- The incorporator need not own any part of the corporation or even be an officer of the corporation.
- Anybody who is of age (usually 18) and mentally competent can be an incorporator.
- Jurisdictions are split as to whether a business entity may be an incorporator.



People Relevant to a Corporation

- **Shareholders:** owners of the company
- **Directors:** (i.e., Board of Directors) General managers of the corporation
- **Officers:** Managers of the day-to-day operations of the corporation



QUIZ TIME!



Formation: Paper

- **Articles of Incorporation** are required for every corporation to be formed
- The Articles are a contract between the shareholder, the incorporators and the state of incorporation



Formation: Paper

• **Articles must contain:**

- Company's name and address of its place of business
- The names and addresses of each incorporator
- Purposes of the corporation (i.e., what types of businesses it will engage in)
- Authorized stock issuance and capital structure of the corporation (including classes of stock, if applicable)
- Duration of the Corporation's existence (if there is none, it's assumed to be perpetual)
- Some states require corporations to designate an agent for service of process



Formation: Paper

- **Corporate Bylaws**

- These are not required, but they can be adopted at any time. They are done after the Articles are filed and they discuss a variety of issues, such as voting procedure, contents of the board of directors, etc.
- Bylaws usually can only be added, amended or repealed by a shareholder vote, but they can also sometimes be done by the directors themselves.
- The corporation must also issue stock certificates, where applicable.
- There is also the requirement that an out-of-state company **register** before doing business in a state.



Formation: Acts

- Required for incorporation:
 - Notarized signatures of all incorporators
 - Filing with the correct state organization and payment of required filing fees
- **Organizational Meeting**
 - After the filing of the Articles, the incorporators meet to:
 - Elect the initial directors
 - Adopt initial bylaws for the corporation