December 9th 2023

**Gorton v. Doty**

* Tort. Vicarious liability.
* Principal-agency relationship exists when two agree that one person will act on behalf of and subject to the control of the other person.
* Car and driver: when they agree that driver will operate the car condition imposed by the owner?
* Doty asked Garst if he had obtained enough cars to transport the entire team whether Principal-agent exists at the time of the accident
* Doty’s liability on Garst.
* Doty testified that she loaned the car.
* Driver was agent to Principal.
* Jury awarded monetary damages to Gorton, finding that Garst was acting as Doty’s agent, and consequently Doty was liable for the damages.
* Gas fee: 학교가냄.
* Yes.
* No compensation or business association between the parties is necessary to create a principal-agent relationship.
* Ownership of a car is enough to … individual who drives that car acts as an agent.
* Doty volunteered her car for the purpose of transporting football players to/from a game.
* Minority: Principal-agent: created by affirmative directive that one should act on behalf of another not mere permission to use one’s car.

Gay Jenson Farms v. Cargill Inc

* Principal-agent relationship exists between creditor and debtor when the creditor intervenes in the business affairs of the debtor.
* Cargill: Contractual authority and commenced a pattern of reviewing witness finances and operations and making business recommendations to Warren.
* By the middle of 1970s, W shipped 90 percent grain to Cargill. Grain elevator.
* Cargill executed new security agreements to W, increasing its limit to $1,250,000.
* Warren bankrupt🡪 86 farmers sued Cargill.
* Is a creditor liable as a principal for the Ks of a debtor when the creditor takes control fo the debtor’s business functions?
  + Yes. Principal and agent relationship is created between the parties.
  + Farmer.
* Cargill’s influencing W’s internal affairs particularly its finances, demonstrates control over the grain elevator.
* Creditor-Debtor (유착관계심함) Relationship
* Principal-agent relationship
* De facto Control Cargill 🡪 Principal.
* Fiduciary duty: Agency: What agent authorized to do?
* Scope
* Ratification

**Mill Street Church v. Hogan**

* ***Implied authority*** to act as an agent exicsts when it is shown that a principal acted in a manner that would lead an agent to reasonably believe that the principal intended for the agent to have such powers as are practically necessary to carry out the duties delegated.
* Bill had implied authority as a church agent to hir Sam Hogan.
* Sam was a church employee entitled to compensation.
* Can ***implied authority*** be established by evidence showing a course of conduct between 2 parties which would lead an agent to reasonably believe that a principal intended the agent to have authority under the circumstance? YES
* Implied authority is assumed when the agent exercises its powers.
* Bill Hogan had implied authority to hire Sam Hogan.
* Sam was an employee of the church or not?

Botticello v. Stefanovicz

* Ratification (비준, 추인)
* Tenancy in Common: She (wife) did not know undivided interest.
* Mary sells the fram for less than $85,000. B & W agreed to a price of $85,000 and executed a lease with an option to purchase the farm.
* Walter signed the lease option to purchase agreement on his own without representing that he was acting on behalf of Mary.
* A few years later, B exercised the option to buy the farm.
* Specific performance.
* Does a person’s acceptance of the benefits of an agreement to which she was not a party constitute ratification of that agreement?
  + No. ***Mere receiving of benefits*** doesn’t prove ratification of an agreement.
* Ratification: if an intent to ratify and knowledge of material circumstances are also proven, … by accepting rent and acknowledging his property improvement, Mary demonstrated her intent to ratify the agreement and displayed knowledge of the material circumstances.
* 대리: 의사 있어야함.
* Ratification: intent to be bound (o).
* Held: no ratification.
* If you don’t want to ratify🡪 it is ok.
* Cashing the rent: not ratifying.
* Ratification of unauthorized act.

Estoppel

**Hoddeson v. Koos Bros**

**A proprietor has a duty of care to customers and is liable for a customer’s monetary loss caused by an unauthorized person posing as the proprietor’s agent, if the proprietor could have prevented the loss but failed to do so.**

* **I intend to buy certain items that I had picked out.”**
* **Man produced a pad, commenced writing and told Hoddeson that he calculated $168.50 as the total price for the furniture**
* **Hoddeson gave the full in case, but didn’t receive a receipt.**
* **Items were out of stock but would deliver approximately a month**
* **Koos Bros argued it’s not liable.**
* **Because impersonization a store salesman without Koos Bros knowledge**
* **Is a proprietor liable to a customer for money lost to an un-authorized person who convincingly pretends to be agent?**
  + **Yes.**
* **A proprietor has a duty to exercise reasonable care to prevent customers from being defrauded by unauthorized persons when it allows a non=agent to swindle a customer under circumstances in which an average person would believe proprietor is estopped from denying liability.**
* **Agency by estoppel by breaching a duty of care to her.**
* **Authority to sell furniture X**
* **Actual express authority X**
* **Actual implied authority X**
* **Apparent authority O. 🡪 stopped. (없는데 있다고 믿음)**
* Customer has mistaken belief traceable for negligent conduct.
* Detrimental Reliance.
* Principal, based on detrimental reliance, are estopped.

Atlantic Salmon v. Curran

* Agent that makes a contract on behalf of a partially disclosed or undisclosed principal is a party to Contract.
* Curran Defendant purchased Salmon for resale from Salmonor and Atlantic 1985-1988.
* Marketing designs inc was dissolved.
* Is a person liable for a contract that made on behalf of a principal that was not revealed to the other party?
  + Yes
* In order to avoid liability in Kontract, a person must inform the 3rd that he is acting on behalf of a principal and reveal Identity of the principal.
* Disclosure of agent is not enough.
* Agent is a party to contract if the person doesn’t identify the specific entity that represents.
* Curran represented to Salmon and Atlantic that he contracts on behalf of some fictitious corporation entities.
* Salmon and Atlantic were not aware of the party with whom they were supposed to be contracting.
* Trial court: Curran was representing MDI by checking the city clerk records.
* Duty of the agent to affirmatively disclose the principal who is represented in a transaction.
* Because Curran didn’t identify MDI as the principal he purportedly represented when he made the dishonored payments to S & A, he is liable for the full amount of the Salmon bought plus interests and Ct fees.
* 1인기업. DBA (Boston Seafood Exchange)
* Each Corporation has home state
* Actual notice
* Corporation statue
* He was an un-disclosed agent (O)

***Humble Oil v. Martin***

* Master-servant relationship exists when 2 parties agree that one party will work on behalf of another party and be subject to that party’s control of how the job will be performed.
* Principal has to have a control over “how they do it.” It’s not actual control.
* Tort: Vicarious liability
* Humble was liable because a master-servant relationship existed.
* Terminable.
* Between Humber and the gas station manager, Schneider, pursuant to a commission Agency Agreement (Agreement)
* The agreement contained a number of provisions that gave Humble control over the gas stations operations.
* Is an oil company liable for the negligence of an employee of a gas station manager with whom the oil company contracts to sell their products when the oil company has power over the gas station’s daily business?
  + Yes. A master is responsible for torts of a servant arises from contract.
  + Agreement proves that one party has authority over the day to day operations of another party’s business.
  + Humble: Master servant (o)
  + Shneider.
* Humble asserts Schneider is independent Contractor.
* Humble: giving Schneider a complete authority over his employees to show that Schneider is independent
* Humble set the gas station’s hours of operation and furnish its advertising and equipment.
* Whatever duties Humble requires in connection with the operation of the gas station.

**Hoover v. Sun Oil**

* Independent contractor relationship exists when one party works on behalf of another independently with no control exerted by the other party over the contract’s day to day operations?
* The lease, provided for rental fees based on the amount of gasoline sold.
* Sun was to loan the equipment and ads to Barone.
* Barone to sell products from competing oil companies but required him to sell the Sun products under the Sun label.
* Peterson: made weekly calls to service station and discussed various business issues.
* Is an oil company liable for negligence of an employee of a service station manager with whom the oil company contract when the oil company doesn’t have authority over the gas stations business? NO.
* A company is not responsible for the negligence of an independent contract or its employees
* Neither gives the Sun the authority to influence Barone’s day to day operation of the service station.
* He Barone held himself out publicly as the proprietor of the service stations assumed all risk of loss and had complete authority over his employees.

Customer slipped

Murphy v. Holiday Inns

* Franchisee’s Tort Liability
* Betsy-Len is the motel owner operator.
* There is no agency relationship.
* Holiday Inn is liable because ***agent*** is negligent.
* Master-servant + inspection
* No agency relationship with Betsy.
* No Principal agency.
* Is a franchisor liable for the negligence of a francisee’s employee if their contract doesn’t give the franchisor control over the franchisee’s day to day operations?
  + No. Principal is liable for the torts of its agent. But …
  + There is no principal agent relationship.
* Franchisor: distribute goods or services to franchisee
* Franchisee assumes the risk of profit or loss.
* Independent contractor.
* Betsy-Len got full authority over its expenditures, customer rates, profits, and employees.
* There is no principal-agent. Holiday Inn is NOT liable.
* Holiday Inn Case: Master >< Servant 있어야 하지만 이 경우는 없는 경우. Vicarious liability within the scope of employment.
* The more independent skill….<<<< the more independent contractor.
* Restatment 220 S. 7.07. An employee acts within the scope of employment……..
* An employee’s act is NOT within the scope of employment when it occurs within an independent course of conduct not intened by the employee to serve any purpose of the employer.
* Restatement 228: It is of the kind he is employed to perform.

Fiduciary duties of Agency and Principal

8.11. Duty to Provide Information

Notice to the agent🡪 agent has to tell🡪 notice to the principal.

September 18th

Partnership Dissolution under 1914 Act

* Dissolution = winding up.
* 31 (1) (a) Expiration of partnership term or
* 31 (1) (d) Expulsion of a partner.
* 31 (1) © Agree of all partners
* Bankruptcy of any partner or the partnership
* Court… impracticality other equitable circumstances.
* Dissolution
  + After dissolution, the partnership must be wound up, absent agreement among the partners to carry on the business.
  + Winding up 🡪 turn all stuff into money. Shutting down post dissolution.
  + End partnership
  + Keep unlimited personal liability
  + Partnership pays

1) outside creditors first non-partner creditors

2) inside creditor next.

3) capital account balances 🡪 accounts return.

4) split surpluse deficit the same as profit split.

Withdrawing and departing partners

* does the withdrawing partner have liability for partnership debts?
* Before and after
* For obligations incurred while he was a partner, he retains unlimited personal liability.
* After, he retains unlimited personal liability unless he provides appropriate notice to TPs.

**Appropriate Notice**

* Actual notice to existing creditors, and constructive for all other TPs.
* Withdrawing partner incl.
* Partners 🡪 creditors.

Will a release help here?

* Debt/ obligation relief between the partners.
* It is not binding for the 3rd party.
* The remaining partners can release the withdrawing partner from liability for past debts or future debts of the partnership. But this will not be binding on TPs.

How can a withdrawing partner be released from liability on debts incurred when he was a partner?

* Novation by remaining partners and TP.
* W would need an agreement between the partnership without the withdrawing partner, the creditor, and the withdrawing partner that the partnership WITH the withdrawing partner is out and the new partnership without the withdrawing partner is now liable on the debt.
* Substitution of the parties for each creditor.
* Novation is rare: pre-withdrawal debts.
* Debt incurred after I withdraw🡪 notice (need).

Incoming partners

* If a new partner, unlimited personal liability, joins the firm when it continues after an event of dissolution, the new partner is also liable for the firms old debts, called, antecedent debts….
* The new partner cannot be held personally liable for the old debts, unless expressly agrees to be held.
* Due diligence.
* Loss in the capital account🡪 ok.
* Capital contribution에는 반영됨.

September 11th Partnership law

Martin v. Peyton

Unsecured debt 🡪 카드빚등

* Do agreements intended to protect the financial interest of creditors necessarily make them partners of a debtor firm?
  + No. Partnership is not formed unless two or more parties are closely associated so as to be co-owners carrying on a business or profit.
  + All partners have ***UNLIMITED*** personal liability on all partnership debts.
  + If a creditor sues the partnership and the partnership taps out, that creditor can enforce the debt against any partners.
* Paying bill is not partnership
* Net profit share 🡪 is partnership
* Paying back is not partnership
* Creditors have executed loan docu with a debtor firm that contains provisions for the collection of collateral this ct must examine the extent to which those docu associate the creditors with the business operations of the firm.
* No partnership was formed.
* Agreement’s providing for appointment of 2 of the lenders as trustees is not partnership.
* <abridged>
* Inspection right
* Veto right (Essentially nothing)
* De facto control

**Young v. Jones**

Credit enhancers

* South Carolina Law: A person who “represents himself, or permits another to represent him …. With others not actually partners, is liable to… given credit to the actual or apparent partnership.”
* Young & other investors deposited more than $500,000 in a band, the entire amount disappeared. PW-Bahamas confirming a financial statements that turned out to be falsified.
* PW-US liable for negligence of PW-Bahamas regarding the audit letter (이슈없는 회계감정서), Price Waterhouse partnership with offices around the world.
* PW-US PW-Bahamas
* Price Waterhouse US is a large and respected global entity with 400 offices throughout the world.
* Large international accounting firm
* Does a partnership by estoppel exist when the 3rd party does not rely on any statements or act by 2 companies it alleges were holding themselves out as partners and when no credit was extended based on the representation of a partnership? NO.

Furniture case

* the 3rd party🡪 detrimental reliance
* Partnership estoppel.
* Partnership 없어도 있는 것처럼 취급
* 제3자: give credit extension of credit
* You are not a partner
* But act, manifest as existing
* 제3자 누구에게나 liable.

**Meinhard v. Salmon**

1920 Grand Central

* Meinhard: financial investor carryon co-business
* Salmon: Do jobs.
* Not partnership
* But kind of partnership🡪 subject to fiduciary duty.
* Lease 20 years hotel Bristol
* Ships offices
* $200,000 Agreement
* Meinhard provide $200,000 in exchange of profit.
* 40% of the profit + 5 years
* 50% of the remaining / 5 years
* Salmon agrees to provide with all labor needed to operate the building and has all the legal authority to manage the property
* Co-adventurers = General partners.
* 20 years later: renewal? 🡪여러 빌딩 부수고 새로 지으려.
* New lease : 80 years. Salmon never told Meinhard about the deal and learned and sued 50% profit🡪 fiduciary duty of loyalty by keeping new deal
* Meinhard 🡪 25% 🡪 50% 늘림
* Is a co-adventurer required to inform another co-adventurer of a business opportunity that occurs as a result of participation in a joint venture?
  + Yes as sharers of a joint venture, ***fiduciary duty***.
* Salmon has to include Meinhard
* Good Deal: notice 필요. Opportunity to compete
* Joint venture partnership
* The more tied to this 2nd contract, the duty of loyalty .
* A person shaking hands with another person

  Description automatically generatedScope, subject matter, time
* Minority: joint venture has no fiduciary duty.
* **All partnerships are agencies. But not all agencies are partners.**
* Midpoint lease🡪 extension 🡪 Bristol 🡪substantial investment of Meinhard.
* Salmon could enter Mid-point lease because he managed hotel.
* Trust attaching to its shares of stock should be granted to Meinhard

**Sandvick v. Lacrosse**

* Does a joint purchase of a lease for the purpose of selling the lease for profit constitute a joint venture?
* Yes. No partnership.
* In North Dakota, a partnership consists of two or more people who associate to carry on a business as co-owners for profit.
* Partnership exists -1) intent to be partners, 2) co-ownership, and 3) profit motive.
* A business is defined as a series of acts that are aimed at a particular goal.
* Two top leases 🡪 they have to split.
* A joint venture 1) contribution of each party 2) propriety interest and mutual control over the property 3) agreement profit 4) agreement of joint venture.

Principles of Partnerships apply to Joint ventures

* Duty of loyalty and care: LaCrosse and Hanghton’s purpose of the Horm Top leases was incompatible with their duty of loyalty

Joint ventures: no duty of fiduciary.

Co owners for business profit.

Conflict of interest: because not the best interest to sell the Horn leases before they expired.

Dissent: Limit their duty of Loyalty.

* No joint venture
* No partnership law applies.
* They are just bad guys.
* Contract: term , period, fixed….

**Meehan v. Shaughnessy**

* Boyle breached their fiduciary duty not to compete with their partners by secretly setting up a new firm during their tenure at Parker Coulter. 🡪 NO
* Fiduciary duty to law firm partners🡪 OK BUT
* 1984. Their own partnership.--> 숨김.
* Meehan, Boyle and Cohen (MBC)
* Steven🡪 three officers Associates not partners, clients.
* Black 🡪 travel🡪 solicit business
* Three times (July and October) Are you planning to leave?
* No Meehan
* “we are leaving the practice.” (they didn’t pay).
* December 1st Called client.
* December 3rd mailed a letter.
* Parker coulter🡪 142… MBC (suing owed)
* Breach fiduciary duty
* Is it a breach of fiduciary duty for partners, while partnership, to secretly solicit the partners clients for their own gain, while denying their intent ions to their partners? Yes.
* Partners fiduciary duty to act with loyalty and in good faith.
* Meehan and Boyle took unfair advantage of the other Parker Coulter Co partners by acting in secret to solicit clients falsely denying their plans to their partners, and denying the release of the list of clients until they won business.
* **All partners = agency**
* Office leave: notice 30days were did not keep.
* Fiduciary duty breached.
* Disadvantage your former lawfirm
* Manipulated their cases X
* No breach of fiduciary duty
* You can prepare to compete.

**Lawlis v. Kightlimer Gray**

Extrastuff- special power.

* Does a partnership act in bad faith by expelling unproductive partner who violated terms and conditions to which that partner agreed?
  + No.
* Involuntary expulsion of a partner.
* Bad faith
* Lawlis resumed drinking, but K&G gave him another chance and retained him as senior partner for an extended period of time.
* The court finds “no” predatory purpose” in K&G’s expulsion of Lawlis
* Dissolution of Partnership.
* 암 걸린 고용인.
* No cause expulsion clause (그냥 짤림)

1) no notice

2) no chance to be heard.

<알콜 중독자> 🡪술을 그만 마시면 복직 Partner (No) Expelled.

National Biscuit v. Stroud

* In general partnership with two partners, each party has the power to bind the partnership in matters pertaining to the partnership’s business.
* Can general partner restrict another partner from conducting business on behalf of a 2 person partnership?
* No. Each partner has an equal right in the management and conduct of a partnership and differences within a partnership are decided by a majority of the partners. When there are only 2 partners there can be no majority, and neither partner can prevent the other from binding the partnership in the ordinary course of business.
* Freeman’s purchase of bread was a binding transaction done. Partnership business.
* Stroud as Freeman’s sole co-partner had no authority to negate Freeman’s purchase.
* Partners🡪 unlimited personal liability….. Unenforceable unilateral limitation 🡪안됨.

**Giles v. Giles Land Company**

1. What is the effect of assigning one’s partnership interest?
   1. Assigning her right to receive assets.
   2. It doesn’t impact the partnership.
   3. Does Alice have any transferable rights in the partnership? YES. She can transfer her rights to receive profits.
2. 2 partners were working 🡪 1 quitted.
3. Kelly: General partner.--> 사이 안 좋아짐. 다 죽어라.
4. 2007. Limited Partnership 🡪 Limited Liability Company 가 됨.
5. Giles Land Company
6. Kelly나오지 않고 Objection
7. He asked the court to compel Partnership to turn over materials I requested
8. 🡨🡪 counterclaim.
9. Is dissociation appropriate where the partner engaged in conduct relating to the partnership business that makes it not reasonably practicable to carry on the business in partnership with the partner?
10. Yes
11. Dissociation may be proper based on impracticability or a partner’s wrongful conduct.
12. ***Dissociation on account of impracticability is based on dissolution law.***

13. under impracticable route to dissociation, despite Kelly’s claims that he had not engaged in the alleged conduct relating to the partnership threats to family related to business

1. Business is a family business
2. Those threatedned family members are the other partners in the business.
3. Kelly🡪 dissociation for the wrongful conduct route to dissociation

A couple of people with text

Description automatically generated

|  |  |  |
| --- | --- | --- |
| 🙍🏽‍♂️limited partner: | limited liability | Capped. Passive investment |
| 🙎‍♂️General Partner | Unlimited liability |  |
| 🙍🏽‍♂️limited partner1 | + 🙎‍♂️General Partner1 | = at least one each |

**Kovacik v. Reed**

Human capital is not balance sheet

Unsuccessful joint venture

Kitchen remodelling work

10,000 USD for the joint venture.

I will work as the job estimator and superintendent

Agree.. 50 -50

Loss???

October: remodeling job.

Kovacik : give me money we lost.

Reed: no…

Recovery: Kovacik won $4,340 Venture’s losses.

* Is a partner who contributed only skill and labor liable for the monetary losses fo the enterprise?
  + No.
* When there is no explicit agreement as to loss. Losses are to be divided equally between the partners, without regard to the amount each partner contributed to the venture.
* The rule is🡪 each of the partners contributed capital to the enterprise.
* The partner contributing labor takes a loss in the form of his lost labor.
* this case🡪 both partner endured loss.
* Kovacik: loss of monetary investment
* Reed: time, effort, uncompensated.--> no liability.

Themis 5 Piercing the Corporate Veil

* Plaintiff .. out of the investors of the company.
* PCV
* Very rarely applied.
* Plaintiff must proof:
  + Unity of interest Alter ego
    - Between the investor and corporation
  + Fraud
    - Intentional, not just failure or accident.
  + Undercapitalized
    - Insufficient funds left in business for anticipated expenses.
* Defense: adherence to corporate formality
  + Treat the company and the investors as different entities.
  + No intermingling of assets
  + Separate records nd books
  + Mandatory shareholder meetings
* Against public corporations: ALWAYS lose because…
  + Too many investors. No unity of interest.
  + Difficult to establish… PASSIVE SHAREHOLDERS.
    - No action taken – no unity of interest
  + Minority shareholders
    - Not in control: no unity of interest.
  + If formalities are observed?

Boilermakers Local 154 v. Chevron

* Chevron defendant articles of incorporation authorized the company’s Board of Director to adopt bylaws without a vote by stockholders.
* Bylaws were both statutorily and contractually NOT VALID.
* Plaintiff🡪 external matter, rather than an internal matter
* Stockholder meetings. Board of Director and Officerships.
* Plaintiff: statutory claim rested on the notion that the bylaws in question referred to an external matter.
* Delaware law: bylaws may contain any provision, consistent with law or with the certificate of incorporation relating to the business of the corporation.
* The conduct of its affairs and its rights or powers or the rights or powers of its stockholders directors officers or employees
* 109 (a) Choice of Law Provision … 109 (b)
* Are forum selection bylaws adopted pursuant to articles of incorporation without a vote by stockholders facially invalid? NO.
* Statutory validity:
* Process-oriented.
* Directives “relating to the business of the corporation” such as regulation of stockholder meetings and Board of Director

A diagram of a company

Description automatically generated

Walkovszky v. Carlton

* Pedestrian

A cartoon of a person

Description automatically generated



* Pierce the corporate veil
* Insurance
* 10 shareholders different tax corporations
* 2 cabs registered in its name
* Vicarious liability
* Unity of interest: telephone number
* Carlton: “I should able to hold Carlton personally liable because his corporate structure is defraud members of the public who might be injured by cabs.”
* May a party maintain a cause of action to pierce a corporate veil without alleging that a shareholder used the corporate form to conduct business in an individual ?
* NO
* Agency law principles inquiry into possible abuse of the corporate form.
* Court: vicarious liability pleading.
* Owners would be on the hook every time their corporation accrued liabilities outstripping assets: LLC 🡪 is meaningless.
* Enterprise liability: 운전자변경common employer.
* Walkovszky may not recover damages
  + Doesn’t justify let him pierce Cab’s veil.
  + All separate companies.
  + Shareholder.
* Certificate of corporation
* Fee shifting bylaw: Shifting all $$$$$ 🡪 to loser.
  + Shareholder 보호는 가능 🡪but Chill effect.
* Forum selection clause
  + Corporation: 2 difference places: HQ or PPB.
* 109 (a) 109 (b): where you can sue?
* 주주: amend가능. ½ 주주 이상일 때.
* BoD
* Preemptive rights
* Minority shareholder🡪 cumulative voting
* Every state has corporate statute

**Sealand v. Pepper Source**

* Pierce Corporate Veil
* Unity of Interest + Tax Fraud 등이 더 필요
* 입증할 것?
* 6개 사업을 가진 제리
* Expense Accounts $ \* 6 각각.
* Sum of $: no corporate meeting.
* No articles of incorporation
* No corporation bylaws
* $87,000🡪 Pepper Source owed Sealand for its services 🡪 sued🡪 Dissolved. Sealand이김
* The business entities alter egos of each other: held liable.
* Pierce the corporate veil
  + Summary judgment
* ***Bad behavior of Shareholder.***
* Comingle
* When multiple companies share all funds and stuff with each other & with their owner,

Can a creditor to one of those Business collect its debt?

* + Yes.
* Alignment of interest: Business ^^^ shareholders.
* Injustice or Fraud XX

Frigidaire v. Union

* Can a creditor that has never dealt with a company’s owners as anything other than representative of the company hold those owners generally liable for debts? NO
* PPT 87: In general, partners are personally liable for the debts of the partnership, but limited parteners are not.
* In general, share holders are not liable for the debts of the corporation.
* In general, officers are not liable for the debts they cause a corporation to incur.

Dodge v. Ford Motor

* Can a company choose to stop paying dividends and instead invest its profits in the communities in which it is active?
  + No. Business exists to conduct business on behalf of its shareholders.
* It’s not a charity to be run for its employees or neighbors
* Ford was more profitable in 1916 than it was in 195 when it paid over $10, million in dividents.
* 1916, Ford paid only $120,000 Dividend
* Ct may choose to maintain cash on hand to plan for future shortfalls
* Ford had done that in prior years and still managed to pay special dividends
* Henry Ford and Directors who supported his decision were acting arbitrarily to the direct detriment of the shareholders in whose interest they were supposed to be acting.
* The lower court opinion enjoy Ford from investing in the smelting plaint is reversed.
* Ford annual dividends $120,000 / $ 10 million
* Annually in 1913, 1914, 1915.
* 주주자본분배금: 회사 자산을 주주에게 분배.
* Dodge Brothers are plaintiffs.
* Dividends
* Ford ordered dividend
* Declaration of dividend is discretion of Ford
* Dividend is maximizing shareholder wealth
* Piercing Corporate Veil: Unity of Interest.
  + Not following the corporate formality
  + Sole shareholder.
* Enterprise Liability
* Entire company is liable.
* Corporate Formality
* Creditors
* Sealand: Marchese
* PCV: unity of intereset + alpha.
* Ex. Lack of corporation for comingling,
* use of one corporation for another🡪 is not PCV, enterprise liability.

Unity of Interest 무너짐

Promote injustice.

PPT

76

Piercing the corporate veil:

* Courts will disregard the corporate form whenever necessary to prevent fraud and achieve equity.

77

How to avoid PCV:

* Avoid unity of interest Alter ego. Respect the separate existance of the corp, and your clients probably won’t need to be concerned about personal liability
* Observe corporate formalities: hold your statutorily required meetings, keep minutes, elect officers etc but…important, keep corporate funds and traansactions separate from individual funds and transactions and not constantly shift money in and out of the corporate account.
* Substantial compliance is probably enough.Make sure the corporation is adequately capitalized.

**Duty of Care and Business judgment rule**

* Fiduciary duty of care requires corporate directors to act in good faith and in a manner reasonably believed to be the best interest of the corporation with a care.
* NY Trial Court: Director breached?
* Howard Kamin: “Please don’t issue the dividend.”
* Just sell the DLJ stok on the open market.
* The sale would save you guys 8 million dollars.
* American Express rejected the shareholder’s demand and issue the dividend.
* Supreme Court NY County
* Kamin, “Dividends were a complete waste of corporate assets.”
* Dismiss the complaint
* Can a stockholder maintain a claim against the directors of a corporation if the stockholder alleges only that a particular course of action would have been more advantageous than the course of action on the directors took?
  + NO. Courts will not interfere with a business decision made by directors of a business unless there is a claim of fraud, bad faith, or self-dealing.
* An error of judgment by directors is not sufficient to keep a claim.
* No bad faith here.
* DLJ stock:
* Fiduciary duty breached.
* Special meeting for the plaintiff
* 8 million usd: Tax saving return
* 25 million usd: Taxable income .
* American Express🡪 Publicly Traded Company: Business Judgment Rule.
* Inside Director 🡪 4 people. 🡪 income increase program.
* Duty of Loyalty: 저촉되지 않는 이유?
* Dividend에 관한 회사 결정🡪 법원이 관여하지 않음. 🡪 abstention자제.

**Smith v. Van Gorkom**

* Contract: to sell the entire company
* Income tax
* Rights liability investment
* TransUnion: Credits taxes
* “I know what we will do. We will merge.”
* Van Gorkom: 75 years old CEO: you can get our shares at 55 USD / share.
* Two months later, Board of Director: “Merger Agreement.”
* This is a great deal.
* “Merger Agreement: TransUnion may accept bids from other buyers for the next 90 days.
* TransUnion may not actively solicit other bids or help other bidders.
* Van Gorkom signed in Chicago🡪 Board of Director sued for breach of fiduciary duty.
* May directors of a corporations be liable to share holders under the business judgment rule for approving a merger without reviewing the agreement and only considering the transaction at 2 hour meeting? YES
* Business judgment Rule: Board of Director

1. Fully informed
2. Good faith
3. Best interest of the corporation

* Rebuttable if the plaintiff can show directors were grossly negligent, “all material information reasonably available to them.”
* Informed business judgment in voting to approve the merger.
* Director’s decision to approve the merger wasn’t fully informed.
* Dissent: “more than well qualified,” OK
* Van Gorkom: Stock price was low:
  + Stock price: feasibility study.
  + Only see “stock price.” Ex. 55 USD.
  + Valuation study: 관여하지 않음.
  + input만 본다. output 안 본다.
  + 55 USD>>>> 38 USD 실제거래가
  + Material information 🡪 not available.
    - Didn’t understand the deal.
    - Willfully misrepresented
  + Meeting
  + Record was never produced by the defendants
  + Corporate counsel
  + Failure to avail them for material information.
  + Proxy statement

Francis v United Jersey Bank 1973

* Bankruptcy Trustee
* Director does nothing
* Pritchard: Insurance Brokerage in New Jersey
* Director🡪 died. 🡪 Two sons and wife.
* Son 2: 훔치기 시작. Taking loans from Trust 🡪 Spending.
* Wife(X) 🡪 depressed drinks. Office no power to read financial statements
* Firm collapsed.
* Wife says, “I resign,” 🡪 died.
* Estate of Lillian: Notice of Lawsuit.
* Breach of fiduciary duty.
* Inside Director: Business judgment rule
* Renumeration Stock price.
* Majority rule: duty of care no breach.

**Duty of Loyalty**

**Bayer v. Beran**

* Corporate directors are not liable for breach of duty of loyalty for making business decisions, even if decisions personally benefit one or more of the directors.
* Business judgment rule: absent proof of self- dealing.
* Seymour Bayer is the owner of stock in the Celane Corporation in America.
* Stock Certificate
* Products are superior Quality material. 레이온.
* All designated as leyon
* The new rule can affect our profit.
* Radio ad campaign.
* Radio consultant
* 1 million dollar🡪 매년 퍼다 부음
* 진 테네슨: 마누라: Opera singer.
* Duty of loyalty
* Non corporate purpose
* When advertising the campaign, to help out Tennyson’s singing career
* Not business judgment rule.
* Q: Are corporate directors liable for breach of duty of loyalty for making business decisions, even if it benefits one or more directors?
  + No. corporate directors to put corporate interest before their own private interests. To avoid possibility of fraud and temptation of self interest.

|  |  |
| --- | --- |
| Business judgment rule OK. | 레이온 회사 -- 광고 |
| Duty of Care X | Duty of loyalty O |

* Personal transactions of directors with the most scrupulous care
* Personal transactions will be void if there is evidence of improvidence or oppression or indication of unfairness or undue advantage
* It subject to rigorious scrutiny to decide whether the appointment serves some purpose outside the interests of the corporation
* The courts find that directors did not violate their duty of loyalty to CCA by advertisement on Dreyfus program.
* What channel to advertisement?
* Advertisement choice may enhance Director’s career, it benefited CCA and the evidence supports a conclusion.
* Camile Dreyfus: CCA’s directors subsidized her career and was a vehicle for her talents.
* If mrs D were not on the program the court finds in favor of CCA directors.

Simple majority🡪 Del Law: Quorum stays until…….. measure the quorum before every vote.

Themis 10: Duty of loyalty

🡪 SELF DEALING.

Business judgment rule: illegality, self-dealing, etc.

1. Interested insider Transaction (IIT); board member interested in gain from transaction. /// money out of the company to insiders🡪 Salary?--> not everything illegal. Many beneficial.s

Example: “the company is paying the CEO’s parents in a real estate deal.”

2. Corporate opportunity

$$--> flowing into the company is … 🡪 📡 💆USURPS THE Corporate OPPORTUNITY

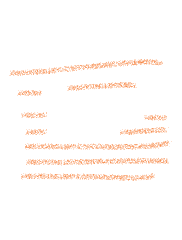
🡪 Self dealing?

Broz v. Cellular information systems, inc.

BJR: v. … if duty of loyalty or care is breached, then, it’s over.

**Benihana of Tokyo v. Benihana**

* Can a corporations transaction directly benefitting one of the corporation’s directors be valid?
* Rocky Aoki
* Yes. A transaction involving an interested director is valid if the material facts as to the director’s interest are disclosed or known to the board of directors and the board in good faith authorizes the transaction by an affirmative vote of the disinterested directors.
* The court decides that the Behihana board knew enough information about Abdo’s involvement in the transaction to validate the sale.
* It knew that Abdo was a director of BFC that he was the proposed buyer, and that he had made the initial contact about the purchase with Joseph.
* This is sufficient information to deem the board knowledgeable on the material facts of Abdo’s interest.
* Because the board approved the transaction without Abdo’s vote, it is valid.
* In favor of the Benihana Board of Directors
* Questionable Legality.
* Board of Director nevertheless approved the sale
* BOT then brought suit against the Benihana BoD, alleging breach of its fiduciary duties.
* BFC: interested director transaction
* A transaction involving an interested director is valid if the material facts as to the director’s interest are disclosed or known to the board of directors and the board in good faith authorizes the transaction by an affirmative vote of the disinterested directors.
* Public company behind trust 🡪 diluted🡪 control and dilution 🡪 percentild dropgs right to buy my share.
* Aoki’s interests was diluted.
* Watchdog director
* Redemption right?

**Delaware Law: quorum**

If there are four disinterested + present🡪 yes, vote to transaction.

MBCA: this doesn’t work.

**Broz v. Cellular Info Systems (CIS)**

Corporate Opportunity

Outside director v. Inside director

Duty of Loyalty (don’t be greedy)

* Must a director in question formally present the opportunity to his corporation’s?
* Board of directors if the corporation doesn’t have an interest in or the financial ability to undertake the opportunity?
  + No.
* Delaware Court improperly wrote additional requirements to the corporate opportunity doctrine.
* Pricelluar had no equitable interest in CIS.
* At the time CIS couldn’t financially afford to purchase the license and it in fact ahd no interest in purchasing the license.
* Broz didn’t violate any fiduciary duty.
* Del Ct found
* Broz violated his fiduciary duty to CIS because he didn’t take into account Pricellular’s future plans regarding the purchase of CIS. Because Broz didn’t formally present the opportunity to CIS Board of Director
* Pricellular
* Radio Licenses 50… --🡪 👩‍🦱 먹음. Usurp the corporate opportunity.
* Tender offer
* Trial court🡪 B need to bring it to the board of director
* Breach of fiduciary duty.
* 사외이사가 회사 역량을 사취.
* Take opportunity of corporation
* Duty of loyalty breached.
* Appellate Court: not corporate opportunity
* Reversed because no cash.
* Corporation can waive the conflict.
* Safe harbor.

Ebay

IPO

Privately X

Themis 11 Fiduciary duty analysis

Plaintiff must both:

1. Act or Actor.
2. Was act carelessness or self-dealing?
   1. IIT or corporate opportunity
3. Actor: Director, officer, or controlling shareholder??
4. Defeating Business Judgment Rule.

* The court will immediately dismiss the case unless
  + Fraud illegality or self dealing: plaintiff has a burden to defeat the BJR.
  + Extreme carelessness or self dealing🡪 THERE WAS!
  1. Using Actor or ACT.

Then, Defendant can defense: self dealing claims.

1. Decision was ratified🡪 then, the plaintiff can show: Waste or Unfair transaction.

2. Decision was fair.

Business Judgment Rule

PPT 4

A rebuttable presumption that directors are performing their functions with honesty and good intentions, and that their decisions are informed and rational.

Van Gorkom: The BJR is a presumption that in making a business decision, the directors of a corp acted on an informed basis good faith and honest belief that the action was in the best interst of the company

PPT

Corporate opportunities doctrine

Directors and officers can’t …

1. Presented to them in their corporate capacity
2. That the cor is financially able to take advantage of,
3. Are within the corp’s line of business and is of practical advantage to it
4. Is one in which the corp has an interest or reasonable expectancy
5. By embracing the opportunity the officer or director would create a conflict between his or her self interest and that of the corporation.

PPT 82

Dominant Shareholders

* 50% or more voting stocks
* Why shareholders and directors bear the same fiduciary duties?
  + Directors are elcted to… monitor the firm on behalf of the shareholders.
  + Fiduciary duties are basic to their appointment.
  + Shareholders stand in a fundamentally different position in relation to each other than directors stand in relation to shareholders.
* Not the same fiduciary duty.
* Shareholders vis-à-vis shareholders: owe on another no fiduciary doties.
* But courts do impose some fiduciary tidies on some shareholders controlling sharehoders who own enough sotck to control the board.
* 🡪 controlling shareholders owe fiduciary duties to the minority.

PPT 84

Intrinsic Fairness

A comparison of a court of chance

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A person in a suit and tie

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A green and white sign with a dinosaur and words

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**Sinclair Oil v. Levien**

* Minority stockholder
* 1960 Sinven Stock …97% stock
* Sinclair < Sinven International Oil
* 1960-1966

1. Sinclair caused Sinven to payout $108 million in dividends, an amount in excess of Sinven’s earnings (버는 것보다 더 줌).
2. Sinclair gave the development opportunity to subsidiaries other than Sinven (편애)
3. 3% shareholder.
4. Sinclair caused Sinven to sign a Kontract with international oil, which international oil then breached.
5. Self-dealing.
6. Board Sinclair Oil doesn’t allow Sinven to sue.
7. Lawsuit🡪 allows stockholders to sue on behalf of a corporation.
8. 1969. Derivative Action

* If the corp opts not to sue for itself:
* 💆Levine : fiduciary duty breached.
* Delaware Court: Equity issues
  + ***Intrinsic Fairness Standard***🡪 did not meet. When there is a self-dealing.
  + Sinclair has the burden to prove that transactions were highly fair.
  + Sinven🡪 dividend 3%--> self-dealing? NO. 97%???
* Duty of Loyalty🡪 breached.
  + Unless self-dealing, there was no breach.
  + Sinven sue🡪 impossible>>>> Sinven International favored (편애).>>>>> there was a self-dealing.
* Business Judgment Rule declined
  + Protects Board of Director’s decision from judicial scrutiny
  + Courts may interfere only if there is “gross and palpable over-reaching.”
* Must a parent corporation always pass intrinsic fairness test when it transacts business that affects its subsidiary?
  + No. a parent corporation must pass intrinsic fairness test only WHEN its transactions with its subsidiary constitute self-dealing in that the parent is on both sides of the transaction with its subsidiary and the parent receives a benefit to the exclusion and at the expense of the subsidiary.
  + Otherwise, Business judgment rule applies.
  + Improperly applied🡪 Intrinsic Fairness Standard.
* Dividend payments were not self-dealing by Sinclair.
* A portion of the money was received by Sinven’s minority shareholders.
* Payments do not constitute self-dealing
* No evidence🡪 cause Sinven to pay dividends were fraudulent or made in Bad Faith.
* Sinclair did not violate fiduciary duty to Sinven by causing the dividends to be paid and the Delaware Ct is reversed on that issue.
* Self-dealing: Sinclair🡪 parent to both parties. Sinven International of Contract.
* Sinclair’s involvement: Intrainsic Fairness Standard.
* Court decides Delaware was correct in Sinclair did not meet burden of showing objective fairness under that standard.
* 97% of the stock of its subsidiary Sinclair Venezuelan Oil Company plaintiff $108 mill dividends.

PPT 89

* Intrinsic fairness used when parent has received a benefit to the exclusion of the minority shareholders of the subsidiary and at the expense of the minority shareholders of the subsidiary.

Ratification : Dominant Shareholders.

Zahn v. Transamerica Corporation

**Self-dealing.**

* May directors declare dividends for the purpose of personal profit?
  + No. Directors may not declare or withhold the declaration of dividends for personal profit.
    - Duty of loyalty breached.
* Directors of Axton-Fisher 🡪 voted for the declaration of dividends of the Class A stock were also “instruments” of Transamerica voted to pay dividends for Class A stocks solely so that “transamerica” – “their true principal” could profit by virtue of its status as the primary Class B stockholder.
* No reason for the declaration of dividends on the Class A stock to be followed by liquidation.
* Other than to profit. The Class B stockholders if the allegations are proven true,
* Transamerica will have breached its fiduciary duty to Zahn and other similarly situated Class A stockholders by declaring dividends for personal profit.
* Common Stock $3.20
* $60 incident to continuance of Axton-Fisher as a going concern.
* Self-dealing (x) a shareholder

**Marx v. Akers**

**Shareholder Derivative Suit**

IBM Corporate Loyalty 1990s

1993 April’s pool’s day: 짤림.

Derivative Suit

IBM Outside Directors: 15 people. Inside Directors: 3 people.

A screenshot of a white and black suit procedure

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A screenshot of a computer

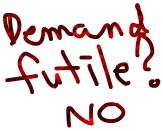
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1. It did not deplete IBM’s earnings or assets to the point of bankruptcy.
2. It did not prevent the distribution of dividends.
3. 🧔‍♀️Silvia (Shareholder대표)🡪 Derivative Suit procedure.
4. Shareholders must present the board with a ***DEMAND*** to take a suit forward on behalf of the company(**futile**: 헛된, 소용없는 (=pointless))
   1. Dismissed.
5. Does NY Law stating that a complaint in a derivative case must detail a plaintiff’s efforts to change board policy mean that NY has a universal demand requirement?
   1. NO.
6. While leagal theorists have commented on the virtues of a universal demand requirement, the legislature has not adopted it.
7. The court: 🧑‍🎓😡hate Derivative Suit.
8. Failed to state a claim.
9. The demand requirement exists to ensure that the courts are NOT flooded by un-necessary litigation, to protect the board’s ability to make decisions, and to discourage shareholders from brining suits for personal gain.
10. NY has chosen not to have a universal demand requirement, and has excused demand in the past when the plaintiff could show that the board of director had a direct financial interest in the challenged board decisions.
11. Allegations must be particularized.
12. Back-Scratching schemes.
13. Director’s will vote for compensation for each other,
14. Not enough members of the board benefited for the board as a whole to be implicated.
15. Marx failed to properly plead that the compensation to directors was wasteful.

Zapata Corp. v. Maldonado

1. Board of Director: Business Judgment Rule
2. Special Litigation Committee
3. Corporate Derivative Suit Delaware
4. Jun 1975
5. 10 Directors sued
6. Directors breached Zapata’s shareholders duty
7. No demand that board takes action
8. 4 people left🡪 2 people added.
9. Board composed of special committee compared of directors to investigate
10. M’s suit🡪 Contrary to Z’s interest.
11. Dismss based on the committee’s findings. 🡪 the court denied.
12. Business Judgement Rule: did not give authority to dismiss derivative action.
13. Zapata: appeal interlocutory
14. Must the Chancery Court analyze the committee’s independence and good faith and the bases supporting the committee’s Conclusions and then if the court is satisfied that the committee was independent and acting in good faith, apply its own independent business judgment whether the motion should be granted?
    1. Yes. If a shareholder asserts that a corporations best intersts are served by maintaining a properly instituted derivative suit🡪 problem.
15. Interest of the individual shareholder
16. Business Judgment Rule Allows a Board of Directors to terminate a derivative suit based on a vote by a disinterested committee, and that this decision is insulated((불쾌한 경험·영향으로부터) ~을 보호[격리]하다 (=shield)) from judicial review.
17. Business judgment rule is insufficient to analyze the decision that the action should be dismissed.
18. The committee’s independence and good faith bases supporting conclusions
19. Maldonado properly instituted the derivative suit.
20. Independent or thorough?
21. Independent investigation committee has the power to seek the termination of the lawsuit.
22. Discretion🡪 make a motion to dismiss.

Delaware County v. Sanchez

Shareholder demand letter

* Corporation directors officers or managers must bring a suit.
* Demand was excused???
* Sanchez had four private companies.
* Sanchez Energy 🡪 right to develop Sancez resources Marine Shape Projects 78 million USD.
* 5 Board of Directors: Transaction approved
* Derivative Suit🡪 Challenged transaction
* Jackson 🡪 Sanchez junior friend for 50 years.
* “We move to dismiss the suit for the failure to make a demand.”
* To survive a motion to dismiss a shareholder derivative claim in which the plaintiff is asserting that demand is excused.
* Due to lack of director independence must the plaintiff plead particularized facts that create a reasonable dubt about the director’s independence?
  + Yes.
* The plaintiff must create a reasonable doubt about the director’s independence
* The plaintiff pleads with respect to the director’s lack of independence in their totality and not independent of another.
* The plaintiff had not pled enough facts to infer that Jackson was an interested director.
* Personal facts about Jackson’s ties to Sanchez independently of one another and decided that each fact is not enough -🡪 improper.
* The court must evaluate the facts in a light most favorable to the plaintiff.

Zukerberg

1. Zu sells too many shares. But Zu doesn’t want to give away voting power.
2. Facebook: Class A and Class C🡪 approve되게 하려면 Article of Incorporation개정해야.--> reclassification.
3. Special committee 3 BoD.
4. Board of Director 👹: Class Action.
5. Tri-State Sued in Class action
6. 68 USD 🡪 The cost abandoned while reclassification.
7. Breach of Duty of Loyalty.
8. They didn’t make a demand before filing a suit.
9. Unless demand is futile, you need to make a demand.
10. The Aronson test: whether the B can exercise BJR on demand.

PPT

United Food and Commercial Workers Union v. Zuckerberg

Reclassification

* Shareholders have to either make a demand or show demand would be futile.
* Because the reclassification was not the product of a valid exercise of business judgment and that a majority of the Board of Director faced a substantial likelihood of being considered interested or lacking independence.

The Aronson Test

* The court of chancery in the proper exercise of its discretion must decide whether under the particularized facts alleged, a reasonable doubt is created that

1. The directors are disinterested and independent
2. The challenged transaction was otherwise the product of a valid exercise of business judgment.

The Rales v. Blasband test

* The complaint if filed, a majority of the Board of Director “could have properly exercised its independent and disinterested business judgment in responding to a demand.”

What is an “exculpated” care violation?

* Duty of care violation
* You are removed from liability
* Smith v. Van Gorkom
  + The directors face no risk of personal liability because the AOI provision exculpates them. These are called, “exculpated care violations.”
  + Disability indemnity director intentional misconduct

The Rales test as per the Zuckerberg court:

* Whether Zu received a material personal benefit from the alleged misconduct that is subject of the litigation demand
* Whether a director would face a substantial likelihood of liability on any of the claims that are the subject of the litigation on demand and
* Whether director lacks independence from someone who received a material personal benefit from the alleged misconduct that is subject of the litigation demand or who would face a substantial likelihood of liability on an of the claims that are subject of the litigation demand.

Their progeny ??

* How does the court decide if a director “lacks independence” from another director?
  + Fact specific
  + Discretion would be sterilized.

NY test for demand futility

1. Demand is excused because of futility if a majority of the BoD is interested in the challenged transaction.
2. Director interest may either be self-interest in the transaction at issue or a loss of independence because a director with no direct interest in a transaction is “controlled” by a self-interested director.
3. Demand is excused because of a futility if a majority of the BoD failed to inform themselves about the challenged transaction to the extent reasonably appropriate under the circumstances.
4. Duty of care, duty of loyalty
5. Demand is excused because of futility when a complaint alleged with particularity that the challenged transaction was so egregious on its fact that it could not have been the product of sound business judgment of the directors.

MBCA 7.42: Universal demand:

Demand 90 days.

Unless irreparable injury to the corporation would result by waiting for the expiration of the 90 day period.

7.42 requires a written demand on the board in all cases and precludes a shareholder from brining suit for 90 days after the demand is made unless irreparable injury would result or the board rejects demand.

PPT 81

* A majority vote of a committee consisting of 2 or more qualified directors appointed by majority vote of qualified directors present at a meeting of the board of directors, regardless of whether such qualified directors constitute a quorum.
* The board has to be mostly qualified.
* 5+1🡪 1 person who shows up 🡪qualified. The 1 can make a committee of … 2 3.4….. etc.
* If a majority of the board was not qualified, the burden of proof is on the defendant corporation.

PPT 97

We confront a special instance of the application of the BJR and inquire whether it applies in its full……….

Special litigation committee

Ad hoc.

Minority committee

Not standing.

**Close Corporation control abuse of control**

**McQuade v. Stoneham**

* Who directs the director?
* Freedom to think for themselves.
* Charles Stoneham 🡪 야구장 주식 친구에게 팜
* Contract: paid certain salary to the officers and shareholders.
* Minority 90 shareholder.
* Stoneham continued to be majority shareholder.--> loyalty 4 people.
* A few years later, Stoneham … McQuade out of business.
* Meeting: Removing McQuade as an officer?
* Aye
* McQuade sued🡪 Stoneham didn’t use his best efforts to keep me in office.
* Stoneham didn’t honor agreement
* Is a contract that requires directors of a corporation to refrain from changing officers salaries, or policies or retaining individuals in office without consent of the contracting parties void?
  + Yes. Directors’ primary duty is to the corporation and its shareholders.
* How they vote? Duty of care can be breached. Director vote🡪 ok. If agreed. 🡪 shareholders each other.
* Shareholders may combine their votes to elect directors, but they may not extend this power to limit director’s authority to run the corporation, such as in the selection of officers or fixing salaries.
* Boilerplate
* Contract that adds a concurrent duty to other directors brings with it the likelihood that the director will not always make personnel decisions in the best interest of the corporation.
* Outright ban of such contracts is appropriate as not to put the courts in a position of judging the motives of directors in individual cases.
* McQuade was not eligible to be a director because he was city mayor at the time and thus prohibited by law from engaging in other business
* Concurrent: there should be no legal difference between the joint action in those cases and the contract in this case.
* The contract is not inherently illegal.
* Its results in a small number of majority shareholders combining to exercise their control over the corporation
* Specific performance
* All agreements among shareholders binding the actions of directors are void
* Duty of care

**Clark v. Dodge 1936 NY**

1. Director and officers have to make the best judgment for corporation
2. “I will vote for your friend if you vote for my wife.”🡪 Void
3. Public policy🡪서로를 위한 투표 해 준 사람들.
4. Klark: 25%: manufacture pharmacy: knew the formula alone. Based on secret formula . trade secret
5. Dodge: 75 %. Shares🡪 president. 경영안함.
6. 1921 agreement: Dodge’s son에게 formula공개하라…🡪 voting his stock in four specific ways.
   1. Dodge will vote so that Clark will continue to be the general manager of Bell so long as he is faithful, efficient, and competent. So Clark will be director.
   2. Dodge will vote so that Clark will receive ¼ of the net income of the corporate profits during his lifetime
   3. No unreasonable salaries will be paid to other officers
7. Dodge breached our agreement
8. I move to dismiss
9. Is a contract between directors that are the sole stockholders in a corporation to vote for certain people as officers illegal?
10. Public policy and possible detriment to the corporation require that there may be no variation however slight from the idea that Board of Director manages the business of the corporation without any influence other than the best interests of the corporation
11. McQuade decision is too restrictive as directors in a closely held corporation should h?? the freedom to choose the officers they see fit unless their decision clearly harms the corporation
12. Requirement:
    1. Perfectly legal contract as Doge as stockholder, is entitled to vote for whomever he chooses as director
    2. It keeps Bell’s best interest in mind by ensuring that contract is faithful, efficient, and competent general manager
    3. Net income of corporation will only be what is left after the directors in good faith determine dividends salaries etc
    4. To not overpay any incompetent employees 🡪 clearly a reasonable clause that has the corp’s best interests in mind.
    5. Clause that has the corp’s best interests in mind.

**Galler v Galler 1964**

Galler Drug Company

* Close corporations
* Companies privately owned by only a few shareholders.
* ½… ½… share…
* 1955: agreement
* After one of us dies, the deceased family will maintain equal control of the company
* 1955. Clark🡪 가족 반대: 우리는 Benjamin죽으면 따르지 않을 것이다. 1955 포기하라 종용.
* 1956 Benjamin: Trust: 아내에게 줌.
* You are the trustee. My stock certificates are now part of the trust.
* Interference.
* Reissuing stock
* Isadore🡪 refused to see her
* 1957: Benjamin died
* 1955 agreement carry out!
  + Equal control of the company
  + Yearly dividends
  + Continuation of Benjamin’s salary
* Specific performance and ordered accounting
* Dissent: void for public policy.
* Appealed
* Is an agreement between directors in a close corporation valid if it calls for the election of a certain person to an office, a minimum dividend to an individual each year, and a continuation of salary to the successor in interest of a deceased director?
  + Yes
* In ***a closed corporation, an agreement as to the management of the corporation agreed to by the directors must be valid where there is no complaining minority interest, no fraud or apparent injury to the public or creditors, and no violation of clearly prohibitory statutory language***.
* Nature: its directors need to be able to exercise their control and effectively protect their interests and “***shareholder agreement***.”
* Clearly prohibitory statutory language
* Unique =Sui generis

Wilkes v. Springside Nursing Home, Inc.

State MA

* Are majority shareholders in a close corporation liable for breach of fiduciary duty to a minority shareholder if they remove him from office and cut off his salary without any showing of misconduct?
  + Yes
* Majority of shareholders in a close corporation owe minority shareholders a strict duty to of the utmost good faith and loyalty unless a legitimate business purpose can be demonstrated to justify a breach of that duty.
* There is no show of misconduct or poor performance in Wilkes’ role as director
* Merely a “personal desire” of the defendant to remove Wilkes from office and deny him salary.
* Defendant’s actions constitute an unlawful corporate freeze out and because they didn’t show any legitimate business purpose for the freezing out of Wilkes, they are liable for breach of their fiduciary duty to him.

A close-up of a sign

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A close-up of a company's company's logo

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Ingle v. Glamore Motor Sales, Inc.

A screen shot of a phone

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A screen shot of a phone

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A person talking to another person at a podium

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Close corp:

A few shareholders.

* Shareholders have a fiduciary duty to deal

LLC

Duray Development LLC v. Perrin

* De facto Corporation: Doctrine to dig himself.
* “We will still getting LLC up and running but we can sign the contract now.”
* Standard Agency Law.
* “LLC” 새로운것.
* 9월. 1st contract: Duray development and Perrin Excavate + KDM Excavating signed.
* 10월. 2nd contract: Duray Development and Outlaw. Signed.
* Novation🡪 Agent as LLC Perrin.
* Duray: LLC. Protected.
* “We are suing for breach of contract.”
* Perrin: whether he was personal liability?
  + Agent for Company? 존재하지 않음?
* LLC should be liable not me. Under the doctrine of de facto corporation.
* LLC has no duty of loyalty 🡪 stickynephron
* That doctrine doesn’t apply to LLC.
* Q: Are the de facto corporation and corporation by estoppel doctrines applicable to limited liability companies?
* Yes. De facto corporation and corporation by estoppel doctrines are applicable to limited liability companies.
* LLC ACT🡪 Business corporation act.
* It gives rise to de facto corporation doctrine and co-exists with the doctrine of corporation by estoppel.
* The purpose of forming similar business associations, both acts contemplate the time at which such associations come into being
* Duray didn’t learn outlaw was not a valid LLC at the time of execution until discovery in the instant litigation
* Articles of Organization
* De facto v. De jure

A person giving a speech to a person

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**Elf Atochem North America Inc v. Jaffari**

* Flexible statute
* Contractual Provision in an LLC operating agreement stating that all disputes are to be resolved by arbitration is valid even if the LLC that the agreement formed didn’t signe the agreement.
* Elf Plaintiff and Jaffari defendant agreed to form an LLC (Malek LLC) to develop and distribute solvent based maskants.
* The agreement contained an arbitration clause providing that all disputes arising from the agreements would be resolved by arbitration.
* Malek never signed the agreement
* Elf sued Jaffari and Malek individually and 🡪 breach of fiduciary duty.
* Contract and tort interference with prospective business relations, among other claims.
* Are contractual provisions in LLC operating agreement stating that all disputes would be resolved by arbitration valid if the LLC that the agreement formed did not sign the agreement?
  + **Yes**
* Delaware LLC law provides broad discretion and great flexibility for freedom of contracting for the establishment of LLCs.
* The fact that Malek LLC didn’t sign the agreement is not material.
* Because Elf signed agreement as a member of the LLC.
* Elf, Jaffari
* The real parties in interest.

**LLC fiduciary duty and dissolution**

**De facto LLC is not De facto corporation.**

**Netjets Aviation v. LHC**

* **A court will pierce the limited liability company veil if**
  + **There is overall injustice or unfairness and**
  + **LLC is mere instrumentality or alter ego of its owner.**
  + **In that the LLC and the owner operate as a single economic unit**
* Facts: he often withdrew money from LHC account for personal use and transferred money into LHC’s account from his own personal account
* Zimmerman didn’t have any written agreements with LHC… comingling of funds
* LHC terminated the lease agreement with Netjets about one year into the agreement.
* The next year, LHC ceased operations owing NetJets a balance of $340,840.39
* Zimmerman took more money out of LHC’s account than he put in, continued withdrawing money for personal use.
* Netjet filed a summary judgment
* “sua sponte” voluntary. Granted Zimmerman.
* Personally, summary judgment and dismissed the claims against him.
* Factors relevant to the alter ego analysis include whether
  + LLC was adequately capitalized, the owner siphoned LLC funds, and “in general, LLC simply functioned as a façade for the owner.”
* Most favorable to Netjets,
  + LHC was the mere alter ego of Zimmerman,
  + There was sufficient levels of fraud or at least overall injustice or unfairness to pierce the LLC veil.
* Z’s withdrawals from LHC amounted to improper contributions that led LHC to go out of business.
* Summary judgment in favor of Z and against piercing the LLC veil was not appropriate.

Netjet: Private jet renting business.

LLC can be pierced. 🡪 the same as corporation but formality is different.

Personal guarantee.

McConnel v. Hunt Sports Enter

Fiduciary obligation.

* An LLC operating agreement may limit the scope of the fiduciary duties of its members.
* Columbus Hockey Limited (CHL) LLC
* Try to obtain a National Hockey League franchise in Columbus.
* McConnal and his individual group signed a lease independently of CHL and Hunt.
* There was a clause in CHL’s operating agreement which stated that members of CHL had a right to engage in business ventures that may compete with CHL.
* McConnell violated fiduciary duty to CHL.
* May an LLC operating agreement limit the scope of fiduciary duties of its members?

**Racing v. Clay Ward Agency 2010**

Last call at the bar is not…

* Capital Call: when a business is short on cash, a business manager issues the call and owners must contribute funds.
* LLC: thoroughbreds we are training to race.
* Operating Agreement: members will pay an initial capital contribution.
* Manager🡪 capital calls for ongoing business expenses
* Members will pay expenses on pro rata basis.
* “I want to buy insurance for the horses through you.”
* $70,000🡪 judgment for unpaid premiums.
* - 13,000🡪 racing investment remaining assets.
* = 57,000🡪 Outstanding Balance Assets
* I move to have Racing Investment held in contempt of court.
* “Racing investment can satisfy the judgment by using the capital-call provision.
* Can a standard capital call provision be invoked to satisfy a judgment against a LLC?
* Kentucky LLC Act immunizes member of a Kentucky Limited Liability Company (LLC) from Personal liability for debts and obligations of the LLC
* A member’s intent to become personally liable.
* Mandatory Arbitration Provision
* Operating agreement requiring members to make occasional capital infusions for business expenses was an available means to satisfy the judgment.
* Racing investment fund 2000
* Defendant purchased insurance from Clay Ward Agency Plaintiff 2004. 05. After failing behind on payments
* Racing Investment agreed to a judgment

PPT

7

Why LLCs popular?

* They provide a standard form contract that incorporates many attractive features of partnerships and corporations.

9

Tax treatment : LLC: favorable.

* Excellent favorable tax
* Duty of Loyalty and Care: as with partnerships, the parties are free to change these default rules to some degree.

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Derivative Actions

* The owner of the LLC acts like a shareholder.
* The owner to sue in the shoes of the entity.
* Member may bring an action on behalf of the LLC to recover a judgment in its favor if the members with authority to bring the action refuse to do so.

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How do you create an LLC?

* LLC is not partnership. It is similar to corporation.
* LLC can be only created by filing articles of organization.

What is corp by estoppel?

* It is an equitable remedy designed to prevent one who contracts with a corp from later denying its existence in order to hold the individual officers or partners liable.

De facto corporation doctrine establishes the legal existence of the corp.

By contrast

Corporation by estoppel doctrine merely prevents one from arguing against it and does nothing to establish is actual existence in the eyes of the rest of the world.

IBM 🡪 as long as DEFACTO, 🡪 is locked to sue me personally

Piercing LLC veil🡪 limited

… other unity of interest also affects.

Themis 1 Forming a Corp:

* Bylaws & certificate of incorporation conflict🡪 the certificate always wins.
* Bylaws adopted by BoD can be modified by shareholders or directors.
* Amendment of the **certificate** after stock is … requires….. shareholder vote.

Themis 2 Investors shareholders

Dilution: existing shareholders lose equity as more shares are issued.

Can be offset by increase in value of company.

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