1. Federal and State Courts have different **SMJ**, meaning that they have the power to hear different kinds of cases.

2. **Federal jurisdiction**: Federal Question (Federal Courts have nonexclusive jurisdiction over cases involving a federal question. A federal question exists when the dispute concerns federal law. Such case can brought to a state court but the defendant has the right to remove it), Diversity (1.citizen of two states/country AND 2.$>75K, State Court can also hear), When U.S. is a party

3. **Citizenship**: Person (An individual is a citizen of the state where that person has legal residence or domicile) Corp (A corporation is deemed a citizen of both (1) the state in which it has been incorporated and (2) the state where it has its principal place of business. To find the corporation's nerve center, courts consider where (1) the executive and administrative offices are located, (2) the income tax return is filed, and (3) the directors and shareholders meet.)

4. **Personal jurisdiction** means that the court has legal authority over the parties to the lawsuit. Personal jurisdiction may be based upon a. the residence or activities of the person being sued (called in **personam jurisdiction**) or b. upon the location of the property at issue in the lawsuit (called **in rem jurisdiction**). Most states have c. long-arm statutes, which can subject an out-of-state defendant to jurisdiction in the state, as long as constitutional due process requirements are satisfied. The critical test is whether the defendant has certain minimum contacts with the state (1. Have done some act of consummated some transaction in the jurisdiction in which it is being sued OR 2. Have purposefully availed itself of the privilege of conducting activities in that state, thereby invoking the benefits and protection of the forum d. service of process, which notifies the defendant of the filing of a lawsuit.

6. If the conduct of the defendant affected numerous persons in a common way, the case may be brought as a **class action** by a representative of the class of persons affected. Anyone who wants to litigate separately can opt out of the class. If a person does not opt out, he or she is a member of the class and will be bound by any decision or settlement reached in the class action. A product liability class action can have the following advantages: (1) the settlement can bind not only present class members but also future claimants; (2) standardized payment schedules can avoid the risk of widely divergent jury awards; (3) some claimants who suffered less harm than others can be excluded from the settlement; and (4) the filing of suits and the settlement can occur on the same day

7. **Discovery** includes **depositions**, which are written or oral questions asked of any person who may have helpful information about the facts of the case; **interrogatories**, which are written questions to the parties in the case and their attorneys; and requests for production of documents, such as medical records and personnel files. In addition, personal notes and computer files, including e-mail correspondence, are also subject to discovery and are often the source of crucial evidence. The basic purpose of discovery is to eliminate the "game" elements in a trial. By revealing the strengths and weaknesses of the various claims, discovery frequently allows the lawsuit to be resolved by agreement without a trial. At the least, discovery helps prevent any major surprises from occurring at trial because each side has already learned about the other's case.

1. If, however, the agent enters into an agreement of a type that must be in writing to be enforceable (such as an agreement for the sale of real property), then the agent's signature on the agreement will not bind the principal unless the **agency relationship** itself is evidenced by some signed writing. This is called the **equal dignities rule**. An agency agreement can also be implied from conduct. Agency relationships can be formed without agreement based on apparent authority. **Apparent authority**, also referred to as agency by estoppel, occurs when a person leads another to believe that someone else is his or her agent and is thereafter estopped (prevented) from denying it. An agency relationship can also be formed without agreement by **ratification**. If a principal approves or accepts the benefits of the actions of an otherwise unauthorized agent, he or she has formed an agency by ratification.

2. The most common form of agency relationship is the **employer–employee relationship**, sometimes still referred to as the master–servant relationship. The basic characteristic of this relationship is that the employer has the right to control the conduct of the employee. The employee may have the authority to bind the employer to a contract under theories of **actual or apparent authority**.

3. **An independent contractor**, such as a lawyer working for a client or a plumber working for a house builder, is not an employee of the person paying for his or her services because the independent contractor's conduct is not fully subject to that person's control. The person hiring an independent contractor bargains only for results. An independent contractor may or may not be an agent. Generally, an agency relationship exists when the hiring person gives the independent contractor authority to enter into contracts on his or her

4. Under the doctrine of **respondeat superior** (literally, "let the master answer"), employers are liable for the torts (and many crimes) of their employees, as long as the employee was acting within the scope of employment. In contrast, persons hiring independent contractors are generally not liable for torts committed by the independent contractor. Employers are required to deduct or pay income, Social Security, and unemployment taxes for employees but not for independent contractors. Independent contractors are responsible for paying their own self-employment taxes.

Moreover, independent contractors are generally not eligible for the same fringe benefits provided to employees, such as medical insurance, stock options, and 401(k) retirement plans.

5. To determine whether a company is a **joint employer** of leased workers, a manager should consider such factors as whether the company (1) supervises the workers, (2) has the ability to hire and fire, (3) is involved in day-to-day labor relations, (4) establishes wage rates, or (5) has the power to promote or discipline the worker. As with questions surrounding the independent contractor label, the bottom line is that if leased employees are treated the same as regular employees, they may be treated as common-law employees of the

6. In agreeing to act on behalf of the principal, the agent becomes a fiduciary. Loyalty, obedience, and care are the hallmarks of the fiduciary relationship. **An agent has a duty** to act solely for the benefit of his or her principal in all matters directly connected with the agency undertaking. This is the duty of loyalty. For example, if Adrienne is entrusted with the power to buy a piece of land for Pierre, she cannot buy the best piece of land for herself instead. An agent is also obligated to obey all reasonable orders of his or her principal. For example, if Adrienne refuses to follow Pierre's order to purchase a particular parcel of property, her insubordination would violate the duty of obedience.

7. **ACTUAL AUTHORITY** The principal may give the agent actual authority to enter into agreements on his or her behalf; that is, the principal may give consent for the agent to act for and bind the principal. This consent (or authority) may be express or implied. **Express authority** may be given by the principal's actual words, for example, a request that the agent hire an architect to design a new office. Express authority may also be given by an action that indicates the principal's consent, for example, by sending the agent a check for the architect's retainer. An agent has express authority if the agent has a justifiable belief that the principal has authorized the agent to do what he or she is doing. **Implied Authority** Once an agent is given express authority, he or she also has implied authority to do whatever is reasonable to complete the task he or she has been instructed to undertake. To determine an agent's implied authority, courts look to the usual and customary authority of the agent. **Usual authority** is the authority that the agent has been allowed to exercise in the past. For example, if a principal has allowed its purchasing agent to enter into contracts with a dollar value of up to $50,000, the agent has implied authority to continue to enter into such transactions. **Customary authority** consists of the authority that agents of that type normally would have. For example, the vice president of purchasing for a trucking business, because of his or her position, has the implied authority to purchase trucks. **Apparent authority** is created when a third party reasonably believes that an agent has authority to act for and bind the principal. This belief may be based on the principal's words or acts or on knowledge that the principal has allowed its agent to engage in certain activities on its behalf over an extended period of time. **Express ratification** occurs when the principal, through words or behavior, manifests an intent to be bound by the agent's act. For example, a principal could ratify an agent's unauthorized purchase of a truck by saying "OK" or simply by paying the bill for the vehicle. Implied ratification occurs when the principal, by silence or failure to repudiate the agent's act, acquiesces in it.

8. **Scope of Employment** (2) the extent to which the employer's interests were advanced by the act, (3) whether the employer furnished the instrumentality (for example, the truck or machine) that caused the injury, and (4) whether the employer had reason to know the employee would perform the act. Courts tend to use the term "**detour**" to refer to a slight deviation from the employer's business and "**frolic**" to refer to conduct that in no way serves the interests of the employer. Detours are deemed to be within the scope of employment, but frolics are not.

9. Even if an employee was acting **outside the scope of employment**, the employer may be liable for the employee's action if (1) the employer intended the employee's conduct or its consequences, (2) the employee's high rank in the company makes him or her the employer's alter ego, (3) the employee's action can be attributed to the employer's own negligence or recklessness, (4) the employee uses apparent authority to act or to speak on behalf of the employer and there was reliance upon apparent authority, or (5) the employee was aided in accomplishing the tort by the existence of the agency relationship (the aided-in-the-agency relation theory). The **respondeat superior doctrine** typically applies only to the actions of employees. Principals may be held liable for the torts of independent contractors only in extraordinary circumstances, usually involving highly dangerous acts or nondelegable duties. Under the theory of **vicarious liability**, a company can be held liable for violations of law by its employee even if a manager told the employee not to violate the law.

1. In **a sole proprietorship**, one individual owns all of the assets of the business and is solely and personally liable for all of its debts, contract obligations, and tort liabilities. In other words, the sole proprietor is the business. Any individual who conducts business without creating a separate organization is operating as a sole proprietorship. There are no formal requirements for forming a sole proprietorship. However, if the business operates under a fictitious business name—that is, a name other than the name of the owner—that name must be registered with the state. A sole proprietorship ends upon the discontinuation of the business or the death of the proprietor, whichever is earlier.

2. A **general partnership** is created when two or more persons agree to place their money, efforts, labor, or skills in a business and to share the profits and losses. A general partnership can be created with nothing more than a handshake and a general understanding between the partners. A partnership does not require a minimum amount of capital for formation. If there is no written partnership agreement, the laws of the state where the parties are doing business will determine whether the relationship will be created as a partnership or some other relationship, such as an agency. **The statutory predecessor of the Uniform Partnership Act defined a partnership as the association of two or more persons, for the purpose of carrying on business together, and dividing its profits between them.** 1 Their agreement can be express or implied, but they must share in real profits, not just receive wages or compensation. Absent an express agreement to the contrary, each partner has some control over the business, and each may have the authority to bind the partnership with respect to third parties. In some respects, a partnership is like a marriage or a family. Its members share not only the benefits of the relationship but the burdens as well. A partnership is treated as an entity separate from its partners and can acquire property in its own name. Property that is not acquired in the name of the partnership is nonetheless partnership property if the instrument transferring title refers to (1) the person taking title as a partner or (2) the existence of the partnership. Unlike a sole proprietorship, which terminates upon the death of the owner, a partnership is not automatically dissolved upon a partner's death, bankruptcy, or withdrawal. Instead, the partners holding a majority of the partnership interests may elect to continue the general partnership within ninety days after the occurrence of such an event.

A partnership agreement usually includes (1) the term of the partnership's existence, (2) the capital characteristics of the partnership, (3) the division of profits and losses between the partners, (4) partnership salaries or withdrawals, (5) the duties of the partners, and (6) the consequences to the partnership if a partner decides to sell the interest in the partnership or becomes incapacity or dies. Also included are the name of the partnership, the names and addresses of the partners, the type of business to be conducted and the location of

Partners owe one another certain fiduciary duties – in particular, a duty of loyalty and a duty of care. Partners must also discharge their duties to the partnership and to one another in accordance with the obligation of good faith and fair dealing. Such loyalty obligations includes: (1) accounting to the partnership and holding as trustee for it any property, profit, or benefit; (2) refraining from dealing with the partnership as or on behalf of a party having an interest adverse to the partnership; and (3) refraining from engaging in grossly negligent or reckless conduct, intentional misconduct or a knowing violation of

3. **A joint venture** is a one-time partnership of two or more persons for a specific purpose, such as the construction of a hydroelectric dam or a cogeneration plant. Like a general partnership, a joint venture requires that the parties (1) share a community of interest; (2) have the mutual right to direct and govern; (3) share the partnership's profits and losses; and (4) combine their property, money, efforts, skill, or knowledge in the undertaking. Unlike a general partnership, a joint venture is not a continuing relationship; it terminates when the

4. The **limited liability partnership (LLP)** is designed primarily for groups of professionals, such as law firms and accounting firms. LLPs are created by filing the appropriate forms with a central state agency. The main function of an LLP is to insulate its partners from vicarious liability for certain partnership obligations, such as liability arising from the malpractice, or negligent or wrongful conduct, of another partner. Partners in an LLP usually have unlimited liability

5. **A limited partnership** is a special type of partnership consisting of general partners and limited partners. General partners of a limited partnership remain jointly and severally liable for partnership obligations (just like partners in a general partnership), and they are responsible for the management of the partnership. In contrast, limited partners assume no liability for partnership debts beyond the amount of capital they have contributed, and they have no right to participate in the management of the partnership.

In addition to the requirement that a certificate of limited partnership be filed with the appropriate state authority, most state statutes require that the partnership agreement clearly designate the limited partners as such. A limited partner's liability is limited unless he or she takes part in the control of the business.

6. **A corporation** is an organization authorized by state law to act as a legal entity distinct from its owners. As a separate legal entity, the corporation has its own name and operates with specified powers to achieve the specific purposes set out in its corporate charter (also called its articles of incorporation or certificate of incorporation). A **C corporation** pays tax on the income generated by the business, and the shareholders pay tax on that same income when it is distributed as dividends. An **S corporation** is taxed as a pass-through entity. In other words, the corporation itself is not taxed on its income; rather, the shareholders pay tax on their pro rata shares of the corporation's income.

To **qualify** for S corporation status, a corporation must satisfy the following requirements: 1. The corporation must have no more than 100 shareholders, all of whom must be individuals who are citizens of the United States or U.S. resident aliens, or certain types of tax-exempt organizations, trusts, or estates. 2. The corporation must have only one class of stock. 3. The corporation generally may not own 80 percent or more of any other corporation. 4. The corporation must file a timely election to be treated as an S

Incorporation is the process by which a corporation is formed. The corporate statutes of each state set forth the steps that must be taken to establish a corporation in that state. Many states' statutes are based in whole or in part onthe Model Business Corporation Act, an annotated uniform statute prepared by academics and practitioners. The state under whose laws a corporation is formed is called the corporation's corporate domicile. A corporation is not limited to doing business in its corporate domicile. It can conduct business as a foreign corporation in other states. Typically, to do so, it must file a statement of foreign corporation with the appropriate secretary of state and state taxing authority.

Two important factors affect the decision of where to incorporate: (1) The costs of incorporation in a given state, and (2) the relative advantages and disadvantages of that state's corporation laws. If the corporation is privately held and its business will be conducted largely within one state, incorporation in that state is probably the best choice. Corporation laws may be favorable either to management or to the shareholders. Some states, such as Delaware, are considered to be pro-management because their statutes and court decisions tend to give control on a wide range of issues to the officers and directors.

Delaware also permits a **staggered (or classified) board**, whereby directors serve for specified terms, usually three years, with only a fraction of them up for reelection at any one time. **To create a corporation**, one or more incorporators must prepare the certificate or articles of incorporation (or the corporate charter). This document must be filed with the appropriate state governmental agency, usually the secretary of state for the jurisdiction that will become the corporate domicile. After the articles of incorporation are filed, the incorporators adopt the bylaws, that is, the rules governing the corporation (including the number of authorized directors), and elect the initial board of directors. This can be done either at an organizational meeting or by unanimous written consent. **The incorporators are exclusively empowered to place the directors in office**. After electing the board of directors, the incorporators sign a written resignation. The directors then have an organizational meeting at which they (1) ratify the adoption of the bylaws by the incorporators or adopt new bylaws, (2) appoint officers, (3) designate a bank as depository for corporate funds, (4) authorize the sale of stock to the initial shareholders, and (5) determine the consideration to be received in exchange for such shares—cash, other property, or past services rendered to the corporation. **De Jure Corporation** When incorporation has been done correctly, a de jure corporation is formed. This means that the entity is a corporation by right and cannot be challenged. Most jurisdictions will find de jure corporate status as long as the incorporators have substantially complied with the incorporation requirements. For example, substantial compliance will be found even if the incorporators failed to obtain a required signature or submitted an improper notarization. **De Facto Corporation** If the incorporators cannot show substantial compliance, a court may treat the entity as a de facto corporation, that is, as a corporation in fact even though it is not technically a corporation by law. For the court to find a de facto corporation, the incorporators must demonstrate that they were unaware of the defect and that they made a good faith effort to incorporate correctly. For example, if a clerk for the secretary of state delayed filing the articles, the business would not be a corporation de jure, but it would probably be a corporation de facto. **Corporation by Estoppel** An entity that is neither a de jure nor a de facto corporation may be a corporation by estoppel. If a third party, in all of its transactions with the enterprise, acts as if it were doing business with a corporation, the third party is prevented or estopped from claiming that the enterprise is not a corporation.22 It is considered unfair to permit the third party to reach shareholders' personal assets when all along it believed it was dealing with a corporation whose shareholders had limited liability.

7. A **close corporation** is a corporation that (1) has elected in its charter to be treated as a close corporation and (2) has a "small" number of shareholders, typically no more than thirty. **A closely held corporation** may have any number of shareholders, but it is characterized by the absence of a market for its stock

8. A **limited liability company** (LLC) combines the tax advantages of a pass-through entity with the limited liability advantages of a corporation. Like corporations and limited partnerships, the LLC is a creature of state law. To form an LLC, a charter document must be filed with the appropriate state agency (usually the office of the secretary of state). The owners of an LLC are called members. The rights, obligations, and powers of the members, managers, and officers are set forth in an operating agreement. The members elect the managers who, like a board of directors, are responsible for managing the business, property, and affairs of the company. The managers appoint the officers of the company. Properly formed LLCs are taxed as partnerships, but unlike the general partners in limited partnerships, even the controlling persons in LLCs can limit their liability to the amount invested. Moreover, all owners of an LLC can participate fully in the management of the business. Specifically, in contrast to an S corporation, there is no limit on the number of members an LLC can have, and its investors can be corporations, partnerships, and foreigners. Section 18-1104 of the Delaware Limited Liability Company Act provides that unless the LLC agreement contains language to the contrary, the managers and controlling members of an LLC owe a **fiduciary duty of care and loyalty** to the LLC and its members.

9. **The Benefit corporation** is a for-profit organization that uses the power of business to solve social and environmental problems. B corporations are required to "have a purpose of creating general public benefit" in addition to their other corporate purposes. Benefit corporations must distribute to shareholders an annual benefit report providing information about their social and environmental performance bench=marked against a third-party standard. Unlike directors of most for-profit corporations, directors of B corporations have no duty to maximize shareholder value even when there is a

11. **Comparing Taxable Entities with Pass-Through Entities**: An exchange of property for a share in a partnership is tax-free regardless of the transferor's percentage share in the partnership. Neither partnership nor the LLC is subject to tax on the appreciated property.

12. **VC often uses C Corporation** for two reasons. First, most VC firms raise money from large institutional investors, such as pension funds, university endowments, and the like. Nonprofit entities such as these can invest in securities and receive their income and capital gains tax-free only if the issuer of the securities is not a pass-through entity. Second, most start-ups want the ability to sell securities to outside investors at a significantly higher price than was paid by the founders at the outset. To justify the price differential, and avoid having some of the value of the founders' shares treated as employee compensation, companies issue two classes of stock: common stock to the founders and preferred stock to the outside investors. Because an S Corp cannot have more than one class of stock, the C Corporation is usually the easiest vehicle to use.

13. A court will **pierce the corporate veil** in this way if necessary to prevent the evasion of statutes, the perpetration of fraud, or other activities against public policy. There are two legal approaches to piercing the corporate veil. The **alter ego theory** applies when the owners of a corporation have so mingled their own affairs with those of the corporation that the corporation does not exist as a distinct entity—instead, it is an alter ego of its owners. The **undercapitalization theory** applies when the corporation is a separate entity, but its deliberate lack of adequate capital allows it to skirt potential liabilities. Such undercapitalization constitutes a fraud upon the public.

14. ALTER EGO THEORY (1) Domination by Controlling Shareholder If an individual or another corporation owning most of the stock of the corporation exerts so much control that the standard corporate decision-making mechanisms are not in operation, the courts may find that the corporation has no separate mind, will, or existence of its own. (2) Commingling of Assets The courts will also examine whether the books and funds of the corporation and of the controlling shareholder have been commingled (3) Bypassing Formalities If an action that requires approval by the board proceeds without a board meeting being held, or if other procedural rules (such as the requirement of an annual shareholders' meeting) are consistently broken, the courts will be inclined to view the corporation as the instrument of the controlling shareholder unless the corporation qualifies as a statutory close corporation under the law of the state of incorporation.

15. **UNDERCAPITALIZATION THEORY** whether the founders should have reasonably anticipated that the corporation would be unable to pay the debts or liabilities it would incur. (1) **TORT VERSUS CONTRACT** A tort plaintiff's contact with the corporation (for example, being hit by a taxi) may be completely involuntary. Many courts are therefore more sympathetic to the tort victim who faces an undercapitalized corporate defendant than to a plaintiff seeking to pierce the corporate veil in a breach of contract

16. **DIRECTORS** Most state statutes provide that the business and the affairs of the corporation shall be managed, and all corporate powers shall be exercised, by or under the direction of the board of directors. The board typically delegates the management of the day-to-day operations of the business of the corporation to the officers or, less often, to a management company. A member of the board may also serve as an officer. Such a person is called an inside director. A director who is not also an officer is called an outside director. An understanding of the dynamics between the board and the officers is essential to comprehend the workings of a corporation.

OFFICERS The officers appointed by the board of directors are agents of the corporation and have the power to act on its behalf.

SHAREHOLDERS Shareholders are virtually never involved in the day-to-day operations of a corporation.

Voting Rights a director who is elected to a staggered or classified board (where directors serve for designated multiyear terms, usually not to exceed three years) may not be removed without cause, unless the certificate of incorporation provides otherwise. consent. A shareholder who cannot be present at a meeting can vote by proxy, that is, by a written authorization for another person to vote on his or her behalf. Only shareholders of record, that is, persons whose names appear on the corporation's shareholder list on a specified date, are entitled to vote. No action can be taken at a shareholders' meeting unless there is a quorum; the quorum requirements are set forth in each state's corporate statute. In most jurisdictions, there is no quorum unless the holders of at least 50 percent of the outstanding shares are present in person or by proxy.

Purity Voting: A director could be elected as long as received a plurality of the vote cast for any nominee, without regard to the number of votes withheld. **Majority voting**: A director must receive a majority of the shares voted to be elected. Cumulative voting formula [(#shares*#directors)/(1+#empty seats)]+1

0. In 2010, the SEC adopted Rule 14a-11, the so-called **proxy access rule** which made it possible for shareholders who have held at least 3% of a public company's stock for at least three years to nominate candidates for the board and solicit proxies without having to go through the considerable expense of commencing a costly proxy contest. The SEC has advised corporations that proposals involving any of the following cannot be omitted from **proxy** materials: (1) requests that the board seek shareholder approval prior to adopting a"poison pill" antitakeover device, (2) limits on the compensation of nonemployee directors, (3) schemes for performance based compensation for executives, (4) equity compensation plans, (5) compensation for senior officers, (6) a reduction in pension benefits, (7) requests that the company dissociate itself from any "offensive" advertising, (8) increased retirement benefits, and (9) a dividend increase.33 Companies had unsuccessfully sought to exclude these proposals under SEC Rule 14a-8 under the Securities Exchange Act of 1934, which allows companies to exclude proposals that relate to the "ordinary business" of the company.

1. **Proxy Contests**, whereby insurgents propose their own slate of directors or rally to oppose a board proposal by sending out their own proxy statement and soliciting proxies for their candidates or positions. Shareholders have a common law right to **inspect the corporate books and records**, including the stock register and/ or shareholder list, the minutes of board meetings and shareholder meetings, the bylaws, and books of account. In making the examination, shareholders are permitted the assistance of an accountant, lawyer, or other expert. In most states, the right of inspection is limited by the requirement that the inspection be conducted for a "proper purpose." The court explained: "Considering the huge size of many modern corporations and the necessarily complicated nature of their bookkeeping, it is plain that to permit thousands of stockholders to roam at will through their records would render impossible . . . the proper carrying on of their business." Because "the power to inspect may be the power to destroy,"

2.**MERGER** A merger is the combination of two or more corporations into one. The disappearing corporation no longer maintains its separate corporate existence but becomes part of the surviving corporation. In a cash merger, some shareholders (usually the public shareholders) are required to surrender their shares in the disappearing corporation for cash. They retain no interest in the surviving corporation. Hence, such a merger is also called a **freeze-out merger. SALE OF ASSETS** A company may want to acquire the assets of another company but not its liabilities. To achieve this goal, it can purchase all or most of the other company's assets without merging with the other company. In a merger or a sale of assets, dissenting shareholders those who voted against the transaction—are frequently granted **appraisal rights,** that is, the right to receive in cash the fair value of the shares they were forced to give up as a result of the transaction.

3. **TENDER OFFERS**

A tender offer is a public offer to all the shareholders of a corporation to buy their shares at a stated price, usually higher than the market price. If shareholders sell sufficient stock to the bidder, it will acquire control of the target corporation. The shareholders are free to reject or accept the tender offer without the approval of the board of the target. If shareholders sell sufficient stock to the bidder, it will acquire control of the target corporation. Hence, the term **takeover** is commonly used to describe this transaction. An example of a takeover that results in a major change in corporate structure is **the second-step back-end merger**. The bidder first acquires more than 50 percent of the shares of a company through a tender offer and replaces the target company's board of directors with its own people. The new board then approves the merger of the target company into a company owned by the bidder, with the shareholders of the target company receiving cash or securities for their stock.

4. A large-scale repurchase can result in the corporation's **going private**, that is, having fewer than 300 shareholders and ceasing to be required to file public periodic reports under the Securities Exchange Act of 1934

5. The **federal securities laws** embody three beliefs: (1) investors should be provided with full information prior to investing. (2) corporate insiders should not be allowed to use nonpublic information concerning their companies to their own financial advantage and (3) misled investors should receive adequate relief even in the absence of common law fraud. **The 1933 Act** requires only that they be advised of all material facts before they invest their money. The 1934 Act implemented a policy of continuous disclosure. **The 1934 Act** also contains stringent antifraud provisions and implements filing requirements for insiders dealing in their own company's stock. In addition, the 1934 Act established a framework for the self-regulation of the securities industry under the ultimate supervision of the SEC. **SOX** created the Public Company Accounting Oversight Board (PCAOB) to regulate and inspect the public accounting firms that provide audit reports for publicly traded companies that are (1) registered under Section 12 of the 1934 Act, (2) required to file reports under Section 15(d) of that act, or (3) have filed a registration statement under the 1933 Act. SOX prohibits the provision of nonaudit services to audit clients in all but very limited circumstances. It also makes it illegal for any person to attempt to improperly influence the auditors. **Dodd-Frank Wall Street Reform Act and Consumer Protection Act** of 2010 included greater regulation of hedge funds, which are private investment partnerships that historically accept only high-wealth investors and use a wide range of high-risk investment strategies including leverage and the trading of equity default swaps,

puts, calls, and other financial derivatives to boost their return. The ACT also gave whistleblowers the power to report potential violations to the SEC without reprisals. Emerging Growth Companies (defined as companies with gross annual revenue of less than $1 billion). **The JOBS act** made it easier for startups and other small businesses to raise limited amounts of capital from members of the public using the Internet and for emerging growth companies to make an initial public offering without having to comply with many of the more onerous requirements imposed by the 1933 Act the 1934 Act and SOX. In 1982, the SEC adopted **Regulation D** with rules that outlined the requirements and limitations for exempt private offerings and offerings by small businesses

6. In addition to the federal securities laws, state statutes called **blue sky laws** also regulate offerings and sales of securities. These laws were the precursors to federal securities regulation and were "aimed at promoters who 'would sell building lots in the blue sky in fee simple.' "7 An issuer selling securities must comply not only with the federal securities laws but also with the securities laws of all of the states in which the securities are offered or sold.

7. The term **security** for purposes of the 1933 Act—and most other securities statutes—is much broader than the common conception of the term. Section 2(1) of the 1933 Act defines a security as: any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, pre-organization certificate or… U.S. Supreme Court held that the sale of a business through a stock transaction is a securities transaction if the stock sold possesses all of the characteristics traditionally associated with common stock. This is the case even though the success of the venture going forward depends on the efforts of the buyer, not the seller.

1. **Investment Contract** An investment may be characterized as a security even if it involves the transfer of an interest in real property or another physical asset. Any transaction that involves an investment of money in a common enterprise with profits to come solely from the efforts of others is deemed to be an investment contract and thus a security. This test was first enunciated in **Howey Co.** 2. The **test** to "whether the scheme involves an investment of money in a common enterprise with profits to come solely from the efforts of others."

2. There is a split in the circuits as to whether the "**common enterprise**" element of the Howey test can be met simply by showing "vertical commonality" between the promoter and the investor or whether there must be "horizontal commonality," that is, multiple investors who pool their funds and receive a pro rata share of the profits or buy very similar assets that are managed jointly.

3. But the courts have found **a general partnership interest to be a security** if it meets any of the following three tests: 1. The partnership agreement leaves so little power to the partners that the arrangement is tantamount to a limited partnership. 2. The investor is so inexperienced in business affairs that he or she is incapable of intelligently exercising his or her partnership powers. 12. See SEC v. Unique Fin. Concepts, Inc., 196 F.3d 1195 (11th Cir. 1999) (vertical commonality sufficient) and the cases cited therein. 3. The investor is so dependent on the unique management ability of the promoter or manager that he or she cannot replace the manager or exercise meaningful partnership powers

4. **Family Resemblance test** This presumption may be rebutted, however, by a showing that the note bears a "strong resemblance" (in terms of four specific factors) to an enumerated category of instruments commonly held not to constitute securities, such as notes delivered in connection with consumer financing, notes secured by a home mortgage, and short-term notes secured by accounts receivable. The four specific factors used in evaluating an instrument are: 1. The motivations that would prompt a reasonable seller and buyer to enter into the transaction. 2. The plan of distribution of the instrument. 3. The reasonable expectations of the investing public. 4. Whether some factor, such as the existence of another regulatory scheme, significantly reduces the risk of the instrument, thereby rendering application of the federal securities laws unnecessary.

5. A principal advantage of **registering a securities** offering with the SEC is that the registered securities are nonrestricted and may be traded relatively freely in a secondary offering, that is, a subsequent offering by a person other than the issuer. **Secondary offerings** must either be registered with the SEC or be exempt from registration.

7. Forms Securities offered in an IPO are registered in a registration statement meeting the requirements of **Form S–1**. The registration statement must include a complete description of the securities being offered, the business of the issuer, the risk factors, the management, and the major shareholders. It must also include audited financial statements. **Form S–3** is used by a category of companies that have timely filed periodic reports under the 1934 Act for at least twelve months and have a widespread following in the marketplace. An issuer can use Form S–3 for an offering of common stock only if the aggregate market value of the voting and nonvoting stock held by nonaffiliates is $175 million or more.

8. A key step in preparing the registration statement is the process of **due diligence**, whereby the company, the underwriters, and their respective counsel assemble and review the information about the company in the registration statement. The time between the filing of the registration statement and its becoming effective is called the **waiting period or the quiet period** because the law severely limits what the issuer and underwriters may say or publish during this time. No sale of securities can occur prior to the effectiveness of the registration statement; however, the underwriters may assemble selling groups, distribute copies of the preliminary prospectus, and even solicit (but not accept) offers to buy the securities.

9. Rule 415 under the 1933 Act provides for the **shelf registration** of securities, that is, the registration of a number of securities at one time for issuance later. The securities can then be issued over a period of time, **Traditional shelf offerings** include (1) securities offered pursuant to employee benefit plans; (2) securities offered or sold pursuant to dividend or interest reinvestment plans; (3) warrants, rights, or securities to be issued upon conversion of other outstanding securities; (4) mortgage-related securities; and (5) securities issued in connection with business combination transactions

10**. Exempt securities**, listed in Section 3 of the 1933 Act, include the following: 1. Any security issued or guaranteed by the United States or any state of the United States. 2. Any security issued or guaranteed by any national bank. 3. Any security issued by a charitable organization. 4. Any security that is part of an issue offered and sold only to persons residing within a single state or territory, if the issuer is a resident of the same state or territory. (Note: Even though the intrastate offering exemption is listed under Section 3, the SEC treats it as a transactional exemption under Section 4.) **Exempt transactions** are described in Section 4 of the 1933 Act. They include the following: 1. "Transactions by any person other than an issuer, underwriter or dealer" (Section 4(1)). 2. "Transactions by an issuer not involving any public offering" (Section 4(2), the private-offering exemption). 3. Offers and sales solely to "accredited investors"

11. **A private offering,** often called a **private placement**, is directed to selected qualified investors, rather than to the public. **Regulation D** offers a safe harbor for those seeking exemption from registration: An issuer that does not comply with all of the requirements of the applicable rule will not necessarily fail to have an exemption because the transaction may still meet the more general conditions of Section 4(2). Rule 501 defines an **accredited investor** as any one of the following: 1. Any national bank. 2. Any corporation, business trust, or charitable organization with total assets in excess of $5 million. 3. Any director, executive officer, or general partner of the issuer. 4. Any natural person who had individual income in excess of $200,000 in each of the two most recent years, or joint income with that person's spouse in excess of $300,000in each of those years, with a reasonable expectation of reaching the same income level in the current year. 5. Any natural person whose individual net worth, or joint net worth with that person's spouse, exceeds $1 million at the time of the purchase. 6. Any trust with assets greater than $5 million with the purchase directed by a sophisticated investor. 7. Any private development company. 8. Any entity in which all of the equity owners are accredited investors. Rule 504 **Rule 504** exempts offerings of up to $1 million within a twelve-month period. Rule 505 **Rule 505** exempts offerings of up to $5 million within a twelve-month period. **Rule 506**, adopted by the SEC under Section 4(2), exempts offerings that in the issuer's reasonable belief are limited to no more than thirty-five unaccredited investors, provided that the issuer reasonably believes immediately prior to making any sale that each unaccredited in…

1. **Section 11** applies only to registered securities. Under Section 11, an issuer of securities is liable for its false statements or misleading omissions even if the issuer had no intent to defraud and was not even negligent in ascertaining the truth. Section 11 lists, and thereby limits, the **entities and persons who may be sued**: (1) the issuer offering the security; (2) the underwriters; (3) any member of the board of directors at the time of the offering; (4) persons who gave their consent to be named in the registration statement as future directors; (5) every person who signed the registration statement (under Section 6(a) of the 1933 Act, it must be signed by the issuer, its principal executive officer, its principal financing officer, and its principal accounting officer); and (6) experts who consented to give authority to the "expertized" portion of the registration statement, such as accountants who audited the financial statements contained in it. No person can be named in the registration statement as an expert unless that person has consented in writing to being named. **The elements of a Section 11 offense** are straightforward. The plaintiff must show that, at the time the registration statement became effective, it (1) contained a false or misleading statement of a material fact or (2) omitted to state a material fact required to be stated in the registration statement or necessary to make the statements contained in the registration statement not misleading.

The Supreme Court has defined a material fact as one that a reasonable investor would most likely have considered important in deciding whether to buy or sell—that is, what a reasonable hypothetical investor would have considered important, not necessarily what the actual investor considered important. **DEFENSES** Section 11 sets forth several defenses. The defenses of no reliance and no causation focus on the effects of the misstatements on the behavior of investors and the market, while the defense of due diligence looks to the culpability of the defendants. No Reliance **The defense of no reliance** relates to the investor's knowledge. Investors who know that there was a misstatement or omission cannot claim to have relied on it; they are presumed to have acted despite the misstatement or omission. Thus, if the defendant can establish that the plaintiff actually. knew that a statement was false or that there was an omission, there is no liability under Section 11. Again, note that investors need not prove that they actually relied on the misstatement or omission or even read the prospectus. **No Causation** The defense of no causation focuses on the link between the misstatement and the investor's loss. Even if there was a misstatement or omission of a material fact, a defendant will not be liable if it can show that the misstatement or omission did not actually cause the plaintiff to suffer any loss. **Due Diligence** The defense of due diligence focuses on the behavior of the defendants. It is available to all defendants except the issuing company. A defendant is not liable for a misrepresentation or omission if it acted with due diligence, meaning that it (1) conducted a reasonable investigation and (2) reasonably believed (a) that the statements made were true and (b) that there were no omissions that made those statements

2. According to another defense, the judicially created **bespeaks caution doctrine**, a court may determine that the inclusion of sufficient cautionary statements in a prospectus renders immaterial any misrepresentations and omissions contained therein. **The safe harbor** provides two independent and alternative grounds for precluding liability.

3. Section 11 sets forth the damages recoverable for violation of its provisions. If the plaintiff has not sold the securities in question, the recoverable damages are the amount paid for each security minus its value at the time the plaintiff brings the claim. The value at the time the plaintiff brings the claim is usually the market price, unless the market price has been affected by the misrepresentation or omission. If the securities have been sold before the plaintiff brings the claim, the recoverable damages are the amount paid for the securities minus the amount received at sale.

4. **Intentional torts** require the plaintiff to prove (1) actual or implied intent, (2) a voluntary act by the defendant, (3) causation, and (4) injury or harm. Intent is the subjective desire to cause the consequences of an act. **Actual intent** can be shown by evidence that the defendant intended a specific consequence to a particular individual. Intent is implied if the defendant knew that the consequences of the act were certain or substantially certain, even if he or she did not actually intend any consequence at all. Intent may be transferred. If the defendant intended to hit one person, but instead hit the plaintiff, the intent requirement is met as to the plaintiff. Even if a plaintiff has proved all the elements of an intentional tort, the defendant may raise a legal defense to absolve himself or herself of liability. The most frequently raised **defense** is consent. If the plaintiff consented to the defendant's act, there is no tort. Even if the plaintiff did not explicitly consent, the law may imply 5. **Defamation** is the communication (often termed publication) to a third party of an untrue statement, asserted as fact that injures the plaintiff's reputation by exposing him or her to "hatred, ridicule or contempt." **Libel** is written defamation, and slander is spoken defamation. The distinction between libel and slander is sometimes blurred with respect to modern communications. In an action for **slander**, the plaintiff must prove that he or she has suffered actual harm, such as the loss of credit, a job, or customers, unless the statement is so obviously damaging that it falls into the category of slander per se. In an action for libel, the law presumes injury; that is, no actual harm need be shown unless the statement on its face is not damaging. An opinion is defamation only if it implies a statement of objective fact. The **requirement of publication** generally means that the statement must be made in the presence of a third person.

6. **Absolute privilege** is limited to situations in which (1) the defendant has consented to the publication, (2) the statement is a political broadcast made under the federal "equal time" statute, (3) the statement is made by a government official in the performance of governmental duties, (4) the statement is made by participants in judicial proceedings, or (5) the statement is made between spouses. a **qualified privilege** (1) to make statements to protect one's own personal interests, including statements to a peer review committee; (2) to make statements to protect legitimate business interests, such as statements to a prospective employer; and (3) to provide information for the public interest, such as credit reports. The media, such as newspapers, television, or radio, have a qualified privilege that is almost absolute when they are commenting on a **public official** or a public figure. Public officials include legislators, judges, and police officers. Public figures are those who are injected into the public eye by reason of the notoriety of their achievements or the vigor and success with which they seek the public's attention.

7. **Communications Decency Act** of 1996 (CDA) provides that no provider or user of an interactive computer service will be held liable for defamatory content provided by a third party.

8. **Invasion of privacy** is a violation of the right to keep personal matters to oneself. It can take several forms. Intrusion is objectionable prying, such as eavesdropping or unauthorized rifling through files. Public disclosure of private facts requires publication, for example, by stating in a newspaper that the plaintiff does not pay debts or posting such a notice in a public place. The matter made public must not be newsworthy. The matter must be private, such that a reasonable person would find publication objectionable. Unlike in a defamation case, truth is not a defense.

9. **Appropriation** of a person's name or likeness may be an invasion of privacy. For example, using a fictitious testimonial in an advertisement would be a tort, as would using a person's picture in an advertisement or article with which he or she has no connection.

10. **Disparagement** is the publication of statements derogatory to the quality of the plaintiff's business, to the business in general, or even to the plaintiff's personal affairs, in order to discourage others from dealing with the plaintiff. To prove disparagement, the plaintiff must show that the defendant. made false statements about the quality or ownership of the plaintiff's goods or services, knowing that the statements were false or with conscious indifference as to their truth, and that the statements caused actual harm. Knowingly making false statements may give rise to a claim for **injurious falsehood**. For example, a false statement that the plaintiff has gone out of business or does not carry certain goods is a tort if it results in economic loss to the plaintiff.

11. **Negligence** is defined as conduct that involves an unreasonably great risk of causing injury to another person or damage to property. To establish liability for negligence, the plaintiff must show that (1) the defendant owed a duty to the plaintiff to act in conformity with a certain standard of conduct, that is, to act reasonably under the circumstances; (2) the defendant breached that duty by failing to conform to the standard; (3) a reasonably close causal connection exists between the plaintiff's injury and the defendant's breach; and (4) the plaintiff suffered an actual loss or injury. A person with a **legal duty** to another is required to act reasonably under the circumstances to avoid harming the other person. The required standard of care is what a reasonable person of ordinary prudence would do in the circumstances.

12. The law does not impose a general **duty to rescue**. However, once one undertakes a rescue, the law imposes a duty to act as a reasonable person and not to abandon the rescue effort unreasonably. A special relationship between two people may create a duty to rescue. There is a duty to rescue those whom one has placed in peril.

13. **Duty of Landlord to Tenant**: A landlord has a duty to provide adequate security to protect tenants from foreseeable criminal acts of a third party. Relevant issues are whether (1) the property was in a high-crime area, (2) there had been earlier criminal acts (3) there was a failure to maintain locks and (4) the land lord had knowledge of prior criminal acts.

14. A **possessor of land (such as a tenant) or its owner has a legal duty** to keep the property reasonably safe. Such a person may be liable for injury that occurs outside the premises as well as on them. **Duty to Trespassers** In general, a possessor of property owes no duty to an undiscovered trespasser. If a substantial number of trespassers are in the habit of entering at a particular place, however, then the possessor of the property has a duty to take reasonable care to discover and to protect the trespassers from activities he or she carries on. The attractive nuisance doctrine imposes liability for physical injury to child trespassers caused by artificial conditions on the land if (1) the possessor knew or should have known that children were likely to trespass; (2) the condition is one the possessor would reasonably know involved an unreasonable risk of injury to such children; (3) because of their youth, the children did not discover the condition or realize the risk involved; (4) the utility to the possessor of maintaining the condition is not great; (5) the burden of eliminating the risk is slight compared with the magnitude of the risk to the children; and (6) the possessor fails to exercise reasonable care to protect the children. **Duty to Licensees** A licensee is anyone who is on the land of another person with the possessor's express or implied consent. The licensee enters for his or her own purposes, not for those of the possessor. Social guests and uninvited sales representatives are licensees. The possessor must exercise reasonable care for the protection of a licensee. This duty differs from that owed to a trespasser because the possessor is required to look out for licensees before they enter the land. The possessor is not required to inspect for unknown dangers, however. The duty arises only when the possessor has actual knowledge of a risk. **Duty to Invitees** An invitee, or business visitor, is someone who enters the premises for purposes of the possessor's business. The possessor owes a higher duty to an invitee than to a licensee. The possessor must protect invitees against known dangers and also against those dangers that the possessor might discover with reasonable care.

1. Once it is determined that the defendant owed the plaintiff a duty, the next issue in a negligence case is whether the defendant **breached that duty**. In many cases, the required standard of conduct will be that of a reasonable person. This rule, sometimes referred to as **negligence per se**, applies only when the statute or regulation was designed to protect a class of persons from the type of harm suffered by the plaintiff and the plaintiff is a member of the class to be pro

2. The doctrine of **res ipsa loquitur**—"the thing speaks for itself" allows the plaintiff to prove breach of duty and causation (discussed below) indirectly. Res ipsa loquitur applies when an accident has occurred, and it is obvious, although there is no direct proof, that the accident would not have happened without someone's negligence. Res ipsa loquitur has three requirements. First, the plaintiff's injury must have been caused by a condition or instrumentality that was within the defendant's exclusive control. This requirement eliminates the possibility that persons not named as defendants were responsible for the condition that gave rise to the injury. Second, the accident must be of such a nature that it ordinarily would not occur in the absence of negligence by the defendant. Third, the accident must not be due to the plaintiff's own negligence.

3. **CAUSAL CONNECTION** In addition to establishing duty and breach, a plaintiff claiming negligence must prove that the defendant's breach of duty caused the injury. The causation requirement has two parts: **actual cause and proximate** (or legal) cause. To establish actual cause, the plaintiff must prove that he or she would not have been harmed but for the defendant's negligence. Once the plaintiff has proved that the defendant's conduct is an actual cause of the plaintiff's injury, he or she must also prove that it is the proximate cause, that is, that the defendant had a duty to protect the particular plaintiff against the particular conduct that injured him or her. The defendant is not required to compensate the plaintiff for injuries that were unforeseeable, even if the defendant's conduct was

4. Under the doctrine of **contributory negligence**, if the plaintiff was also negligent in any manner, he or she cannot recover any damages from the defendant. Under the doctrine of **comparative negligence**, the plaintiff may recover the proportion of his or her loss attributable to the defendant's negligence. Comparative negligence may take two forms: ordinary and pure. In an **ordinary comparative negligence** jurisdiction, the plaintiff may recover only if he or she is less culpable than the defendant. In a **pure comparative negligence** state, the plaintiff may recover for any amount of the defendant's negligence, even if the plaintiff was the more negligent party. **The assumption of risk** defense requires that the plaintiff (1) knew the risk was present and understood its nature and (2) voluntarily chose to incur

5. **Actual Damages/Compensatory** damages measure the cost to repair or replace an item or the decrease in market value caused by the tortious conduct. **Punitive damages/exemplary damages**, may be awarded to punish the defendant and deter others from engaging in similar conduct

6. If a monetary award cannot adequately compensate for the plaintiff's loss, courts may give **equitable relief**. For example, the court may issue an injunction, that is, a court order, to prohibit the defendant from continuing a certain course of activity or take an act.

7. **Strict product liability**, whereby an injured person may recover damages without having to show that the defendant was negligent or otherwise at fault. The primary theories on which a product liability claim can be brought are breach of warranty, negligence, and strict liability. **BREACH OF WARRANTY** In a warranty action, the reasonableness of the manufacturer's actions is not at issue. Rather, the question is whether the quality, characteristics, and safety of the product were consistent with the implied or express representations made by the seller. A buyer may bring a warranty action whenever the product fails to meet the standards that the seller represented to the buyer at the time of purchase. **An express warranty** is an affirmation made by the seller relating to the quality of the goods sold. **An implied warranty** is created by law and guarantees the merchantability of the goods sold and, in some circumstances, their fitness for a particular purpose. This case established the rule, still applicable today that a manufacturer can be liable for failure to exercise reasonable care in the manufacture of a product when such failure involves an unreasonable risk of bodily harm to users of the product. To prove **negligence** in a products case, the injured party must show that the defendant did not use reasonable care in designing or manufacturing its product or in providing adequate warnings. A manufacturer can be found negligent even if the product met all regulatory requirements because, under some circumstances, a reasonably prudent manufacturer would have taken additional precautions. For a defendant to be held **strictly liable**, the plaintiff must prove that (1) the plaintiff, or the plaintiff's property, was harmed by the product; (2) the injury was caused by a defect in the product; and (3) the defect existed at the time the product left the defendant and did not substantially change along the way.

8. An essential element for **recovery in strict liability** is proof of a defect in the product. The injured party must show that (1) the product was defective when it left the hands of the manufacturer or seller and (2) the defect made the product unreasonably dangerous. A **manufacturing defect** is a flaw in a product that occurs during production, such as a failure to meet the design specifications. A product with a manufacturing defect is not like the others rolling off the production line. A **design defect** occurs when a product manufactured according to specifications is, nonetheless, due to its inadequate design or a poor choice of materials, unreasonably dangerous to users. Although a warning can shield a manufacturer from liability for a properly manufactured and designed product, it cannot shield the manufacturer from liability for a defectively manufactured or designed product. To **prevail in a failure-to-warn** case, most states require the plaintiff to prove that "the defendant did not adequately warn of a particular risk that was known or knowable in light of the generally recognized and prevailing best scientific and medical knowledge available at the time of manufacture and distribution. If the societal value of using an **unavoidably unsafe** product outweighs the risk of harm from its use, the manufacturer may be exonerated from liability as long as it provided proper warnings. Under the doctrine of **assumption of risk**, when a person voluntarily and unreasonably assumes the risk of a known danger, the manufacturer is not liable for any resulting injury. If the use of a product carries an **obvious risk**, the manufacturer will not be held liable for injuries that result from ignoring the risk.

1. A **crime** is an offense against the public at large. A **felony** is a crime punishable by death or by imprisonment for more than one year. A **misdemeanor** is a less serious crime, punishable by a fine or a jail sentence of one year or less. **Two elements are necessary to create criminal liability:** (1) an act that violates an existing criminal statute and (2) the requisite state of mind. The term **actus reus** (guilty act or wrongful deed) is often used to describe the act in question. A crime is not committed unless some overt act has occurred. Merely thinking about a criminal activity is not criminal. The statute that defines the criminal act also defines the requisite state of mind. Generally, a crime is not committed unless the criminal act named in the statute is performed with the requisite state of mind, known as **mens rea** . The three forms are negligence, recklessness, and intention to do wrong. Negligence is the failure to see the possible negative consequences of one's actions that a reasonable person would have seen. Recklessness is the conscious disregard of a substantial risk that one's actions will result in the harm prohibited by the statute. Recklessness is found when the individual knew of the possible harm of his or her act but ignored the risk. A person has an intention to do wrong when he or she consciously intends to cause the harm prohibited by the statute, or when he or she knows such harm is substantially certain to result from his or her conduct. Criminal trials impose a much heavier **burden of proof** than civil cases. In a criminal case, the accused is presumed innocent until proved guilty beyond a reasonable doubt. In most civil cases, the plaintiff only needs to establish the facts by a preponderance of the evidence.

2. **Vicarious liability** (also called imputed liability) is the imposition of liability on one party for wrongs committed by another. Under the theory of vicarious liability, officers, directors, and managers may, under certain limited circumstances, be found guilty of a crime committed by employees under their supervision. Under the responsible corporate officer doctrine, a corporate officer may be found guilty of a crime if he or she bore a "responsible relation" to a violation of a statute dealing with "products which may affect the health of customers," that is, if the officer had the power to prevent the violation and failed to do so. To establish the **impossibility defense**, the corporate officer must introduce evidence that he exercised extraordinary care and still could not prevent violations of

3. **Theft**, technically known as **larceny**, is simply the taking of property without the owner's consent. **Embezzlement** is the taking of money or property that is lawfully in the employee's possession by reason of his or her employment. **Fraud** is any deception intended to induce someone to part with property or money. Fraud may involve a false representation of fact, whether by words or by conduct, or concealment of something that should have been disclosed. To establish **mail fraud or wire fraud**, the prosecutor must demonstrate (1) the existence of a scheme intended to defraud or to obtain money or property by fraudulent means and (2) the use of the mails or of interstate telephone lines in furtherance of the fraudulent scheme. A prosecution for wire and mail fraud can be brought in addition to other prosecutions based on the same events.

4.