

# Business Entities and Employment Law

Law 115 | Week 11 | Lecture 22  
Rachael Vaughn

# Agenda

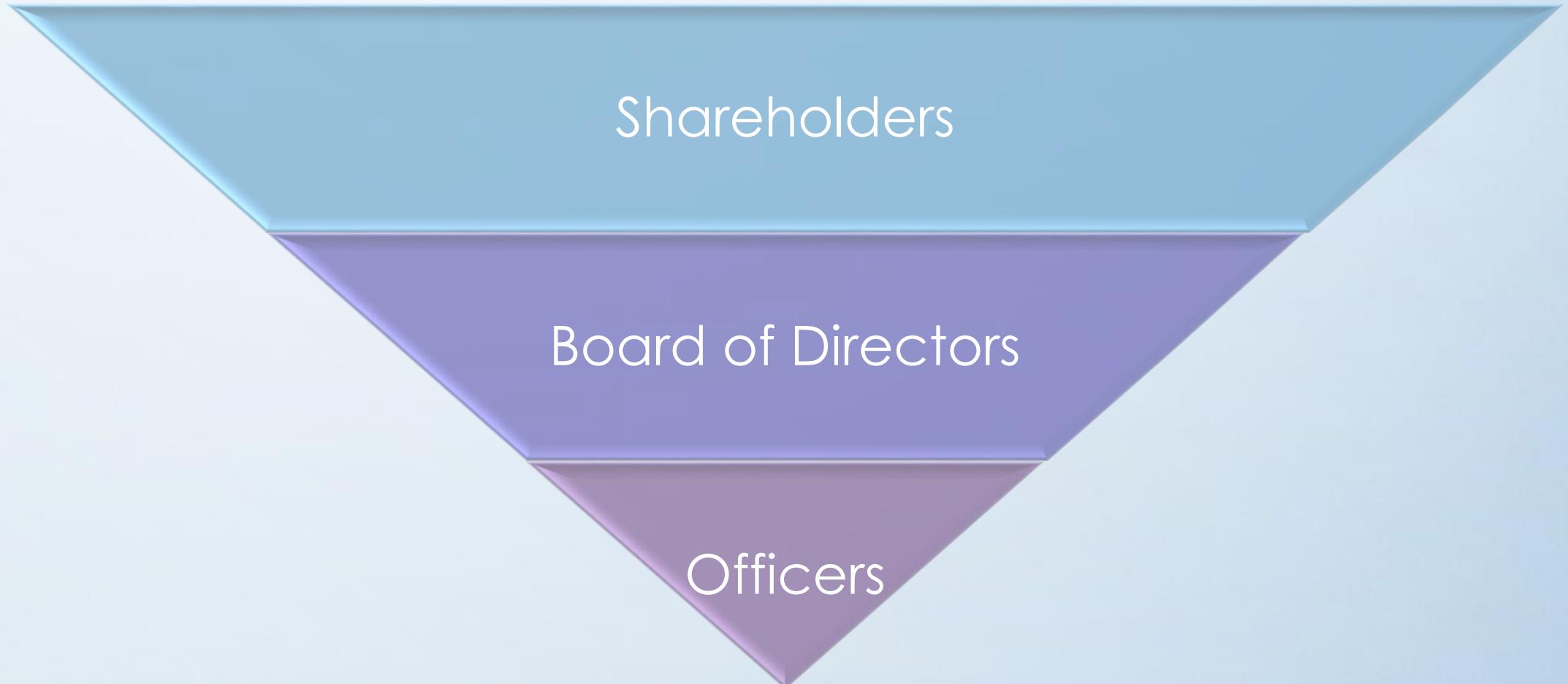
1. Why Incorporate?
2. Business Entities
  - a. The Corporate Form
  - b. Types of Business Entities
  - c. Company Formation
3. Employment Issues
  - a. Non-compete Agreements
  - b. Independent Contractors
4. Checklist for Starting a Game Company

# Why Incorporate?

- Create a plan for how your company will work together
- Organize under a single entity for managing assets (intellectual property, talent, physical assets)
- Have a graceful exit strategy if things don't work out



# The Corporate Form



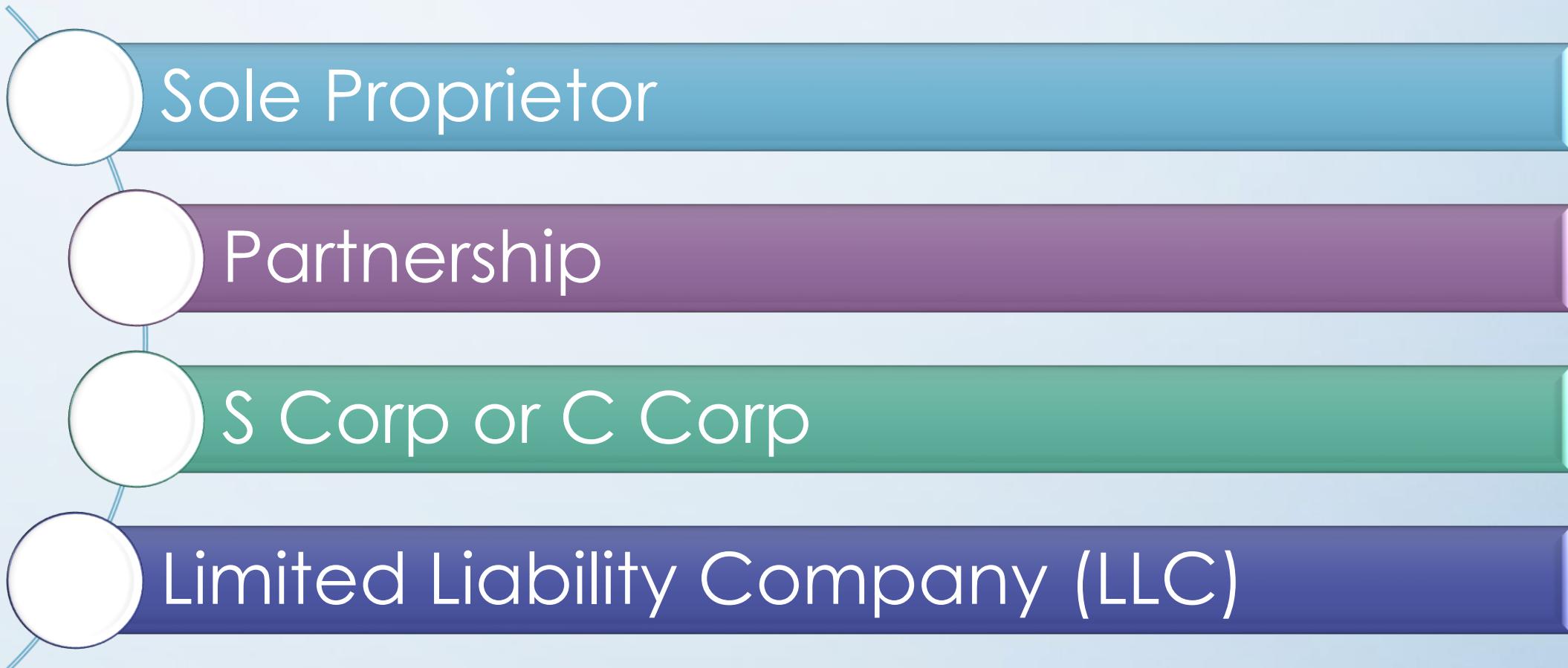
# The Corporate Form

## 6 Traditional Aspects of a Corporation

1. Entity status (can sue, sign contracts, own property)
2. Free transferability of ownership assets
3. Limited liability (in some cases)
4. Continuity of existence
5. Centralized management
6. Taxation (can be double)



# Types of Business Entities



# Types of Business Entities

## Sole Proprietor

**Structure:**

Single owner only  
(default if you run your own business)

**Liability/Tax:**

- Unlimited personal liability
- Entity not taxed, P&L passed on to sole proprietor

**Advantages:**

- Easy and cheap
- One decision maker

**Disadvantages:**

- Liability
- Growth can be a challenge

# Types of Business Entities

## Partnership

**Structure:**

Two or more partners

**Liability/Tax:**

- All partners are jointly and severally liable
- Entity not taxed, P&L passed on to partners

**Advantages:**

- Easy and cheap
- Split decision making, equal management

**Disadvantages:**

- Liability
- Need to find good partner(s)

# Types of Business Entities

## C Corporation

**Structure:**

Two or more shareholders

**Liability/Tax:**

- No personal liability
- Double taxation

**Advantages:**

- Raising funds

**Disadvantages:**

- Administration
- Organization up front
- Taxes

# Types of Business Entities

## S Corporation

**Structure:**

Up to 75 shareholders

**Liability/Tax:**

- No personal liability
- Entity not taxed, P&L passed on to members

**Advantages:**

- Raising funds
- Taxes

**Disadvantages:**

- Administration
- Organization up front
- Regulation

# Types of Business Entities

## LLC = Limited Liability Company

**Structure:**

One or more operators (or "members")

**Liability/Tax:**

- No personal liability
- Entity not taxed, P&L passed on to members

**Advantages:**

- Raising funds
- Taxation

**Disadvantages:**

- Administration
- Organization up front
- Newer form

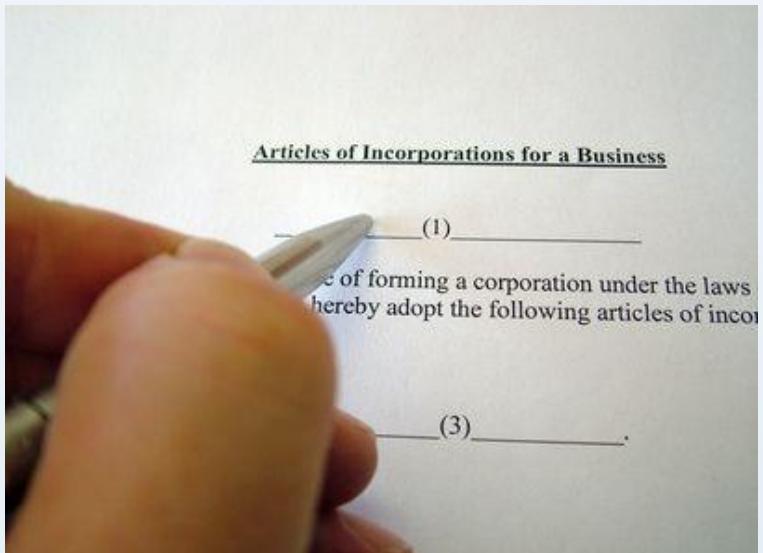
# Corporate Formation

Choose a name that is:

- Memorable
- Easy to spell
- Domain name available or available for purchase at a price you're willing to pay
- Not owned by someone else (unless they are willing to sell for reasonable price)
- A strong mark (trademark spectrum)
- Not likely to confuse consumers (trademark law)



# Corporate Formation



1. Pick your state
2. File your certificate/articles/charter with the Secretary of State
3. Draft your bylaws (the internal rules for how the corporation works)

Then start ***acting like a business entity*** by...

- Following corporate formalities
- Keeping corporate assets separate from personal assets
- Paying corporate taxes

# Non-compete Agreements



**Definition:** Agreement by an employee not to engage in certain competing activities during employment and for a period of time after employment (not enforceable in all states)

**Tip:** When setting up a new business entity, it is a good idea to make sure that none of the participants have non-compete agreements that would stop them from being able to do their jobs.

# Independent Contractors

Business entities may utilize both employees and independent contractors. Independent contractors generally...

- Work only as needed, when required
- May set their own schedule
- Can control workflow, set rates, work for multiple employers
- Do not benefit from company paying for benefits, taxes, and insurance
- May not qualify for unemployment if work dries up

# Independent Contractors

**The Washington Test:** To be an independent contractor the worker must...

1. Be free from the direction and control of the company/employer
2. Perform a service that is outside the regular course of business for the company or perform a service that is away from the business location
3. Maintain her own set of books/record for business income and expenses
4. Meet the IRS 20-point test

# Checklist for Starting a Game Company

- Formation—create legal entity, determine core owners, create legal documents, rules and bylaws (or operating agreement)
- Operations—office space (not necessary at first), equipment, accounting, project management, staffing
- Marketing/Branding—vendor relationships, market analysis/planning, capital

