

1. **1st Amendment and NLRA**

§National Labor Relations Act (NLRA)= Protects all employees—even non-union members—from being fired for complaining about their jobs, if activity is concerted

- Concerted = employee must act with or with fellow employees' authority, not on own behalf
- Enforced by Nat'l Labor Relations Board (NLRB)
- Hispanics United. Facebook posts between employees about job performance or criticizing employer are protected speech under NLRA.
- Political speech only protected by NLRA if it relates to unionization or other work-related issues

2. **1st Amendment in the Workplace**

§Limited free speech rights at work= Only federal, state, + local gov't employees have (some) free speech rights under 1A; private-sector employees do not

- Union contracts used to protect many private-sector workers from speech-related terminations b/c they prohibited termination w/o "just cause"
- Only 6.4% of public-sector workers belong to union
- Off-duty speech and activities= Employers, in general, have right to fire workers for off-duty conduct and speech
- Employee fired her from insulation-packing job b/c employer disapproved of her John Kerry bumper sticker

§Speech by gov't employees= 1A protection of gov't-employee speech limited to speech that addresses a matter of public concern

- Matter of public concern = subject worthy of public attention
 - Political or social issues typically qualify
 - Personal grievances and many forms of nonpolitical self-expression typically do not
 - ExampleNYC social worker complained on TV that city child welfare agency didn't adequately protect children from abuse. City suspended her; worker sued and won.
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| 3. After Incorporation | <p>§Directors and Officers</p> <ul style="list-style-type: none"> •Incorporators elect first set of directors. Then, SHs elect directors. •Under MBCA, corp. req'd to have at least 1 director unless <ol style="list-style-type: none"> (1) all SHs agree to eliminate BOD, or (2) corp. has 50 or fewer SHs. •SHs elect directors at mtg. or by written consent •Directors then elect corporate officers. DE and MBCA req. corp. to have whatever officers are described in bylaws. •Minute book= Written consents and any meeting record kept in minute book—official corporate record. Essential to keep minute records accurate. <p>§Bylaws</p> <ul style="list-style-type: none"> •Lists all "housekeeping" details for corporation •Better to place optional provisions in bylaws rather than AOI b/c bylaws are easier to change •Under DGCL, both SHs and BOD can change bylaws. <p>•Bylaws usually:</p> <ul style="list-style-type: none"> •Set date of annual SHs meeting •Definition of what quorum is (what percentage of stock must be represented for meeting to count) •Set number of directors •Give titles to officers •Fix procedure for calling special SH or BOD meetings •Establish fiscal (tax) year for corp. <p>§Shareholder agreements</p> <ul style="list-style-type: none"> •Right of First Refusal •If SH wants to sell, she must seek out outside buyer's offer. With the outsider's offer in hand, she must first offer stock to company—or to other SHs—at same price outsider has offered. •If, after 30 days, company or other SHs has not agreed to buy/buy back stock, she must offer its to other SHs. •Only once company and/or other SHs refuse to buy can she sell it to outsider. •Right of First Offer Instead of forcing SH to get bona fide offer before coming to company, SH required to negotiate with company first. If that doesn't work, SH then free to find 3rd party to sell to at same/higher price. <p>§Foreign Corporations= Must register in any state in which corp. does biz; corp. called "domestic" in state of incorp. only</p> <ul style="list-style-type: none"> •Requires opening office, est. on going presence (having a registered agent) in state; paying fees and state taxes •Ongoing presence = more than isolated transaction: Holding mtgs., opening bank acct, soliciting sales orders don't count as "doing business" <p>§Debt Issuance= Authorizing debt one of first corp. steps</p> <ul style="list-style-type: none"> •Could be secured by company assets (e.g., bonds or notes) •Could be unsecured (e.g., debentures) |
| 4. Age Discrimination | <p>Under Age Discrimination in Employment Act (ADEA), employer with 20 or more workers may not fire, refuse to hire, fail to promote, or otherwise reduce employment opportunities because he is 40 or older.</p> <ul style="list-style-type: none"> •Can file: disparate treatment, disparate impact or hostile work environment claims •Reid v. Google <p>§Main defense: Bona Fide Occupational Qualification (BFOQ)</p> |
| 5. Agency | <p>"indicates the relation which exists where one person acts for another."</p> <ul style="list-style-type: none"> •It concerns responsibility for actions of others and their consequent obligations to you. <p>•Why do we care about agency?</p> <p>Principals have substantial liability—in tort and contract—for actions of their agents. Whether an agency relationship exists has profound financial consequences, especially in business contexts.</p> |

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| 6. Agency: Consent + Control | <p>§"Mutual consent" clarified= Principal must ask agent to do something, and agent must agree.</p> <ul style="list-style-type: none"> •Typically, consent ≠passive permission. It involves a: •Request; •Instruction •Command. <p>§Same facts as before but: What if Polly had told Wilma which route to take? Or specified that only Wilma could drive the car? Or asked her to pick up a package for her on the way?</p> <p>•Starts to look more like agency,even though Polly is doing Wilma a favor by loaning her car,because Polly exerts some control over Wilma's actions.</p> <p>§"Subject to principal's control"= Principals are liable for agent's acts because they exercise control over agent. Only small degree of influence necessary to demonstrate control.</p> |
| 7. Agency Relationship | <p>To create an agency relationship there must be :</p> <ul style="list-style-type: none"> •(1) A principal and an agent, •(2) who mutually consent that the agent will act on behalf of the principal and •(3) be subject to principal's control, •(4) thereby creating a fiduciary relationship. |
| 8. Agency Relationship Example | <p>§Polly owns her own pet grooming business, Barks and Bubbles. Wilma, Polly's friend, often stops by to chat with Polly and to help her around the store. One day, Polly asks Wilma, "You look like you need a coffee. Why don't you borrow my car and run to Starbucks?" Wilma borrows Polly's car. Is Wilma acting as Polly's agent?</p> <p>•Result= Probably not. Polly simply asks if Wilma wants to borrow her car to perform personal errand. She gives her no instructions; she is not asking Wilma to get her coffee; she does not limit who can drive the car.</p> |
| 9. Agents' Fiduciary Duties | <p>Fiduciary Duty= Agent owes fiduciary duty—duties of loyalty, care and good faith—to her principal. Agent may not:</p> <ul style="list-style-type: none"> •(1) Receive profits resulting from agency r/s unless principal knows and approves. •(2) Disclose or use for her own benefit any confidential info she acquires during her agency. •(3) Compete with her principal in any matter w/i scope of agency business. •(4) Act for two principals whose interests conflict (without consent of both principals). •Rules apply even in absence of non-compete agmt |

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| 10. Agents' Fiduciary Duties Ex. | <p>Laurel starts a EnPointe fitness studio, modeled on NYC Ballet training methods, using barre, pilates, and plyometric equipment. She hires former prima ballerina, Misty, as lead instructor. While still working for Laurel:</p> <ul style="list-style-type: none"> •Misty meets Sam during a community outreach event sponsored by EnPointe. Sam hires Misty to teach dance-inspired fitness classes at her women's only gym. May Misty keep her earnings from Sam's classes? •Answer: In general, no.Misty may not compete with Laurel in the dance-inspired fitness industry, unless she obtains consent from Laurel. <p>**Same facts as before but:**</p> <ul style="list-style-type: none"> •Lila is an EnPointe client. She is so thrilled at meeting her fitness goals after a month of attending classes that she hands Misty a check for \$5,000. May Misty keep the check? •Answer: Only if Laurel knows and approves.Without approval, Misty may have turn over—disgorge—her gift to Laurel. <p>***§Same facts as before but:**</p> <ul style="list-style-type: none"> •Fed up with Laurel, Misty prepares to open her own ballet-influenced fitness studio. She wants to use Laurel's customer list in order to inform clients that she is starting her own studio. She uses her own computer to create her marketing materials on her day off. May Misty use Laurel's customer list? •Answer: No.Laurel's customer list is confidential, and cannot be disclosed or use for Misty's own benefit •Note:This is true, even after agency r/s terminates and even without a non-compete agreement |
| 11. AGENTS Liability for Contracts | <p>General rule—Agent's liability depends on how much 3rd party knows about principal: Is principal fully disclosed, unidentified, or undisclosed?</p> <ul style="list-style-type: none"> •No agent liability for contracts made on behalf of fully disclosed principal. •Fully disclosed = 3rd party knows of principal's existence and his identity •Joint and several liability for contracts made on behalf of unidentified oran undisclosed principal. •Unidentified = 3rd party knows of principal's existence, but not his identity •Undisclosed = 3rd party doesn't know of principal's existence or identity |
| 12. AGENTS Liability for Torts | <p>General rule= Agents are always liable for their own torts</p> <p>§Agents share joint and several liability with principals in tort litigation</p> <p>§Plaintiffs can sue agent, principal, or both</p> |
| 13. Alternative ethical systems | <p>Other types of ethical systems proscribe how people should behave</p> <ul style="list-style-type: none"> •Built on foundation of personal, family, cultural values-Influenced by religious tenets and personal philosophies •Shaped by knowledge gained from past experiences |
| 14. Articles of Incorporation | <p>§AOI filed w/ secretary of state; often form provided online§Required Provisions</p> <ul style="list-style-type: none"> •(1) Name= MBCA + DGCL require incorporated business to: <ul style="list-style-type: none"> •(a) Use Corporation, Incorporated, Company, or Limited in biz name (Inc. or Corp., OK too) •(b) New corp. name must be diff. from that of any corp. that already exists in that state. •(2) Address and Registered Agent= Official address needed so state can contact it and so anyone who wants to sue can serve complaint •(3) Incorporators= Often lawyer who prepares AOI or corp.'s promoter <ul style="list-style-type: none"> •Liability incurred if misrepresentations are in AOI •(4) Corporate Purpose (very broad)= "The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under X Corporation Law of X State." •(5) Stock= Must provide: par value, number of shares, any classes and series of stock. |

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| <p>15. At-Will Employment</p> | <p>In the absence of explicit employment contract or specific statutory protection, a worker is considered an employee at will.</p> <ul style="list-style-type: none"> •Employees at will= Can be fired for any reason—for good or bad reasons or for no reason at all. •Power imbalance between employees and businesses, so common law and statutory protections are carved out |
| <p>16. Barriers to ethical decision-making §Why is it so hard for us to see the moral/ethical implications of our decisions? Why is it so hard for us to speak up, even when we do recognize them?</p> | <ul style="list-style-type: none"> •(1) Cognitive errors •(2) Social/organizational pressures •(3) Situational pressures |
| <p>17. Business Judgment Rule</p> | <p>Presumption that, in making a business decision, corporate O/D acted on an informed basis, in good faith, and in the honest belief that the action taken was in the company's best interests</p> <ul style="list-style-type: none"> •Strong presumption in favor of officers and directors in a breach of fiduciary duty lawsuit <p>§Why do we have a Business Judgment Rule?Accomplishes three objectives:</p> <ul style="list-style-type: none"> •(1) Permits O/D to do their job w/o fear of liability for risks inherent in doing business (i.e., unprofitable business decisions) •(2) Keeps judges from 2nd-guessing corporate management •(3) Encourages directors to serve by limiting exposure to litigation. <p>§How does BJR work?</p> <p>Fundamentally, BJR is a burden-shifting device</p> <ul style="list-style-type: none"> •First, SH plaintiff must prove O/D breached fiduciary duties—duty of loyalty, care, or good faith •Then, if SH plaintiff cannot prove breach of duty, BJR attaches to protect O/D and their decision from 2nd-guessing by court •Or, if plaintiff can prove breach of duty, burden shifts to defendant O/D to prove "the entire fairness" of transaction to plaintiff. |

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| 18. Cognitive Errors | <p>§Incrementalism ("the slippery slope")= Minor infractions, over time, lead to major infractions ·Our brains aren't hardwired to perceive small changes over time: continued exposure to unethical behavior is desensitizing ·Example: Most instances of accounting fraud begins w/ people altering small amounts that grow larger over time.</p> <p>§Tangible vs. Abstract= Natural tendency to consider immediate/ tangible factors at expense of removed, abstract factors ·Moral distance: Easier to relate to relatively minor harms to family, children, co-workers, pets than more serious harms to those we don't know ·Example: Ignoring evidence of dangers of new pharmaceutical drug in rush to beat competing drug to market ·Example: Auditors certifying inaccurate financial statements might feel removed from nameless, faceless investors</p> <p>§Loss Aversion: Tendency to hate losses more than we enjoy gains. (Sunstein 2013). ·More likely to make immoral decisions to avoid perceived potential losses than we would to make perceived gains. ·Short-term vs. long-term decision making</p> <p>§Euphemisms/Reframing: Tendency to make different decisions based on how Q is framed ·"Smoothing earnings" vs. "cooking the books"</p> |
| 19. Common Stock | <p>Common SHs typically have most voting rights.</p> <p>·Greater profit potential b/c no limit on size of dividends; increases in value more quickly ·Last in line for dividend payments and liquidation proceeds</p> |
| 20. Concerted Action | <p>§Strikes= NLRA guarantees employees' right to strike, after giving 60 days' notice. Guaranteed right to strike if: ·(1) Parties can't reach a collective bargaining agmt; ·(2) Union wishes to protest an unfair labor practice.</p> <p>§Replacement Workers= When employees strike, mgmt has right to use replacement workers. ·If goal of strike is to gain wages/benefits, employer can hire permanent replacement workers, and union members aren't entitled to get jobs back. ·If goal of strike is to protest ULP, union members get their jobs back after the strike ends.</p> |
| 21. Contractual Exceptions | <p>§Written employment contracts= Often set out policies and procedures for employee termination</p> <p>§Implied contract exceptions= Courts willing to imply contract terms in absence of written agreement ·(1) Employee handbooksWhere employee handbook sets out policies and procedures for termination, it creates a contract ·Employer responseProvisions in handbook stating that handbook is not a contract and can be modified at any time</p> <p>·(2) Promises/disclosures during hiring processMay be enforceable, even if not approved by higher-ups. Employer liable for: ·Promises that they cannot keep (e.g., if certain compensation promised) ·Failure to disclose important information in hiring process (e.g., if employer anticipates merger in near-future)</p> <p>·(3) Covenant of Good Faith and Fair Dealing Employer may not, e.g., fire worker to avoid paying promised income or benefits</p> <p>Other Exception: §Union Collective Bargaining Agreements= Union members may be protected by CBA—a contract guaranteeing union members certain employment rights ·CBAs often prohibit companies from firing union members without "just cause" and require company to follow certain procedures in order to proceed with termination</p> |

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| 22. Corporate Conflicts of Interest | <p>§2 sets of corp. managers: directors + officers</p> <p>(1) SH-elected directors set policy and</p> <p>(2) director-chosen officers implement policy</p> <p>§Fundamental problem: Interests of managers, SHs, and stakeholders are not necessarily aligned, giving rise to conflicts</p> <ul style="list-style-type: none"> •What does a manager want? •What do SHs want? •What do stakeholders want? |
| 23. Corporate Control & Management | <p>**Internal corporate structure= Stockholders own shares—shares represent ultimate ownership interest in the corporation.</p> <ul style="list-style-type: none"> •Shares may be divided into different classes with different financial and voting rights •No limits on number of SHs or number of shares a corporation may issue •Have only limited rights and powers: <ul style="list-style-type: none"> •Power to elect, remove, replace directors on BOD•Power to amend, repeal bylaws •Power to approve fundamental corporate changes (e.g., mergers) •Power to maintain derivative action on behalf of corporation •Right to receive distributions (e.g., dividends) <p>**Board of Directors= Responsible for managing corporate business. Seat of ultimate management and control.</p> <ul style="list-style-type: none"> •Selects officers to execute BOD decisions and conduct everyday business. BOD hires/fires CEO. •OFFICERS—essentially corporate management—often have broad discretion, esp. in a large, publicly held corporation. •Officers incl., a president, VP, secretary, and a treasurer (could be a single person) •Officers/directors may be SHs, but not req'd to own shares <p>**Logistics= Corporations must hold meetings for both shareholders and directors.</p> <ul style="list-style-type: none"> •Minutes of mtgs. must be kept indefinitely •Failure to hold meetings and record minutes or comply with corporate formalities can destroy limited liability of the organization (e.g., "piercing the corporate veil") |
| 24. Corporate Dissolution | <p>§Piercing the Corporate Veil= Corporation's limited liability forcibly revoked by court</p> <ul style="list-style-type: none"> •Will discuss Wednesday <p>§Voluntary Termination= Voluntary dissolution of corporation in 3 steps:</p> <ul style="list-style-type: none"> •(1) Vote. BOD recommends to SHs that corp. be dissolved; majority of SHs must agree. •(2) Filing.Corp. files Articles of Dissolution w/ sec. of state. •(3)Winding up. Debts paid; assets distributed to SHs. <p>§Forced Termination= Involuntary or court-ordered dissolution</p> <ul style="list-style-type: none"> •Sec. of state may dissolve for failure to pay annual fees. •Court can dissolve where corp. insolvent or if BOD/SHs cannot resolve conflict over how corp. should be managed. •Insolvent = balance sheet liabilities > corp. assets |
| 25. Corporate Taxation | <p>Corporation as Taxable Entity= Corporation must pay income tax on its profits and file its own tax return.</p> <ul style="list-style-type: none"> •Current top federal corporate tax rate is 21% (actual effective tax rate predicted to be approx. 10%) •Shareholders must also pay personal income tax on any dividends distributed. •In theory, every dollar is taxed twice before being deposited by a shareholder. •All publicly held companies taxed as C Corps |

26. **Corporations**

Corporation is a legal entity separate from its owners—the shareholders.

•Corporation as legal fiction= Imagine it as an artificial person having most of same powers, rights, and duties as an individual:

- May sue and be sued
- May enter into contracts
- May purchase property
- May run a business
- Even have free speech rts. under 1A (!)

27. **Corporation types**

§Publicly held corporations= Corporations for which a public market exists for ownership interests

•NYSE & NASDAQ: two largest markets for stock shares

§Closely held corporations= Typically, corporation in which:

- (1) Number of shareholders is small
- (2) Most of principal shareholders participate in management
- (3) No active market for shares
- Transfer of shares may be restricted by **buy-sell agreements

28. **David has worked as a CPA for Accountants R Us for eight months. Because he and his wife are expecting a baby, he requests time off. How much time off is David entitled to under the Family and Medical Leave Act?**

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- A. 6 weeks
- B. 12 weeks
- C. 24 weeks
- D. None

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| 29. Defective Incorporation | <p>§De Jure Corporation</p> <ul style="list-style-type: none"> •Promoter has substantially complied with legal incorporation requirements but has made minor error •De Jure= by law •Effect:Corp. treated as completely valid •ExamplePromoter misspells name of corp.'s registered agent in Articles of Incorporation <p>§De Facto Corporation</p> <ul style="list-style-type: none"> •Promoter has made good faith effort to incorporate and has actually used corp. to conduct business •De Facto= in fact •Effect: Statecan challenge validity of corp., but not 3rdparty •Example= Promoter fills out AOI form and files it; secretary of state doesn't stamp it for weeks. Promoter enters lease. •LL can't challenge validity of corp. to argue that promoter is personally liable to pay lease. <p>§Corporation by Estoppel= if party enters into K believing in good faith that corp. exists, party cannot later take advantage of fact that it does not actually exist</p> <ul style="list-style-type: none"> •Example- Promoter's atty tells him that corp. is formed, but in fact, hadn't even drawn up AOI. Meanwhile, promoter takes out loan with bank in corp's name. •Promoter liable b/c he (and bank) believed corp. existed; cannot now refuse to pay back loan simply b/c corp. did not yet exist |
| 30. Disability | <p>A physical or mental impairment that substantially limits a major life activity or a major bodily function, or someone regarded as having such an impairment-Wearing glasses, contact lenses does not qualify-Employee suffering disabling illness that can be controlled by medicine—e.g., diabetes, mental illness—still qualifies as having a disability</p> |
| 31. Disability Discrimination | <p>§Americans with Disabilities Act (ADA)= Prohibits employers with 15 or more workers from discriminating on basis of disability as long as work can, with reasonable accommodations, perform essential job functions.</p> <p>§Accommodations unreasonable if they create undue hardship (e.g., too costly) for employer</p> <ul style="list-style-type: none"> •Employers must make facilities accessible; permit part-time schedules, acquire/modify equipment; assign EE to job she can perform •Can file: disparate treatment, disparate impact or hostile work environment claims •Willoughby v. Conn. Container Corp. |
| 32. Disparate Impact | <p>Applies where employer practice or policy is not, on its face, discriminatory, but in practice has a discriminatory effect</p> <ul style="list-style-type: none"> •Plaintiff does not prove intentional discrimination |
| 33. Disparate Treatment | <p>§Disparate treatment= Alleges intentional discrimination on basis of sex, race, color, religion, or nat'lorigin</p> <ul style="list-style-type: none"> •Discriminatory motives can be inferred from differences in employers' treatment of different types of workers |

34. **Disparate Treatment example**

§Litigating Disparate Treatment: Vasquez v. Starwood Hotels

•Facts: Appearance policy at Starwood Hotels prohibited employees from wearing hairstyles that "showed excessive scalp." Carmelita Vasquez, who was black and Hispanic, was fired after she repeatedly violated policy by coming to work with her hair in cornrows. White workers were evidently allowed to wear their hair in braids.

•Step 1—Plaintiff's prima facie case Plaintiff presents evidence that he/she

(1) belongs to protected class of persons;

(2) suffered adverse employment action; and

(3) action gives rise to inference of discrimination

•How does this step work in practice? Vasquez belongs to protected class (race); was fired (adverse action); and was treated differently than white workers (inference of discrimination).

•Step 2—Defense responds Defendant must then show its decision was based on legitimate, non-discriminatory reasons. How does this step work in practice? Starwood must present evidence that its appearance policy applied to all employees and had a legitimate business purpose (i.e., that its purpose was to maintain professional appearance).

•Step 3—Plaintiff proves discriminatory intent To win, plaintiff must now prove employer

(a) intentionally discriminated or

(b) defense's reasons for action are pretextual.

•How does this step work in practice? Vasquez presents evidence that Starwood did not apply its appearance policy to white workers and that only employees wearing cornrows—not regular braids—were disciplined/fired.

§Litigating Disparate Treatment: Griggs v. Duke Power Co.

•Facts: Duke Power Co. required applicants for higher-paying, promotional positions to meet 2 requirements: they

(1) needed to have HS diploma and

(2) pass a standardized written test No evidence presented that either related to specific job requirements.

Step 1—Plaintiff's prima facie case Plaintiff shows employment policy/practice excludes disproportionate number of people in a protected class.

•How does this step work in practice? In Griggs, far higher percentage of white than blacks passed two tests required for better paying jobs; white workers at that time were also more likely to have HS diploma.

•Step 2—Defense response Defendant offers evidence that practice/policy was job-related business necessity.

•How does this step work in practice? Duke Power argued its prerequisites measured intelligence and mechanical ability and predicted job performance.

•Step 3—Plaintiff's Rebuttal= to win, plaintiff must prove

(1) employer's reason is pretext for discrimination or

(2) other, less-discriminatory, practices would achieve same results.

•How does this step work in practice? Griggs plaintiff shows test did not, in fact, predict job performance—workers hired before tests were required performed well. Test was pretext for discrimination against black workers.

35. **Doctrine of respondeat superior**

Employer-principal liable by employee-agent where:

•(1) employee commits a physical tort within the scope of employment or after negligent hiring or supervision

•Was employee's action authorized by employer?

•Was the employee simply on a detour or off on a frolic?

•(2) employee commits a non physical tort while acting with express, implied, or apparent authority of employer-principal.

•Non-physical torts = purely reputational, emotional, and financial harms.

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| 36. Duty of Care Definition | <p>§Duty of Care= Officers/directors owe that degree of care that business person of ordinary prudence would exercise in management of own affairs</p> <ul style="list-style-type: none"> •Nature and extent of reasonable care= Depends on type of entity, its size, and financial resources <p>§Scope of Duty of Care= Prior to making business decision, O/D must</p> <ol style="list-style-type: none"> (1) act within legal bounds; (2) inform themselves of all reasonably available material information; and (3) ensure decision has a rational business purpose. <ul style="list-style-type: none"> •Factual inquiry: Need not be informed of every fact, but requires more than passive acceptance of info presented to BOD•BOD must cast "critical eye" in assessing information in order to protect corp. interests and SHs <p>§Rational Business Purpose= requirement interpreted generously by courts</p> <p>§Responsibilities of Officers/Directors</p> <ol style="list-style-type: none"> •(1) Acquire at least basic understanding of corp. biz •(2) Keep informed about corp. acts •(3) Monitor/police corp. affairs/policies •(4) Be familiar with corp.'s financial status •(5) Inquire further into matters revealed by financial statements <ul style="list-style-type: none"> •If illegal acts are discovered, O/D may have duty to: •Seek advice of counsel •Threaten suit to prevent continued misconduct •Object and resign (if conduct not corrected) <p>§Takeaway= In essence, breach of duty of care is failure to take sufficient time to act in a deliberative manner to consider and evaluate pending business decision</p> <ul style="list-style-type: none"> •Did the officers/directors... •Know meeting's purpose in advance? •Review key documents or summaries thereof? •Consult independent legal/finance advisors? •Discuss pending decision extensively? •Consider alternative proposals? |
| 37. Duty of Care Example | <p>Francis v. United Jersey Bank (1981)Facts:</p> <ul style="list-style-type: none"> •Lillian Pritchard inherited majority stake in Pritchard & Baird, reinsurance broker, and served as director; her 2 sons, Charles + William, also served as directors. •Reinsurance broker holds funds in trust for insurance and reinsurance companies •Over several years, C+W withdrew \$12 million in "loans" from corp., taken from funds held in trust for clients. Before he died, Pritchard's husband had warned her "to keep an eye" on their sons' business dealings. <ul style="list-style-type: none"> •Absorbed by grief and alcohol following her husband's death, Lillian did nothing in her role as director: •Never went to corporate office; •Never made any attempt to learn about reinsurance; •Never received or read financial statements; •Knew nothing of corporate affairs or policies. •All this, in spite of fact that husband had warned her to watch out for sons' treachery before he died•Lillian dies after "loans" lead to bankruptcy and discovery of stolen funds. •Bankruptcy trustee, on behalf of creditors, sues Lillian's estate to recover stolen \$ •"personally" liable <ul style="list-style-type: none"> •Issue in question: Can BJR be used to protect her estate from liability for sons' misdeeds? •Creditors are asking court to "pierce the corporate veil" and hold Pritchard personally liable. |

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| 38. Duty of Good Faith | <p>More nebulous concept, but generally requires officers and directors:</p> <ul style="list-style-type: none"> •To act with honesty •To adhere accepted standards of decency in the conduct of business; •To adhere to accepted basic corporate norms •To have fidelity in their office |
| 39. Duty of Loyalty | <p>Prohibits officers/directors from making a decision that benefits them at expense of corp. and SHs.</p> <p>§Two types of conflict-of-interest cases:</p> <ul style="list-style-type: none"> •(1) Self-dealing cases (In re S. Peru Copper) •(2) Corporate opportunity cases (Bellino) •Some states view Duty of Good Faith and Fair Dealing as part of Duty of Loyalty requirement <p>§Corporate Opportunity Doctrine= Prohibits O/D from competing against corporation for favorable deals without first obtaining consent</p> <ul style="list-style-type: none"> •Right of first offer requirement= O/D must first offer opportunity to disinterested directors and SHs. Only if they turn it down does O/D have right to take advantage of opportunity herself. •What if O/D fails to seek permission? Can still avoid liability by showing that corp. would have been unable to benefit from opportunity. •High burden of proof (hard to prove inability to benefit) |
| 40. Duty of Loyalty Ex. 2 | <p>§In re S. Peru Copper Corp. Shareholder Derivative Litigation (2011):</p> <ul style="list-style-type: none"> •Facts= Grupo Mexico is controlling SH in S. Peru Copper Corp. (SPC); it also owns 99% SH of Minera Mexico. Grupo wants to trade all its Minera stock for \$3.1 bn of SPCC shares. SPCC forms special litigation committee to "justify" the transaction. •Problem= Goldman Sachs says Minera stock only worth \$2.8 bn, not \$3.1 bn. To justify the deal, committee then "optimizes" Minera's cash flows—using accounting tricks—and devalues SPC's, ignoring that Minera was a struggling corp., while SPC was thriving/debt-free. •Terms of final deal= At recommendation of committee, SPC approves deal, pays \$3.75 bn for Minera, still only worth \$2.8 bn. •Result= Minority SHs in SPCC sue the BOD in a derivative action for breach of duty of loyalty (self-dealing). •Court's ruling and reasoning= BOD engaged in self-dealing even though it app'ted SLC to examine the deal. SLC viewed its mission as being able to "justify" the transaction, when its mission should have been to test whether deal was fair to the corp. and a good idea. <p>§SPCC knew that its deal to acquire Minera Mexico would be scrutinized as unfair—that's why they appointed a special committee of "disinterested" board members to review the deal!</p> <ul style="list-style-type: none"> •Q: So why, then, did such an unfair deal get approved by the committee? •A: Ethical lapses by "disinterested" SLC members such as: <ul style="list-style-type: none"> •Conformity bias •Obedience to authority •Reframing ("maximizing cash flows" vs. "cooking the books") •Diffusion of responsibility •Short-term vs. long-term decision-making |

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| 41. Duty of Loyalty Ex. 3 | <p>§Example=</p> <p>Otto and Nick form a corp. to operate furniture store in Blacksburg. Otto owns 51% of corp. stock; Nick owns 49%. Otto personally signs a lease w/ Landlord to rent out a storefront. He then enters into lease b/t himself and the corp. at a price 20% higher than he pays Landlord. Nick sues, alleging lease is invalid. Who wins?</p> <p>•Result: Nick.</p> <p>Otto has engaged in self-dealing—the lease for the storefront directly financially benefitted him at the expense of the corp. By engaging in self-dealing, Otto has breached his fiduciary duty of loyalty, so</p> <p>(1) he is personally liable to corp. for any damages; and</p> <p>(2) lease is invalid.</p> |
| 42. Duty of Loyalty example | <p>§Anderson v. Bellino</p> <p>•Facts= Bellino+ Anderson co-own, are directors of LaVistaLottery, which holds city Keno contract</p> <p>•Bellino, behind Anderson's back, convinces city council to put city Keno K up for bid; he then forms corp. to bid on K, in competition with Lottery.</p> <p>•Bellino's new corp. awarded K; Anderson sues</p> <p>•Issues:</p> <p>•(1) By submitting a bid, did Bellino usurp a corporate opportunity?</p> <p>•Yes. Successful award of K was corporate opp. for Lottery, not simply right to bid.</p> <p>•(2) Did Bellino act in bad faith to deprive Lottery of business by his successful bid for the Keno K?•Yes. Bellino's successful bid deprived Lottery of its only source of business. Bellino motivated by jealousy of Anderson.</p> |
| 43. Duty of Loyalty: Self Dealing | <p>§Self-Dealing= O/D engages in self-dealing if she makes decision that</p> <p>(1) benefits herself financially or</p> <p>(2) another company in which she has an interest.</p> <p>§Effect of Business Judgment Rule= Once O/D engages in self-dealing, BJR no longer applies, and transaction is no longer presumed acceptable. Instead, deal is scrutinized (see next slide).</p> <p>§Self-dealing transactions valid where:</p> <p>•(1) Disinterested board members form special litigation committee(SLC) that approves transaction;</p> <p>•(2) Disinterested SHs approve transaction; or</p> <p>•(3) Transaction entirely fair to corporation.</p> <p>•Fairness =Did transaction harm corp.? Was price reasonable (i.e., near market value)?</p> |
| 44. EEOC Procedures | <p>§Equal Employment Opportunity Commission (EEOC)= Federal agency responsible for enforcing federal anti-discrimination claims</p> <p>§Process for bringing Title VII suit:</p> <p>•(1) Plaintiff files complaint with EEOC</p> <p>•(2) EEOC investigates and attempts to reach out-of-court settlement</p> <p>•(3) EEOC can decide to sue employer on Plaintiff's behalf or Plaintiff can bring own suit</p> |
| 45. Emerging Perspectives | <p>§Behavioral finance/economics research, influenced by emerging field of behavioral ethics, shows limitations of the rational-actor model</p> <p>•Suggests that most decisions, incl. ethical ones, are made instinctually</p> <p>§"Moral Myopia" + "Moral Muteness"*</p> <p>•Moral myopia: failure to recognize unethical business decision-making as such</p> <p>•Moral muteness: failure to speak out and/or act against such decisions</p> |

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| 46. Employment Security | <p>§Family and Medical Leave Act (FMLA)= Federal law guarantees both men + women up to 12 weeks' unpaid leave each year for childbirth, adoption, or a serious health condition of their own or in immediate family</p> <ul style="list-style-type: none"> •Immediate family member =spouse, child, parent •Only applies companies with 50+ workers and to employees who have been with company for 1+ year •Serious health condition = condition that requires more than 1 visit to healthcare provider; or that requires physical therapy or prescription medication |
| 47. Enforcing SH Rights | <p>§Shareholders in serious conflict with management have two different mechanisms for enforcing their rights:</p> <p>§(1) Direct suit= SHs permitted to sue corporation directly only if their own rights have been harmed. •SH sues in her own name—not on behalf of corp.—and keeps any damages awarded.</p> <ul style="list-style-type: none"> •SHs' legal fees not paid by corporation •When is direct suit appropriate?If corporation denies SHs some right—e.g., right to inspect its books, to hold SH meeting, access to info <p>§(2) Derivative suits= SHs allege corporation itself was harmed (usu. by BOD); damage to SHs is indirect, through ownership of entity</p> <ul style="list-style-type: none"> •Suit brought in corporation's name; damages awarded to corporation itself •SHs' legal fees paid by corporation •When is derivative suit appropriate?Most often used for breach of fiduciary duty cases <p>§Making Demand in Derivative Suits= SHs must notify BOD of corporate wrong and ask BOD to bring suit on corp.'s behalf</p> <ul style="list-style-type: none"> •Once SHs make demand, BOD has three choices: <ul style="list-style-type: none"> •(1) Agree w/ SHs and file suit on behalf of corp. •(2) Reject demand (or fail to respond). •(3) Appoint a Special Litigation Counsel •When is demand "futile"?= If SH can show BOD has conflict of interest, lacks necessary independence to act in best interest of corp., or violated BJR, SHs have right to bring suit without BOD approval |
| 48. Factors for determining whether partnership exists: | <ul style="list-style-type: none"> •Intent to earn profits •Sharing of profits •Sharing of losses •Participation in management of business •Oral or written agreement |
| 49. Fiduciary Duties | <p>§Three types of fiduciary duties (in any state):</p> <ul style="list-style-type: none"> •(1) Duty of Care •(2) Duty of Loyalty •(3) Duty of Good Faith and Fair Dealing <p>§Defense to breach of fiduciary duty suits:</p> <ul style="list-style-type: none"> •Business Judgment Rule |

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| 50. The following elements are not required to create an agency relationship: | <ul style="list-style-type: none"> •(1) Written agreement Verbal agency agreements are valid, except.. •Exception: Formal dignities ruleWhere Statute of Frauds requires K to be in writing, appointment of agent must also be written. •(2) Formal agreement As long as two individual act like agent and principal, agency r/s exists •(3) Compensation.Principal need not pay agent for agency r/s to exist |
| 51. Forming a Corporation | <p>Two basic documents govern corporations:</p> <p>§(1) Articles of Incorporation= Filed w/ secretary of state to form corporation; act as basic constitution for particular corporation</p> <ul style="list-style-type: none"> •Requires (some annual) legal and filing fees •Available to members of the public; may be amended <p>§(2) Corporate bylaws= Internal set of rules for corporate governance</p> <ul style="list-style-type: none"> •Deal with: elections, notices, size of board of directors, restrictions on share transfers, etc. |
| 52. GP Control & Management | <p>§In absence of partnership agreement:</p> <ul style="list-style-type: none"> •All firms partners have an equal right to share in management and business operations. •All partners have equal votes for ordinary business decisions •Partners have apparent and actual authority to bind partnership to business obligations •Partners share profits and losses equally(regardless of money, time, or effort an individual partner contributes to business) •Partners not entitled to payment beyond their share of profits |
| 53. Hiring Practices | <p>§Interviews= Review chart on pg. 788 (§30-10 Hiring Practices) for how employers may legally inquire about whether or not employees belong to a protected class</p> <ul style="list-style-type: none"> •Questions like "How tall are you? Or how much do you weigh?" that might have disparate impact on women are rephrased: "Could you carry a 100-lb. weight, as required by this job?" <p>§Social Media= Social media vetting sometimes reveals info that it is illegal for employers to base decisions on—race, age, religion, pregnancy, etc.</p> <ul style="list-style-type: none"> •Impermissible to use this info, but harder for employees to prove discrimination |

54. **Hostile Work Environment**

§Employers violate Title VII if they permit a work environment so hostile toward a protected class that it affects their ability to work.

•Sexual harassment definedInvolves unwelcome sexual advances, requests for sexual favors, and other sexualized verbal or physical conduct that interferes with employee's ability to work.

•Two categories:

•(1) Quid pro quo. Some aspect of job made contingent upon sexual favors.

•(2) Hostile work environmentE.g., offensive jokes, intrusive sexualized comments, public displays of sexual images.

§HWE claims apply if hostility is based on race, color, sex, or nat'l origin.(Sexual harassment claims also apply to same-sex harassment)

§Joint and several employer liability for harassment where:

•Company knew/should have known about conduct and failed to stop it; or

•Company was not aware, but employee suffered adverse employment action (firing, demotion, reassignment).

•No liability if:

(1) company used reasonable care to prevent/correct behavior and

(2) employee unreasonably failed to take advantage of complaint procedures provided by company.

55. **How do I make ethical decisions?**

Step 1: Recognizing an ethical (and/or legal) issue exists

§Could decision/situation damage someone?•Choice could involve: good vs. bad, good vs. good, bad vs. bad alternatives

§Is choice more about what is legal, or is it more about is ethical?

•What must I do vs. what should I do?

•If proposed action is illegal, don't do it

Step 2: Fact-gathering

§What relevant facts are known or unknown?

•Do I have access if I need more info?

§How does the situation change if I alter my biases/assumptions?

§What individuals/groups have a stake in the outcome—how might they be affected?

•Is there a hierarchy among those stakeholders? Why?

•Have all stakeholders been consulted?

§What actions might I take?

•If conflict b/t integrity and firm exists, are there ways to lessen or avoid the conflict?

Step 3: Clarifying the Decision-making Process

§Is this a decision I can make?

•Do I have the organizational backing (i.e., formal authority) and support (i.e., informal backing) to decide?

§Whom can I reasonably include or get input from, given the circumstances?

§Is there any documented organizational guidance?

§How much of a stake do I have in the decision and its aftermath?

Step 4: Evaluate Alternative Actions

§Utilitarian Approach= Asks: Which option will produce the most good and do the least harm?•Will certain stakeholders be especially harmed? Will they feel negatively toward the org. or seek to hurt it?

•Are there natural alliances among stakeholders that could be developed?

•If the public finds out, will it lead to lawsuits?

§The Rights/Duties Approach= Asks: Which option best respects the moral rights of all stakeholders?•Does the action violate any human rights?

•What action best meets established moral guidelines and common sense? (e.g., promise-keeping, respect for others, refraining from lying/cheating, fairness)

§The Fairness Approach= Asks: Which option treats people equally or proportionately?

§The Virtue Approach= Asks: Which option leads me to act as the sort of person I want to be?•What character traits does the org. need to be successful over time? To what extent do these action reflect those character traits?

•What decision can I live with? What decision will allow me to live better w/ others?

Step 5: Make a Decision and Test It

Which approach best addresses the situation?

•Public Disclosure Test= How would I feel if this action were described on the front page of a respected newspaper?

•Universalization Test= How would I feel if everyone in a similar situation did this?

•Suitability Test= How would my (our) action be viewed by members of this community?

56. **Incorporation Process**

Sources of corporation law

•Model Business Corporation Act (MBCA)= Source of most states' corporate law

•Delaware General Corporation Law (DGCL)= Over ½ of all public companies incorporated in DE, incl. 60% of Fortune 500 companies

•Note: No federal corporate code. Business can only incorporate under state law.

•Articles of Incorporation + corporate bylaws

•AIC: basic constitution for the corporation

•Bylaws: internal corporate governance documents

57. **Key Corporate Characteristics**

§(1) Limited liability= No personal liability of shareholders for corporate debts or for negligence/intentional torts of corporate employees.

•May not matter in 1-person corporation where creditors insist on personal guarantees or where shareholder personally involved in management (still directly liable if a tortfeasor)

§(2) Perpetual existence= Corporations continue perpetually, even upon death of shareholders

•May not be advantageous where 1 of 2 SHs wants to dissolve business to cash out

§(3) Centralized management= Managed by board of directors elected by SHs rather than managed directly by SHs

•Gives rise to **oppression** closely held corp. where majority SH is able to control BOD and exact benefits from corporation to the exclusion of minority SHs

§(4) Free transferability of shares= Corporate stock bought and sold freely

•Disadvantage in closely held corp. where SHs likely prefer to exert control over those who may be involved in business

•Thus, the importance of **buy-sell agreements

58. **Labor Law Basics**

§National Labor Relations Act (NLRA)= Federal law that guarantees employees' right to organize and join unions and bargain collectively through reps of their own choosing. Enforced by Nat'l Labor Relations Board (NLRB).

•Employers may not engage in Unfair Labor Practices (ULPs), such as:

•Interfering w/ union organizing efforts or union affairs

•Discriminating against union members

•Refusing to collectively bargain with a union

•Unions prohibited from ULPs, such as:

•Interfering w/ employees who exercise their labor rights

•Forcing employers to discriminate against non-union employees

•Charging excessive dues

59. **Legal vs. ethical quandaries problem:**

Minimum standards—rule-or law-based ethical systems—are not designed to promote better conduct, "moral imagination"

•Law-based ethical systems are only designed for compliance

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| 60. LLC Control & Management | <p>Member management= LLC owners called members. Members' rights and responsibilities governed by operating agreement</p> <ul style="list-style-type: none"> •Significant flexibility in how business is run; however, difficult to escape consequences if operating agreement is poorly drafted •LLC members may be individuals, partnerships, corporations or non-U.S. residents •LLCs can also merge with each other <p>§No annuals filings or need to hold annual meetings (as in corporations)</p> <p>§Default voting rule= Votes allocated by percentage interest in LLC</p> <p>§Default transferability of interests rule= Existing LLC members cannot transfer their ownership rights, nor can LLC admit new member w/o unanimous permission of other members</p> |
| 61. LLC Dissolution | <p>§Death, bankruptcy, or retirement of any member may constitute dissolution of LLC, absent an agreement to the contrary</p> <p>§Recent trend= LLC continues to operate even after a member withdraws or dissociates, unless operating agreement requires dissolution</p> |
| 62. LLC Formation | <p>§Articles of Organization= Separate legal entity formed by filing Articles of Organization with secretary of state and paying filing fee</p> <ul style="list-style-type: none"> •May be formed "for any legal purpose", subject to exceptions for certain kinds of banking and insurance businesses <p>§Operating Agreement= Operating agreement—like p/s agmt—not legally required, but necessary to set out rights and obligations of members</p> <ul style="list-style-type: none"> •Particularly important b/c LLC law not as developed as corporate law (lends predictability) |
| 63. LLC Liability | <p>Piercing the LLC Veil= Limited liability revoked where LLC members abuse their privileges. Court may "pierce the veil" where:</p> <ul style="list-style-type: none"> •(1) Failure to observe formalities; commingling assets= Members must treat LLC like separate organization.LLC and its members must keep assets separate. •(2) Failure to provide adequate capital= Members cannot use LLC form to shield themselves from liability, but fail to provide enough capital to actually run and protect business •(3) Commit fraud= Members who use LLC as a shield from liability for fraud will not be protected. |
| 64. LLCs | <p>Limited Liability Company (LLCs)= Hybrid business form that combines desirable tax and business features</p> <ul style="list-style-type: none"> •(1) Limited liability for all owners •(2) Pass-through tax treatments and capital structure of partnership •(3) Almost complete internal flexibility of management and control •Default rules for LLCs drawn from corporation law and from general and limited partnership law •New organizational form so state laws vary widely (less predictable body of law) |
| 65. LLC Taxation | <p>Two possible types of LLC tax treatment:</p> <ul style="list-style-type: none"> •(1) Pass-through treatment for closely held LLCs= Where LLC is closely held, members pay personal income tax on LLC profits, but LLC itself not taxed •(2) Corporate taxation for publicly held LLCs= Once LLC goes public, it loses its favorable tax status; must file under Subchapter C of IRC and pay corporate tax rates |

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| 66. LLPs | <p>Limited Liability Partnerships (LLPs)= Differs from general partnership only because certain partners exempted from personal liability by statute</p> <ul style="list-style-type: none"> •Full shield for general partnersNo personal liability for general partners, unless partner creates obligation through misconduct •Controlled, managed, and taxed like GP •To create, must file registration statement with Secretary of State •Name must refer to LLP status •Must renew annually to keep limited liability |
| 67. Moral Muteness | <p>§Occurs when we witness unethical behavior but say nothing</p> <p>§Reflects preference for conformity bias•Less than half of those who witness organizational misconduct report it</p> <ul style="list-style-type: none"> •Speaking up risks conflict, has social/emotional costs§Requires rationalization: •"It isn't my place to interfere." •"If I don't do it, someone else will." •"Ethics is bad for business." |
| 68. Moral Myopia | <p>§Umbrella term that refers to inability to recognize moral implications of a problem •Psychological defense mechanism: we subconsciously disengage from morality to assuage from guilt about possible harms caused (Tenbrunsel& Messick 2004).</p> <p>§Why might this be a problem?</p> <p>Extreme focus on some situational goals—e.g., meeting sales targets, pleasing boss, winning—obscures ethical issues</p> <ul style="list-style-type: none"> •We only see what we're looking for |
| 69. NEW STUFF: Legal vs. ethical quandaries | <p>§Law-based ethical systems= Rules of law proscribe how people must behave</p> <ul style="list-style-type: none"> •Law imposes duties on us, which vary based on our organizational roles •Provides processes for compliance / remedies for violations •Legal minimalism= Law sets the floor of acceptable concept; it is the minimum standard for behavior |
| 70. Optional AOI Provisions | <p>(1) BOD Liability Waiver/Indemnification Clauses</p> <ul style="list-style-type: none"> •Exculpatory clauses= Protects director from personal liability to corp. or its SHs for anything other than egregious misbehavior (e.g., bad faith, breach of fiduciary duty, or intentional misconduct) •Indemnification clauses= Requires corp. to pay legal fees of directors sued for any actions taken on behalf of corp. <p>(2) Cumulative Voting SystemsStrengthens minority SHs' ability to elect director. Allows SHs to cast all votes for single nominee for BOD when BOD has multiple openings.</p> <ul style="list-style-type: none"> •"Regular" voting system= SHs may give only 1 vote per share for any single nominee |
| 71. Organizing: Actions | <p>§What WORKERS MayDo= NLRA guarantees employees' rights to:</p> <ul style="list-style-type: none"> •(1) Talk with each other about working conditions and forming a union; •(2) Hand out literature related to unions; •(3) Vigorously argue on behalf of union cause; and •(4) Join a union. <p>§What EMPLOYERS MayDo= NLRA guarantees employers' rights to:</p> <ul style="list-style-type: none"> •(1) Vigorously present anti-union views; •Can't use threats or rewards to defeat union drive •Can't fire worker due to support of union •Can't suddenly grant pay raise in middle of union campaign •(2) Restrict organizing discussions if they interfere with business; and •(3) Prohibit union discussions in front of customers. |

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| 72. Other Agent Duties | <p>§Duty of Care= Agent must act with reasonable care. But..</p> <ul style="list-style-type: none"> •Gratuitous agent = liable only for gross negligence, not ordinary negligence <p>§Appropriate behavior= Agent may not engage in behavior that reflects poorly on principal, even when off duty.</p> <ul style="list-style-type: none"> •Example: Gov't contractor, AkimaLLC, w/i rights to fire Juli Briskman, who flipped off Trump's motorcade while riding her bicycle (off-duty). <p>§Duty to obey instructions= Unless directed to act illegally/unethically, agent must obey instructions and provide accurate info to principal.</p> |
| 73. Participating Preferred Stock | <ul style="list-style-type: none"> •Participating preferred stock= Upon liquidation, PPS owners paid first, receiving what was paid for stock plus accrued dividends. Then treated as CS owner and so share rest of proceeds •Favored by venture capitalists |
| 74. Partnership Disadvantages | <p>§Limited capital= Capital needs of partnership must be met by contributions from partners or by borrowing.</p> <p>§Limited transfer of ownership= Partner can't sell share of the organization w/o permission of other partners</p> <ul style="list-style-type: none"> •Can only transfer value of her p/s interest, not interest itself (even if partner dies) •Cannot transfer right to participate in firm management or vote on firm matters |
| 75. Partnership Dissolution | <p>§Unique feature of p/s law= Each partner has power to dissolve partnership relationship at any time</p> <ul style="list-style-type: none"> •"Dissociation"= When partner leaves the partnership, partnership can either: •Wind up business and dissolve partnership •Buy out departing partner and continue in business |
| 76. Partnership Formation | <p>Can be formed by verbal or written agreement (or even by accident)</p> <ul style="list-style-type: none"> •No public filing of any document, other than any required if using a trade name <p>***Revised Uniform Partnership Act (RUPA)= Permits GP to file statement with local Secretary of State containing basic info about partnership</p> <ul style="list-style-type: none"> - Default rules governing partnership set out in RUPA •Default rules = statutory rules that apply absent any private agreements between parties <p>§Hire a lawyer to draft partnership agmt= Advisable to have written agreement so that rights and duties are explicitly defined (esp. to heirs and assigns)</p> <ul style="list-style-type: none"> •Increases formations costs, but plan is in place: •If, e.g., there is a falling out between partners •If, e.g., one partner dies or retires <p>§Partnership by default= Two or more people who carry on a business for profit form a partnership, whether or not they intend to form a partnership.</p> |

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| 77. Partnership Liability | <p>§RUPA rules regarding liability mandatory, cannot be changed by partnership agreement</p> <p>§Under RUPA, every partner is an agent for the partnership. Partnership liable if a partner acts with either:</p> <ul style="list-style-type: none"> •(1) Actual authority= Acts of partner specifically authorized by partnership •(2) Implied authority= Acts of partner reasonably necessary to carry out authorized transaction •(3) Apparent authority=Unauthorized acts of partner if partner appears to be conducting business of partnership <p>§Each partner is personally liable for business debts, whether or not she created obligation.</p> <ul style="list-style-type: none"> •Joint and several liability= Creditor can sue partnership and the partners together, or in separate suits, or in any combination •Creditor cannot seek individual partner's assets until all partnership assets are exhausted <p>§Partnership responsible for intentional torts and negligent acts of partner that occur in ordinary course of business or with actual authority of partners.</p> |
| 78. Partnership Taxation | <p>Partnership not a separate taxable entity= No separate federal income tax return filed</p> <ul style="list-style-type: none"> •Pass-through tax statusPartners pay personal income tax on any profit earned, but partnership itself pays no tax •Partnership prepares information return that shows partnership income and expenses •Return allocates income or loss to individual partners in accordance w/ partnership agmt |
| 79. Partnership Types | <p>*General Partnership= Operation of a business by 2+ co-owners. Each co-owner called a general partner</p> <p>*Limited partnership= Differs from GP in that there are two classes of partners: one or more general partners, and one or more limited partners</p> <ul style="list-style-type: none"> •LPs usu. passive investors: not liable for partnership debts, not participants in day-to-day affairs of business •Must specifically identifyLPs in written partnership agreement |
| 80. Practice Question: | <p>§Jane employs Hank to drive a delivery van for her flower business. Company policy prohibits drivers from talking on the phone while driving. While delivering flowers, Hank hits Roscoe. An investigation reveals Roscoe was talking on the phone at the time of the accident. Is Jane liable to Roscoe for Hank's negligence?</p> <ul style="list-style-type: none"> •A. No, because company policy prohibited talking on the phone. •B. No, because Roscoe was an independent contractor. -----C. Yes, because Jane authorized Hank to drive the van. •D. Yes, because employers are always liable for torts committed by employees. <p>§Jane employs Hank to drive a delivery van for her flower business. While en route to a delivery, Hank stops for lunch at a McDonald's drive-thru. When exiting the lot, Hank hits a pedestrian. Is Jane liable to the pedestrian for Hank's negligence?</p> <ul style="list-style-type: none"> •A. No, because Hank was not acting within the scope of his employment at the time of the accident •B. No, because Jane could not have foreseen that Hank would hit the pedestrian. •C. No, because Jane had not authorized Hank to use the delivery van for personal errands. -----D. Yes, because Hank was simply on a detour from company business. |
| 81. Preferred Stock | <p>SHs get preferential treatment</p> <ul style="list-style-type: none"> •Dividends: PS owners paid dividends before common stock owners •Cumulative vs. non-cumulativePS(p. 861) •Liquidation: PS owners paid share of corp. assets before CS owners upon corp. dissolution •Might have preemptive rights or conversion rights, but not usu. voting rights (pg. 859-60) |
| 82. Pregnancy Discrimination | <p>§RuleUnder Pregnancy Discrimination Act, employer may not fire, refuse to hire, or fail to promote woman because she is pregnant</p> |

83. **Pre-Incorporation**

Promoter = person who creates corporation, Generates idea, raises capital, hires lawyers, etc.

•Promoter may enter into contracts before Articles of Incorporation are filed, but beware...

•Promoter liability rules:

- (1) Promoter personally liable on any K signed before corp officially formed
- (2) Corporation not liable on any K signed before incorporation unless it adopts K
- Adoption = BOD approval or corporation acts as if it intends to be bound by K
- (3) Even if corporation adopts K, promoter still liable until 3rd party agrees to novation.

•Novation = creates new K b/t 3rd party and corp.

•Exception to novation requirement= If it's clear parties did not intend for promoter to be personally liable, she is released from liability once corp. adopts K

84. **Principal's Duties**

•Duty to compensate as provided by agreement= Principal can recover any monetary damages caused by breach.

•Duty to indemnify= —reimburse—agent for reasonable expenses, including those arising from torts and contracts.

•Duty to cooperate with agent= (i.e., furnish agent with opportunity to work, not interfere with agent's ability to perform, perform her duties under agreement).

85. **PRINCIPALS Liability for Contracts**

§General Rule= Principal liable for agent's acts and statements if

- (1) agent had authority or
- (2) principal ratified agent's acts.

•Express authority. Principal's words and conduct cause agent to believe she may act on principal's behalf.

•Example:Investor calls his stockbroker and asks her to purchase 100 share of Apple stock for his account

•Implied authority.If principal grants agent authority to conduct transaction, he also impliedly grants agent authority to take all necessary steps to accomplish it

•Example: Kevin hires real-estate agent to sell his apt. Implied authority to advertise house, list it in MLS, enter apt. for showings, etc.

•Apparent authority= Principal does not actually authorize agent to act, but principal's conduct makes 3rd party believe agent is authorized.

•Example: Client mistakenly believes employee who presents her with contract on company stationary is authorized to sign contract on company's behalf.

•Ratification= If principal accepts benefit of unauthorized transaction or fails to reject it, she ratifies and is bound to agent's unauthorized act

•Detroit St. Regis hotel example

86. **PRINCIPALS Liability for Torts**

§Two types agents for tort purposes—employees and independent contractors

§Employee or independent contractor?= The more control principal has over agent, more likely that agent will qualify as employee.

•Did principal supervise details of work?

•Did principal supply tools and place of work?•Did agent work full time?

•Was agent paid hourly, salaried, or paid flat fee?•Was work schedule set by principal?

•Did principal and agent believe they had employer-employee r/s?

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| <p>87. Principal's Remedies: Three potential remedies when agent breaches duty to principal:</p> | <ul style="list-style-type: none"> •Damages. Principal can recover any monetary damages caused by breach. •Profits. If agent breaches duty of loyalty, she must disgorge—turn over—any profits earned as a result of wrongdoing to principal. •Rescission. If agent violated duty of loyalty, principal may rescind transaction. |
| <p>88. §Rebecca is hired to work at Whitefeather& Associates as a lawyer. Rebecca's supervisor, Darryl, immediately dislikes her because she reminds him of his ex-wife. Darryl fires Rebecca within a week, stating "I just can't the sight of you!" Is Rebecca's termination legal?</p> <ul style="list-style-type: none"> •A. No, because Darryl must have a business-related reason to fire Rebecca. •B. No, because personal appearance is not a valid statutory justification for termination. •C. No, because it constitutes wrongful discharge. •D. Yes, unless Rebecca has a valid employment K. | <p>...</p> |
| <p>89. Religious Discrimination</p> | <p>§Title VII rule= Employers cannot discriminate against worker based on her religious beliefs.</p> <p>§Reasonable accommodation= Employers must reasonably accommodate worker's religious practices, unless it causes "undue hardship".</p> <p>§Undue hardship =costly, compromises workplace safety, decreases workplace efficiency, infringes other employees' rights, or requires other employees to do more potentially hazardous/burdensome work</p> <ul style="list-style-type: none"> •Should scheduling changes be made for workers who keep the Sabbath? •Do certain religious garments or grooming habits interfere with workers' ability to do job? |
| <p>90. Retaliation</p> | <p>§Prohibits employers from retaliating against workers who oppose discrimination, bring Title VII claim, or take part in investigation or hearing.</p> <ul style="list-style-type: none"> •Higher standard of proof than in disparate treatment, impact, and hostile work environment claims. |
| <p>91. Role of ethics in business</p> | <p>§Customer retention and market growth= Customers prefer to purchase from businesses with ethical practices and pay more for their products/services</p> <p>.-Examples?</p> <p>§Current and prospective employees= Employees increasingly expect businesses to address societal problems and seek out those that do</p> <p>§Less government regulation</p> <ul style="list-style-type: none"> •Examples: Dodd-Frank (banking); Sarbanes-Oxley (accounting); Orphan Drug Act (drug pricing) |

92. **S Corporation Taxation**

§S Corporations—Special Tax Rules= to encourage entrepreneurial efforts, congress created special tax breaks for some corporations.

- Taxed under Subchapter S of IRC (thus S Corps_
- S corps have limited liability of corporations but qualify for pass-through tax treatment

§To qualify as S Corporation:

- (1) Can only have one class of stock;
- (2) Can have 100 or fewer SHs;
- (3) No corporate or partnership SHs;
- (4) Must have citizen or US resident SHs;
- (5) All SHs must agree to S Corp status.

93. **Sex Discrimination**

§Title VII rule= Gender must be irrelevant to employment decisions.

§Discrimination on basis of sex includes:

- Sex and gender stereotyping (i.e., against women who act "aggressively" or men who are "too feminine")
- Discrimination based gender identity and expression
- Family responsibility discrimination (i.e., mothers being promoted less often than fathers or denial of paternity benefits that are available to women)

§Tit VII and federal law do not protect against discrimination based on sexual orientation.

- Executive orders and state statutes offer some protections

94. **Shareholder Rights**

§Officers/directors owe fiduciary duty to both corporation AND its shareholders

- Fiduciary duty= Highest possible standard of care. A fiduciary acts for the benefit of the beneficiary, always placing beneficiary's interests before her own
- Officer/director = fiduciary
- Corporation/SH = beneficiary
- Beneficiary places special confidence in fiduciary; fiduciary must act in good faith and with candor.

95. **Significant factors in business form selection**

- (1) Internal efficiency, operational cost, and organizational convenience of business
- (2) Limitation of liability and responsibility for debts of the business
- (3) Minimization of federal income taxation, state income taxation, and franchise tax obligations
- (4) Legal restrictions on ability of certain businesses (e.g., law firms, accountants) to select specific business forms
- (6) Ease of raising future capital

96. **Situational Pressures**

§Time pressures= Those under time pressure often act less ethically than when they are not

- Example: Ignoring evidence of dangers of new pharmaceutical drug in rush to beat competing drug to market

§Transparency= If people feel no is watching, they act less ethically

- People even act more ethically in a well-lit room than in a dark one. (Herbert 2010)

§Stress= Research shows we act less ethically when tired

97. **Social/Organizational Pressures**

§Obedience to Authority= Tend to respect , follow those with perceived legitimate authority

- Fear of punishment/retaliation
- Encourages incentive gaming

§Conformity Bias= Tendency to mimic communal behaviors, rather than exercising one's own judgment

- True whether behavior is good or bad

§Diffusion of Responsibility= People feel less pressure to act when they believe, accurately or not, that others will do so

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| 98. Sole Proprietorship | <p>A business individually owned by a single person</p> <ul style="list-style-type: none"> •Single individual could also conduct business as a corporation or a LLC •Most common type of business organization, due to ease of formation |
| 99. Sole proprietorship control and management | <p>Management- No legal requirement of division b/t owner's personal and business affairs</p> <ul style="list-style-type: none"> •But..Good business practice to maintain independent set of books for accounting and record-keeping purposes •Simplifies preparation of tax returns •Eases determination of business' profitability •Permits identification of property formally devoted to business <p>Flexible and efficient management- Owner of proprietorship may act individually or employ agents, employees or managers to act on his behalf.</p> <ul style="list-style-type: none"> - Entitlement to profits= Proprietor entitled to income and cash flow (after paying debts), without any formality •Owner can legally empty cash drawer or cash payments to pay personal expenses •Must not disrupt operations; must be reflected accurately in records |
| 100. Sole proprietorship Disadvantages | <p>§Limited capital= Owner of SP has limited options for financing.</p> <ul style="list-style-type: none"> •Debt = main source of working capitalNo stock or memberships to sell •SPs work best for small businesses without large capital needs <p>§Valuation difficulties= Where personal and business assets commingle, valuation of business for sale can be more difficult</p> <ul style="list-style-type: none"> •Customer loyalty to proprietor may not transfer to new owner upon sale of business |
| 101. Sole proprietorship Dissolution | <p>Sole proprietorships do not have PERPETUAL EXISTENCE —i.e., entity does not continue after death of owner, bankruptcy, or owner's exit from business</p> <ul style="list-style-type: none"> •DissolutionInvolves paying business debts, closing creditor accounts, and ensuring records are maintained for tax-filing purposes |
| 102. Sole Proprietorship Formation | <p>No formal steps necessary to create sole proprietorship</p> <ul style="list-style-type: none"> •No need to register with state, so cost-effective •Depending on purpose of business, may need a business license <p>•TRADE NAME STATUTES= File "d/b/a" or "doing business as" certificate with state if using a trade name</p> <ul style="list-style-type: none"> •Cannot incl. Corporation, Incorporated, orInc. in trade name, as it implies limited liability |
| 103. Sole proprietorship liability | <p>Owner of a proprietorship personally liable for all business debts.</p> <ul style="list-style-type: none"> •Creditors can levy upon personal and business assets if proprietor defaults •True even if owner 's name does not appear on note or if she was not involved in negotiation terms of debt •Persona land business assets subject to court judgments •Personally liable for employees' negligence, torts •SP not best form of entity if significant liability anticipated |
| 104. Sole proprietorship Taxation | <p>SP not a separate taxable entity= No separate federal income tax return filed</p> <ul style="list-style-type: none"> •Pass-through tax status= Proprietor pays personal income tax on any profit earned, but business itself pays no tax •Proprietor files SCHEDULE C with personal return to show revenues and expenses of business |

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| 105. Sources of Anti-Discrimination Law | <p>§U.S. Constitution</p> <ul style="list-style-type: none"> •5thAmendment= Prohibit fed gov't from depriving individuals of "life, liberty, or property" without due process •14thAmendment= Prohibits state gov't from violating individual's right to due process and equal protection under the law <p>§Civil Rights Act of 1866= Interpreted to prohibit racial discrimination in both public and private employment</p> <p>§Equal Pay Act of 1963= Worker may not be paid at a lesser rate than employees of opposite sex for equal work</p> <ul style="list-style-type: none"> •Equal work = Tasks that require equal skills, effort and responsibility under similar working conditions <p>§Title VII (of Civil Rights Act of 1964)= Illegal for employers to discriminate on basis of race, color, religion, sex or nat'l origin</p> <ul style="list-style-type: none"> •Applies only to companies with 15+ employees •Applies to every aspect of employment process (hiring, firing, promotion, termination, wages, etc.) |
| 106. Special notes on 2018 taxation: | <p>§S Corporations—Special Tax Rules</p> <ul style="list-style-type: none"> * Small business owners will be eligible to deduct 20% of their "qualified business income" (QBI) starting in 2018. *Thus, some pass-throughs will only be taxed on 80% of their income |
| 107. Stakeholder Rights | <p>§Corporate law, traditionally, does not require officers/directors to take account of stakeholder rights when making business decisions</p> <ul style="list-style-type: none"> •Instead, corporation and SH interests are top focus <p>§Effects of Unocal v. Mesa Petroleum= Some state statutes permit—but do not require—directors to consider short-and long-term interests of corp.</p> <ul style="list-style-type: none"> •Allows directors to weigh not only effects on SHs but also "other corporate constituent groups" (i.e., creditors, consumers, employees, community) |
| 108. Stock | <p>§Par Value= Usu. nominal figure (\$.01 or \$.0001) per share</p> <ul style="list-style-type: none"> •Can issue stock with no par value •Check state filing fees b/c can be based on par value of company stock <p>§Number of Shares= Stock must be authorized in AOI before it can be sold;can authorize as many shares as incorporators choose (more shares = higher filing fees)</p> <ul style="list-style-type: none"> •Authorized and unissued stock = approved but not yet sold •Authorized and issued stock = approved and sold (a.k.a., outstanding stock) •Treasury stock = sold but bought back by corp. <p>§Classes and Series of Stock= Unlimited flexibility in defining rights of SHs: stock divided in classes and subdivided into series</p> <ul style="list-style-type: none"> •All stock in same class has the same rights; all series in a single class have similar rights •Example:In a class of preferred stock, all SHs may be entitled to a dividend, but amount of dividend may vary by series. <p>§The rights of different stock classes and series vary widely. Might contain:</p> <ul style="list-style-type: none"> •Dividend rights (distribution of corp. earnings) •Liquidation rights (upon dissolution) •Pre-emptive rights (to prevent share dilution) •Conversion rights (to convert to different class) •Redemption rights (forced stock buy-back) •Voting rights (to elect directors, e.g.) |

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| 109. Takeover Defenses NOT requiring SH approval | <ul style="list-style-type: none"> •(1) Blank-check preferred stock= In AOI, corp. creates class of unissued shares of preferred stock. Terms/conditions determined by BOD when issued. •Can be structured to give more voting power to SHs •(2) Asset lock-up ("scorched earth strategy")= Target company sells off the assets the acquiring company most wants. •(3) Greenmail (ltd. by law, heavily taxed by IRS)= Target company pays a premium to buy back corporate raider's stock share at inflated rate. |
| 110. Takeover Defenses requiring SH approval | <ul style="list-style-type: none"> •(1) "Poison pill" strategies (SH rights plans)= When outside SH acquires more than certain % of stock, "poison pill" dilutes value of these shares. •(2) Staggered board of directors= In typical BOD, all directors run for election each year. In staggered BOD, only some are elected each year. •Result: replacement of BOD takes multiple years. •(3) Supermajority voting provisions= SHs can req. supermajority vote to approved fundamental corp. changes |
| 111. Terminating Agency Relationship | <p>§Agency at Will= If no agency agreement exists, either agent or principal can terminate agency r/s at any time.</p> <ul style="list-style-type: none"> •Term Agreements=If principal and agent agree in advance how long r/s will last, they have a term agreement •Can agree to set duration or purpose of r/s-May or may not be written <p>§Wrongful termination= If one party's departure from agency r/s violates term agreement and causes harm to other party, wrongful party pays damages.</p> |
| 112. Three ways to acquire control of a company: (takeover) | <ul style="list-style-type: none"> •(1) Buy company's assets= •Must be approved by both SHs and BOD of acquired company. •(2) Merge with the company= In a merger, one company absorbs the other—the acquired company ceases to exist •Must be approved by SHs and BOD of the target company. •(3) Tender offer= Bidder asks SHs to offer their stock for sale. If SHs tender enough stock, bidder gains control. |
| 113. Title VII Discrimination Defenses | <p>§(1) Bona Fide Occupational Qualification= Business must show it cannot fulfill its primary function unless it discriminates; discriminatory job requirement must be essential to job.</p> <p>§In general, BFOQ defense doesn't apply to discrimination based on race or color</p> <ul style="list-style-type: none"> •Example: Catholic schools can refuse to hire non-Catholic teachers. <p>§Allows companies to use "customer preference" defense for reasons rel. to:</p> <ul style="list-style-type: none"> •Safety= (female correctional officers in men's prison) •Privacy= (male attendant in women's bathroom) •Authenticity= (male in female role in movie) <p>§(2) Merit= Employer not liable if it shows favored person was most qualified.</p> <p>§(3) Seniority= Legitimate seniority system is legal even if it perpetuates past discrimination</p> <p>§(4) Affirmative Action= Affirmative action plans to remedy effects of past practices or to achieve equitable representation of minorities or women are legal (provided they are not too unfair to majority members)</p> |

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| 114. Title VII Overview | <p>§4 types of prohibited activities under Tit VII</p> <ul style="list-style-type: none"> •(1) Disparate treatment •(2) Disparate impact •(3) Hostile work environment •(4) Retaliation |
| 115. Types of Business Organizations | <p>Sole Proprietorships Partnerships General partnerships(GP) Limited partnerships (LP) Limited liability partnerships (LLP) Limited Liability Companies (LLC) Corporations</p> |
| 116. Where to Incorporate? | <p>Corp. pays filing fees and franchise taxes in its state of incorporation, as well as any state in which it does ongoing business.</p> <ul style="list-style-type: none"> •To avoid paying double fees, businesses operating primarily in one state typically select that state for incorporation •If company is going to do business in several states,it might consider Delaware. Yes, Delaware. |
| 117. Whistleblower Statutes | <p>= Employee who exposes illegal/unethical conduct by her employer</p> <ul style="list-style-type: none"> •Protection available under fed and state laws: •False Claims Act= Protects workers who expose employers who defraud gov't •Dodd-Frank Wall St Reform Act= Pays workers who reveal violations of securities/commodities trading laws. •Sarbanes-Oxley Act= Protects employees of publicly traded companies who provide evidence of fraud to investigators. |
| 118. §Who is an agent? | Any person authorized to act on behalf of another |
| 119. §Who is a principal? | Any person who grants someone else legal authority to act on her behalf |
| 120. Why Delaware? | <ul style="list-style-type: none"> •Flexible laws that favor management •If SHs want to take vote in writing, instead of holding meeting, need only a majority in DE •Most states req. unanimous vote •An efficient court systemDE Chancery Court hear nothing but business cases by judges who are experts in corporate law. May hear cases on short notice. •An established body of lawLarge body of precedent b/c so many corps. there; makes disputes more predictable. •A neutral arenaSo few business actually based in DE, so viewed as neutral place to try cases. <p>§"Race to the Bottom"</p> <ul style="list-style-type: none"> •DE collects substantial filing fees and taxes that do little business in state-NY, OH, PA, NJ, NV, TX—all have modified corporate laws and tax structure to attract incorporation business •Could argue that these states' laws unfairly favor management over SHs |

121. **Why does it matter whether agent is an employee or an independent contractor?**

•Special tort rules for independent contractors= Principals liable for tortious actions of ICs only if principal negligent in hiring/supervising IC.

•Example: Uber can be sued for driver who assaults passenger only if it fails to conduct background check on driver during hiring process.

§Food for thought:Should agency tort rules apply in our gig economy (i.e., where more and more workers are ICs rather than employees)?

122. **Why teach ethics in business school?**

§The Rational Decision-maker Model= Courses in finance/economics teach us that markets are efficient because people are rational decision makers (see, e.g., Milton Friedman)

•Traditional business decision-making models focus on rational cost-benefit analyses

§Why might this be a problem?

Leads to over-confidence in efficiency of capital markets, prioritizes short-term thinking

•Research shows that focusing only on financial considerations leads to decisions that are: less social/cooperative, less generous, less ethical

123. **Workers' Financial Protection**

§Fair Labor Standards Act= Regulates wages and limits child labor nationally

•Wage provisions= Set federal minimum wage at \$7.25 per hour, plus time and a half for any hours above 40 in one week

•Doesn't apply to salaried workers or independent contractors

•Tipped-worker credit Workers earning tips may be paid only \$2.13 per hour plus tips.

•Unpaid internships must..= Provide school-like training; be for intern's benefit; not displace regular employees, and not provide immediate advantage to employer.

§Health insuranceUnder Affordable Care Act= , employers with 50+ full-time employees pay a penalty if they do not provide basic health insurance

•Insurance policies cover workers' children up to age 26

•COBRA= allows former employees to continue health coverage for 18 mos. after leaving job

§Social Security= Pays benefits to workers who are retired, disabled, or temporarily unemployed, and to spouses and children of disabled or deceased workers

•Financed through tax on wages

§Federal Unemployment Tax Act= Sets guidelines for unemployed worker benefits and payment schedules

•Rule: Worker who quits voluntarily or is fired for "just cause" is ineligible for unemployment benefits

•Unemployed workers must make "good faith effort" to look for other employment while receiving payments

124. **Workplace Privacy**

§Electronic Communications Privacy Act (ECPA)= Permits employers to monitor workers' telephone calls, e-mail messages, text messages, and even "instant messages" if:

•(1) employee consents;

•(2) monitoring occurs in the ordinary course of business; or

•(3) in the case of e-mail, texts, and IMs, the employer provides the e-mail system, phone, or computer.

125. **Workplace
Safety**

Occupational Safety and Health Act (OSHA)= ensures safe working conditions:

- Employee must comply with specific health, safety standards;
- Employers must maintain workplace free from hazards that cause death or serious injury; -Employers must keep records of workplace injuries and accidents;
- OSHA inspects workplaces to ensure safety; can fine violators and order employers to correct unsafe conditions

§Workers' Compensation Statutes= Ensure employees receive payment for injuries incurred at work

- Statutes provide fixed, certain recovery to injured employee, no matter who is at fault for injury
- In return, employees waive right to sue for negligence
- Amts. allowed for med. expenses and lost wages < worker might recover in lawsuit

126. **Workplace Tort
Liability**

§Defamation liability= Employers may be liable for defamation when giving false and unfavorable references about a former employee.

- Qualified privilege= Employer only liable if it knew statement was false or if false statement was motivated by ill will
- Qualified privilege rule applies in ½ of states

§Common practice= Employers typically limit references to confirmation of dates that former employee worked at company

- Thus, only liable if they fail to disclose employee presents some kind of danger to new employer

127. **Wrongful
Discharge**

Wrongful discharge doctrine= Exception to at-will employment doctrine.

- Public policy exception= Prohibits employer from firing worker for reasons that violate social norms or statutory rights, duties, or responsibilities. Workers may not be fired for:

- Refusing to violate law(e.g., commit perjury, falsify records, pollute)
- Performing legal duty(e.g., serving on a jury)
- Exercising legal right(e.g., filing worker's comp claim)
- Supporting social values(e.g., leaving armored car unprotected to save bystander's life)