|  |  |
| --- | --- |
| Types of Busi OrgsNon Profit* Incorporate under BC Society Act
* Same rules, remedies, duties
* Cannot have profit as motive

1. Sole Proprietorship* Only one entity/tax payer
* Remains liable
* Name protect: limited to common law passing off in bc

2. Partnership* Dichotomy btw ownership and control: passive and act
* Board/Incorp may be more efficient if larger
* ***S2 BC Partnership Act*** – 2 or more persons carrying on business in common with a view to profit

a) Carrying on business1. Kamex – is a factual determination: commercial purp and continuity* Here it was isolated txn, kept apart for tax purp

b) Commonality* Specialized form of k: terms can be varied
* ***S27*** – default statu k
* (a) share profits (g) new needs unimity (h) ord matters needs maj, funda change needs all
* 1) contract of agency
* 2) parties of which owe a fid duty

c) profitability* Excludes clubs and societies
* Legal personality – no separate entity to claim against
* Liability – from pt of entry to pt of exit
* ***S11*** – liability joint for debts
* ***S14*** – wrongful acts joint and severable
* ***S19*** – from pt of entry to retire or death
* ***S7*** – partner is agent unless T knows otherwise
* Diff from Corp only when corp gets big

3. Limited Partnership* allows for passive contrib w/o liab (US creation)
* ***Part 3 - s48-80*** - special rules, rest of act aps if no contro
* ***s50*** – partshp consisting of one or more general partners and one or more limited partners
* ***s51*** – file cert to become (cannot be deemed)
* ***s53*** – name must include LP
* ***s57*** – lmt p liab limited to ini money or goods contrib
* Diff from corp: may also include services
* ***S64*** – lp cannot be involved in management
* Putting self out to T as A? long term planning ok
* Attractions
* Tax adv, no mng resp, transferability simplified, exemption to requirement for securities perspective
* Other jurisdictions honour, but regi required
 | 4. Limited Liability Partnership* Way around s14, protects from prof miscond awards
* ***Part 6 – s94-113***
* ***S104*** – personally liab for own civ lib, not liab for othr
* ***S96*** – registration and naming requirements
* Cannot be all three types of partnerships

5. Joint Ventures* **Not**a category of legal organization
* Factual or statutory but not legal term
* *Kamex*: not partnership but has lgl resp to each other

6. Business CorporationEvolution and Nature of CorporatHistory* Was letter patents (qu and on), and registration (bc, ab)
* now statutory melding of systems
* 19c – lawyers used deed of settlemt: trust and trustees
* 1862 – Comp act: first lmt liab, lgl person, sharehldrs
* 1970 – Royal Commission Report
* Abolish letter patent discretion
* One person incorp possible
* Abolish ultra vires – protects creditors
* 1971 – Dickinson Report 🡪 new CBCA
* enhance cl to provide more min shldr protect
* Securities Act
* Prospectus: account and lawyer effort, liab if incor
* Requirement for cont disclosure of material changes at time they occur since 60s
* Regs proxy solicitation: take over both sides discl
* Insider trading: lists liability rather then gen cl duty
* Difference: SA applies to conduct in BC; CA gives powers sourced in place of incorp
* Constitutional – parallel jurisdict
* 92(11) – incop w/ prov objectives
* Bonanza – no pwr to give rights in other provs
* POGG – validated in *Citizen*
* Fed coro immune from prov regi requirements

2. Salomon v Salomon – 1) corp is a separate lgl entity 2) utility of corp and enshrined business judgement rule 3) application of fid duty influen so long as directors act rsbly* Sole prop incorp, shares over valued; he had control
* Took cash, sharehldr position and debenture (sec cred, not tied to any one asset unlike promissory note)
* Trial and CoA – acting as agent to required to reimb
* HoL – corp able to k on own, did not abuse statute
* S 64 – permissive pwr to issue shares
* S120 - # directors can be 1; reporting comp need 3
* Creditor rights limited to document of debt, not articles or oppression rem
* Agent argument (behind lgl personality), will be rare
 |

|  |  |
| --- | --- |
| Piercing the Corp Veil* Never ignores lgl personality, saying that certain lgl conc as a result of the separate personality will not apply
* See patterns but no certainty
* Ad Hoc statu may remedy perceiv ineqts (empl strds)

1. Corp Found to be Agent of Princ Shareholder3. Clarkson – not prepped on facts to hold that company is agent of shareholders* Land conveyed: Selkirk 🡪 ind limited 🡪 Sister
* Sister deemed to own prop in trust for IL; Selk dominated comp, but init incorp not in cred troubles

2. Corp Structure designed to avoid Regu Legi (esp tax)* Holding and subsidiary – holding defacto controls sub [ability to elect maj ofBoD] - s2(3)(b)
* Affiliation – if have same parent comp

4. De Salaberry Realities – courts more willing to ignore conc of indep personty in context of regu scheme, exp tax* Cemps invest 🡪 Cemps holding 🡪 ss1 + ss2 + ss3…
* Purch for sale not develop: no indp $, never dealt w/eachother, directs not indp, not carry on business
* So liab for tax

3. Fraudulent purposes to avoid pre-existing lgl resp5. Gilford – if premeditated motive is to avoid pre-existing lgl resp then answerable* Agreement not to estb busi near former empler

Process of IncorpIncorporation* Naming – key is differentiation, distinctiveness
* Not: single word, regi trademark, other comp name, statu restrictions
* Test: whether register for any good reason approves
* Object: 1) trademark act, 2) s406 standing based on ruling of register 3) cl for passing off
* ***S23*** – must draw attn to limited liab: corp, ltd…
* ***S263*** – name changes must be on notice of articles: is funda change
* Place of Incorp – CL: governs law that applies to affairs
* No residence requirements for directors
* No big diff btw cdn provs
 | * Extra Prov Licencing
* ***Part 11 s 274-379***
* Not applic to comps incorp under act
* Extra prov are not comps, they are corporations
* ***S1*** – if register under 11 then extra prov comp
* ***S375*** – need regi w/I 2mth if **carrying on business**
* Onus on comp to show not carrying on

Weightwatchers – cont of presence, not one off txns* Agent does not mean princ carrying on busi
* ***S375(2)*** – required if in phone book, adv w/ bc #, resident agent, warehouse
* ***S376*** – requirement: mailing add, disp name
* ***S378(4)*** – if fail nothing invalid, fine
* Continuance
* Mergers are fundamental change

a) Special Resolution: 2/3 or more if const specifiesb) Meeting before court: compliance with formalities creates a presumption of fairness* ***S303-311*** – allow for extra act corps to merg
* Need provisions in lcl allowing import and foreign allowing export

Classification* Widely held & closely held – colloquial terms, relv to sec
* ***S1***: public: reporting issuer, RI equiv, registered under US sec act, traded on securities exchange or trade reporting system
* **Public** Company, turns on **Reporting Issuer**, turns on whether delivering **securities to the public**, turns on **need to know** test (from US, not UK #)
* No alternative defn: either public or not
* Would have been cleaner to use ‘reporting company’
* Distinction Important:
* ***S210*** – auditing requirement not for non pub
* ***S220*** – pub needs 3 directors, non need 1
* ***S223*** – pub need audit committee incl direct
* ***S197*** – diff # of finc stmts needed
* One person
* ***S172(3)*** – shrdr meeting of one
* ***S140(4)*** – direct meeting of one
* Constrained Share Corps
* Federally regu busi may have rest on foreign own: media, insurance, finc instu, publishing
* CBCA – allows rest on share xfer per fed statu
* Professional Corps
* Other statutes involved - driven by tax law
* Unlmt Liab Corps
* Only in NS – tax liab in US drives
* Special Act Corps (Crown Corps too)
* Charter is statute under which they are incorp, owe lgl person to this other act
* ***S4*** – residual application of BCA special act not apply
 |
| Corporate ConstitutionGenerally* File notice of art and notice of incorp 🡪 cert of incorp issued (proves lgl person)
* Law governing: cert of incorp; notice of art, art, BCA, regs under act, CL
* ***S10*** – **notice of articles** (public doc)
* i) name; ii) incorporators (will be shrds) iii) directors iv) addr of regi and records office v) share structure
* ***s52*** – discusses par and no par value
* preferred shares get first right to dividends
* ***s1*** – **articles** (private doc)
* other jurisd refer to as bylaws
* ***s12*** – sets some article requirements
* ***s16*** – table one draft articles tied into act

Scope of the Contract* ***s19(3)*** – NoArt and Art have contractual binding effect
* damages have never been awarded, usually decl
* Less relevant: 1) knowledge of min shareholders at buy in make them less sym 2) min protections in act
* ***S228*** – preempts privity of k

Restrictions* Ultravires
* Letters Patent – irrelevant since assumed all pwrs
* Registration – all powers must be listed
* If not, act is void + have constructive knowledge
* Causes prejudice to unsecured lenders
* ***S30*** abol UV – all pwrs of nat p (since 1970s)
* ***S421*** abol const know (except if should know)
* ***S33*** – Restricted from acts laid out in Art or NoA
* But, no act invalid
* ***S259*** – restriction add, removed, mod – funda change

Remedies* ***S237*** – **Appraisal Remedy**– triggered by special resolu
* Automatic where: vote, passed, dissented, want company to purchase shares
* No judicial discretion
* Common law: breach of fid duty if not in best interest
* standing for shdrs through k in articles
* likely replaced by statu provs
* ***s142*** – breach of fid duty
* Action by company against directors
* ***s33(1)*** – Grounds
* Have grounds if violation of comp restrictions
* ***s228*** – Injunction for commission of restricted act
* (1) standing: sharehdr, appropriate persons (cred)
* (2) court order: decl, compens, injunction
* (3)c compensation to 3rd party, from company
* ***s154*** – Imposition of personal Liability
* directors specifically liabl for s33 violation
 | Pre-Incorp ContractsCommon law6. Kelner v Baxter - where both know, then common intent for A to be personally liable* Bevs to hotel, both know does not exist
* **Prob**: comp never bound unless new k drafted
* Work around: quantum merit, trust 🡪 uncertain

7. Black v Smallwood – where shared belief in existence, then inconsistant with mutual intent so no k* Presumption that intend to be bound rebutted by mistaken belief
* **Prob**: promoter could manu circ to get benes

8. Wickberg v Shatsky – applies Black; Remedy may be avail in Breech of Warranty* K of emp, shared mistaken belief that comp exists
* Breach of Warranty: 1) A makes representation 2) T relies 3) leading to losses
* **Prob**: Made out, but here losses caused by lack of assets not comp’s non-existance

Statutory Remedy* BC last province to remedy; likely complete code; outside of expertise since in k realm (UV fed)
* Issues 1) when applies 2) if never incorp
* ***S20***
* ***(2)*** – sets up deemed warranty: facilitator warrants that incorp will occur and that comp will adopt k
* **Prob**: if no incorp, remedy is action in breach of warranty, less robust then hold A person liab
* **Prob**: measure of damage cl or from statu? If so then could apply *Wickberg*: not a good remedy.
* ***(8)*** – A can k out of deemed w liab in writing
* **Prob**: if being mislead, only rem: fraud or neg rep
* **Prob**: if A never intended for P to have resources
* May lift veil and hold A liab through P
* ***(3)*** – Company indicates adoption by any conduct sig intent to be bound – will turn on facts
* CL reversed, implit or exp performance of k binds company and removes A liab
* A cannot simply assign k to the corp
* Remedies
* ***(5)*** - return benefits to T if company does not adopt
* **Prob:** under old tracing, equitable, so no rem if sold on to 3rd party
* ***(6)*** – anyone can apply, regardless of adoption, for court to rearrange obligs of parties
* Contra to K princ and beyond any pwr in cl
* Problems
* If not incorp – then not company – so no s20 🡪 remedies from other jurisd or cl
 |
| Management and ControlOrgans of the Corporation* Shareholders in AGM
* Power: elect board per process in Arts
* No check on mng decisions made by board
* Law and econ says ineff will be bought, but few ppl hold the ownership in canada
* Board of Directors
* ***S136*** – vests broad mng authority in board collectively
* Indiv directors must be delegated authority
* Delg: intern ?: must retain pwr to revoke deleg
* Agent: how relate to 3rd parties: required for businesses - 1) actual author 2) usual author 3) apparent author: P cannot deny resp if know
* Duties owed individually (ex fid)
* Subject to BCA, Regs, Arts (s33)
* If dysfunctional, then may revert to ‘owners’ (engl case, now use oppression remedy)
* ***S128(3)*** – any anytime in term, director can be dismissed by special resolution
* Convocation of meeting: >5% shareholders or BoD
* Threshold high, directors more cred (Nader <10%)

9. Automatic v Cuninghame – unlimited management powers vested in board; no mng powers with shareholders* shareholder resolution to sell, directors refused

Management* Issues: 1) incompetent, dishondes 2) unaware of fraud
* Indoor Management Rule
* Where there is an internal limit, outsider deemed to know but can assume it was complied with
* ***S30*** and ***s421*** – abolish UV and deemed know 🡪&IMR
* S421 – exception if know/insider, still rely on IMR?
* Audit Committee
* EU – requirement for mng and super board: outside directors check on inside directors
* Idea: link audit funct to mng superv to discover fraud
* ***S223*** – only applies to public companies
* ***S224*** – appointment of audit committee required
* (1) board must elect from within
* (2) at least 3, maj not be officers or emp (insiders)
* outsider maj, offers measure of independence
* essential
* ***(5)*** auditor to have notice of meeting
* ***(6)*** auditor can require a meeting
* ***S265-266*** committee must report on financial stmts
* Issues
* Lack of requisite financial literacy
* A may not appear (no sanctions) or may be compromised (by loyalty to company)
 | Sale of the Undertaking* S136 + Automatic 🡪 board liquidate corp?

10. # Holding v Fayerman – shareholders can veto sale but cannot order it; Substantial 1) quantitative (%) 2) qualitative (essentailly distroys business?)* sells home repair, does not reorder, essentially a sale
* Constructive winding up: where inequitable act, shldrs entitled to retrun of capital
* Sale of all assets may justify request orig from 1 shldr
* Note: does not stand for imp k to pursue business
* S301 – must not dispose of all or substantially all of its undertaking
* ‘undertaking’ refers to assets, anything w/moni val
* ‘all or sub all’ – apply [10] – **essence of application**

Katz – substantially has quali and quanti* US Case, same test as Fayermay
* Unless (a) ord course of business (b) special resolution
* (a) ‘ord course’ – statu language for qual test?
* (b) if not approved, shareholders prevent (cannot force sale)
* Automatic and Fayerman – same outcome
* ***(6)*** mortgage, lease, sales btw affiliates not a sale
* ***(3)*** third party rights protected, still valid against corp
* remedies
* ***(5)*** is a fundamental change – so s237 remedy applies
* ***(2)*** if not complied with: shldr, dir, cred have standing to request order to enjoin, set aside, any other
* but no personal liab on director here
 |
| Duties of Directors and OfficersCommon Law Duty of Care* Director Duties: (***City Equitable***)
1. care and skill rsb expected w/ know and exp
* if special know: court will not disregard
1. continuous attention to comp affairs not nesc
2. not lib for mng acts; can rely on them if rsb
* if inside mng: may be liab for not knowing

11. City Equitable – director duty* director fund diversion: negligence and fraud
* Structural problems
* pre derive claim: so brought by company
* too expensive/ltl incentive for shldrs to act
* connotat: breach DoC not dishonest like breach fid

Statutory Expansion of DutyNeed to seek leave to sue deriv:* **Business Judgment rule**: deference to directors (***Pente***)
* Second guess at take over bid? (no: ***BCE***)
* Rejects US *Revelon* – conflict bwt persona and corp then business judgment does not apply
* *Park v Daily News* UK – severance pmts at wind up cannot be in best interest
* ***s142*** – duty of care & fiduciary duty (1)(a)
* honestly in good faith for best interest of comp
* Application: -director [elected per act], -sr officer [policy funct; cap to infl direct], -officer [court discr]
* Breaches:
* Insider trading –s192- but does not suffer…
* Self-Dealing – s147-153 – exhaustive code
* Corporate Ops
* ***s154*** – directors liab for specific breaches of act (s33)
* ***s157*** - reliance excuse; applies to s142 and s154
* a) good fth reliance b) finc stmt/writ expert/any court

12. Peoples Dept Store – duty to corporation* relied on wrong person when selling, receiv sue

Competition* Very permissive, no cl rule against on multi boards
* ***S153*** – must disclose if hold office in conflict w/dir
* Application: directors and sr officers
* Required but does not insulate from fid brea; on facts

To Whom is it Owed* Directors: on behalf of corp if get ***s136*** resolution
* Not to shdr – so seek derivative action & award for corp
* Not a breach to consider stakeholders (***Peoples***)

BCE – take over bid; oked by shdrs; dispu by debenture* Best interest of company? Yes: report & committee
* Busi judg import but Fid duty has min level of fairness
 | Self-DealingCommon law* *Aberdeen* – auto right to voidable
* *Gray* – ratification impossible w/o disclosure
* *Pacific NW*
* maybe not all breaches
* shdrs can for self-dealing
* director can vote w/ shares
* *S233(6)* – vote considered but not determ

LegislationComplete code – other rem and cl ousted* ***S153*** – disclosure to BoD mandato [cl void but not req]
* Application: directors; sr officers (officers s142)
* Questions: detail?; enough to remove liab
* ***s147***: discl: material taxn has or proposes to enter
* ***147(2)*** excepts: remunera; indemn; k btw affiliates
* ***s148*** – if disclable, then must account
* ***S149*** – ratification
* 1) By gen maj of BoD– abst if invol [cl did not allow]
* 2) shldrs special resolution (2/3)
* ***S142(3)*** – cannot k out [cl allowed art]
* ***S150*** – remedies
* Standing: comp, dir, sr offi, shdr, no residual [cl just comp or deriv]
* Order: if fair and reasonable to company
* 3) (2) could ask judge for order to retain profit
* Test: if fair and rsb to company
* Prob does not replace fid discretion
* Other: injunction from k, account, any other
* ***S151*** – violating k still valid

Corporate Ops: * Personal bene from txns that appear to be corp’s
* Tensions: strict rules can be avoided; bal fid w flexy
* ***Regal*** – conflict rule
* New directors brought axn and old had to account
* Too strict: no evid bad fth or harm to company
* Shdrs could have ratified (how if assumed in bad fth)
* **Conflict R**: obtain only reason of dirshp at time of conflict
* ***Peso –*** conflict ends at refusal - permissive
* BoD declined; 1dir formed comp and exploited
* ***Canaero*** – breach is open textured concept, factors
* Not inside info & had resigned – but misused
* Consider: (not comprehensive, facts of this case, conflit?)
* Position in company
* Nature of op (ripeness, specificness)
* Relationship of d to info (not too min)
* Amt of know possessed
* Circumstances acquired (private)
* Time btw leaving and exploiting
* Circ ending: retire, discharge…
* US Approach: Fairness; interest or expect; business of comp
* Diff: informal onus shift once conflict estb
 |
| Duties of Directors Cont.Take over Bid* Personal interest opposed to duty to corp
* Issue shares; set up share classes; poison pills
* Shdrs not fids (***NW Transport***) but maj owe duty not to vote in oppressive way to min
* *Hogg* – proper purpose doctrine: how know ided?
* *Bonisteel* – close held & shares issued is breach; take over bids are good in economics
* *Unocal* – US rejected: take over=inherent breach-> onus shift: proportional temporal and extent

Tech Corp – exercise of pwr that stops bid not neces breach of fid duty* Deal with 3rd party while take over in progress
* 1) what was the primary purpose of issuing shares? 2) if to defeat take over: rsb grds? (almost onus shift)
* directors can consider: reputation, experience and qualities of take overer

Relief from LiabilityRatification at Common Law* CL: unsettled: negligence (yes) – mid (hard) – theft (no)
* rat apply for leave to sue deriv or merits too?
* Uncertain defence for directors
* cannot: illegal act/ultra vires & fraud on min (***Foss***)

NW Transport: indep of vote affects cred* Statutory
* ***S233(6)*** – if deriv: rat not determinative; independence of vote will be considered
* ***S142(3)*** – cannot k out of duties

Excuse provisions* ***S157*** – reliance defence 1) extends to 142 and 2) courts may distg btw inside and outside directors
* ***S234*** – acted honestly and rsbly and ought fairly to be excused (already taken into account? Rare success)

Indemnification and Insurance**Insurance*** ***S165*** – company may purchase insurance
* Prob: high premiums and deduct due to risk perspect
* 1) indem o or d for payments company must make 2) indem o or d for pmts they must make
* subrogation – if payout insurance subed to right to sue company for indem?

**Indemnification*** ***s160*** - indem of dir or off permitted for acts; voluntary
* ***s161*** – right to indem for legal costs if you are ‘substantially successful’
* ***s163*** – prohibited:
* ***(2)*** – breach of fid duty: no liab owed to corp
* ***(1)(c)*** – breach of duty of care: honest and good fth
* ***S164*** – court can order
 | Shareholder RightsSources: 1) Constitution/notice of art and arts 2) Governing statute 3) Common law 4) Agreements btw shdrs & companyVoting Rights* Not technically owners since indep lgl persons
* Not entitle to return of $ (until windup) or
* Not entitle to dividends (at descr of board)
* Strongest practical right: vote
* Shares may be voteless; sometimes emp: appraiser rem
* ***S173*** – entitled to vote incl by proxy
* ***S174*** – can call in vote

Meetings**Shareholder Meetings*** 1) AGM – required
* ***s169*** - 2mth notice
* ***s198*** - financial stmts to be received
* ***s182*** – may waive requirement (unanimous)
* ***s172*** – quorum – usual at least 2shrd
* 2) special/extraordinary GMS
* ***s181*** same rules apply
* any not AGM; usually to deal with one issue
* 3) court ordered meeting
* ***s186*** – may be a personal remedy

**Shareholder Proposals*** public companies and AGM only; limited success
* ***s187*** – standing: a) >1% voting shares b) >2yr
* ***s188*** – formalities must be observed (length)
* ***s189*** – mng must pay and give notice unless:
* ***(5)(d)*** –not relate in sig way to busi or affairs of comp

Variety – not of a nature that relates to political or social * Stop business in south Africa blocked

**Requisitioned Meetings*** Forced on mng outside of AGM at any time
* ***S167***
* ***(2)*** Standing: >5% indiv or collectively
* ***(5)*** If formalities obser: must be convened in 4 mths
* ***(7)*** Exceptions: ***(b)*** sub same business already adder ***(c)*** no sig relation to business ***(d)*** not publicity/personal gain
* ***(8)*** if ignore: can circ if >2%; may get reimb

Air Canada – requisitioned meetings if mng call another* if board calling another: do not trust BoD: needs rsb likelihood that will have chance to speak
* any valid meeting of shdr can change articles
* exempts not relevant where mng refuses to hold
* court ordered meetings with caution: interfering

Barriers even if pass* Will still need 2/3 support – unlikely if back door
* Does not affect mng pwrs of board – can not in best interest

***S128(3)*** – can dismiss director from board by special resolution |
| Shareholder RemediesDerivative Action* Brought on behalf of company, remedy to comp
* Corp v d1 + d2
* ***Allen v Hyatt*** - Fid to indiv shdr except: insider trade
* ***Foss v Harbottle*** – shdr not sue; right belong to comp
* Concern re multi suits; there were excepts
* Deriv leave provs oust CL (***Farnham***)
* Now liberalized except under OR – too much?
* Problems:
* Old: expensive; uncert re ratable; no access to evid
* New: divided applications
* Statutory provs (now replace CL)
* ***S232*** – Applic: Dir; Shdr; Bene Shdr; appropriate
* Creditors, employees, consumers?...
* ***S233*** –
* ***(6)*** ratification considered but not determ
* rat of mere neg ok in cl, but 2nd guess (***NW***)
* ***(1)*** conditions:
1. Rsb efforts to get comp to sue
* Some is ok (***North West***)
1. Notice given to comp
* Just need gen intent to sue (***NW*** *&* ***Bellm)***
1. Acting in good faith
* If deriv and personal may be vex (***Bellm***)
1. Leave in interests of company
* Suf evid that if true would (***North West***)
* Litigation c not defence if commit is indep of board & look at all alleg (***Bellm***)
* If ok oust juris by busi jud r? US split
* In can: policy – protect & statu interp support court keeping jurisd
* ***(3)*** interm funding during suit
* ***(4)*** appointment of control person who reps
* ***(5)***cannot be settled privately: no strike suit

North West - negligence case; sold under valueBellman – financing to fund take over; company guarenteeRandom note:Bell Case* Oppression Rem diff: 1) fed has unfair disregard 2) fed: security holders, dir, offi, creds 3) BC cover prospective
* Relationship: 1) OR looks to conc of behave not behave 2) fid requires deriv ap
 | Personal Actions* Shdr has standing in personal capacity
* S1 + S2 v D1 + D2
* Ratification is irrelevant
* ***S19*** – articles are k
* ***S20*** – pre-incorp k
* ***S33*** – restriction in const
* ***S167*** – requisitioned meetings
* ***S186*** – court ordered meeting
* ***S187-88*** – shareholder proposals
* ***Maj duty to min*** – not much case law here

Oppression Remedy* Aimed at increasing access w/o deriv
* ***S227***

1) Standing: shdr, bene; any appropriate person* ***First Edmonton Place*** – lessor not unless cred too
* Creditors next & tend successful (Ben-Ishai stud)
* Secured creds: loan agree suff protect?
* Emp and consum: leg protect suff?
* Dir sue in cap of shrd for loss of dir R? (***Diligenti***)

2) Grounds for relief***(2)(a)*** Oppression* Look to conduct (***Diligenti***)
* ‘burdensome, harsh, wrongful’ (***Scottish***)
* new statu rem aimed help min where no cl rem avail: holistic look at marginalizi cond (***Ferguson***)
* rsb expect of close diff from arm leng (***Ebrahimi***)

***(2)(b)*** Unfair Prejudice – happened or proposed* Look to consequences; more liberal (***Bell***)

***Bell*** Framework1) Determine Rsb Expectations* aimed at fair treatment
* rsb expect to have concerns considered

2) Breached on the facts?* adv commi, mention of deb and deb agmt covers
* if rsb expect not breached then do not go on
* deference to busi judge rule

3) Breach amount to op or up?* 3) Remedy

***(3)*** wide range of possible orders* incl interim orders – so can remain seized
* appraiser rem most appropriate for those with rsb expect of involve – wife not (***Jackman***)

***(4)*** brought in timely manner: laches defence?Comparison:* breach fid can be OR; factual overlap; fid duty certain
 |
| Personal Actions Continued…Compliance and Restraining Orders* ***S228*** – any contravention of the act
* Standing: shdrs & appropriate persons
* Many orders possible: comp only for restrict s19 act
* ***Goldhar*** – cannot use s228 for breach fid sans deriv
* Indication in AB that not all courts limit? confus
* ***S229*** – order to remedy corporate mistake
* Standing: any interested person
* Will consider effect on dir, off, cred, shdr, bene

Appraisal Remedy* No need to prove wrongdoing or misconduct
* Finality to this remedy

Trigger:* ***S238(1)*** - fundamental changes: special resolution

Procedure:* ***S240*** – procedure: short time lines
* ***S238(2), 242*** – filing of dissent: required for all shares
* ***S243*** – comp respond by way of noti of inte to proceed
* ***S244*** – send notice and share cert
* ***S239*** – waiver – not generally, can for particular
* ***S246*** – lose: if you vote in favour
* ***S244(6)*** – if choose, cannot exercise other rights

Remedy* Company will purchase: must be solvent
* Valuation (***Domglas***): 1) market value (public) 2) asset value 3) earnings value

Winding Up* Shareholder vote by special resolute
* State wind up
* ***S324*** – final order where **just and equitable**
* Standing: shdr, bene, dir, andy other incl cred where appropriate
* Reluctance and can substitute w/ OR (***Ebrahimi***)
* J&E indicate that more serious violt then OR

Shareholder Agreements* ***S175*** - >2 shdr can enter into written agreement
* Directors cannot fetter; use clear langua (***Ringuet***)
* In US, can fetter through unan shdr agree (***Dodge***)
* Letters patent: can only derogate from pwrs of board in unan shdr agree - > but if not binding then effectively cannot derogate
* Regi Provs (s146) allow derog in articles and nofart
 |  |

|  |  |
| --- | --- |
| Breach of Fid Duty (start here since more certain)1. Direct to save
* have it ratified per common law
* company cannot indem 163(2): apply to court s164
* s157 reliance defence
* s234 ought to be excused
1. Direct sue per s136 resolution

Shareholders1. Shdr request dir to sue per 232
2. Shdr applies for deriv action suing 233

Apply DerivativeConsider OR |  |