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| Types of Busi Orgs Non 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 business 1. 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 Corporation Evolution 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 |

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| 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 Shareholder 3. 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 resp 5. 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 specifies  b) 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 Constitution Generally   * 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 Officers Common 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 Duty  Need 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-Dealing  Common 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   Legislation  Complete 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 Liability  Ratification 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 Rights Sources: 1) Constitution/notice of art and arts 2) Governing statute 3) Common law 4) Agreements btw shdrs & company Voting 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 guarentee Random 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*** Framework  1) 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 |  |

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| 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   Shareholders   1. Shdr request dir to sue per 232 2. Shdr applies for deriv action suing 233   Apply Derivative  Consider OR |  |