Week Two Lecture

**Corporations**

This week we’ll examine corporations, their governance structure, and the duties associated with the officers of corporations. Corporations demand a thorough review in a business law context because they offer certain protections and benefits that appeal to businesses.  The two main appealing characteristics corporations offer are:

* Corporate officers are shielded from personal liability (pursuant to the Business Judgment Rule, which we’ll discuss below).
* Business income is taxed to the corporate entity, not to the individual owners.

The appeal of this is that two of the more important business liabilities fall on the business entity rather than officers working for the business.

Having said that, there are many aspects of corporations that you will need to study in more depth, such as: the role of the board of directors, officers and their duties, the rights of shareholders, and the issuance of stocks.  The textbook will go into more detail on these topics.

**Business Judgment Rule**

The Business Judgment Rule is one of the more important aspects of corporations that have legal significance for officers of a corporation. As mentioned above, corporate officers are shielded from personal liability, generally. This proposition is qualified subject to the Business Judgment Rule (BJR).  The textbook will go into more detail, but the BJR states that corporate officers are not held personally liable for their actions as corporate officers if they were: 1) made in good faith, 2) done with the care of a reasonably prudent person, and 3) done in the best interests of the corporation.

Why is this important? Take the British Petroleum oil leak/environmental disaster in the Gulf of Mexico in 2010 as an example. As a general proposition, we can assume that mistakes happen in the course of business. But, what if one mistake costs billions and billions of dollars of damage and people also died?  Should the corporate officers in charge of British Petroleum’s deep water drilling in the Gulf of Mexico be held personally responsible for all of that damage? The BJR would affect the outcome of that question.

For better or worse, this rule is open to much interpretation. Additionally, this rule is very deferential to the corporate officer. But this rule is one of the cornerstones of business law, as it pertains to corporations. And when you graduate with your degree, you may end up a corporate officer, in which case, the BJR would then apply to you, too.

**Inversion as Example of Mergers**

This week we will also review mergers and takeovers. These practices are not only common among businesses, but they can be very complicated. These transactions are complicated because there are many legal and financial components involved. Mergers can be conducted with the trade of cash, assets, stocks, other securities, or any combination of the above. Mergers can happen domestically or overseas, create new companies or consolidate existing ones. These actions can be mutually agreed upon, or it can be in a hostile manner, forcing the sale of one corporation to another.

There is one type of merger that has recently come under scrutiny: the inversion.  This type of merger unfolds as an American corporation buys out a foreign corporation outside of the United States, and then consolidates the new business entity in the foreign country’s jurisdiction. A very recent example is Burger King’s merger with Tim Hortons of Canada (Vardi, 2014).  The result of inversions is that the income of the new company, post-merger, is taxed at a lower rate than it would if the company was located domestically.

Many have criticized this type of merger, including President Obama, who has essentially described these types of mergers as being economically unpatriotic since they are seen as a tax shelter that reduces tax revenue for the federal government (Vardi, 2014).  Take a look at the Burger King/Tim Hortons merger and make your own decision: “[Warren Buffet, Burger King and the Big Money Behind Inversion Deals](http://www.forbes.com/sites/nathanvardi/2014/08/26/warren-buffett-burger-king-and-the-big-money-behind-inversion-deals/).”

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Reference

Vardi, N. (2014, August 26). [Warren Buffet, Burger King and the big money behind inversion deals](http://www.forbes.com/sites/nathanvardi/2014/08/26/warren-buffett-burger-king-and-the-big-money-behind-inversion-deals/).  *Forbes*.  Retrieved from http://www.forbes.com/sites/nathanvardi/2014/08/26/warren-buffett-burger-king-and-the-big-money-behind-inversion-deals/