

Chapter 11

Business and Bankruptcy Law

Case File and Law of Agency (263-266)

- Review the case file on page 263. Based on your own knowledge who do you think is responsible for business debts if a business fails? Explain your reasoning
- What are the various types of business organizations?
 - What organizations and rules govern the manner in which businesses operate on both the state and the federal level?
- What is a security? What organization regulates securities in the United States?
- What is a fiduciary relationship? How are fiduciary relationships formed between employers and employees?
 - In an employer / employee relationship who is held responsible for the conduct of the employee?
- Discuss the difference between an agent and an independent contractor? Does liability differ in the sense of an independent contractor?
 - What about other responsibilities What are the difference between employees and independent contractors?
 - How can one determine the difference between an independent contractor and an employee? What metrics are used?
- Vocabulary

Employee Employer Relationships

● Law of Agency / Agent = Employee

- Details the responsibility of employees and employers regarding conducts

● Fiduciary Relationship

- At employment a fiduciary relationship is created between employee and employer
 - Elements: loyalty, trust, care
- The Employer is responsible for the conduct of the employee when working.
- The employer is responsible for business agreements made by the employee
- The employer is responsible for civil torts of the employee (vicarious liability / respondeat superior)

● Agents v Independent Contractors

- Employees – they have little control over how they do their jobs
 - Construction Workers, Landscapers, Waiters, Delivery Drivers
- Independent Contractors – Professionals – often have nearly complete control over how they perform their jobs
 - Doctors, Lawyers, Teachers, General Contractors

Responsibility of Employers

Liability of Employers	Agent / Employee	Independent Contractor
Tort Liability	Respondeat superior	No liability
Taxes	Must withhold taxes	No liability
Work Injuries	Workman's Compensation Employees may not sue employer for negligence	No Workman's Compensation May sue employer for employer negligence

● Tort Liability – Respondeat Superior

- The employer is only responsible for torts committed during the course of performing employment duties

● Actual Authority

- Employers are responsible for business deals and contracts negotiated by employee acting with apparent authority
 - Expressly authorized by the employer

Case Reading Kaplan v Coldwell Banker Residential Affiliates Inc. (266-268)

- Read the case Kaplan v Coldwell Banker Residential Affiliates Inc. (266-268)
 - Answer case analysis questions
- Read 268-270 Copy the following table into your notes and complete it as you read
- Vocabulary

Type of Business	Number of Owners / Control of Owners	Liability of Owner including Debt liability	Taxes	Requirements to Start Business other facts about business
Sole Proprietorship				
General Partnership				
Limited Partnership				

Corporations (273-276)

- What is a corporation? How is a corporation different from that of a partnership or sole proprietorship?
 - Do corporations have rights?
- What are the two main types of corporations and what makes them different from one another?
 - How are corporations formed? Is it difficult to create a corporation?
 - How are owners of a corporation defined and how do they purchase ownership in a corporation? How is their role and payment different from that of a sole proprietor?
 - Do the owners of a corporation necessarily run the corporation? If not who does?
 - Identify the titles of people who run a corporation
 - Are these people liable for the failure of the corporation which they are responsible for running? Explain.
- Read application 11.3. Attempt to explain why this suit was filed by shareholders? What was the court's decision and why... explain.
- What is a close corporation / public corporation / professional corporation and a non profit corporation? What makes each of these organizations unique?
- Vocabulary

Corporations

- **Corporations – Formed via registration with the state**
 - **Types of Corporations**
 - **Business Corporations** – formed to make money
 - **Non Profit Corporations** – formed to serve some public purpose (education / charity / religious)
 - **Liability**
 - **Corporations are separate entities from their owners and employees** – the owners (shareholders) are not liable for the debts of the corporation
 - **Organization**
 - **Shareholders – Owners** – Profits are distributed to shareholders in “dividends”
 - **Directors** – General Management Power not day to day operations
 - **Officers** – Chosen by the directors to run the day to day operations of the company – owe a fiduciary duty to the company but are not liable for business losses absent extraordinary circumstances
- **Close v Public Corporations**
 - **Close corporations** – shares are not available to the public – few shareholders
 - **Public Corporation** – shares are available to anyone – publicly traded (stock)

Case Study - Burwell v Hobby Lobby Stores

- Provided on Google Docs is the Case Burwell v Hobby Lobby Stores
 - Read the case and find the directions for this essay on google drive. You do not have to read the whole case tonight but please start to.

Corporate Regulation (276-281)

- What governments / organizations / laws regulate the sale transfer of securities?
How?
- Read Oakland Raiders v National Football League (278-281) Answer Case Analysis Questions
 - Using this case as an example explain why corporate law can become extremely complex when dealing with large scale corporations such as the NFL?
- Vocabulary

Limited Liability and Bankruptcy (281-287)

- What is a Limited Liability Partnership? How does this type of organization differ from a corporation sole proprietorship or other partnerships?
 - How does a LLC manage debt? Who is responsible?
 - Why would someone form an LLC rather than a corporation?
- What does it meant to be Bankrupt?
 - What is a debtor and creditor? How are they involved in business bankruptcy?
 - What is the goal of the courts in Bankruptcy proceedings?
 - What do corporations ask the courts to do in the event of Bankruptcy?
- Vocabulary

Bankruptcy

● Oh No! You're out of money

- Businesses not only receive money in the form of profits but they also incur debt (borrowing money)

● Bankruptcy – Federal Law (Bankruptcy courts)

- Occurs when a business can no longer pay its debts to creditors.
 - Businesses (and people sometimes) ask the courts to relieve them (discharge them) of their debt
 - Taxes are not dischargeable
 - The court can require that all non-exempt assets be turned over to a trustee
 - The trustee sells the assets and pays creditors appropriately.
 - Business can also ask for a debt repayment schedule
 - Relieves some debt and puts debt payments on a schedule to make payments more manageable.

Application and Analysis 1

- Complete Question 1 – The case is available here:

<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=000&invol=02-1389>

- Complete Question 2 – The case is available here:

<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=000&invol=01-1435>

Application and Analysis 2

- Complete question 3 – Give your opinion if you'd like to read the case it is available here:

http://www.leagle.com/decision/200628551CalRptr3d234_1265

- Complete question 4 Give your opinion

Application and Analysis 3

- ◉ Complete Questions 5 and 6
- ◉ Case is available here:
 - 5: <http://caselaw.findlaw.com/de-supreme-court/1232781.html>