**Corporations Short Outline**

1. **AGENCY**
   1. **Agent?** (1) Agreement. (2) Act on Behalf. (3) Subject to control.
   2. **Types of Agent:** (1) Independent Contract Agent. (2) Servant.
   3. **Types of Authority** 
      1. Actual Express
      2. Actual Implied (*Mill Street*)
      3. Apparent Authority (*370 Leasing*) or Apparent Partnership (*Young*)
      4. Inherent Agency Power (*Watteau*)
      5. Ratification (*Botticello*)
      6. Estoppel (*Hoddeson*)
   4. **Bind in Tort:** Servant? Scope of Employment?
   5. **Exception for Non-Agent:** (i) Inherently Dangerous. (ii) Negligent in Choosing/IC Incompetent.
   6. **Fiduciary Duties:** Duty of Loyalty (not steal). Duty of Care (not sleep on job).
2. **PARTNERSHIP**
   1. **Partnership?** Sharing (1) profits and (2) control. Need co-ownership. *See* *Fenwick Factors*.
   2. **Apparent Partnership:** Represents, or allows another to represent. Need reliance. (*Young v. Jones*)
   3. **Fiduciary Duties:** Owe utmost good faith and loyalty. (*Meehan*) Stronger version in *Meinhard*.
   4. **Authority:** can bind in any manner legitimate to business. Need majority to change default.
3. **PRELIMINARY CORPORATE ISSUES**
   1. **Piercing the Corporate Veil:** Major scumbag doctrine (fraud/injustice). Basically a shell. *See SeaLand Factors.*
   2. **Derivative Suit:** Cannot force board unless violated BJR 🡪 defer absent fraud, illegality, or conflict of interest.
      1. **Direct Suit:** shareholder needs to individually suffer direct/primary harm. NOT about corporate loss.
   3. **Charitable Giving:** Needs to be relative to corporation AND no conflict of interest. (*A.P. Smith*)
4. **FIDUCIARY DUTIES**
   1. **Duty of Loyalty:** director/officer cannot engage in undisclosed business transactions if conflict of interest.
      1. If CoI, D/O needs to show (1) fair and reasonable OR (2) **ratified** by Board/shareholders (SoR: waste).
   2. **Duty of Care:** spend time/care as ordinary prudent person with his assets. ***Gross negligence***. (*Francis*)
      1. **BJR:** Court won’t bother absent fraud, CoI, illegality, gross negligence or waste.
      2. **Creditors:** D/O owe duty of care when company is insolvent.
   3. **Dominating Shareholder:** owe FD to minority. (*Sinclair*)
   4. **Corporate Opportunity:** (1) Line of Business. (2) Learned through Work. (3) Necessity. (4) Expectancy.
      1. If board rejects 🡪 can take.
   5. **Classes of Stock:** Corp has FD to maximize returns to junior-most security. (*Zahn*)
   6. **Caremark Claim (Oversight):** For liability, need to (1) no system OR (2) if have system, consciously not monitor.
   7. **Independence of Board** (*China Agritech*)
5. **DISCLOSURE/INSIDER TRADING – ’34 Act** 
   1. **Rule 10b-5**: abstain or disclose (*TGS*)
   2. **10b**-**5(2) “Misappropriation Theory”:** (1) Agree to Maintain Info. (2) Pattern of sharing. (3) Spouse/Child/Sibling.
   3. **FN 14 “Temporary Insider”:** legitimately gains MNI for corporate purposes (law/accounting firm) 🡪 *Dirks*.
   4. **Tippee Liability:** assumes FD when insider breached FD (personal gain) AND tippee knows/should know. (*Dirks*)
   5. **Rule 14e-**3**:** no trading on MNI if in connection to TO.
   6. **16b Short Swing Profits**
6. **PROXY FIGHTS**
   1. **Reimbursements**
   2. **Shareholder Proposals** (*Lovenheim*)
   3. **Shareholder Inspection Rights** (*Honeywell; Crane*)
7. **CONTROL ISSUES**
   1. **General Rule:** can bind as shareholders, but NOT as directors. (*McQuade*)
      1. Exceptions if no damage (*Clark*) or no one complains (*Galler*)
   2. **Abuse of Control:** In closely held corporations, owe same FD as partners. (*Wilkes*). Business matters (*Smith*).
   3. **Transfer of Control:** Control premiums OK if not looting (*Zetlin*), and no implied clauses (*Frandsen*).
8. **MERGERS & ACQUISITIONS**
   1. **Cash/Freeze Out Merger:** If R of disinterested board AND majority of minority shareholders 🡪 BJR. (*Kahn*)
      1. In Mass, need legitimate business purpose AND fair to minority. (*Coggins*)
   2. **Equal Dignity:** Delaware law allows for different choices, and you get to choose. No re-characterization. (*Rauch*)
9. **TAKOVERS**
   1. **Greenmail:** buy potential acquirer’s stock at premium. Different standards for inside/outside directors. (*Cheff*)
   2. **Takeover Defenses:** Must be reasonable response to threat posed (*Unocal*) and at some, *Revlon* duties kick in.