

BUSINESS ORGANISATIONS LAW

Law 459
Summer 2022
Bruce MacDougall

This course deals with the law of partnerships and corporations. The objective of the course is to ground student knowledge in this area of law in accordance with the topics listed below. It provides an introduction to this topic that is useful for all areas of law. The course also provides a preparation for students who wish to take more specialised business courses. The course will concentrate on the B.C. statutes in this area, but we will also look at the federal corporations statute that operates in this area to see how it has important similarities and differences as compared to the B.C. law.

Required course material:

All students must have copies of:

- (a) *British Columbia Business Corporations Act and Commentary*, Copy Uploaded on Canvas (“BCCA”) [alternatively, students may download this statute from the internet]
- (b) *Partnership Act*, R.S.B.C. 1996, c. 348, Copy Uploaded on Canvas (“PA”) [alternatively, students may download this statute from the internet]
- (c) *Canada Business Corporations Act and Commentary*, Copy Uploaded on Canvas (“CBCA”) [alternatively, students may download this statute from the internet]
- (d) Poonam Puri, Anita Anand, Ronald Daniels, et al., *Cases, Materials and Notes on Partnerships and Canadian Business Corporations* (**EITHER** Fifth **or** Sixth Edition) (Carswell, 2011 **or** 2016). [Page numbers below are for **both** editions, e.g.: 2011//2016]

The exam will be open-book so you will doubtless want paper copies of the materials. All page references in the reading list that follows are to **both** editions of the above text in item (d). The UBC Bookstore has ordered copies of the Sixth Edition (2016).

The exam will be two-and-a-half hours. It will start at 9:00 a.m. on Wednesday 8 June.

If you have questions, contact the professor at any time by email at: macdougall@allard.ubc.ca.

This course will be held in-person Mondays, Wednesdays and Fridays from 4 May (a Wednesday) to 3 June (a Friday), from 8:30 a.m. to 12:30 p.m. in Room [TBA]. Monday 23 May is a holiday and so there will be no class that day. The lectures will not be recorded. You are expected to attend in person. Ensure that you abide by social-distancing and other covid-preventative measures in effect at that time.

If a student needs an accommodation, then you should contact student services to ascertain how the process works in your case. Accommodations are not made by the professor.

UBC provides resources to support student learning and to maintain healthy lifestyles but recognizes that sometimes crises arise and so there are additional resources to access including those for survivors of sexual violence. UBC values respect for the person and ideas of all members of the academic community. Harassment and discrimination are not tolerated nor is suppression of academic freedom. UBC provides appropriate accommodation for students with disabilities and for religious and cultural observances. UBC values academic honesty and students are expected to acknowledge the ideas generated by others and to uphold the highest academic standards in all of their actions. Details of the policies and how to access support are available here (<https://senate.ubc.ca/policies-resources-support-student-success>)

The syllabus is not broken up into readings designated for particular days. Rather the order in which the material will be covered and the readings for the topics within that ordering are set out. Students will be told in advance of the next class how far in the readings we will get for the next class - and thus the readings to prepare.

The list of topics to be covered in the course lectures is as follows.

*** READING LIST ***

1. TYPES OF BUSINESS ORGANISATIONS

- a. Sole Proprietorships 1//1
PA, ss. 1“sole proprietorship”, 88, 89(1)

- b. Partnerships 2//2
 - (i) Definition 3//4
PA, ss. 1“general partnership”, “firm”, 2, 4, 7, 91

A.E. LePage Ltd. v. Kamex Developments Ltd. 5//5
Pooley. v. Driver..... 13//14
 - (ii) Legal Personality of Partnership
PA, ss. 1.1“partnership property”, 16, 81(1), 89(1)

Thorne v. N.B. (Workmen’s Compensation Board) 21//30
 - (iii) Relationship of Partners to each other and third parties.....29 - 33//39 - 41
PA, ss. 7, 11, 12, 14, 16, 19, 22, 23(1), 24, 27, 28, 29, 31, 35, 36, 37, 38(1), 42

c.	<u>Limited Liability Partnerships</u>	44 - 46// <u>54 - 57</u> PA, ss. 94 “limited liability partnership”, 95, 96, 97, 102, 104, 105, 106
d.	<u>Limited Partnerships</u>	34 - 37// <u>43 - 45</u> PA, ss. 49, 50, 51, 52, 55, 56, 57, 58, 59, 61, 62(1), 64 <i>Haughton Graphic Ltd. v. Zivot</i> 37// <u>46</u> <i>Nordile Holdings Ltd. v. Breckenridge</i> 42// <u>52</u>
e.	<u>Business Corporations</u>	2// <u>2</u>

2. THE EVOLUTION OF CORPORATIONS LAW & THE NATURE OF CORPORATE PERSONALITY

a.	<u>History of Canadian Business Corporations Law</u>	47 - 58// <u>61 - 69</u>
b.	<u>Salomon v. Salomon & Co. Ltd.</u>	59// <u>73</u>
c.	<u>Theorising Corporate Personality</u>	134 - 135// <u>151 - 152</u>
d.	<u>Limited Liability and Creditor Protection</u>	65–66, 69-75// <u>80 - 81, 84 - 90</u> BCA, s. 87 CBCA, s. 45(1)
e.	<u>Liability in Tort</u> <i>ADGA Systems Int’l. Ltd. v. Valcom</i>	78// <u>93</u>
f.	<u>Piercing the Corporate Veil</u>	87 - 88// <u>102 - 103</u> BCA, s. 2 <i>Clarkson Co. v. Zhelka</i>
	<i>Lee v. Lee’s Air Farming Ltd.</i>	88// <u>103</u> 114// <u>131</u>
	<i>De Salaberry Realties Ltd. v. M.N.R.</i>	117// <u>134</u>
	<i>Lynch v. Segal</i>	131// <u>147</u>
g.	<u>Criminal Liability</u>	135 - 147// <u>152 - 164</u> Criminal Code, ss. 22.1, 22.2, 718.21 <i>Canadian Dredge & Dock Co. Ltd. v. R.</i>
		136// <u>153</u>

3. JURISDICTIONAL AND CATEGORISATION CONSIDERATIONS

a.	<u>Introduction and Place of Incorporation</u>	149-153// <u>167 - 171</u>
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b.	<u>Classification of Corporations:</u>	
(i)	<u>“Widely-held” (“public”) and “closely-held” (“private”) corporations</u> ..155//173 BCA, s. 1“public company”, “reporting issuer” and “reporting issuer equivalent”. CBCA, s. 2(1)“distributing corporation”	
(ii)	<u>One-Person Corporations</u>	156//175
(iii)	<u>Community Contribution Companies</u> BCA, ss. 51.91-51.94, 51.97.	
c.	<u>Extra-Provincial Licensing and Filing Requirements</u>	153-154//171 - 172
	BCA, ss. 1“company”, “extra-provincial company”, “foreign entity”, “foreign corporation”, “limited liability company”, 374 to 379	
d.	<u>Continuance Under the Law of Another Jurisdiction</u>	154-155//172 - 173
	BCA, ss. 269(b), 275(1)(b), 284(1), 302-311	
e.	<u>THE CORPORATE CONSTITUTION</u>	
a.	<u>Corporate Names</u>	158-159//177 - 178
	BCA, ss. 21 to 29, 263	
b.	<u>Creating the Corporation</u>	159-163//179 - 183
	BCA, ss. 1“articles”, 3, 10-19, 256-259, 263 CBCA, ss. 2(1)“articles”, 5-9, 173	
c.	<u>The Concept of Restrictions</u>	225-227//246 - 247
	BCA, ss. 30-33, 154(1)(a), 228(3)(c) 259, 260, and 378 (2) and (4)	
4.	<u>PRE-INCORPORATION CONTRACTS</u>	
a.	<u>Common Law</u>	
	<i>Kelner v. Baxter</i>	167//187
	<i>Black v. Smallwood</i>	171//190
	<i>Wickberg v. Shatsky</i>	173//193
b.	<u>Statutory Reform</u>	176-181//196 - 201
	BCA, s. 20 CBCA, s. 14	
5.	<u>MANAGEMENT AND CONTROL OF THE CORPORATION</u>	
a.	<u>Introduction</u>	185-199//205 - 219

BCA, ss. 1(1)“director”, “first director”, 1(3), 128(3), 135-138, 143 (and Part 5 in gen'l)
CBCA, ss. 2(1) “director”, “officer”, 102, 103, 109, 116

b. Corporate Responsibility231-232//253 - 254

Dodge v. Ford Motor Company 232//254
Parke v. Daily News Ltd. 237//259
Re Peoples Dep't. Stores Ltd. (1992) Inc. 247//268
Re BCE Inc. 252//274

c. Shareholder Input

Bushell v. Faith 200//221
Automatic Self-Cleansing Filter Syndicate Co. Ltd. v. Cuninghame..... 208//229

(i) Sale of the Undertaking

BCA, s. 301
CBCA, s. 189(3)-(9)

(ii) Unanimous Shareholder Agreements (and Equivalent),685-692//730 - 737

BCA, s. 51.93(3), 137, 138
CBCA, ss. 49(8), 146, 241(3)(c), 247

Bury v. Bell Gouinlock Ltd.693//738

d. Protecting Third Party Reliance - The Indoor Management Rule,226-227//248 - 249

BCA, s. 146
CBCA, ss. 17, 18

Sherwood Design Services Inc. v. 872935 Ontario Ltd. 228//249

e. Protecting Outside Directors - The Audit Committee640//697

BCA, ss. 223-226

6. DUTIES OF DIRECTORS AND OFFICERS

a. Directors (and Officers) - General

BCA, ss. 120-122, 124, 126, 128, 130, 131, 134, 135, 140-143, 145, 146
CBCA, ss. 102-106, 108, 109, 114-117, 121, 237.3, 237.4

b. Directors - Personal Liability

BCA, ss. 154, 156-158
CBCA, ss. 118, 119, 122, 123

c.	<u>Care and Skill</u>	
	BCA, s. 142	
	CBCA, s.122	
	(ii)	<u>Common Law</u>
		<i>Re City Equitable Fire Insurance Co. Ltd.</i> 269// <u>291</u>
	(ii)	<u>Statutory Reform</u>276-278// <u>299 - 300</u>
		BCA, ss. 142(1)(b), (2)(3), 154, 157
		CBCA, ss. 118, 122(1)(b), (2)(3), 123(4)(5)
		<i>Re Peoples Department Stores Ltd.</i> 284// <u>300</u>
	(iii)	<u>The Business Judgment Rule</u>306-309// <u>325 - 327</u>
		<i>UPM-Kymmene Corp. v. UPM-Kymmene Miramichi Inc.</i> 322// <u>341</u>
d.	<u>Fiduciary Duties</u>	
	BCA, s. 142	
	CBCA, s. 122	
	(i)	<u>Introduction</u>341-352// <u>367 - 377</u>
	(ii)	<u>To Whom Is the Fiduciary Duty Owed</u>393-395// <u>421 - 423</u>
		<i>Re BCE Inc.</i> 395// <u>423</u>
	(iii)	<u>Self-Dealing (Contracting with the Corporation)</u>
	(a)	<u>The Common Law</u>352-353// <u>379 - 380</u>
	(b)	<u>Legislation</u>353-357// <u>380 - 384</u>
		BCA, ss. 147-153
		CBCA, s. 120
	(iv)	<u>Corporate Opportunities</u>357-358// <u>384 - 385</u>
		<i>Regal (Hastings) Ltd. v. Gulliver</i> 358// <u>385</u>
		<i>Peso Silver Mines v. Cropper</i> 366// <u>393</u>
		<i>Canadian Aero Services Ltd. v. O’Malley</i> 373// <u>400</u>
	(v)	<u>Competition</u> 384// <u>412</u>
		BCA, s. 153

<i>London and Mashonaland Expl.Co. Ltd. v. New Mashonaland</i>	385// <u>412</u>
<i>Slate Ventures Inc. v. Hurley</i>	387// <u>415</u>
<i>Cranewood Financial Corp. v. Norisawa</i>	391// <u>418</u>
Notes	392// <u>419</u>

(vi) Hostile Take-Overs and Defensive Tactics by Target Management

(a) <u>Introduction</u>	401-406// <u>429 - 434</u>
(b) <u>The Common Law</u>	422-427// <u>448 - 453</u>
<i>Teck Corp. v. Millar</i>	427// <u>453</u>
<i>Pente Investment Mgmt. Ltd. v. Schneider Corp.</i>	450// <u>476</u>

e. Relief from Liability

(i) <u>Common Law</u>	483-485// <u>510 - 511</u>
<i>North-West Transportation v. Beatty</i>	485// <u>511</u>
(ii) <u>Statute,</u>	490-494// <u>517 - 521</u>
BCA, ss. 142(3), 157, 233(6), 234	
CBCA, ss. 122(3), 123(4)(5), 242(1)	
(iii) <u>Indemnification and Insurance,</u>	335-340// <u>360 - 365</u>
BCA, ss. 159-165	
CBCA, s. 124	

7. SHAREHOLDERS, SHARES AND SHAREHOLDERS' RIGHTS

a. <u>Introduction</u>	549-551// <u>579 - 581</u>
b. <u>Shares</u>	
BCA, ss. 1(1)“authorized share structure”, “shareholder”, 10, 11, 49, 52-54, 56,	
57, 59, 60, 62-64, 70, 107, 111, 119.1-119.3	
CBCA, ss. 6, 25	
c. <u>Restrictions on Transfer,</u>	663-668// <u>707 - 712</u>
BCA, ss. 11(h), 57(3), 58	
CBCA, ss. 6(1)(c)(d), 49(8)(9)	
<i>Re Smith & Fawcett Ltd.</i>	668// <u>712</u>
<i>Case v. Edmonton Country Club Ltd</i>	672// <u>716</u>
d. <u>Voting Rights,</u>	554-559// <u>585 - 589</u>
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	<i>Jacobsen v. United Canso.</i>561// <u>592</u>
	<i>Bowater v. R.L. Crain and Craisec Ltd.</i>569// <u>600</u>
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	<i>Ringuet v. Bergeron</i>682// <u>726</u>
f.	<u>Shareholders' Meetings</u>592-593// <u>624 - 625</u>
	BCA, ss. 1(1)"electronic meeting", "fully electronic meeting", "partially electronic meeting", "meeting of shareholders", "special resolution", "special majority", "ordinary resolution", 166-186	
	CBCA, ss. 2(1)"ordinary resolution", "special resolution", 132-133, 135, 139, 145	
	(i) <u>Unanimous and Consent Shareholders' Resolution</u>	
	BCA, ss.1(1)"consent resolution", "ordinary resolution", "unanimous resolution", 180, 182	
	CBCA, s. 142	
	<i>Eisenberg v. Bank of NS</i>593// <u>625</u>
	(ii) <u>The Conduct of Meetings</u>	
	<i>Wall v. London and Northern Assets Corp.</i>599// <u>632</u>
	(iii) <u>Shareholders' Proposals,</u>610-614// <u>643 - 647</u>
	BCA, ss. 187-191	
	CBCA, s. 137	
	<i>Varity Corp. v. Jesuit Fathers of Upper Canada</i>	614// <u>648</u>
	(iv) <u>Requisitioned and Court-Ordered Meetings,</u>	629-630// <u>655 - 656</u>
	BCA, ss. 167,168, 186	
	CBCA, s. 143, 144	
	<i>Air Industry Revitalization Co. v. Air Canada</i>	630// <u>665</u>
	(v) <u>Removal of Directors</u>	
	BCA, ss. 128(3)(4), 131(a)	
	CBCA, s. 109	

8. SHAREHOLDERS' REMEDIES AND RELIEF

a.	<u>Introduction</u>699-701// <u>745 - 747</u>
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b.	<u>The Derivative Action</u>	
	(i) <u>Introduction</u>	701//747
	(ii) <u>Common Law – The Rule in <i>Foss v. Harbottle</i></u>	702-705//748 - 749
	(iii) <u>The Statutory Derivative Action</u>	706-707//749 - 751
	BCA, ss. 232, 233	
	CBCA, ss. 238-240, 242	
	<i>Re North West Forest Products, Ltd.</i>	707//751
	<i>Re Bellman and Western Approaches</i>	713//756
	<i>Turner v. Mailhot</i>	721//765
	(iv) <u>Comments and <i>Re BCE Inc.</i></u>	724-728//769 - 772
c.	<u>The Personal Action</u>	729-736//772 - 779
	<i>Goldex Mines Ltd. v. Revill</i>	741//785
	<i>Hercules Management Ltd. v. Ernst & Young</i>	747//791
d.	<u>The Statutory Oppression Remedy</u>	
	BCA, s. 227	
	CBCA, ss. 238, 241, 242	
	(i) <u>Introduction</u>	753-758//797 - 802
	(ii) <u>Cases</u>	
	<i>Re BCE Inc.</i>	759//803
	<i>First Edmonton Place Ltd. v. 315888 Alberta Ltd.</i>	764//809
	<i>Ebrahimi v. Westbourne Galleries Ltd.</i>	509//537
	<i>Ferguson v. Imax Systems Corp.</i>	770//816
	<i>Naneff v. Con-Crete Holdings Ltd.</i>	800//854
	<i>Bury v. Bell Gouinlock Ltd.</i>	693//738
e.	<u>The Appraisal Remedy (Dissent Proceedings)</u>	821-825//862 - 866
	BCA, ss. 237-247	
	CBCA, s. 190	
f.	<u>Compliance and Restraining Orders</u>	809//867
	BCA, ss. 19(3), 228, 229	
	CBCA, ss. 238, 247	
	<u>Investigations</u>	816-820//869 - 873

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g. Winding-Up,825-829//874 - 878
BCA, s. 324
CBCA, ss. 213, 214