

# Module 6: Agency, Partnerships, and Corporations

# 6.1 Agency

- Creation of the agency relationship
  - By agreement, estoppel, ratification or necessity
- Duties of Agents
  - Duty of care
  - Duty of loyalty
  - Duty of obedience

# 6.1 Agency

- Liability of Principal
  - All acts of agent as long as agent is acting with authority
    - Actual authority
    - Implied actual authority
    - Apparent authority
- Liability of Agent
  - Acts for which agent does not have authority
  - If principal's identity is not fully disclosed to third party

## 6.2 Partnerships

- An association of two or more people entering business together to make a profit (as opposed to sole proprietorship)
- Need not be in writing and can be implied from behavior (particularly profit sharing)
- Partnership by estoppel
- Property brought to partnership or acquired by the partnership remains partnership property (absent other agreement)

## 6.2 Partnerships

- Relations Between Partners (absent contrary agreement)
  - Equal profit sharing
  - Equality in decision-making
  - Duties of care and loyalty to other partners
  - “Flow-through” tax treatment
- Liability
  - Partners are all agents
  - Each partner is personally liable for debts and obligations of the partnership (incurred after joining partnership)
- Limited Partnerships
- Limited Liability Partnerships (requires filing)
- Limited Liability Company

## 6.2 Partnerships

- Dissolution
  - Specified period
  - Desire of any partner
  - Mutual agreement
  - Death, expulsion, or bankruptcy of a partner
  - Court order
- Terminates actual authority to act for partnership except to wind up the partnership
- Must provide notice to third parties
- After partnership assets are paid to creditors and then distributed to partners, partnership is terminated

## 6.3 Corporations

- Perpetual existence separate from owners or managers
- Must have articles of incorporation, bylaws, and at least one meeting to determine directors and officers
- Law of the corporation is state of incorporation

## 6.3 Corporations

- Shareholders own corporation, but do not make management decisions
  - Right to vote for Board of Directors and key corporate matters and to bring suit against the corporation
- Directors
  - Directors elect or appoint officers and form committees to oversee management
  - Officers run day-to-day operation
  - Directors and officers owe duties of care and loyalty to corporation and shareholders
    - Business judgment rule



## 6.3 Corporations

- Stocks and Dividends
  - Common and preferred shares of stock
- Corporations are subject to taxation, as do shareholders when they receive dividends
- Corporations are liable for their own debts and obligations
  - Unlike partnerships, those within the corporation enjoy limited liability
  - Exception to limited liability: piercing the corporate veil
- Termination: dissolution and liquidation by board and shareholders (or by court order)
  - File certificate or article of dissolution
  - Liquidate and pay creditors and shareholders