

9 Business Structures in the US

1 Facts

Exercise 1 (pages 309-310)

1. Student's own work: should include sole proprietorship, partnership, or corporation, the formalities and expenses of setting up the business, general partner vs. limited partner (silent partner) the potential risks and liabilities (unlimited personal liability, joint and several liability), the income tax (flow-through entity, double taxation)
2. There is an income tax for the business entity itself as a legal person or legal entity and then there is the taxation of the owner's share or profit or dividend.
3. A flow-through entity is not a taxable business structure and only the owners or investors are subject to income taxation and not the entity.
4. Unlimited personal liability is when the owners or investors of an entity are personally liable on their personal assets (their house, bank account, car) which may be seized by the court to satisfy any debts of the business. This is primarily the case in sole proprietorships and partnerships.
5. Doctors, lawyers, travel agent, bar owner, florist, and restaurant.
6. Public corporation: airport, bus and metro systems.
Semi-public Corporation: electricity, sanitation, waste collection.
Publicly-held Corporation: banks, insurance, airlines.
Closed Corporation or LLC: importation, software, research lab.
7. A general partner has the right of control, management and participation in the entity but has the disadvantage of unlimited personal liability.
8. Student's opinion, but might include the need of more capital for research and development, to be able to compete and break into a larger public market, to be able to pay higher salaries to attract qualified persons to new businesses.
9. & 10. Students' own answers.
Same research as in question number 9.

Exercise 2 (page 310)

1. Directors 'direct' or are in charge of general policy and officers execute and implement this policy.
2. An officer may also be a director. The shareholders may elect a person as a director and the board of directors may then decide on that person to be an officer as well.
3. President and CEO are terms used to describe the head of the officers and the management board; usually a President today is probably used more in Closed Corporations or LLCs and CEO in the larger Publicly-held corporations, but essentially the same position.
4. Articles of incorporation is an external legal document creating and registering the entity and the bylaws are an internal legal document describing the rights, obligations and procedures of the corporation, its officers, directors with the shareholders.

5. Student's own answers.
6. "Good faith", "due care", "diligence actions in a manner for the best interests of the company"
7. Discussion of 'business judgment rule' using good faith, conflict of interest, gross negligence, fraud or illegal activity
8. Student use of; "insolvent", "failure of corporate formalities", "records not properly maintained", "commingling of assets", "separate entity", "façade", "parent and subsidiary"
9. & 10. Student's own answers.

2 Further Resources

Exercise 1 (page 317)

Students' own answers.

Exercise 2 (page 317)

1. The annual meeting of the stockholders shall be held on the 3rd Wednesday of February in each year if not a legal holiday, and if a legal holiday, then on the next secular day following at 10:00 a.m.
2. Regular meetings of the Board shall be held without notice, at least quarterly, at the registered office of the corporation, or at such other time and place as shall be determined by the Board.
3. A quorum is a majority of the total number of directors or shareholders needed for a meeting in order to ensure fair representation in making business transactions and decisions.
4. Written authorization from one person to another to act as their representative and act for them, used when one is unable to attend a meeting.
5. The Chairman has the power to execute bonds, mortgages and other contracts requiring a seal, under the seal of the corporation and this is the power of execution of policy.
6. Shareholders have voting rights at general and special meetings, to elect directors, to vote on special resolutions and rights to dividends; they do not have the power to declare dividends or direct management and control.

Exercise 1 (page 319)

1. block, protect
2. amount held by investors, owners in a business entity
3. created in this jurisdiction not foreign or outside
4. aid financially
5. municipal or city divisions commonly used in New York City
6. to do without
7. evidence discovery procedure of oral cross-examination
8. strengthen

Exercise 2 (page 319)

1. New York State requires that newly formed domestic LLCs publish certain information listed in their formation documents within 120 days of their formation. The same requirement applies to foreign entities of these types that apply for authority to conduct business in New York; they must publish within 120 days of filing their application. To do business in New York, this information is necessary for creditors and others doing business with the entity.

2. The publication requirement has been criticized by some commentators, who argue that publication serves no practical use when such information is freely available on the Internet, and that the requirement instead merely subsidizes the print media.

3. Student opinions but discussion of:

- reduction in the number of publications from once a week in two publications for six weeks to once a week in two publications for four weeks;
- increase in the information that must be included in the publication notice,
- stronger punishment for non-compliance by an entity so that failure to meet the requirement results in not only limited access to New York courts,
- imposition of deadlines by which existing non-compliant entities must satisfy the requirements before they are subject to the penalties of the new law; and
- minor changes in the method of certifying compliance with the publication requirement to the appropriate county clerk.
- alter the penalty for non-compliance from suspension of business to the elimination of limited liability protection, imposing personal liability on equity holders;
- significantly bring forward the deadlines by which non-compliant entities must publish to avoid penalties;
- restore the six-week publication requirement; and
- eliminate the requirement that the names of members be published

4. Students' own answers.

Exercises & 21 (pages 321-322)

Students' own answers.

Exercise (page 325)

1. "Collections of law, rules and regulations passed by a state legislature." (+ students' own answers)

2. & 3. Students' own answers

3 Focus on Case Law**Exercise** (page 333)

1. Equitable relief is an act by the court to do or not to do something in order "to pierce the corporate veil" to seize assets from the owner of Window treatment.

2. Service contract of carpet installation

3. The courts have been persuaded to “pierce the corporate veil” after substantial consideration of the shareholder-owner’s disregard of the separate corporate fiction and the degree of injustice impressed on the litigants by recognition of the corporate entity.
4. Lack of respecting the corporate formalities, Failure to pay taxes and misrepresentations
5. Some contracts were perhaps fraudulently negotiated, that the assets were fraudulently transferred, having had adequate time to secure counsel, Window Treatment did not appear by counsel during the trial, post-trial briefing or argument.

4 Listening

Tapescript

Corporate governance, the subject of our conference, has evolved over the past century to more effectively promote the allocation of the nation’s savings to its most productive uses. And, generally speaking, the resulting structure of business incentives, reporting, and accountability has served us well. We could not have achieved our current level of national productivity if corporate governance had been deeply flawed.

Yet, our most recent experiences with corporate malfeasance suggest that governance has strayed from the way we think it is supposed to work. By law, shareholders own our corporations, and corporate managers ideally should be working on behalf of shareholders to allocate business resources to their optimum use.

But as our economy has grown and our business units have become ever larger, de facto shareholder control has diminished: ownership has become more dispersed, and few shareholders have sufficient stakes to individually influence the choice of boards of directors or chief executive officers. The vast majority of corporate share ownership is for investment, not for operating control of a company.

(pause)

Thus, corporate officers, especially chief executive officers, have increasingly shouldered the responsibility for guiding businesses in what one hopes they perceive to be the best interests of shareholders. Not all CEOs have appropriately discharged their responsibilities and lived up to the trust placed in them, as the events that led to the passage of the Sarbanes-Oxley Act demonstrated. In too many instances, some CEOs, under pressure to meet elevated short-term expectations for earnings, employed accounting devices for the sole purpose of obscuring adverse results.

A change in behavior, however, may already be in train. The sharp decline in stock and bond prices after the collapse of Enron and WorldCom has chastened many of those responsible for questionable business practices. Corporate reputation is emerging out of the ashes of the debacle as a significant economic value.

I hope that we will return to the earlier practices of firms competing for the reputation of having the most conservative and transparent set of books.

It is hard to overstate the importance of reputation in a market economy. To be sure, a market economy requires a structure of formal rules – a law of contracts, bankruptcy statutes, a code of shareholder rights – to name but a few. But rules cannot substitute for

character. In virtually all transactions, whether with customers or with colleagues, we rely on the word of those with whom we do business. If we could not do so, goods and services could not be exchanged efficiently. Even when followed to the letter, rules guide only a small number of the day-to-day decisions required of corporate management. The rest are governed by whatever personal code of values corporate managers bring to the table.

Market transactions are inhibited if counterparties cannot rely on the accuracy of information. The ability to trust the word of a stranger still is an integral part of any sophisticated economy. A reputation for honest dealings within a corporation is critical for effective corporate governance. Even more important is the reputation of the corporation itself as seen through the eyes of outsiders. It is an exceptionally important market value that in principle is capitalized on a balance sheet as goodwill.

Exercise 1 (page 334)

See tapescript above.

Exercise 2 (page 334)

1. Ownership is more dispersed and shareholders don't have enough stakes to influence decisions.
2. Employed accounting devices to obscure adverse results.
3. Enron and Worldcom. Both were involved in corporate scandals that cost investors billions of dollars.
4. Sarbanes -Oxley. It was enacted in response to a number of Corporate and accounting scandals.
5. A law of contracts, bankruptcy statutes, a code of shareholder rights.
6. Character, reputation, honesty or a code of values.
7. Greenspan feels that rules only govern a small part of the day to day decision making process. The rest is governed by the people who run business and the code of values they have.
8. Students' own answers.

5 Grammar Practice

Exercise 1 (page 335)

1. employment (U), jobs (C)
2. advertising (U), advertisements (C)
3. equity (U), injustice (B), laws (C)
4. litigation (U) , advice (U), information (U)
5. business (B)
6. insolvency (U), notice (B)
7. staff (C), law (B)
8. damage (B), damages (B)

Remarques

- Exemple n° 7 : *staff* est généralement invariable lorsqu'il signifie « personnel, employés » ; s'il est sujet d'un verbe, le verbe se met au pluriel.

Exercise 2 (pages 335-336)

1. assets 2. profits 3. utilities, collection, dispose 4. Securities 5. Corporate 6. location 7. benefits 8. discharge 9. discretion 10. attend

Exercise 3 (page 336)

1. commercials 2. returns 3. will, trust 4. chair, resigned 5. bills, board, wind up 6. minutes, apply 7. bonds 8. late

Exemples de phrases pour illustrer d'autres sens de ces mots :

- These laws have been passed to protect US commercial interests.
- When do you expect his return?
- Where there's a will there's a way.
- I don't trust that man at all.
- A chair is a piece of furniture.
- He is resigned to his fate.
- The bill was vetoed by the President.
- In this house, you get full board and lodging for \$20 a day.
- I wind up the old grandfather clock once a month.
- There are 60 minutes in an hour.
- American judges do not simply apply the law, they can make it, to a certain extent
- The bonds of friendship can be stronger than the bonds of marriage.
- It is never too late to change your mind.

Exercise 4 (pages 336-337)

1. It is more complicated for a Frenchman to set up a company than for an American.
2. I know a Spaniard who lives in Switzerland and works for a Japanese company. He does not speak Japanese very well but everybody makes themselves understood in English.
3. It is a German law company whose headquarters are in Poland. The Poles speak German or Russian, but few Germans speak Polish.
4. This Belgian lawyer represents the interests of a Greek company set up in the Netherlands. The Dutch refuse to recognize certain provisions of the contract applicable in Greece.
5. In Brazil, they speak Portuguese with a very colourful accent. The Portuguese can be spotted at once.
6. A Chinese businessman who sold electronic components in Egypt had to learn Egyptian Arabic.
7. The Israelis and the Palestinians may find a solution to their problems by setting up commercial partnerships.

8. The Canadian Prime Minister made a statement to the press about Quebec. It's pure journalese!

9. The Turkish President/Turkey's President met (with) his Iranian counterpart yesterday. The Turks and the Iranians are determined/have made up their minds to cooperate.

10. Whereas Sweden, Finland and Denmark are members of the EU, Norway has refused membership. However, the Swedes, the Finnish, the Danes and the Norwegians all share a common Scandinavian culture.

Remarques

- En anglais, les adjectifs de nationalité prennent une majuscule.