# Characteristics of a corporation

**A.PRINCIPAL CHARACTERISTICS OF A CORPORATION**

              a)Entity Status--a corporation is a legal entity created under the authority of  legislature

              b)Limited Liability--as a legal entity, a corp is responsible for its own debts; its sh’s liability is limited to their investment;

              c)Free Transferability of Interest--shares, representing ownership interests, are freely transferable;

              d)Centralized Management and Control--a corp’s management is centralized in a board of dirs and officers. Shs have no direct control over the board’s activities;

              e)Duration--Continuity of Existence--a corp is capable of perpetual existence;

              f)Taxation--a corp, as an entity, pays taxes on its own income; shs are taxed only on dividends;

              g)Remember Attributes of the Corporation--CLIFF:

                 1)Centralization of management;

                 2)Limited liability;

                 3)Forever (perpetual duration);

                 4)Freely alienable (shares can be sold).

**B.CORPORATIONS DISTINGUISHED FROM OTHER FORMS OF BUSINESS ASSOCIATIONS.**

          1.GENERAL PARTNERSHIPS--in most states, p’ships are governed by the Uniform Partnership Act (UPA). However, the Revised UPA (RUPA) has been adopted by a few states

              a)Aggregate Status--a p’ship is an aggregation of two or more persons who are engaged in business as co-owners. Although not a legal entity, a p’ship is treated as one for certain purposes, e.g., ownership and transfer of property. RUPA confers entity status on p’ships;

              b)Unlimited Liability--every partner is subject to unlimited personal liability on p’ship debts;

              c)Transferability of Interests--a partner cannot make a transferee a member of the p’ship. She can, however, assign his interest in the p’ship, thus permitting the assignee to receive distributions of profits. Because the assignee does not become a member of the p’ship, he is not entitled to participate in p’ship business or management.

              d)Duration and Dissolution--a p’ship cannot have perpetual existence. It is terminable at will unless a definite term is expressed or implied, and is also dissolved by death, incapacity, or withdrawal of any partner.

                 1)Wrongful dissolution--p’ships can also be dissolved in contravention of the p’ship agreement, by the express will of any partner, by a court or by a partner’s conduct. Upon wrongful dissolution, nonbreaching partners may seek damages for breach and, if they choose to do so, may continue the p’ship upon payment to the breaching partner of the value of his interest.

                 1)Compare--dissociation under RUPA--termination results in either the winding up of the p’ship or buyout of the dissociating partner, depending on the event triggering the termination. A buyout may be reduced by damages if dissociation was wrongful.

              e)Management and Control--absent a contrary agreement, every partner has a right to participate equally in the partnership management.

              f)Autority--each partner, as an agent of the firm, may bind the p’ship by acts done for the carrying on, in the usual way, the business of the p’ship.

                 1)RUPA--a p’ship is bound by a partner’s act for carrying on in the usual way either the actual p’ship business or a business of the kind carried on by the p’ship.

              g)Ownership of Property--title may be held in the name of the p’ship, but property is owned by the individual partners as tenants in p’ship. There is no tenancy in p’ship under RUPA, which provides that property acquired by p’ship is owned by p’ship, not individual partners.

              h)Capacity to Sue and be Sued--under the UPA, a lawsuit may be brought by or against individual partners, rather than p’ship. Partners are jointly and severally liable for wrongful acts and breaches of trust; they are only jointly liable for debts and obligations of the p’ship.

                 1)Statutory reforms--many state statutes specifically allow a p’ship to be sued in its own name. Other states make all p’ship liabilities joint and several. Other reforms provide that not all joint obligors need to be joined in a suit.

                 2)RUPA--a p’ship may sue and be sued in its own name, and partners are jointly and severally liable for all p’ship obligations. A claim against the p’ship cannot be satisfied from a partner’s personal assets unless p’ship assets have been exhausted.

          2.JOINT VENTURE--a p’ship formed for some limited investment or operation, as opposed to a continued business enterprise. Joint ventures are governed by the rules applicable to p’ships

          3.LIMITED PARTNERSHIP--this is a p’ship consisting of two classes of partners: general partners (with rights and obligations as in an ordinary p’ship) and limited partners (with no control and limited liability).

          4.LIMITED LIABILITY PARTNERSHIPS--in a LLP, a general partner is NOT personally liable for all p’ship obligations arising from negligence, wrongful acts, and misconduct absent his involvement in the misconduct. There is no exclusion for liability for contractual obligations.

          5.LIMITED LIABILITY COMPANIES--LLC is a non-corporate business entity whose owners (members) have limited liability and can participate actively in its management. An LLC may be either for a term or at will. It can be managed either by its members or nonmember managers. Depending on the statute, distributions are made either equally to each member or in proportion to each member’s contribution.

              a)Withdrawal and Dissolution--some statutes provide that any event that terminates a member’s membership (death, resignation) causes dissolution. Other statutes distinguish between fault events(member misconduct...) and non-fault events (death, bankruptcy), and some provide that dissolution can be avoided by paying the withdrawing member fair value for his interest.

              b)Advantages of LLCs--An LLC for a business association, not publicly held, has strong advantages: partnership taxation, virtually no restrictions in structuring ownership interests and management, limited liability for owners and managers, and no limitations on the number or nature of owners.