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SYLLABUS

CORPORATE LAW

JANUARY 2010

(revised October 8, 2009)

OTHER RESOURCES:

W. Gray, CANADA BUSINESS CORPORATIONS ACT (Toronto: Carswell, first published 1994, now looseleaf) KE 1369 .A3127 G73 1994 (see also subsequent years)

W. Gray & C.W. Halladay, GUIDE TO CBCA REFORM: ANALYSIS AND PRECEDENTS (Toronto: Carswell, 2003)

C. C. Nicholls, CORPORATE LAW (Toronto, Emond Montgomery, 2005)

B. Welling, CORPORATE LAW IN CANADA, 3d ed. (Toronto: Carswell, 2006)

K. P. McGuinness, THE LAW AND PRACTICE OF CANADIAN BUSINESS CORPORATIONS , 2d ed. (Toronto: Butterworths, 2007)

COURSE SYLLABUS

I - INTRODUCTION

What is a Business?

Basic Forms of Business Organization

Sole Proprietorships

Partnerships

Corporations

Other Methods of Carrying on Business

Required Reading: Casebook pp. 1-4
VanDuzer pp. 1-24

II - PARTNERSHIP

(a) What is a Partnership?

Required Reading: Casebook pp. 4-24
VanDuzer pp. 28-49

Statutory References: *Partnerships Act*, R.S.O. 1990, c. P.5 (“P.A.”), ss. 1-5, 45
Business Names Act, R.S.O. 1990, c. B.17, ss. 1, 2, 6, 7, 10

(b) How Does a Partnership Carry on Business?

(i) Relations Between Partners

Required Reading: Casebook pp. 24-26
VanDuzer pp. 49-54

Statutory References: P.A. ss. 20-31

(ii) Relations With Third Parties

Required Reading: Casebook pp. 26-34
VanDuzer pp. 54-63

Statutory References: P.A. ss. 6-19

(c) Dissolution of the Partnership

Required Reading: VanDuzer pp. 66-68

Statutory References: P.A. ss. 26, 32-44

(d) **Partnership Agreements**

Required Reading: VanDuzer pp. 68-76

(e) **Other Relationships**

(i) Joint Ventures

Required Reading: Casebook pp. 34-40
VanDuzer pp. 76-79

Statutory References: P.A. ss. 2, 3, 32(b)

(ii) Limited Partnerships

Required Reading: Casebook pp. 41-51
VanDuzer pp. 79-86

Statutory References: *Limited Partnerships Act*, R.S.O. 1990, c. L.16, ss. 2-5, 8-12, 14, 17, 22, 24-6, 32

(iii) Limited Liability Partnerships

Required Reading: Casebook pp. 51-53
VanDuzer pp. 63-66

Statutory References: P.A. ss. 10, 44.1-44.4

III - THE CORPORATION

(a) **Introduction**

(i) General

Required Reading: VanDuzer pp. 90-98

(ii) Constitutional Matters:
Division of Powers
The Charter

Required Reading: Casebook pp. 62-64, 160-162
VanDuzer pp. 98-112

(iii) Incorporation Process

Required Reading: VanDuzer pp. 112-116

Statutory References: **CBCA** ss. 5, 6, 8, 9, 15
Interpretation Act, R.S.C. 1985, c. I-21, s. 20

OBCA ss. 4, 5, 6, 7, 15
(Note 2007 amendments to ss. 4, 5)
Interpretation Act, R.S.O. 1990, c. I.11, s.
27

(iv) Function of Corporate Law

Required Reading: VanDuzer pp. 116-125

(v) Corporate Law and Securities Law

Required Reading: VanDuzer pp. 464-473

(b) Nature of the Corporation

(i) Separate Existence and Limited Liability

Required Reading: Casebook pp. 68-95
VanDuzer pp. 125-129

Statutory References: **CBCA** ss. 6, 10, 15, 45(1), 212
Forms 1, 2, 3, 6
OBCA ss. 10, 92(1)
Business Names Act, ss. 1, 2, 6, 7, 10

(ii) Disregard of Corporate Legal Personality

Required Reading: Casebook pp. 110-120, 123-132, 138-145
VanDuzer pp. 129-139

Statutory References: **CBCA** ss. 45(1)
OBCA ss. 92(1)

(c) Incorporation

(i) Considerations and Process

Required Reading: Casebook pp. 163-173
VanDuzer pp. 146-147; 161-185

Statutory References: **CBCA** ss. 2(6), 2(7), 2(8), 102(2), 114(8),
117(1), 126(1), 139(4), 142(1), 149(2),
160, 174(1), 263, Form 22
OBCA ss. 1(6), 1(1)(27), 101(4), 104(1),
111, 115(2), 126(12)
Business Names Act, ss. 2(1), (6), 7
Corporations Information Act, R.S.O.
1990, c. C.39, ss. 2, 3

(ii) Corporate Names

Required Reading:	Casebook pp. 173-175 VanDuzer pp. 148-161
Statutory References:	CBCA ss. 6(1)(a), 10-13 Reg. 17-34 OBCA ss. 8-12; Reg. 1-22 <i>Business Names Act</i> , s. 6

(iii) Pre-incorporation Contracts

Required Reading:	Casebook pp. 180-181, 195-206 VanDuzer pp. 186-192
Statutory References:	CBCA s. 14 OBCA s. 21

(d) The Corporation in Action

(i) Liability of Corporation for Crimes and Torts

Required Reading:	Casebook pp. 147-159 VanDuzer pp. 195-207
Statutory References:	None

(ii) Corporate Agency (Liability of Corporation in Contract)

Required Readings:	Casebook pp. 249-262 VanDuzer pp. 207-221
Statutory References:	CBCA ss. 16(3), 17-8 OBCA ss. 17(3), 18-9 (Note 2007 amendments to s. 19(f))

(e) Shares and Shareholders

(i) Introduction to Shares

Required Reading:	Casebook pp. 696-713 VanDuzer pp. 225-228
Statutory References:	CBCA ss. 24, 25, 48, 49, 50, 51, 55, 60, 257 OBCA ss. 22, 23, 53, 54, 56, 67, 143, 266 (Note 2007 amendments to ss. 24(3), 67 and 2006 amendments to ss. 53, 54, 56, 67)

(ii) Characteristics of Shares

A. General

Required Reading: VanDuzer pp. 228-244

Statutory References: **CBCA** ss. 24(3), (4), 42, 43, 115(3)(d), 118
OBCA ss. 22(3), (4), 38, 127(3)(d), 130
(Note 2007 amendments to ss. 38(2), 130(2)(a))

B. No Par Value

Statutory References: **CBCA** s. 24(1), (2)
OBCA s. 22(1), (2)

C. Series

Statutory References: **CBCA** ss. 24(4), 27
OBCA ss. 22(4), 25

D. Pre-emptive Rights

Required Reading: Casebook pp. 687-690

Statutory References: **CBCA** s. 28
OBCA s. 26

(iii) Issuing and Paying for Shares and the Stated Capital Account

Required Reading: VanDuzer pp. 244-247

Statutory References: **CBCA** ss. 25, 26, 30, 41, 118(1), (6), 123(4)
OBCA ss. 23, 24, 37, 130(1), (6), 135(4)
(Note 2007 amendments to ss. 24(3), 135(4))

(iv) Redemption and Repurchase of Shares

Required Reading: VanDuzer pp. 247-251

Statutory References: **CBCA** ss. 30-40
OBCA ss. 28-36
(Note 2007 amendments to ss. 29, 31, 32, 36)

IV - MANAGEMENT AND CONTROL OF THE CORPORATION: THE BASIC LEGAL FRAMEWORK

(a) Introduction - Shareholders, Directors and Officers

Required Reading:	Casebook p. 207 VanDuzer pp. 254-257
Statutory References:	CBCA ss. 103, 108, 173 OBCA ss. 115, 119, 121, 122, 168

(b) How Shareholders Exercise Power- Shareholder Meetings and Resolutions

- *Annual and Special Meetings*
- *Calling Meetings*
- *Notice of Meetings*
- *Proxies and Proxy Solicitation*
- *Shareholder Proposals*
- *Quorum*
- *Voting*
- *Access to Information - Auditors and Financial Disclosure*
- *Signed Resolutions*

Required Reading:	Casebook pp. 747, 755-770, 772-779, 798-803 VanDuzer 258-273
Statutory References:	CBCA ss. 20-22, 132-44, 147-158, 160, Reg. ss. 32-43, Form 22 (Annual Return) OBCA ss. 93-106, 109-114, 139, 140, 144-6, 154-7, 159, Reg. ss. 27-37 (Note 2007 amendments to ss. 99, 109, 112, 145, 146, 154)

(c) Directors and How They Exercise Power

(i) Introduction - The Power to Manage

Readings:	Casebook pp. 230-235
Statutory References:	CBCA ss. 103, 108, 173, 190, 211 OBCA ss. 115, 119, 121, 122, 168, 185, 207, 208 (Note 2007 amendments to s. 185)

(ii) Qualifications

Readings:	VanDuzer pp. 273-275
Statutory References:	CBCA ss. 2(1) (definition of director), 2(5) (definition of resident Canadian), 102(2), 105, 108(1)(c), 116; Reg. s. 11 OBCA ss. 1(1)(16), (37), 118, 121(1)(c),

143; (Note 2007 amendments to s. 118)
Reg. s. 26

(iii) Election and Appointment of Directors

Readings: VanDuzer pp. 275-277

Statutory References: **CBCA** ss. 106, 107, 108(2), 111(1), 116, 132(1), 133(a), (b), 135(5), 143-5
OBCA ss. 93, 94, 96(5), 100, 101, 104-7, 119, 120, 124, 128

(iv) Number of Directors

Readings: VanDuzer pp. 277

Statutory References: **CBCA** ss. 6(1)(e), 20(1)(c), 21(1), 102(2), 106(7), 107(a), 109(3), 111-4, 213(1)(b)
OBCA ss. 5(1)(c), 120, 124-6, 128, 140, 145
(Note 2007 amendments to ss. 6, 145)

(d) **Directors' Meetings**

Required Reading: VanDuzer pp. 277-280

Statutory References: **CBCA** ss. 6(3), 18, 103, 104, 114, 117, 120(2), 123(1), (2), (3)
OBCA ss. 5(4), 19, 116, 117, 126, 129, 132(2), 135
(Note 2007 amendments to ss. 19(f), 126, 132, 135)

(e) **Officers**

(i) General

Required Reading: VanDuzer pp. 280-282

Statutory References: **CBCA** ss. 16(1), 102(1), 104(1)(d), 115(1), 116, 121
OBCA ss. 17(1), 115, 117(d), 127, 128, 133
(Note 2007 amendments to s. 127)

(ii) Delegation

Required Reading: Casebook pp. 239-241
VanDuzer pp. 282-284

Statutory References: **CBCA** s. 115
 OBCA s. 127

(f) Remuneration and Indemnification

Required Reading: Casebook pp. 368-373
 VanDuzer pp. 284-290

Statutory References: **CBCA** ss. 120(5)(b), 124(1)-(5), 125
 OBCA ss. 132(5)(b), 136, 137
 (Note 2007 amendments to ss. 132, 136)

(g) Shareholders' Agreements and Unanimous Shareholders' Agreements

Required Reading: Casebook pp. 835-850
 VanDuzer pp. 290-299

Statutory References: **CBCA** s. 146
 OBCA s. 108
 (Note 2007 amendments to s. 108)

V - CORPORATE CHANGES

(a) Amendment of Articles, By-laws and Changes to Stated Capital

Required Reading: Casebook pp. 179-180
 VanDuzer pp. 302-309

Statutory References: **CBCA** ss. 173-80, 190, 241
 OBCA ss. 168-72, 185, 248
 (Note 2007 amendments to s. 185)

(b) Continuation under the Law of Another Jurisdiction

Required Reading: Casebook pp. 167-168
 VanDuzer pp. 309-313

Statutory References: **CBCA** ss. 187-8, 190(1)(d), 190(7), 190(8),
 268(2)(b) **OBCA** ss. 180-1

(c) Amalgamation

Required Reading: VanDuzer pp. 313-321

Statutory References: **CBCA** ss. 181-6
 OBCA ss. 174-9

(d) Arrangements and Reorganizations

Required Reading: VanDuzer pp. 321-324

Statutory References: **CBCA** ss. 191-2
OBCA ss. 182-3, 186

(e) Sales of Assets or Shares

Required Reading: VanDuzer p. 324-325

Statutory References: **CBCA** s. 183
OBCA s. 176

(f) Going Private Transactions

Required Reading: VanDuzer pp. 325-329

Statutory References: **CBCA** ss. 2(1) (definition of “squeeze-out”), 193-194
OBCA s. 190

(g) Termination of the Corporation’s Existence

Required Reading: VanDuzer pp. 329-334

Statutory References: **CBCA** ss. 207-228
OBCA ss. 191-204

VI - DIRECTORS’ AND OFFICERS’ DUTIES

(a) Fiduciary Duties

(i) Introduction

Required Reading: Casebook pp. 375-376
VanDuzer pp. 338-345

Statutory References: **CBCA** ss. 102(1), 121, 122(1)(a), (2) and (3), 123(4)
OBCA ss. 115, 133, 134(1)(a), 135(4)
(Note 2007 amendments to ss. 134, 135)

(ii) Conflicts of Interest - Transactions with the Corporation

Required Reading: Casebook pp. 376-386
VanDuzer pp. 345-352

Statutory References: **CBCA** ss. 44, 120, 125, 241
OBCA ss. 20, 132, 134, 137
(Note 2007 amendments to s. 134)

(iii) Corporate Opportunities

Required Reading: Casebook pp. 387-400, 410-416, 419-425
VanDuzer pp. 352-361

Statutory References: **CBCA** s. 122(1)(a)
OBCA s. 134(1)(a)
(Note 2007 amendments to s. 134)

(iv) Competition

Required Reading: Casebook pp. 433-439
VanDuzer pp. 362-363

Statutory References: **CBCA** s. 122(1)(a)
OBCA s. 134(1)(a)
(Note 2007 amendments to s. 134)

(v) Takeover Bids

Required Reading: Casebook pp. 439-441, 442-450, 465-466,
495-509, 519-526
VanDuzer 363-371

Statutory References: **CBCA** s. 122(1)(a)
OBCA s. 134(1)(a)
(Note 2007 amendments to s. 134)

(vi) Other Breaches of Fiduciary Duty

Required Reading: VanDuzer pp. 371-373

(vii) Reliance on Management and Others

Required Reading: VanDuzer p. 373

Statutory References: **CBCA** s. 123 (4)
OBCA s. 134(4)
(Note 2007 amendments to s. 134)

(viii) Sanction by Shareholders of Fiduciary Breach

Required Reading: Casebook pp. 526-527
VanDuzer pp. 373-375

Statutory References: **CBCA** ss. 120(7), 122(3), 124, 239, 241,
242(1)
OBCA ss. 132(7), 134(3), 136, 246, 248,
249
(Note 2007 amendments to ss. 132, 134,

136, 246)

(b) Duty of Care

(i) Common Law

Required Reading: Casebook pp. 301-309

Statutory References: None

(ii) Statutory Reform

Required Reading: Casebook pp. 309-324, 358-368
VanDuzer pp. 375-384

Statutory References: **CBCA** ss. 118(2), 119, 122(1)(b), 123
OBCA ss. 130, 131, 134(1)(b), 135
(Note 2007 amendments to ss. 130, 134, 135)

(c) Statutory Duties and Oppression

Required Reading: Casebook pp. 341-342
VanDuzer pp. 384-389

Statutory References: **CBCA** ss. 118, 119, 122(2), 239-242
OBCA ss. 130, 131, 246-249
(Note 2007 amendments to ss. 130, 246)

(d) Liability of Corporate Managers for Torts

Required Reading: Casebook pp. 99-107
VanDuzer pp. 389-396

VII - SHAREHOLDERS' REMEDIES

(a) Introduction

Required Reading: Casebook pp. 859-861
VanDuzer pp. 402-404

Statutory References: None

(b) Personal Action

Required Reading: Casebook pp. 885-892, 897-903
VanDuzer pp. 404-406

Statutory References: None

(c) **Derivative Actions on Behalf of the Corporation**

Required Reading: Casebook pp. 861-867
VanDuzer pp. 406-412

Statutory References: **CBCA** ss. 238-40, 242
OBCA ss. 244-6, 248
(Note 2007 amendments to s. 246)

(d) **Oppression**

Required Reading: Casebook pp. 909-935, 948-958
VanDuzer pp. 412-451

Statutory References: **CBCA** ss. 239-242
OBCA ss. 246-249
(Note 2007 amendments to s. 246)

(e) **Compliance and Restraining Orders**

Required Reading: Casebook p. 958-965
VanDuzer p. 451-452

Statutory References: **CBCA** s. 247
OBCA s. 253

(f) **Rectification Orders**

Required Reading: Casebook pp. 965-967
VanDuzer p. 452

Statutory References: **CBCA** ss. 243, 257
OBCA ss. 250, 266

(g) **Investigations**

Required Reading: Casebook pp. 967-974
VanDuzer pp. 453-454

Statutory References: **CBCA** ss. 229-37
OBCA ss. 161-67
(Note 2007 amendments to s. 161)

(h) **Corporate Purchase of Shares of Dissenting Shareholder**

Required Reading: Casebook pp. 975-977
VanDuzer pp. 454-458

Statutory References: **CBCA** s. 190
OBCA s. 185

(Note 2007 amendments to s. 185)

(i) **Winding Up and Dissolution**

Required Reading: Casebook pp. 986-989
VanDuzer pp. 458-460

Statutory References: **CBCA** s. 214
OBCA s. 207

VIII – CORPORATE GOVERNANCE IN THEORY AND PRACTICE

Required Reading: Casebook pp. 207-223
VanDuzer pp. 519-544

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This is a listing for all the provinces and is highly recommended

Ontario:

<http://www.attorneygeneral.jus.gov.on.ca/english/legis/>

British Columbia (Queen's Printer):

<http://www.bclaws.ca/>

Alberta (Queen's Printer):

<http://www.qp.alberta.ca/>

Supreme Court Judgments:

<http://scc.lexum.umontreal.ca/en/index.html>