

# [Doctrine of constructive notice](https://assignbuster.com/doctrine-of-constructive-notice/)

Corporation – A separate legal entity that has an existence at law that is separable from those who form it. It is a separate legal entity in the sense that it has an existence at law, but no material existence. \* It is separate and distinct from its shareholders \* A properly authorized agent may bind the corporation in contract with third parties. \* Shareholders possess limited liability for the debts of the corporation, and creditors may look only to the assets of the corporation to satisfy their claims.

Director – a person elected by the shareholders of a corporation to manage its affairs. They are free to carry functions in accordance to corporation’s objects, but their powers are limited by any restrictions mentioned in articles of corporation. Officers – a person elected or appointed by the directors of a corporation to fill a particular office (such as president, secretary, treasurer, etc. ). Methods of Incorporation 1. Royal Charter: The issue of the charter was for the purpose of creating a legal existence for the entity, to permit it to either operate as a monopoly or to own land.

It was an exercise of king’s prerogative, and issue of charter gave the entity all the rights at law of a natural person. 2. Letters Patent: A government document that creates a corporation as a legal entity. Crown’s representative issues the incorporating document. 3. Special-Act: A corporation created by an Act of Parliament or a legislature for a specific purpose. The corporation has powers specially granted to it by the statute. If the corporation attempts to do something that is not authorized under the statute, the act is ultra vires (beyond the powers of) corporation and a nullity.

4. General-Act: A form of incorporation whereby a corporation may be created by filing specific information required by the statute. The document filed is known as Memorandum of Association. In Ontario, document filed is called articles of incorporation and document issued by government is called certificate of incorporation. Powers are limited to those specified under the act. Doctrine of constructive notice: Presumption at law that everyone has knowledge of the content of all statutes (related to corporation).

For example, third party may not enforce any contract on a corporation, if the corporation’s act was ultra vires, as it is pre-assumed that the third party had knowledge of all statutes. Indoor management rule: A party dealing with a corporation may assume that the officers have the valid and express authority to bind the corporation. Officers may show a document, containing the approval of shareholders before entering the contract. The Incorporation Process 1.

It begins with the preparation of an application for incorporation that sets out the name of the proposed corporation, the address of the local office and principal place of business, names of incorporators for the application for incorporation, the object of the incorporation, the share capital, any restrictions or rights attached to shares, and any special powers or restrictions that apply to acts of the corporation. 2. The complete application is then submitted to appropriate office in the incorporating jurisdiction, with a fee charged for incorporation. The filing date becomes date of incorporation.

3. After incorporation, the incorporators perform remaining formalities. They set the various duties of directors and officers. Also provide for banking, borrowing, the issue of shares, or purchase of some existing business. 4. Incorporators may resign as first directors, and shareholders elect permanent BOD. Shareholders’ Agreement: An agreement between shareholders of a private corporation concerning management and future reorganization of the corporation such as buy-out of interests. Corporate Securities Shares: Ownership of a fractional equity interest in a corporation.

Floating Charge: A debt security issued by a corporation in which assets of the corporation, such as stock-in-trade, are pledged as security. Until such time as default occurs, the corporation is free to dispose of the assets. Debentures: A debt security issued by a corporation that may or may not have specific assets of the corporation pledged as security. Fiduciary: A relationship of utmost good faith in which a person, in dealing with property, must act in the best interests of the person for whom he or she acts, rather than in his/her own personal interest.

If a director has a benefit in some dealing of the corporation, he must disclose it at the soonest and should not sit in voting and meetings for the deal. Doctrine of corporate opportunity: The use of corporate information for a personal benefit to the detriment of the corporation. Due diligence: The obligation on the directors of the corporation to ensure that effective systems are in place to comply with legislation, and to monitor the systems to ensure compliance. Outside directors: A director who is not and officer or employee of the corporation.

Business judgment rule: The reluctance of the court to interfere with decisions of BOD. Sarbanes-Oxley Act: A U. S. statute that imposes extensive duties on corporations to ensure accuracy of financial and securities information provided to the public. Its policy targets are: creation of a public company accounting oversight board, auditor independence, corporateresponsibilityfor financial reports, enhanced financial disclosure, conflicts of interest by analysts, and corporate and criminal fraud liability. Chapter 19 – Securities Regulation

Security: A document or other thing that stands as evidence of title to or interest in the capitals, assets, property, earnings, profits or royalties of any person or company, including any document commonly known as a security. Purpose and administration of securities regulation 1. Providing protection to investors from unfair, improper and fraudulent practices 2. Fostering fair and efficient capital markets and confidence in capital markets Caveat emptor – buyer beware Disclosure – The release to the public of information about the corporation that intends to offer its securities to the public.

Involves true, full and plain disclosure of all material facts relating to securities being issued. Prospectus disclosure – A public document required by law before securities are issued, revealing material facts about the security and it’s issuer, with such a true, full and plain disclosure that a potential investor may make an informed decision as to the riskiness and price of that security. It is required to be filed and accepted by the provincial securities commission. Reporting issuer – The Corporation that has issued its shares to the public by way of a prospectus.

Chapter 20 – The Employment Relationship Fourfold test: A test for employment based upon (1) ownership of tools, (2) control, (3) chance of profit, (4) risk of loss. Organization test: Test for employment based upon an examination of the services in relation to the business itself. Duty to accommodate: The obligation of an employer to adjust work for an employee with a recognized disability. Just Cause: The onus of the employer to establish grounds for termination of an employee without notice. Wrongful Dismissal: Thefailureof an employer to give reasonable notice of termination of a contract of employment.

Constructive Dismissal: Employer termination of a contract of employment by a substantial, unilateral change in terms of conditions of employment. Chapter 22 – Law of Bailment Bailment – The transfer of a chattel by the owner to another for some purpose, with the chattel to be later returned or dealt with accordance with owner’s instructions. Three elements: \* Delivery of goods by the bailor \* Possession of goods by the bailee for a specific period \* Return of goods to the bailor at a later time, or the disposition of the goods according to bailor’s wish.

Bailor – The owner of the chattel who delivers possession of the chattel to another in a bailment. Bailee – The person who takes possession of chattel in the bailment. Sub-bailment – A bailment, which involves two or more bailees wherein one bailee would pass goods to other bailee as per contract. Automobile repairs, etc. Exculpatory Clause – A clause in a contract that limits or exempts a party from any liability for damaged goods. Licence – A right to use property in common with others. Consignment Sale – The delivery of a chattel to another person with instructions of its sale.

Lien – Withrespectto goods, it is the right to retain the goods until payment is made. Pledge – The transfer of securities by a debtor (bailor) to a creditor (bailee) as security for the payment of a debt. If debtor fails to pay debt, creditor may charge the amount of loss from security and return any surplus to debtor. Pawn – The transfer of possession (but not ownership) of chattels by a debtor to a creditor who is licensed to take and hold goods as security for payment of debts. Chapter 23 – The Sale of Goods

Contract of sale of goods: A contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for amoneyconsideration called the price. Two instances: \* If the ownership is immediately transferred under the contract, it represents a sale. \* If transfer of ownership is to take place at a future date, or subject to some condition that must be fulfilled before the transfer takes place, is an agreement to sell. The agreement need not be in writing, if the buyer: \* Accepts part of goods sold \* Makes a part-payment of the contract price

\* Gives something ‘ in earnest’ to bind the contract 5 rules of transfer of title 1. If there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of delivery or payment is postponed. 2. It is applicable to a contract where the seller must do something to put goods in a deliverable state. If he hasn’t done that, the ownership won’t pass. Once he is done and has noticed the buyer about alterations, title passes. 3.

The goods are in a deliverable state, but the seller must weigh, measure, test or do something to ascertain price. Title won’t pass until act is done and the buyer is notified. 4. Goods are sold to buyer on the approval of the buyer. Involves trial before making the final approval. Buyer must inform his approval; only then the ownership will pass. If he doesn’t approve in a given time period, the title will pass to buyer once time period is over. 5. Applies to goods that have not yet been produced. They are in an agreement to sell, not agreement to sale. Deals in future goods. Condition: An essential term of a contract.

If one party fails to fulfill it, other party would be released from contract without any performance. Warranty: In the sale of goods, a minor term in a contract. The breach of the term would allow the injured party to damages, but not rescission of the agreement. Sold by description: If buyer purchases goods seeing a catalogue. Goods must be same as mentioned in catalogue. Merchantable Quality: Goods of a quality standard suitable for re-sale. Cooling off: Cooling off period is for buyer to examine the good in his leisure. If he doesn’t like it, he may return it ending the contract.