

[illegible]

Purchased Property		
	Taxable Income	Basis
Taxable Transactions	FMV	FMV
Non Taxable Transaction	None	NBV
Basis Spreading - New basis per share is found with same cost and new shares		

Gifted Property	
Donee's Tax Basis in gifted property	Sales Price - Basis = Gain or Loss
General Rule: the donors basis becomes the donee's basis (NBV)	
Exception: if FMV < NBV; It depends on the future cost	
1) Sales Price > NBV → Use NBV as basis; gain is recognized	
2) Sales Price < FMV → Use FMV as basis; loss is recognized	
3) Sales Price is between FMV/NBV → Use SP as basis; nothing is recognized	
Depreciation Basis in gifted property lesser of:	
a) donors adjusted basis at the date of the gift	
b) FMV at the date of the gift	
Holding Period of gifted property	
General Rule: the recipient of gift gets to absorb the donors holding period	
Exception:	
1) Sales Price > NBV → use the donors holding period	
2) Sales Price < FMV → holding period begin at the date of the gift	
3) Sales Price is between FMV/NBV → holding period is not relevant	

Inherited Property	
General Rule: FMV of property at the date of death	
Alternate Valuation Date: if elected, FMV can be used at the earlier of:	
a) distribution of assets	
b) six months after death	
- are always considered long term property regardless of how long its held	

Purchasing Property for Business	
General Rule: if useful life > one year → capitalize	
- Capitalize improvements and expense repairs and maintenance	
De Minimis Safe Harbor Rule	
- amount allowed to be deducted depends if there's an audited F/S	
taxpayer with AFS → deduct costs up to \$5,000 per item	
taxpayer without AFS → deduct costs up to \$2,500 perm item	

Types of Rental Property	
Real Property: land and all permanent fixtures	
Personal Property: all property not in Real	

Initial Basis is the Cost + Capital Improvements and includes all costs to place asset into service
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Section 197 Purchased Intangibles	
Intangibles connected with purchase of existing firm	
Organizational and Start-Up Costs	
- Taxpayers can immediately expense the first \$5k of organization costs and \$5k of start up costs	
- allowance is reduced \$45 for excess of \$50k	
Business Organizational Costs	
- costs to formation or organization of a firm	
- does not include costs with equity	
Business Start-Up Costs	
- costs incurred prior to operations	

MACRS Property	
3 Years: special tools and certain racehorses	
5 Years: car, light trucks, computers, copiers	
7 Years: furniture, fixtures, machinery, other equip	
10 Years: boat and other transportation equip	
15 Years: qualified improvements	
20 Years: farm buildings and municipal sewers	

Section 179 Depreciation Rules	
1) Max allowable deduction is \$1.22 million	
2) Phase Out amount: when exceeds \$3,050,000 (\$45)	
3) no losses or NOL already exists	
4) cant have been acquired through related party	
5) never depreciate land	
Non-reis do not qualify but improvements do	

Amortization	
- straight line method using 180 months	

Property Converted from Personal to Business	
Tax Basis for Depreciation (similar to gifts) lesser of:	
a) original cost basis, adjusted for any improvements to property	
b) fair market value (FMV) of property on the date of conversion	
Tax Basis for Gain/Loss Purposes      Adjusted Basis = OG Cost Basis - Depreciation	
Gain (Sales Price > Adj Basis) → Basis is adjusted basis at date of sale	
Loss (Sales Price < Adj Basis) → Basis is the based on conversion date lesser of :	
a) adjusted cost basis	
b) FMV of property	
- reduce the lesser amount by any depreciation deductions	

Capital Gains and Loss Rules			
Net Capital Loss Deduction			
- \$3,000 maximum deduction against income			
- excess capital loss can carry forward for unlimited time			
Summary of Cap Losses	Offset to Income	Excess Carryback	Excess Carryforward
Individuals	\$3,000	None	Indefinitely
Corporate	None	3 Years	5 Years
Collectibles and Qualified Small Business Stock (QSBS) are taxed @ 28%			
Worthless Stocks are stocks that completely go to zero; treated as a capital loss as if sold on last tax day			

Nondeductible Losses	
1) Wash Sales (only applies to losses)	
- a security is sold for a loss and repurchases within 30 days before/after the sales date	
Basis = Purchase Price of the shares + Disallowed loss on wash sale	
2) Related Party Transactions - not allowed to deduct losses for arm's length transactions	
3) Personal Losses - no deduction is allowed for loss of personal assets	

Depreciation	
MACRS: Half Year convention (General Rule)	
- property is treated as if it was placed in service or disposed halfway through the year	
If property is disposed of before the last year → take full MACRS rate and multiply it by 50%	
Exemption: Mid Quarter Convention - when 40% or more of pers prop is placed in service in last Q of year	
- property is treated as having been placed in service midway through the Q	
If property is disposed of before the last year → multiple by a mid-Q ratio	
Q1 (12.5%)   Q2 (37.5%)   Q3 (62.5%)   Q4 (87.5%)	
Real Property - Mid Month (one half month in placed in service and half month when disposed)	
Residential: ignore salvage value, use straight line depreciation over 27.5 years	
Non-Residential: ignore salvage value, use straight line depreciation over 39 years	
Land is never depreciated	

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Cash Basis vs Accrual Basis
<b>Cash Basis</b> is used by most individuals including: 1) qualified personal service corporations 2) taxpayers whose avg annual gross receipts do not exceed \$30 mil for 3 yr avg
<b>Accrual Basis</b> is required for the following 1) accounting for purchases and sales of inventory above the threshold 2) tax sellers 3) certain farming corporations above the threshold 4) C-corporations above the threshold

The selection of an accounting method for C Corps tax purposes is made on the <b>initial tax return</b> by using the chosen method.
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Corporation Tax Summary		
Gross Income	GAAP	TAX
Gross Sales	Income	Income
Installment Sales	Income	Income when received
Rent and Royalties in Advance	Income when Earned	Income when received
State Tax Refund	Income	Income
Equity Method	Income is Sub's Earnings	Income is Dividend Received
Items Not Includible in "Taxable Income"		
State and Municipal Bond Interest	Income	Not Taxable Income
Life Insurance Proceeds for Key Staff	Income	Not Taxable Income
Gain/Loss on Treasury Stock	Not Reported	Not Reported
Ordinary Expenses		
COGS	currently expensed	uniform cap rules
Top Officers' Compensation	Expense	\$1,000,000 limit
Bad Debt	Allowance	Direct Write-Off
Warranties	Expense (Accrue estimate)	No deduction until paid
Interest Expense: Business Loan	Expense	Deduct (up to a limit)
Tax Free Investment	Expense	Not Deductible
Charitable Contributions	All Expensed	Limited to 10% of ATI
Loss on Abandonment/Casualty	Expense	Deduct
Loss on Worthless Subsidiary	Expense	Deduct
Depreciation	Slow Depreciation	Fast Depreciation
Section 179 Depreciation	Not Allowed (Must Depre)	\$1,160,000
Different Basis of Asset	Use GAAP Basis	Use tax basis
Start-up/Organization Expenses	Expense	\$5k max/amort rest for 15yr
Franchise	Amortize	Amortize over 15 years
Goodwill	Impairment Test	Amortize over 15 years
Depletion	Cost over years	Percentage of Sales
Percentage in excess of cost (Depletion)	Not Allowed	Percentage of Sales
Profit Sharing and Pension Expense	Expense Accrued	No deduction until paid
Accrued Expense (50% owner/family)	Expense Accrued	No deduction until paid
State Taxes (Paid)	Expense	Deduct
Meals	Expense	50% deductible
GAAP Expenses that are not deductions		
Life Insurance Expense (Corp)	Expense	Not Deductible
Penalties	Expense	Not Deductible
Entertainment	Expense	Not Deductible
Lobbying/Political Expense	Expense	Not Deductible
Federal Income Taxes	Expense	Not Deductible

Foreign Tax Credit
<b>Calculated as Followed</b> Step 1: Determine the qualified foreign income taxes paid or accrued for the tax year (given) Step 2: compute the foreign tax limitation a) US tax liability = Worldwide Taxable Income * US Tax Rate b) Ratio of Ft to WTI = Foreign Income / Worldwide Taxable Income c) Foreign Tax Credit Limitation = Calculation A * Calculation B) <b>Excess credit</b> can be CB for 1 year and CF for 10 years

<b>A company will have only one of the following:</b> - IRS will tax undistributed money @ a 20% tax rate <b>Personal Holding Company Tax</b> (Corp set up by high bracket to shelter income to lower tax) <b>Personal Holding Companies have:</b> a) more than 50% owned by 5 or fewer individuals b) having 50% of adjusted ordinary gross income consisting of passive income (NIRD): N - Net Rent (if less than 50% of gross income) I - Interest that is taxable (nontaxable is included) R - Royalties (not mineral, oil, gas, or copyright) D - Dividends from an unrelated domestic corporation - <b>if deemed to be a personal holding company, an additional 20% tax is for income not distributed</b>
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S-Corporation Eligibility
<b>Requirements to qualify as an S Corporation</b> a) must be a domestic corporation b) all shareholders (voting/nonvoting) must consent to a valid election on Form 2553 c) can't have more than 100 shareholders (family members are treated as one family) d) can't have shareholders including corporations, partnerships, and nonresident aliens

S-Corporation Important Issues
- may be no more than one class of stock outstanding - differences in common stock voting rights are allowed - preferred stock is not allowed - S-Corps can own shares in a C Corp, but a C Corp <b>cannot</b> own shares in a S Corp - S-Corps cannot file a consolidated tax return with the C Corp

S-Corporation Income/Loss
- allocated to shareholders on a per-share and per-day basis - not subject to self-employment taxes

Fringe Benefits (S-Corporation)
<b>for Non Shareholding employees</b> → deductible by S Corp <b>for Shareholding employees &lt;2%</b> → deductible by S Corp <b>for Shareholding employees &gt;2%</b> → <b>nondeductible</b> by S Corp - unless the S corp includes the benefit on the W-2

Nexus
<b>Nexus:</b> minimum level of contact a taxpayer may have with a jurisdiction to be subject to taxes <b>Events that trigger Nexus in a state</b> - owning or leasing tangible personal or real property - sending employees into the state for training or work - soliciting sales in a state - providing installation, maintenance to customers in a state (even 3rd parties) - accepting/rejecting sales orders in a state or accepting returns <b>These rules don't apply to:</b> a) sales/use tax    b) franchise tax    c) gross receipt taxes

Ordinary and Necessary mean that expenses are:
a) common/accepted in the industry b) related to production of the current year

Dividends Received Deduction	
Percentage Ownership	DRD
Unrelated: 0% - <20%	50%
20% - <80%	65%
Consolidated >80%	100%

<b>DRD equals the lesser of:</b> a) percentage of dividends received b) percentage of taxable income <b>Use the greater value if results in NOL</b> DRD is not available in <b>Personal</b> situations
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Net Operating Losses (NOL)
<b>Before 2017:</b> CB 2 yrs, CF 20 yrs, offsets 100% through 2020 and 80% after <b>2018-2020:</b> CB 5 yrs, CF forever, offsets 100% through 2020 and 80% after <b>2021 + Forward:</b> no CB, CF forever, offsets 80% of future income

Filing Requirements for C-Corps
- file a Form 1120 by the 15th day of the 4th month - for F/Ys ended June 30th = due by Sept 15th - can file extension of 6 months (7 for June FYs) - must pay estimated taxes 4 times during the year <b>Corps with Less than \$1 mil in TI in 3 prior years</b> required to pay the lesser of: a) 100% of tax shown for current year b) 100% of tax shown for preceding year <b>Corps with More than \$1 mil in TI in 3 prior years</b> required to pay 100% of current year return

General Business Credit Types
- Investment Credit - Work Opportunity Credit - Alternative Fuels Credit - R&D tax credit - low-income housing credit - small employer pension plan start-up costs <b>limited</b> to net income tax less 25% of net regular tax liability above \$25k <b>Excess</b> can be carried back one year and carried forward for 20 years

Capital Losses (can only use losses to offset gains)
<b>Net Capital Losses can Be</b> a) carried back 3 years    b) carried forward 5 years

Timing of S Corp Elections
<b>For Existing Calendar Year Corporations</b> filed by Mar 15 → effective Jan 1 of that year filed after Mar 15 → effective Jan 1 of next year <b>For Existing Non-Calendar Year Corporations</b> filed by 15th day of 3rd month → first day of FY filed after 15th day of 3rd month → next FY 2 Month Grace period for these elections

Separately Stated Items
- Rental Real Estate Income/Loss - Interest Income - Dividend Income - Royalties - Net Short Term Capital Gains/Loss - Net Long Term Capital Gains/Loss - Net Section 1231 Gain/Loss - Charitable Contributions - Section 179 Expense Deduction <b>Shareholders are taxed when SIs are earned, not when distributed to shareholders</b>

Required Forms for Partnerships
<b>Form 1065</b> → information return for partnership <b>Sch K-1</b> → separate items and full income <b>Sch K-1</b> → partner's share of the income

Things that Appear on Sch K + K-1
Ordinary Business Income/Loss → <b>Schedule E</b> Net Rental Real Estate Income/Loss → <b>Schedule E</b> Interest Income → <b>Schedule B</b> Dividend Income → <b>Schedule B</b> Capital Gains/Losses → <b>Schedule D</b> Net Section 1231 Loss → <b>Schedule D</b> Charitable Contributions → <b>Schedule A</b>

Ordinary Income/Loss (Partnership)
Business Income (Business Expenses) (Guaranteed Payments) <b>Ordinary Business Income/Loss</b>

Other Common Types of Tax Exempt Organizations
- Corps organized under an Act as an instrument - title holding corps organized only for tax exempt - Civil Leagues and social welfare orgs - labor, agricultural, and horticultural orgs - business leagues (chamber of commerce, RE board) - Social and Recreational Clubs - Beneficiary and domestic fraternal societies - mutual insurance companies - cemetery companies - Veterans organization for US Armed forces

Allocation
<b>Allocation:</b> the process of removing non business income and assigning it entirely to the right state <b>Investment Income</b> → allocated entirely to TP's state of commercial domicile <b>Rentals</b> → allocated where the property is located

Ordinary and Necessary Expenses
<b>Executive Compensation</b> - 5 highest paid employees can deduct expenses up to \$1,000,000 - <b>entertainment expenses</b> may be deducted to the extent that they are included in individuals income <b>Bonus Accruals paid by an Accrual Basis Taxpayer are deductible in the tax year:</b> a) when all events have occurred that establish a liability with reasonable accuracy and; b) provided they are paid within 2.5 months of taxpayers year end <b>Bad Debts</b> <b>Accrual Basis Method</b> → must write off when the bad debt is actually uncollectible <b>Cash Basis Method</b> → bad debt is <b>not</b> deductible <b>Business Interest Expense</b> - interest paid is deductible unless the firm exceeds \$30 mil threshold <b>When the avg gross receipts exceed the threshold, interest expenses deduction is limited to the sum of:</b> 1) business interest income 2) 30% of adjusted taxable income 3) floor plan financing - Disallowed business interest can be carried forward indefinitely <b>Charitable Contributions</b> - maximum deduction of 10% of taxable income before DRD, carry back, and charity - disallowed charitable contributions can be carried forward 5 years - accrual must be paid within 3.5 months of taxable year to be deductible <b>Business Losses or Casualty Losses</b> - losses during the year and not compensated by insurance are deduct <b>Partially Destroyed Loss</b> = (Lesser of a) Change in FMV b) NRV ) - Insurance Reimbursement <b>Fully Destroyed Loss</b> = NRV - Insurance Reimbursement <b>Organizational Expenditures and Start-Up Costs</b> can deduct up to \$5k for each cost - if the costs exceed \$50k, reduce the deduction dollar for dollar until \$55k - any excess costs are capitalized and <b>amortized over 180 months</b> <b>Organization Expenditures</b> - costs to form or organize a firm <b>Start Up Costs</b> - costs incurred prior to the opening of the firm - <b>does not include the cost to raise capital (they are nondeductible) or offering material</b> <b>Life Insurance Premiums</b> <b>Key Person Policy</b> (corp is named as beneficiary, corp owns the policy) → not deductible/not includeable <b>Fringe Benefit Policy</b> (Employee is named as beneficiary, employee owns the policy) → deductible <b>Business Gifts</b> → deductible up to \$25 per recipient per year <b>Business Meals</b> → 50% is deductible to the corporation <b>Business Entertainment</b> → are not deductible <b>Penalties, Bribes, Kickbacks, Fines</b> → are not deductible <b>Payments made for Sexual Harassment/Abuse</b> → are not deductible if there is a NDA <b>Lobbying and Political Contributions</b> → are not deductible <b>Taxes</b> - all state/local/federal payroll taxes are deductible when incurred on property or on business income - federal income taxes are never deductible; foreign income taxes may be used as a credit <b>Capital Loss</b> deductions are not allowed; can carry back 3 years, carried forward 5 years <b>rental income</b> received in advance, non refundable rent deposits, and lease cancellation payments are rental income when received for federal income tax purposes regardless of cash/accrual

Termination of S Corporation
1) Shareholders holding 50% of the stock (voting/nonvoting) consent to a voluntary revocation <b>Effective:</b> when the effective date is decided to be filed with the IRS 2) The Corporation fails any of the qualifications (corp/partner owner, foreign owner, more than 100 owners) <b>Effective:</b> terminated immediately 3) Excess Passive Income: +25% of corp's gross receipts are from passive investment income for 3 straight years <b>Effective:</b> terminated at the start of the 4th year - Once terminated, the corp must wait until the start of the <b>5th year</b> after termination before it can get S again

S Corp Shareholder Basis
<b>Initial Stock Basis</b> ADD: Additional Contributions AND Income Items SUBTRACT: Distributions to shareholders, nondeductible expenses, AND loss/deduction items <b>Ending Stock Basis</b>

<b>Accumulated Adjustments Account</b> hold earnings and profits for S-Corps like R/E
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Partnership Business Expenses
<b>Most business expenses are deductible for partnerships</b> <b>Guaranteed Payments:</b> reasonable compensation paid to a partner for services without regard to P/L ratio - business expense to the partnership; ordinary taxable income to the partners <b>Organizational Expenditures and Start Up Costs:</b> same rules as the corporation <b>deduct up to \$5,000</b> - if the costs exceed \$50k, reduce the deduction dollar for dollar until \$55k - any excess costs are capitalized and <b>amortized over 180 months</b>

Partnership Tax Basis			
Partnership Tax Basis = Stock basis + Debt Basis			
<b>Increases in Basis</b>		<b>Decrease in Basis</b>	
- additional contributions		- distributions	
- income and gain items		- loss and deduction items	
- increase in partnership debt		- decreases in partnership debt	
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<i>Timing of Taxable Income To Partners</i>		<b>Tax Consequence</b>	<b>Impact on Basis</b>
<b>Income</b>	<b>Withdrawals</b>	Taxable	Increase
		Nontaxable	Decrease

Tax Exempt Organizations
<b>Tax Exempt Organizations:</b> not-for-profit organizations that qualify for exemption from federal income tax The most common type of tax exempt organization is a <b>Section 501 (c) (3)</b>

Types of 501(c)(3)s
<b>Exempt Purpose of 501 (c)(3):</b> religious, charitable, scientific, testing for public safety, literacy, educational, fostering national/international amateur sports competitions, or prevention of cruelty <b>Private Foundations:</b> is classified as private unless it fits into one of the excluded categories <b>Must meet 2 requirements to be tax exempt:</b> a) the foundation will distribute income each year as required under tax law b) the foundation will not engage in any act of self-dealing or retain any excess business holdings - typically receive funding from a single major source; main activity is making grants <b>Public Charities:</b> falls into one of the excluded categories including: 1) churches, schools, colleges, hospitals or qualified medical research that are publicly supported 2) other broadly based, publicly supported organizations with limited investment income 3) not-for-profit organizations that support public charities 4) organizations that test products for public safety <b>Qualification:</b> at least one third of total support must come from gov units or the general public

Apportionment: business income is apportioned to all the states where the corp does business
<b>Apportionment Fact:</b> find the average of the 3 factors to determine apportionment <b>Property Factor:</b> (Property & Rent Expense within the state)/Total Property <b>Payroll Factor:</b> (Payroll paid to employees within the state)/Total Payroll <b>Sales Factor:</b> (Sales from sources within the state)/Total Sales

Due to R3

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<b>Circular 230</b> (publication to practice before the IRS)
<b>Subpart A:</b> Rules Governing Authority to Practice
<b>Subpart B:</b> Duties and Restrictions in Practice before the IRS
<b>Subpart C:</b> Sanctions for Violating the Regulations
<b>Subpart D:</b> Rules Applicable to Disciplinary Proceedings
<b>Subpart E:</b> General Proceedings
<b>Circular 230</b> addresses the following
- rules governing the <b>authority</b> to practice before the IRS
- <b>duties</b> and restriction relating to practice before the IRS
- <b>Sanctions</b> for violation of the regulations
- <b>Rules</b> applicable to disciplinary hearings

<b>Standards for different Documents</b>
<b>Tax Returns, Documents, Affidavits, and Other Papers</b>
- practitioner may not willfully or recklessly sign or advise if the position is frivolous
<b>Advising Clients on Potential Penalties</b>
- practitioner may must inform the client of any penalties that are <b>reasonably likely</b>
Practitioner may <b>rely</b> on client info in good faith without verification

<b>Incompetence and Disreputable Conduct:</b> may be sanctioned include:
- being <b>convicted of a federal tax law</b> or any criminal offense involving dishonesty
- giving <b>false/misleading</b> info to the US Treasury
- <b>willfully evading</b> payment of federal taxes or assisting others to evade taxes
- using <b>threats</b> in order to influence any IRS employee
- <b>recklessly giving false opinions</b>
- <b>willfully failing to sign a tax return</b>
- willfully disclosing a tax return where disclosure is not authorized
- willfully preparing/signing returns <b>without a tax preparer ID</b>
- willfully representing a taxpayer without the authority to do so
<b>Petition for Reinstatement</b> - must wait 5 years following suspension or disbarment

<b>Written Advice</b>
<i>The Practitioner Must:</i>
a) reasonably consider all relevant facts and circumstances
b) not rely on representations unless they are reasonable
c) not take into consideration the fact that the return might not be audited

<b>Authority</b>
<b>Primary Authoritative Sources to determine tax treatment include:</b>
- provisions of the Internal Revenue Code (has the most authority)
- revenue rulings and procedures
- court cases
<b>Reportable Transaction</b> - extra info is need for portenial for tax avoidance or evasion
<b>Listed Transaction</b> - reportable transaction as a tax avoidance transaction
<b>Negligence</b> - failure to make a reasonable attempt to comply with internal revenue laws

<b>Tax Preparer Standards</b>	Position	% chance of being upheld
Reasonable Basis Standard	Disclosed Position	Great than 20%
Substantial Authority Standard	Undisclosed Position	from 40-50%
More-likely-than-not Standard	Listed/Reportable Trans	Greater than 50%

State Boards vs. AICPA/State Societies	
State Boards	AICPA/State Societies
- due process is required	- due process is not required
- can impose fines/revoke license	- cannot impose fines/revoke license

<b>Types of Audits</b>
<b>Correspondence Audit</b> (no need for formal meeting)
- as a result of information errors, matching issues, or mathematical errors
<b>Office Audit</b> - conducted by IRS agent in office or by correspondence, individuals with few items
<b>Field Audit</b> - conducted by IRS agent at taxpayers office or home
<b>After the Audit</b>
1) <b>Issue Resolved</b> - IRS agent accepts the return and issues a "no change report"
2) <b>Unresolved Issues</b> - taxpayer receives a copy of the report and a 30-day letter to appeal
3) <b>Fast Track Mediation</b> - for small business owners/self employed individuals
- IRS office of appeals is assigned and attempts for resolution in 60 days

<b>Appeals Process</b>
<b>The Goal is to resolve disputes without litigation; waived right to appeal</b>
<b>30 Day Letter</b> -> notice that taxpayer has 30 days to request an appeal with an appeals officer
<b>90 Day Letter</b> (Notice of Deficiency) -> 90 days to pay the amt./file a petition with the <b>U.S. Tax Court</b>

<b>Key Characteristics of Federal Trial Courts</b>
<b>US Tax Court</b>
- Specializes in federal tax disputes
- Judges are tax experts (no jury)
- May litigate without first paying the disputed tax
- Neither party can appeal a decision of the Small Cases Division of the U.S Tax Court.
<b>US District Court</b>
- court is in the geographic area in which the taxpayer lives
- hears all types of cases and are not tax experts
- Must pay the disputed tax first and sue for refund

<b>Defenses to Avoid/Reduce Tax Penalties</b>
<b>Frivolous Tax Return</b> (less than 20% chance of succeeding)
- has no basis in law or other authority and has no defense regardless of disclosures
<b>Reasonable Basis Standard</b> (greater than 20% chance of succeeding)
- avoids the <b>negligence underpayment penalty</b> even if the tax position is not adequately disclosed
- avoids the <b>substantial underpayment penalty</b> only if the tax position is adequately disclosed
<b>Substantial Authority Standard</b> (greater than 40% chance of succeeding)
- avoids the substantial underpayment penalty even if the taxpayer does not adequately disclose
<b>More-Likely-Than-Not Standard</b> (greater than 50% chance of succeeding)
- applies to reportable and listed transactions and tax shelters

<b>Elements of Fraud</b>
<b>M</b> - Misrepresentation of Material Fact by Degrading Party
<b>A</b> - Actual and Reasonable Reliance on the misrepresentation
<b>I</b> - Intent to Induce Reliance (to make a sale)
<b>D</b> - Damages must have occurred
<b>S</b> - Scientist (Intent to Deceive)
<b>Elements of Negligence</b>
a) defendant owed a duty of care to the plaintiff
b) defendant breached that duty by failing to act with due care
c) the breach caused plaintiff's injury and damages

<b>Five Levels of Fault</b>
1) <b>Reasonable care</b> = No negligence
2) <b>Lack of reasonable care</b> = Ordinary negligence
3) <b>Lack of even slight care</b> = Gross negligence or constructive fraud
4) <b>Actual fraud</b> = Actual intent to deceive
5) <b>Criminal fraud</b> = Actual intent to deceive

<b>Privileges for CPAs</b>
<b>Attorney-Client Privilege:</b> CPA has been engaged by an attorney where the expertised CPA is needed
<b>Work Product Privilege:</b> can protect tangible materials produced in prep for litigation
<b>Tax practitioner-taxpayer privilege:</b> certain tax advice from federally authorized tax practitioners

<b>Federal Tax Matters</b>
<i>Any matter concerning the application of:</i>
1) a revenue provision of the code
2) any provision impacting obligations
3) any laws administered by the IRS

<b>Compliance</b>
Firm's procedures must include good IC pattern of noncompliance through:
- willfulness, recklessness, or gross incompetence
- must disseminate, educate, and test ICs

<b>Sanctions for Violations of Regulations</b>
<b>Secretary of Treasury may reprimand, suspend, or disbar any practitioner if they:</b>
1) are shown to be incompetent
2) fail to comply with Circular 230
3) willfully/knowingly mislead or threaten

<b>Tax Return Preparer</b>
- any person who prepares for compensation any required federal tax return
- doesn't need to be a CPA
- must have a IRS PTIN number to prepare taxes
<b>Not Considered Tax Return Preparer</b>
- someone engages in mechanical assistance
- refund/claim for refund for an employer
- refund/claim for refund as a fiduciary
<b>Tax Practitioners</b> -> licensed, can work on any matter
<b>Tax Preparers</b> -> No license, cannot present before IRS
<b>Signing Tax Preparers</b> -> primary responsibility
<b>Non-Signing Tax Preparers</b> -> assist in prep, not MM

<b>Acceptable circumstances for disclosure include:</b>
1) Preparation of state and local tax returns
2) Quality and peer reviews
3) Court order or administrative order
<b>Tax Return Preparer Compliance Penalties</b>
<b>Negligence</b> -> penalty is greater of \$1k or 50% of income
<b>Fraud</b> -> penalty is greater of \$5k or 75% of income
Preparer is not required to obtain supporting docs

<b>Role of State Boards of Accountancy</b>
1) Grant License
2) Suspend License
3) Revoke License
<b>Three Board Categories of Misconduct for State Boards</b>
1) Misconduct while performing accounting services
2) Misconduct outside the scope of the accounting
3) Criminal Conviction

<b>Penalties that the State Board can impose</b>
1) Suspension/revocation of license
2) monetary fine
3) a reprimand or censure
4) probation
5) requirement for CPE courses

<b>Three Federal Trial Courts</b>
<b>US Tax Court</b> -> do not pay first, no jury
<b>US District Court</b> -> pay first & sue for refund, jury
<b>US Court of Fed Claims</b> -> pay first & sue for refund, no jury
<b>Burden of Proof</b>
<b>Civil Cases</b> -> <b>preponderance of evidence</b>
- plaintiff has burden of proof
<b>Criminal Cases</b> -> <b>beyond a reasonable doubt</b>
- IRS has burden of proof

<b>US Tax Court Decisions (Opinions)</b>
<b>Regular decisions</b> -> involves a new or unusual point of law
<b>Memorandum decisions</b> -> only involves existing law
<b>The 8 Taxpayer Penalties</b>
1) Earned income credit penalty
2) Penalty for failure to make estimated income tax payments
3) Failure-to-file penalty
4) Failure-to-pay penalty
5) Negligence penalty w/ respect to an understatement of tax
6) Penalty for substantial underpayment of tax
7) Penalty for a substantial valuation misstatement
8) Fraud penalties

<b>Can Avoid Penalties if:</b> (for reasonable basis)
1) had reasonable cause to support the return position
2) acted in good faith
3) did not have willful neglect

<b>Private Letter Ruling (PLR)</b> is the IRS's interpretation of the federal tax law as it applies to a specific taxpayer situation
<b>Three ways CPA Legal Liability Arise</b>
1) Breach of Contract
2) Commission of a tort
3) Violation of a Statute

<b>To Prove Malpractice against a Tax Preparer (needs all)</b>
a) tax preparer owed a duty to the taxpayer
b) there was a breach of that duty
c) the plaintiff suffered injuries
d) the breach of duty caused the plaintiff's injury

<b>Torts</b>
<b>Unintentional Tort</b>
- Ordinary negligence, lacks reasonable care
- <b>compensatory damages ONLY</b>
<b>Intentional Tort</b>
<b>Constructive Fraud:</b> gross negligence/recklessness
<b>Fraud:</b> acts in bad faith with intent
- <b>compensatory and punitive damages</b>

<b>Workpapers</b>
<b>WR's cannot be shared unless:</b>
1) in response to a subpoena in a court case
2) To a prospective purchaser of the CPA's practice
3) To a state CPA society voluntary quality-control review panel
4) in defense of a lawsuit brought by a client
5) in defense of an investigation by the AICPA/State trial board
6) When GAAP requires the disclosure

<b>Duties and Restrictions in Practice before the IRS (Subpart B)</b>
<b>Information to Be Furnished</b>
- practitioner may withhold info he believes in good faith to be privileged
<b>Knowledge of Client Omission</b>
- practitioner that knows of noncompliance must notify/advise the client on penalties
- does not need to notify the IRS nor withdrawal from the client until fixed
<b>Prompt Disposition of Pending Matters</b>
- there may not be any unreasonable delay in any matters before the IRS
<b>Diligence as to Accuracy</b>
- must exercise due diligence in IRS matters, reasonable reliance is ok
<b>Assistance from/to Disbarred/Suspended/Former IRS employees</b>
- cannot accept help/assist any person who is disbarred or suspended
<b>Practice by former Government Employees, their partners, and associates</b>
- no firm can represent tax payers unless the gov employee is <b>isolated</b>
- <i>if the employee is personally and substantially participated in a matter</i> -> never represent in those matters
- <i>if the employee had "official responsibility" in a matter</i> -> cannot represent for 2 years
- <i>if the employee had participated in the development of a rule</i> -> cannot represent for 1 years
<b>Notary</b> - practitioner may not act as a notary public for his clients on a tax matter
<b>Fees</b> - practitioner cannot charge an unconscionable fee in connection with matters before the IRS
<b>Contingent Fees are allowed in 3 situations:</b>
1) IRS examination of original tax return
2) claim for a refund of interest and/or penalties
3) a judicial proceeding
<b>Return of Client's Record</b> - practitioner owes client a duty of confidentiality, but may retain copies
<b>Conflict of Interest</b> - practitioner may not represent if it involves a conflict of interest unless:
- practitioner believes he can competently represent each client, no law prohibits it, and parties give consent
<b>Solicitation</b> - cannot give guarantees including anything false, fraudulent, misleading, or deceptive
<b>Negotiation of Taxpayer's Check</b> - practitioner <b>may not endorse or negotiate</b> any refund check
<b>Competence</b> - practitioner must possess the necessary competence
<b>Best Practices for Tax Advisors</b>
- should provide clients with the highest-quality representation
- communicate terms of engagement to determine client's purpose and use for the advice
- facts/conclusions must be supported by law (do due diligence)
- advise client about importance of conclusions reached
- act fairly and with integrity in practice before the IRS
- take reasonable steps to ensure all firm members follows these procedures

<b>Tax Return Preparer Penalties for Unethical Behaviors</b>
<b>Penalty of \$60 per failure, maximum of \$31,500 for the following failures</b>
- failure to sign return
- failure to provide copy to taxpayer due to reasonable cause (not willful neglect)
- failure to furnish identification number of preparer
- failure to properly retain records for <b>3 years</b> following the last return period
- failure to file correct information returns
<b>Penalty of \$635 per failure for the following issues</b>
- any preparer who endorses or negotiates a refund check
- failure to comply with IRS's due diligence requirements
<b>Aiding and Abetting in the Understatement of Tax Liability</b>
- IRS has the burden of proof beyond a preponderance of evidence (civil) or a reasonable doubt (crim)
- penalty of \$1,000 for all taxpayers and \$10,000 for corporations
<b>Wrongful Disclosure/Use of Tax Return Info</b>
- penalty of \$250 for each wrong disclosure (maximum of \$10,000)
<b>Exceptions to the penalty</b>
a) disclosure allowed by any provision of the code and disclosure pursuant to a court order
b) allowable uses (prep of state/local taxes and preparation of declaration of estimated tax)
c) disclosures and uses for quality and peer reviews and admin order
d) <b>Consent of Client:</b> client info may be disclosed if the client specifically consents to the info

<b>Requirements of Regulatory Agencies</b>
<b>American Institute of Certified Public Accountants (AICPA)</b>
- membership is voluntary, must follow the "professional code of conduct"
<b>Internal Revenue Services (IRS)</b>
<b>Criminal Penalties</b>
- proof beyond a reasonable doubt and burden is on the government
- can be imposed on any person who prepares a tax return in a fraudulent or false manner
<b>Civil Penalties</b>
- may prohibit an accountant from practicing before the IRS
- proof preponderance of evidence and burden is on the taxpayer
<b>Securities and Exchange Commission (SEC)</b>
- the SEC <b>only investigates criminal activity</b> and does not prosecute criminal cases
- they may suspend or revoke the right to practice in front of the SEC

<b>Selection of Returns for Audit</b>
1) <b>Statistical Model</b> - model used to select returns that are most likely to contain errors and yield add taxes
2) <b>Random Selection</b> - small number of additional returns are manually selected
3) <b>Prior Year Audit</b> - subsequent audits for taxpayers with a substantial deficiency in prior year
4) <b>Information Return Discrepancy</b> - information forms do not match W-2s/1099s might trigger an audit
5) <b>Deductions that Exceed Norms</b> - itemized deductions are in excess of norms

<b>Taxpayer Penalties</b>
1) <b>Earned income credit penalty</b>
- taxpayers who negligently claim the credit; cannot claim credit for <b>2 years (10 years in fraud cases)</b>
2) <b>Penalty for failure to make estimated income tax payments</b>
- TPs that don't have enough withholding and who do not make timely payments of estimated income tax
- accrues from the date the estimated income tax must be paid
<b>To Avoid penalties, withholdin-gs and timely estimated payments must be:</b>
a) less than or equal to \$1,000 of current year tax
b) at least 90% of the current year's tax
c) at least 100% of prior year's tax (or 110% if AGI is greater than \$150k)
d) equal to estimated current year tax based on "annualization of income" method
3) <b>Failure-to-file penalty</b>
- 5% of the amount of tax due for each month; can be a maximum of 25%
- <b>if more than 60 days late</b> - minimum penalty increases to the lesser of \$510 or 100% of tax due
- the failure-to-file penalty is reduced by the amount of the failure-to-pay penalty
4) <b>Failure-to-pay penalty</b>
- One-half of 1% per month up to a maximum of 25% of the unpaid tax
- <b>exception:</b> no penalty if at least 90% of tax is paid by the unextended due date and balance is paid at due date
5) <b>Negligence penalty w/ respect to an understatement of tax</b>
- tax preparer or disorgan (careless, reckless) of tax rules and regulations
- accuracy based penalty is equal to <b>20%</b> of the understatement of tax
6) <b>Penalty for substantial underpayment of tax</b>
- accuracy based penalty is equal to <b>20%</b> of the understatement of tax
- <b>Understatement of tax is "substantial" if it exceeds:</b>
- <b>for most taxpayers:</b> greater of \$5,000 or 10% of correct tax
- <b>for C-Corps:</b> lesser of a) \$10 mil or b) greater of \$10,000 or 10% of correct tax
<b>TPs can avoid penalty if:</b>
a) reasonable basis and adequate disclosure of tax position
b) substantial authority and no disclosure of tax position
7) <b>Penalty for a substantial valuation misstatement</b>
- penalty is equal to <b>20%</b> of the understatement of tax
- No penalty if the amount of the tax underpayment is no more than \$5,000 (\$10k for C-Corps)
8) <b>Fraud penalties</b>
- applies if the taxpayer <b>willfully</b> and deliberately attempts to evade tax
- <b>Civil Penalty:</b> 75% of understatement due to fraud
- <b>Criminal Penalty:</b> up to \$100k (\$500k for C-Corps); IRS has burden of proof

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<b>Methods of Formation</b>		
<b>Express Contract:</b> formed by language, oral, or written		
<b>Implied-In-Fact Contract:</b> formed by conduct		
<b>Implied-In-Law:</b> not a contract, it's a remedy to prevent unjust enrichment		
<b>Unilateral Contract:</b> there is one promise given in exchange for performance		
<b>Bilateral Contract:</b> there are two promises - a promise for a promise		
<b>Fraud (defenses)</b>		
Can prove fraud if he is able to prove MAIDS		
<b>M</b> - Misrepresentation of Material Fact by Degrading Party		
<b>A</b> - Actual and Reasonable Reliance on the misrepresentation		
<b>I</b> - Intent to Induce Reliance (to make a sale)		
<b>D</b> - Damages must have occurred		
<b>S</b> - Scientist (Intent to Deceive)		
<b>Fraud in Execution (Void)</b> → signing something that does not look like a K		
<b>Fraud in Inducement (Voidable)</b> → terms are materially misrepresented		
<b>Innocent Misrepresentation (defenses)</b>		
- innocent misrepresentation has all the elements of Fraud except scienter		
- K is voidable, will only pay for compensatory damages		
<b>Duress (defenses)</b>		
- harm is threatened by physical force → void		
- harm is threatened by economic/social force → voidable		
<b>Undue Influence (defenses)</b>		
- person in position of trust/confidence uses it to take advantage of another		
- K is voidable		
<b>Mutual Mistakes (defenses)</b>		
- material fact regarding the contract, the good guys can avoid the K		
- if subject matter is not in existence when K is made, it is void		
- unilateral mistakes is not a defense unless the other party knew		
<b>Illegality (defenses)</b>		
- consideration/subject is illegal, the K is void		
if work is performed without a license		
license is required to raise revenue (vendor) → K is enforceable		
license is required to protect public (CPA) → K is void		
<b>Minors (defenses)</b>		
- a minor can disaffirm a contract and must return their possession when they do		
- a minor has reasonable time after reaching majority to disaffirm the K		
Can be bound to Contract if they Ratify it by age of majority by any		
a) failing to disaffirm within a reasonable time after reaching majority		
b) expressly ratifying the entire contract orally or in writing		
c) retaining or accepting benefits		
<b>Intoxication (defenses)</b>		
- only valid if the intoxication was known and prevents from knowing the details		
<b>Adjudicated incompetent (defenses)</b>		
- K made by someone who is adjudicated mentally incompetent is void		
<b>Statute of Frauds: Six Contracts Requiring Writing</b>		
<b>M</b> - contract in which the consideration is marriage		
<b>V</b> - contracts which teams cannot be performed within a year		
<b>L</b> - contractings involving interests in land		
<b>E</b> - contracts by executors to pay estate debts out of personal funds		
<b>G</b> - contract for the sale of goods for \$500 or more		
<b>S</b> - K to act as surety (pay the debt of another)		
exemption: when already been performed, admitted, or specially manufactured		
<b>Impossibility (defenses)</b>		
- after K exists, events occurs that makes the K objectively impossible		
<b>Parol Evidence Rule</b>		
If the parties have entered into a fully integrated written contract, prior or contemporaneous oral statements and prior written statements cannot be admitted into evidence to vary the written terms of the contract.		
The parol evidence rule prohibits evidence of prior oral or written agreements that seek to contradict the terms of a fully integrated contract		
<b>Conditions that Affect Duty to Perform</b>		
<b>Condition Precedent:</b> condition must occur before other party must perform		
<b>Condition Concurrent:</b> conditions that must occur simultaneously		
<b>Condition Subsequent:</b> conditions will occur after the duty to perform has arisen		
<b>Duties of an Agent to the Principal (implied duties)</b>		
<b>D - Duty of Loyalty:</b> agent must act solely in the principal's interest in connection		
<b>O - Duty of Obedience:</b> agent must obey all reasonable directions (oral/written)		
<b>R - Duty of Reasonable Care:</b> agent must not be negligent		
<b>A - Duty of Account:</b> agent must account for all property/money received		
<b>Duties of an Principal to the Agent (implied by law)</b>		
<b>Compensation</b> - principle has implied duty to give reasonable compensation		
<b>Reimbursement (Indemnification)</b> - must reimburse for all expenses incurred		
<b>Principal Remedies for Breach of K</b>		
<b>Suing for damages</b>		
	<b>Sue for Torts</b>	<b>Sue for Contract</b>
Agent is Receiving Compensation	Yes	Yes
Agent is Not Receiving Compensation	Yes	No
- Principal can recover the secret profit (commission/kickbacks) (constructive trust)		
- Principal may refuse to pay the agent if the agent committed an intentional tort		
<b>Actual Authority (Real Authority)</b>		
- authority the agent believes he possesses because of comms to the agent		
Express → Oral/Written instructions   Implied → Reasonable Belief		
<b>Termination of Actual Authority</b>		
1) <b>Acts of the Parties:</b> agent quits (renunciation) or gets fired (revocation)		
- damages could be awarded if termination violates K		
- if the agency is coupled with interest - only agent can terminate K		
2) <b>Accomplishment of Objective or Expiration of Stated Period</b>		
- will terminate after a reasonable time if no time is stated		
3) <b>Automatic Termination of Actual Authority (By operation of Law)</b>		
<b>B</b> - Discharge in bankruptcy of principal		
1 - Incapacity of the principal		
D - Death of either the principal or agent		
1 - Failure to acquire a necessary license		
1 - Subsequent illegality		
D - Destruction of subject matter of the agency		
<b>Apparent Authority</b>		
- conduct that caused 3rd parties to reasonably believe that the agent had authority		
<b>Apparent Authority Requires Either:</b>		
1) a holding out by the principal		
2) negligent inaction by the principal		
- vests the agent with power to enter into all transactions that a RP would		
- Secret limiting instructions limits actual authority but not apparent authority		
<b>General Agent</b> - ongoing transactions		
<b>Special Agent</b> - one-time transactions		
<b>Termination of Apparent Authority</b> must give notice to the 3rd parties		
<b>Old or Current Customers</b> → actual notice (written/oral) must be given		
<b>Potential Customers</b> → constructive notice (ads in paper) must be given		
if terminated by operation of law → no notice is needed		
<b>Estoppel to Deny Existence of Agency</b> - not stopping a claim of misinfo		
<b>Ratification</b>		
- the agent acts on behalf of the principal in an unauthorized way		
- the principal can accept the deal if they know the facts and accept the whole deal		
- only disclosed principals can ratify the contract		

<b>Sources of Contract Law</b> <b>Common Law</b> - derived from the courts includes: R - Real Estate I - Insurance S - Services E - Employment <b>UCC Sales Article</b> governs sale of goods (moveable)
<b>Elements of Legally Enforceable Contracts</b> 1) Offer and Acceptance (Mutual Assent) 2) Exchange of Consideration 3) Lack of Defenses
<b>Elements of Consideration</b> 1) something of legal value - does not need to have monetary value - does not need to flow to one of the parties - is not obligated to do/will obtain a benefit - fairness is not required, as long as it's not a sham - promise to perform an existing duty is not 2) a bargained-for-exchange - must be given for other consideration
<b>Defenses</b> <b>Void</b> → unenforceable by either party D - Destruction of Subject Matter A - Adjudicated Incompetency P - Physical Duress I - Illegality E - Fraud in the Execution <b>Voidable</b> → at the option of the good guys - Fraud in the inducement - innocent misrepresentation - economic/social duress - undue influence - mutual/unilateral mistake - minority - intoxication
<b>Remedies (Common Law)</b> - intended to put non-breacher in pre-breach position <b>Major Breach</b> → can discharge from K <b>Minor Breach</b> → entitled to damages (no discharge) The statute of limitations for breach of contract usually begins to run on the occurrence of the breach.
<b>Damages</b> <b>Compensatory Damages</b> - award that's enough money to obtain subs <b>Specific Performance</b> - alternative with cash (RE, art etc) <b>Liquidated Damages</b> - clause that specifies what damages will be <b>Punitive Damages</b> - only available for torts (Fraud)
<b>Accords/Satisfactions/Substituted Contracts</b> <b>Accord</b> - agreement to sub one K for another K <b>Satisfaction</b> - execution of the accord <b>Substituted K</b> - duties under OG contract are discharged <b>Novation</b> - available as defense to party released from K - happens when new K sub new party for old K
<b>Agency (Legal Relationship between 3 parties)</b> <b>Principal</b> hires agent on their behalf <b>Agent</b> negotiates with 3rd party - Principal must have capacity, the agent does not need - writing and consideration are not required <b>Power of Attorney</b> - written authorization of an agency - only the principal is required to sign - is limited to specific transactions
<b>Agents Power to Contractually Bind Principal</b> 1) <b>Actual Authority</b> - agent has power and right - principal can't sue for damages 2) <b>Apparent Authority</b> - agent has power but not right 3) <b>Ratification</b> - agent has no power or right
<b>Agents Liability to 3rd Parties</b> <b>Disclosed</b> → agent is not liable <b>Undisclosed/Undisclosed</b> → agent is liable 3rd party can hold either party liable but not both - no apparent authority with undisclosed
<b>Surety</b> is one who agrees to be directly liable for the debt/obligation of another <b>Guarantor</b> is only liable to the creditor if the debtor does not perform his duty
<b>Surety's Rights Against Principal Debtor</b> <b>Exoneratio</b> - right to compel principal to pay <b>Subrogation</b> - enforcement of C's rights against principal <b>Reimbursement</b> - can recover from P after surety pays
<b>Surety's Basics</b> <b>Surety</b> is one who agrees to be directly liable for the debt/obligation of another <b>Guarantor</b> is only liable to the creditor if the debtor does not perform his duty <b>C's Sureties</b> are 2+ sureties of the same obligation that are jointly and severally liable.

<b>The Offer</b> - can be express or implied contract - offer must be sufficient for a reasonable person to assume that the offer was a serious offer to enter <b>Advertisements</b> are not offers (considered invitations) EXCEPTIONS: ads that limit the scope <b>Terms Must be Definite and Certain</b> <b>UCC (Sale of Goods)</b> - generally only requires quantity terms to be an offer <b>Common Law (RISE)</b> - offers must include offeree, price, time, quantity, and nature of work
<b>Three ways of Termination of Offers</b> 1) <b>Revocation by Offeror</b> - offeror can revoke an offer any time before acceptance by communicating it - it is considered an irrevocable option if the offeree pays to keep it open - effective when received, (when done by publication, its effective when published) 2) <b>Rejection by Offeree</b> - offeree can terminate the offer by rejecting it - counteroffers are considered both a rejection and a new option; mere injury is not a rejection - effective when received 3) <b>Termination of Operation of Law</b> - terminate if either of the parties dies/become incompetent prior to acceptance - terminate if subject matter is destroyed or became illegal prior to acceptance - an option is not terminated by the death of a party
<b>The Acceptance</b> - acceptances may be made in any manner reasonable under the circumstances, unless its specified <b>UCC (Sale of Goods)</b> - minor changes to an acceptance can be made and mirror image rules doesn't apply <b>Common Law (RISE)</b> - follows mirror image rule (acceptance must mirror offer to be effective) <b>Mailbox Rule</b> - acceptances are effective when they are sent (can be different if in K)
<b>UCC Rules</b> <b>Merchants</b> are one who deals in goods of the kind sold or has special knowledge to the goods <b>To Qualify as a Merchant Firm Offer:</b> a) seller must be a merchant b) offer must be in writing and signed by the merchant c) offer gives assurances that will be kept open for a certain time (maximum 3 months) - acceptance does not follow the mirror image rule - an offer that does not specify means of acceptance can be accepted in any reasonable way - an offer that does specify the means of acceptance must be accepted in stated ways - an offer can be accepted by either a promise to ship (Bilateral) or by a prompt shipment (unilateral) - a prompt shipment of nonconforming goods is both an acceptance and a breach of contract UCC Deals require that the seller makes a Perfect Tender UCC Modifications are Enforceable without Consideration
<b>UCC Defenses</b> <b>UCC Statute of Limitation for Fraud:</b> 4 years from the date of breach <b>Exceptions to Statute of Frauds (UCC Only) (SUNAP)</b> <b>S</b> - Contracts for Specially manufactured goods <b>W</b> - Written Confirmation memo between merchants <b>A</b> - Contracts for parties have admitted in court <b>P</b> - Contracts that have been performed to the extent that performance is accepted Impracticability: standard to get discharged for UCC; common requires impossibility
<b>Delivery and Risk of Loss</b> <b>Delivery and risk of loss can be independent of title</b> <b>Seller's Duty:</b> hold conforming goods for buyer and enable the buyer to take delivery <b>For Risk of Loss to Pass</b> <b>Step 1: Goods must be identified</b> - title/risk of loss cannot pass until goods are identified <b>Step 2: Parties must agree on K terms</b> - parties that designate something govern the agreement <b>Step 3: Default Rules Apply in Absence of Agreement</b> <b>Non-Carrier Cases:</b> Seller has no duty to deliver/ship the goods Seller is a Merchant: ROL passes when buyer takes physical possession Seller is not a Merchant: ROL passes upon sellers tender of delivery of goods <b>Carrier Cases:</b> Parties agree that a common carrier will be used to ship the goods to the buyer FOB, Seller's City (Shipment): ROL passes when goods get into the common carrier FOB, Buyer's City (Destination): ROL passes when goods are delivered to buyer Non-Conforming Good Shipped: ROL remains with the seller regardless of terms
<b>Risk in Sales</b> <b>General Rule:</b> All sales are final, unless otherwise agreed <b>Sale on Approval</b> (risk on seller until approval) - buyer has right to return within X days, like a trial - title and ROL remain with seller until buyer approves <b>Sale or Return</b> (risk on buyer until returned) - consignment sales - ROL remain with buyer until goods are completely sold
<b>Four Types of Warranties</b> 1) <b>Express Warranty</b> - something that is done to induce the buyer to buy the goods 2) <b>Implied Warranty of Title</b> - seller actually has the right to sell the goods 3) <b>Implied Warranty of Merchantability</b> - goods must fit the ordinary purpose intended 4) <b>Implied Warranty of Fitness for Particular Purpose</b> - goods must be fit for buyers purpose - an injury by a defective product is a breach of contract
<b>Remedies of Buyers and Sellers</b> <b>Anticipatory Repudiation</b> - occurs if either party indicates in advance that they won't perform <i>Options for non-breaching party</i> 1) Sue Immediately 2) Cancel the K 3) Demand Assurances 4) Wait until time for performance to sue <b>Punitive Damages are only available for fraud;</b> not available under the UCC <b>Duty to Mitigate</b> - both parties have a duty to avoid damages; cant recover damages on avoided events <b>Seller's Remedies</b> (if the buyer's breach) - seller can cancel or rescind and/or sue for damages - seller has right to resell; can only sue for difference between damages and sold goods with any add costs - seller may withhold delivery if there is a breach on the K <b>Seller can Collect the full contract price if the goods:</b> a) cannot be resold for any price b) are destroyed after ROL has passed to the buyer <b>Absence of a Liquidated Damages</b> even with no damage clause, if the buyer makes a down payment, seller can keep the lesser of: a) \$500 b) 20% of the sales price
<b>Buyer's Remedies (if the seller breach)</b> - Seller must make a Perfect Tender (delivery free from defect); buyer has right to reject nonconformity If goods do not conform to the K: 1) Reject all of the goods 2) Reject some of the goods 3) Accept all of the goods
<b>Respondent Superior</b> <b>General Rule:</b> a principal is not liable for torts committed by his agent <b>Respondent Superior</b> - employer can be liable for employee torts if committed within scope of employment - employer has little control over independent contractors and are not liable <b>Scope of Employment</b> - tort must have happened during working hours - the activities do not need to have been authorized by employer, just same general type - not liable for intentional torts or serious crimes (not within the scope of employment) - small detours will fall in the scope, major detours don't fall in the scope - cannot limit liability by agreement with employee
<b>Defenses of a Surety</b> <b>Defrauded Principal</b> - principal debtor was induced to enter the contract by creditor's fraud <b>Duress Upon Principal</b> - principal debtor's promise was obtained by duress and surety didn't know of duress <b>Illegality of the Principal's Obligation</b> - surety is not liable if underlying obligation is illegal <b>Discharge of Principal's Obligation</b> - if the underlying obligation is paid/creditor refuses to accept it, not liable - if creditor releases the principal, the surety is no longer liable <b>Surety's Incapacity or Bankruptcy:</b> surety's contractual incapacity is a defense for the surety <b>Lack of Consideration:</b> promise to serve must be supported by consideration to be enforceable



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<b>Dismissal/Conversion of a Chapter 7 Case</b>
<i>A Chapter 7 by an individual may be dismissed if:</i>
a) upon a finding that granting relief would constitute abuse
b) the debtor has sufficient income to pay the debts
<b>Means Test</b>
1) If Average Monthly Income < State Median → Stay in Chapter 7
2) If Average Monthly Income > State Median → Move to the means test
3) If (Avg Monthly Income - Allowed Expense) * 60 > \$9,075 → Stay in Chap 7
4) If (Avg Monthly Income - Allowed Expense) * 60 > \$15,150 → Dismiss

<b>Property of a Bankrupt Estate</b>
<b>Rule:</b> debtor's estate includes all real/personal property at the time of filing
<i>Also includes Dili found within 180 days after filing</i>
<b>D</b> - Property the debtor receives from divorce
<b>I</b> - Income generated from Rent, Dividends or Interest
<b>I</b> - Inheritance
<b>I</b> - Insurance within 180 days after the petition
<b>Property Excluded From Estate</b>
- salaries after petition (post petition earnings)
- basic household items needed to live

<b>Preferential payment is:</b>
- A transfer made to or for the benefit of a creditor
- On account of an antecedent debt of the debtor
- Made within 90 days prior to the filing (one year if the creditor is an insider)
- Made while the debtor was insolvent
- Results in the creditor receiving more than the creditor would have received

<b>Chapter 7 Features</b>
<b>Goal:</b> give an honest debtor a fresh start by financially discharging most debts
<b>Individual Debt</b> → discharged <b>Entity Debt</b> → Dissolved

<b>4 Items that Prevent Discharge (Chapter 7)</b>
1) Debtor is not an individual
2) Fraudulent transfers or concealment of property
3) unjustifiably failed to keep books and records
4) prior discharge within 8 years

<b>Six Exceptions to Discharge (Nondischargeable debts)</b>
<b>W</b> - Willful and malicious injury
<b>A</b> - Alimony
<b>F</b> - Fraud or Fines
<b>T</b> - Taxes within 3 years
<b>E</b> - Educational Loans
<b>D</b> - Debts undiscovered in bankruptcy petition

<b>Affordable Care Act</b>
<b>Goal:</b> improve access to healthcare by providing workers access to affordable healthcare; creates a national standard <b>not a national HC plan</b>
<b>Healthcare Coverage May be Offered through:</b>
1) an employer provided plan
2) plan purchased through Health Insurance Marketplace
3) a government sponsored program (medicare, medicaid)
4) direct purchase from an insurance company
<b>Participation:</b> both employers and employees must participate
<b>Applicable Large Employees:</b> employers with 50+ full time employees (30 hrs a week or 130 a month); must provide opportunity to purchase HC
<b>Employers must file annual info to IRS and provide info to workers about HC</b>
- is illegal to deny coverage to individuals with preexisting conditions
<b>Penalties (only applies to employers)</b>
<b>Penalty Type 1:</b> must pay \$2,880 per employee (first 30 aren't if):
a) it does not offer coverage to at least 95% for full time
b) at least one full time receives the premium tax credit
<b>Penalty Type 2:</b> must pay \$4,320 per employee if:
a) the minimum coverage is not affordable or provide minimum value

<b>General Partnership/Joint Venture</b>
<b>Formation:</b> easy to set up, nothing needs to be filed with the state
<b>General Partnership</b> → ongoing <b>Joint Venture</b> → Single Transactions
- GP agreement does not need to be in writing unless it is longer than a year
<b>Three simple elements of Partnerships</b>
i) two or more person ii) who agree iii) to carry on a business for profit
<b>Operation of GP:</b> absent to agreement, all partners have equal rights to manage
- management rights and voting power are not based on amount contributed
- decisions regarding ordinary course videos may be controlled by majority
- unanimous consent required for: new partners, confession of judgement or
Each partner is <b>joint and several</b> liable for all partnership obligations
<b>Absent an agreement</b> → all partners have equal rights to share P/Ls
- unless noted, partners are not entitled for compensation for services

<b>Limited Liability Partnership (LLP)</b>
Similar to GP including sharing of P/L and all advantages/disadvantages
<b>Liability:</b> Partners are not liable for acts of fellow partners
- still liable for own/employee negligence, errors, omissions or malpractice
<b>Formation:</b> must be filed with the state; some states restrict to only law/account
<b>Certificate of LLP include</b>
a) the LLP's name
b) the name and location of its registered office
c) the number of partners
d) description of the partnership business

<b>Limited Liability Company (LLC)</b>
<b>Feature A:</b> limited liability that shareholders of a corporation \
<b>Feature B:</b> ability to be taxed like a partnership <b>Members</b> = LLC Owners
<b>Formation:</b> files an <b>article of organization</b> with the sec of state; includes:
a) statement that the entity is an LLC
b) name of the LLC and an indication that it is an LLC
c) address of the LLC's registered office and name of its agent
d) if management is vested in managers
e) names of the persons who will be managing the company
Generally all members may participate in management
<b>Member-Managed LLC:</b> each member is an agent and has authority
<b>Manager-Managed LLC:</b> each manager is an agent and has authority
- Voting strength is proportional to contributions
<b>P/Ls get split based on the value of the partners contributions</b>
Under the ULLCA: profits are shared equally

<b>6 Basic Types of Bankruptcy Cases</b>
<b>Chapter 7</b> → Liquidation
<b>Chapter 9</b> → municipal debt adjustment
<b>Chapter 11</b> → reorganization
<b>Chapter 12</b> → family farmers with regular income
<b>Chapter 13</b> → adj of debt of individuals with income
<b>Chapter 15</b> → ancillary + other cross border cases

<b>Trustee Requirements</b>
<b>Chapter 7</b> → trustee <b>must</b> be appointed
<b>Chapter 13</b> → trustee <b>must</b> be appointed
<b>Chapter 11</b> → trustee isn't required but courts can force

<b>Automatic Stay</b>
- Stops almost all collection efforts (not alimony)
- starts when the the petition is filed

<b>Section 341 Meeting:</b> creditors meeting
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<b>Three Categories for Claimants (paid in order)</b>
1) Secured Claimants
2) Priority Claimants (SAG WEG CFI)
3) General Creditors who filed claim on time

<b>Federal Insurance Contributions Act (FICA)</b>
<b>Goal:</b> Provide workers with benefits in the case of death, disability or retirement
<b>Participation:</b>
1) all full-time and part-time employees
2) self-employment if net profits exceed \$400
- Employers have <b>right to reimbursement</b> if they pay both sides of the FICA taxes
<b>Funding:</b> is funded jointly by employers and employees, responsibility of employers to withhold taxes
- income includes all income (salary, bonuses, and commission) + doesn't include gifts, interest and dividends
<b>FICA Contributions</b> → 6.2% <b>Medicare Contri</b> → 1.45%

<b>Unemployment Compensation (FUTA)</b>
<b>Goal:</b> establish a state-run system of insurance to provide income to workers who lose their job
- excludes the self-employed
<b>Participation:</b> all employers who have either
1) quarterly payrolls of at least \$1,500
2) employ at least 1 person for 20 weeks in a year
<b>Funding:</b> only the employer pays and can be deductible as a business expense
<b>Social Security/FICA Benefits Four Major Programs</b>
1) Old Age and Survivors Insurance
2) Disability Insurance
3) Medicare ( <b>but not Medicaid</b> )
4) Supplemental Security Income

<b>Workers' Compensation</b>
<b>Goal:</b> a state-run program designed to enable employees to recover for injuries occurred on the job
<b>Employers are strictly liable regardless of fault</b>
- even in negligent or assumption of risk
only for employees in the <b>scope of employment</b>
<b>Participation:</b> all employers must except for:
- agriculture, domestic, casual workers
- public employees and independent contractors
<b>Funding:</b> funded through the employer through state/private insurance

<b>Premium Tax Credit</b>
<b>Goal:</b> refundable tax credit that helps low/mid income TP to cover premiums for HC through the marketplace
<b>Eligibility:</b>
1) has household income within a certain range
2) does not file a Married Filing Separately
3) cannot be claimed as a dependent
4) must be enrolled in the marketplace for 1mon

<b>Foreign Corrupt Practices Act (FCPA)</b>
<b>Goal:</b> generally prohibits the payments of bribes to foreign officials
<b>Penalties:</b> twice the amt benefit + 5 years in prison

<b>Sole Proprietorship</b>
- Simplest form of business ownership
- SoleP is <b>Personal Liable</b> for all obligation of the firm
<b>Duration:</b> cannot exist beyond the life of the SoleP
<b>Benefits of Sole Proprietorship</b>
a) wants to form business that he will manage
b) wants to claim income/losses on taxes
c) does not want to bother with formality

<b>Formation of Corporations</b>
- most states are created using the Revised Model Business Corporation Act (RMBCA)
<b>Promoters:</b> procure capital to form a cor's
<b>Articles of Incorporation must include:</b>
1) name of the corporation
2) name/address of corporation registration
3) name/addr of each of the incorporators
4) type/number of shares authorized to be issued
<b>Commonly wrong answers, Don't need to include</b>
1) type of business
2) business purpose
3) where the pfices are located
4) initial directors or officers name
<b>Ultra Vires Act:</b> clause in articles stating purpose

<b>Piercing the Corporate Veil</b>
- Disregarding the corporate entity
<b>I</b> - Inadequate capitalization
<b>C</b> - Commingling personal with corporate funds
<b>F</b> - Fraud

<b>Who can be a Debtor in Chapter 7</b>
<b>Rule:</b> only a individuals, partnership, or corporation that resides in the US or has a place of business in the US
<b>Exceptions (May not file for Chapter 7) No RIBS in Chapter 7</b>
<b>R</b> - Railroads
<b>I</b> - Insurance companies or small business investment companies
<b>B</b> - Banks
<b>S</b> - Savings Institutions

<b>Who can be a Debtor in Chapter 11</b>
<b>Rule:</b> only a individuals, partnership, or corporation that resides in the US or has a place of business in the US
<b>Exceptions (May not file for Chapter 11) only changes is no Brokers</b>
<b>B</b> - Brokers
<b>I</b> - Insurance companies or small business investment companies
<b>B</b> - Banks
<b>S</b> - Savings Institutions

<b>Involuntary Cases (Chapter 7/11)</b>
Creditors must file a petition and show that the debtor is not paying debts and in default
<b>Debtors who can not be involuntary petition:</b> farmers and nonprofit charitable organizations
<b>Only Creditors who are owed at least \$18,600 in unsecured, undisputed debt can petition</b>
<b>With Fewer than 12 Creditors</b> = only one creditor owed \$18,600 is needed
<b>With More than 12 Creditors</b> = at least 3 creditor owed \$18,600 are needed

<b>Priority Claimants include:</b> (from highest to lowest priority) <b>SAG WEG CFI</b>
<b>S</b> - Support obligations owed to spouses and children
<b>A</b> - expenses of bankruptcy admin (filing fees, court fees, trustee fees, legal/accounting fees)
<b>G</b> - Gap claims accrued in ordinary course of business after an involuntary petition is filed
<b>W</b> - wage claims of employees for sums earned with 180 days since bankruptcy (up to \$15,150)
<b>E</b> - sums owed for employee benefits (up to whatever of the \$15,150 that is left)
<b>G</b> - claims of grain farmers and fisherman (up to \$7,475)
<b>C</b> - consumer deposits (up to \$3,350)
<b>T</b> - Tax claims
<b>I</b> - personal injury claims arising from intoxicated driving

<b>Formation (Summary of Business Entities)</b>
<b>Sole Proprietorship</b>
No formalities, owner can simply operate a business
<b>General Partnership/IV</b>
No formalities, formed by agreement or mere conduct
<b>LLP</b>
Formalities, file <b>statement of qualification</b> with state
<b>Limited Partner</b>
Formalities, file <b>certificate of LP</b> with state
<b>LLC</b>
Formalities, file <b>articles of organization</b> with state
<b>Corporation</b>
Formalities, file <b>incorporation/corporate charter</b> with state; needs S election
<b>Subchapter S Corp</b>
Formalities, file <b>incorporation/corporate charter</b> with state

<b>Liability of Owners (Summary of Business Entities)</b>
<b>Sole Proprietorship</b>
Unlimited personal liability
<b>General Partnership/IV</b>
Unlimited personal liability
<b>LLP</b>
Partners are generally not liable unless caused by their own negligence
<b>Limited Partner</b>
GP has unlimited personal liability while LP is not liable beyond investment
<b>LLC</b>
Members are generally not personally liable beyond their investment
<b>Corporation</b>
Shareholders are generally not personally liable beyond their investment
<b>Subchapter S Corp</b>
Shareholders are generally not personally liable beyond their investment

<b>Management (Summary of Business Entities)</b>
<b>Sole Proprietorship</b>
Sole Proprietor manages or can appoint manager
<b>General Partnership/IV</b>
Owners manages or can appoint managing partner
<b>LLP</b>
Partners manages or can appoint managing partner
<b>Limited Partner</b>
GPs are the exclusive managers, LPs do not normally manage
<b>LLC</b>
Members manages or can appoint manager
<b>Corporation</b>
Managed by Board of Directors which appoints officers to run operations
<b>Subchapter S Corp</b>
Managed by Board of Directors which appoints officers to run operations

<b>Transferability (Summary of Business Entities)</b>
<b>Sole Proprietorship</b>
Can sell the business at will
<b>General Partnership/IV</b>
cannot transfer ownership interest without unanimous consent
<b>LLP</b>
cannot transfer ownership interest without unanimous consent
<b>Limited Partner</b>
cannot transfer ownership interest without unanimous consent
<b>LLC</b>
cannot transfer ownership interest without unanimous consent
<b>Corporation</b>
Shareholders are free to transfer ownership interest unless they agree otherwise
<b>Subchapter S Corp</b>
Shareholders are free to transfer ownership interest unless they agree otherwise

<b>Taxation (Summary of Business Entities)</b>
<b>Sole Proprietorship</b>
"Flow Through" Taxation
<b>General Partnership/IV</b>
"Flow Through" Taxation
<b>LLP</b>
"Flow Through" Taxation (but partners may have passive loss restrictions)
<b>Limited Partner</b>
"Flow Through" Taxation (but partners may have passive loss restrictions)
<b>LLC</b>
"Flow Through" Taxation (but partners may have passive loss restrictions)
<b>Corporation</b>
Income taxed at corporate level and again for taxpayers with dividends
<b>Subchapter S Corp</b>
"Flow Through" Taxation

<b>Limited Partnership</b>
<b>General Partners:</b> have personal liability for all partnership debts; manages the day-to-day
<b>Limited Partners:</b> liability for debts is generally limited to their investment; doesn't manage day-to-day
has the right to review financial information and tax returns
<b>Absent an agreement</b> → P/Ls get split based on the value of the partners contributions
<b>Methods of Dissolution</b>
1) the occurrence of the time/event stated in the partnership agreement
2) written consent of all of the partners (unanimous consent)
3) withdrawal of death of a General Partner (won't matter for LP)
4) Judicial Decree

<b>Nature of Corporations</b>
<b>Liability:</b> only the corporation is liable for corporate obligations
<b>Disadvantage:</b> subject to double taxation
<b>Advantages:</b> has a perpetual life and can freely transfer ownership
<b>Management:</b> is run by the board of directors

<b>Shareholders</b>
- Have the right to vote and can approve fundamental changes to the corporation