

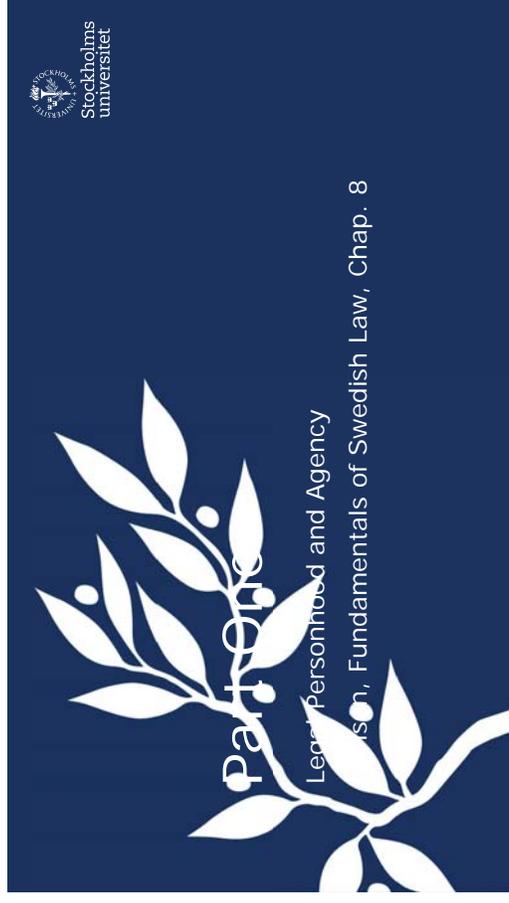
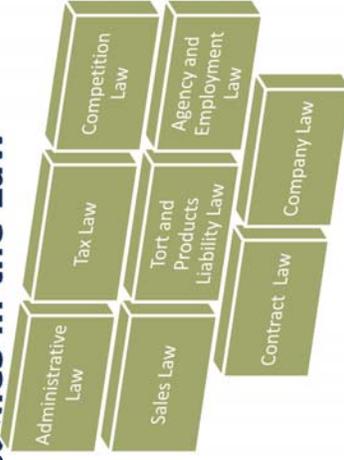


## Parts:

- Part One: Legal Personhood and Agency
- Part Two: Specific types of agencies
- Part Three: Types of Business Organizations
- Part Four: Companies
- Part Five: Liability
- Part Six: Debtors and Creditors



## Companies in the Law



## Part 1: Legal Personhood and Agency

Legal personhood (*rättskapacitet*):

Every natural person is a legal subject, cannot be deprived of certain rights.

Legal person, born under the law, dies under the law.

## Other Professional Limitations

- Prohibition as to providing legal or financial advice (lawyers and accountants)
- Revocation of a real estate broker's license - prohibition as to selling/buying real estate

## Legal Capacity

The legal capacity (*rätts-handlingsförmåga*) of natural persons can, however, be restricted:

- Children (successive legal capacity to the age of 18)
- Persons in bankruptcy (bankruptcy trustee has legal capacity)
- Persons found incompetent (guardian)
- Person who have a prohibition as to conducting business (3 to 10 years)

## Agency

Voluntary delegation of legal authority to another party.

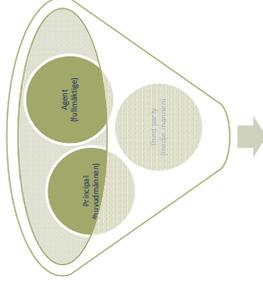
Three parties involved: principal, agent, third party.

General principles of agency in the second chapter of the

Contracts Act as well as Chapter 18 of the Commerce Code of 1734.

No overriding principle of fiduciary duty in Swedish law.

## Three Legal Actors



Grant of Authority (fullmakt)

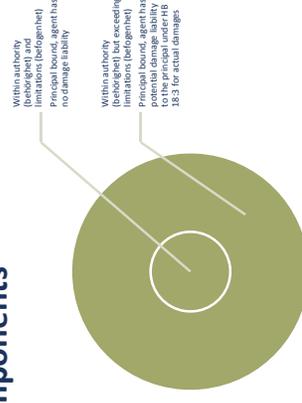
## Grant of Authority

- Distinction made between authority and limitations in the authority. Actions within the scope of authority bind the principal.
- Actions exceeding the scope of limitations bind the principal but the agent can be liable to the principal for actual damages (similar to the duty of loyalty).
- Actions outside the authority do not bind the principal but the agent can be liable for damages to a third party in good faith.

## Agents

- Through the grant of authority, the principal agrees to be bound by the acts of the agent within the authority to a third party.
- Two categories of agency;
  - Principal-based (principal has informed third party in some manner of the authority) and
  - Agent-based (agent has informed the third party of the authority without confirmation from the principal).

## Grant of authority: Two Components



## Types of Principal-based Authority

Three main types of grants of authority:

- Express grant
  - Orally to a third party (No general requirement of a writing (exception for real estate)
  - In a writing generally
  - In a writing to a specific third party
- Agency based on status (by statute or custom and usage)
- Case law has also recognized agency based on tolerance by the principal as well as a combination of factors based agency.

## Revoking an Agency

Basic rule is that an agency is to be revoked in the same manner by which it was created:

- If created orally, revoked orally;
- If in writing to a specific party, by a writing to that party;
- If in a general writing, by regaining possession of the writing;  
or
- If by status, removal from the status and all accouterments.

## Authority

In the event the agent has exceeded her authority, the principal is free to ratify the contract.

A principal can also be bound by passivity in certain situations.

Unjust enrichment and *negotiorum gestio* can also come into play.

## Death

- If the principal dies, the agency is still in place for a certain period.
- If the agent dies, the agency expires immediately.



## General Agents (*prokura*)

- General agents are governed by the Act on General Agents (*prokuralag 1974:158*).
- A general agent has to be registered with the Trade Register as kept by the Swedish Companies Registration Office, [www.bolagsverket.se](http://www.bolagsverket.se).
- Registered general agents can bind the principal to any legal transaction with the exception of the sale of real estate (special authority has to be given for that).

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## Part 2: Specific Types of Agencies

- General Agents (*prokura*)
- Professional Service Providers (*syssломän*)
- Commercial Agents (*kommission*)
- Self-Employed Commercial Agents (*handelsagent*)

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## Professional Service Providers (*syssломän*)

Professional service providers are generally regulated by the few provisions remaining of Chapter 18 of the 1734 Commerce Code (*Handelsbalk*).

There are today, however, specific provisions regulating the conduct of real estate and insurance brokers, accountants, licensed attorneys, real estate inspectors, etc.

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## Commercial Agents (*kommission*)

- Commercial agents are regulated in the Act on Commercial Agents (*kommissionslag 2009:865*).
- Commercial agents (*kommissionär*) sell products on behalf of a known/unknown principal (*komittenten*) and acts as the principal's face to the customer, who is to turn first to the agent with respect to any problems.

## Self-employed Commercial Agents (*handelsagent*)

Self-employed commercial agents are regulated by the act concerning such (*lag 1991:351 om handelsagentur*) based on Council Directive 86/653/EEC on the Co-ordination of the Laws of the Member States relating to Self-Employed Commercial Agents ("the Directive") as set out in the Regulations on the same in 1994.

## Commercial Agents

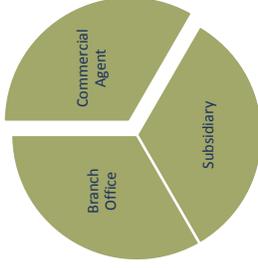
- Consumers are permitted however to go directly to the principal despite a lack of contractual privity in certain cases.
- The commercial agent has a statutory right to certain payments as well as a right of retention for payment.
- There are also statutory rules in place as to the content and termination of this type of agency agreement.

## Self-employed Commercial Agents

- The act sets out rights and responsibilities for both the agent and the principal, a more extensive regulatory approach than those taken in any of the other agency approaches.
- Both parties now have a duty of loyalty
- Agent has right to payment, set-off as well as the right to retain goods.

## Why regulate agents in the EU?

Methods to establish in markets:



## Part 3: Business Organization Types

- Sole proprietorships
- Foundations
- Cooperatives (non-profit or commercial)
- Companies (joint ventures, partnerships, limited partnerships, corporations)



## Sole Proprietorship

- Sole trader
- No form requirements for formation.
- Registration for tax id no.
- Simpler bookkeeping requirements as of 2008.
- Most persons conduct business in this manner, share capital requirements prohibitive.

## Foundations

Closest thing to a trust, but a legal person.

Bequest, property, beneficiaries. County Administrative Boards regulate.

IKEA is owned in such a form. Prior to the abolition of gift/inheritance tax, way to insure generational changes without taxation.

## European Cooperative Societies (SCE)

- The European Cooperative Society (SCE, for Latin Societas Cooperativa Europaea) is, in company law, a European co-operative type of company, established in 2006 and related to the European Company.
- SCEs may be established, and may operate, throughout the European Economic Area and EU.
- SCEs removed the need for co-operatives to establish a subsidiary in each Member State in which they operate, and to allow them to move their registered office and head office freely from one Member State to another, keeping their legal identity and without having to register or wind up any legal persons.
- No matter where they are established, SCEs are governed by a single EEA-wide set of rules and principles which are supplemented by the laws on co-operatives in each Member State, and other areas of law.
- Have a share capital requirement of € 30,000.

## Cooperative Enterprises

- Non-profit – not regulated by statute
- Commercial – regulated by statute. Examples are Konsum, Coop, housing cooperatives.
- No share capital requirements.



## Part 4: Companies

- Joint Ventures
- Partnerships
- Limited Partnerships
- Corporations

## Partnerships

- Legal person
- Joint and several liability
- Single taxation
- Any partner can bind the others unless stated otherwise in the partnership agreement.

## Joint Ventures

Not a legal person.

Simply an agreement between two or more parties to do a specific thing.

Most common form of cooperation as parties cannot bind each and no joint and several liability.

## Limited Partnerships

- Hybrid between partnership and corporation
- Single taxation
- Only several and joint liability for general partner
- Limited partners act more as shareholders, limited liability and usually free assignment of shares

## Corporations

Limited Liability Company  
Private (share capital SEK 50,000)  
Public (share capital SEK 500,000)  
Articles of incorporation and bylaws  
Shares equal voting power (not more than ten times)  
Often a right of first refusal or a right to buy from new owner

## Code of Corporate Governance

- No general fiduciary duties.
- Code of Corporate Governance drafted by private industry actors, self-regulation.
- Requires that certain actions be taken openly, and if not, explained in the corporate documents such as year end statements.

## Corporate Governance

Division of power and responsibilities between shareholders (meeting), the board of directors, corporate management and the auditors (outside).

Employees have right to be represented on the board of directors.

## European Companies

- Inc., Ltd., AB, GmbH, SE
  - Share capital € 120,000
- A European Company can be created by the:
1. Merger of national companies from different Member States;
  2. Creation of a joint venture between companies (or other entities) in different Member States;
  3. Creation of a European Company subsidiary of a national company; or the
  4. Conversion of a national company into a European Company.



## Tort law

- What is tort law? A tort is a civil wrong.
- Tort law involves the liability for damage in non-contractual situations.
- Different approaches to torts in different jurisdictions: law of delict, law of torts.
- In Sweden, the development of tort law has been shaped by the values of the social welfare state and the Swedish insurance system.

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## Part 5: Liability

- Distinction between individuals and legal persons is drawn to protect individuals against liability.
- Liability can arise in different contexts, as seen from the first lecture voluntarily by signing a contract.
- Liability can also arise involuntarily through the commission of a tort.

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## Torts and insurance law

1. Introduction to torts and insurance law
2. Sources of Swedish tort law
3. Swedish Tort Liability Act
4. Strict liability
5. Causation
6. Damages
7. Swedish Insurance System
8. Swedish Insurance law

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## Sources of Swedish tort law

- The Tort Liability Act 1972 (skadeståndslagen, SKL).
- SKL is a framework statute which lacks definitions and rules on many issues.
- Specific legislation dealing with particular types of damage:
  - Products Liability Act 1992
  - Motor Traffic Damage Act 1975
  - Environmental Code 1998

## Tort Liability Act - Culpa rule

- A person who intentionally or negligently causes injury to another person or property is required to compensate for the loss (SKL 2:1).
- Special rule of "reasonableness/objectivity" for minors and mentally handicapped (SKL 2:4, 2:5)

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## Tort Liability Act - general requirements for liability

1. Negligence (fault, culpa) or a rule of strict liability.
2. A legally recognised type of damage.
3. Causation and adequacy.

## Tort Liability Act - negligence test

- How do you determine negligence?
- Hellner says:
  - Is there a particular test prescribed in legislation? e.g. Road Traffic Legislation.
  - Custom?
  - Precedent?

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### Tort Liability Act - negligence test

- In absence of guidelines, test applied is essentially the Learned Hand formula.
  - The Learned Hand test:
  - Risk that the damage would occur
  - Magnitude or severity of the potential damage
  - Defendant's costs for avoiding the risk
  - Defendant's (subjective) ability to foresee the damage.
- The final subjective element is a Swedish addition (Hellner).

### Tort Liability Act - vicarious liability

- SKL 3:1 An employer must compensate for (i) injuries to person or property caused by an employee *in the course of her employment* (ii) pure economic loss caused by an employee committing a criminal act *in the course of her employment*.
- Employer is usually covered by insurance.

### Tort Liability Act - pure economic loss

- A person who causes pure economic loss by a criminal act is obliged to compensate the loss (SKL 2:2)
- Very limited compared to common law countries
- Why? The social justifications for liability are not as strong when it comes to pure economic loss.
- Rule has been extended to cover quasi contractual situations, i.e. where a negligent evaluation has been relied upon in good faith by a third party.

### Tort Liability Act - vicarious liability

- SKL 4:1 An employee is liable for injuries caused in the course of her employment in *extraordinary circumstances* e.g. a bank official loses the only key to the vault, an oil worker ignores his bosses instructions to oil the pump.

## Tort Liability Act - liability of public bodies

- SKL 3:2 A public body is liable for injuries to persons or property or pure economic loss caused by mistake or neglect in the *exercise of public authority*.

## Causation

- No clear rule in legislation
- *Cause-in-fact rule*: Was A's act a necessary criterion in causing B damage?
- *Adequacy rule*: Even if A did cause B damage, A will not be liable if the damage was unforeseeable or improbable

## Strict liability

- Products Liability Act 1992, based on EU directive
- Environmental Code - pollution and other environmental interference caused by use of real property
- Motor Traffic Damage Act 1975 - car owners are strictly liable for all third party damage caused by the car (NB compulsory third party insurance cover)
- Liability for the state in the event of wrongful arrest or detention
- Liability for owners and possessors of dogs for all physical damage caused by the dog!

## Damages

- SKL 5
- Damages to a person
  - Health care costs
  - Loss of income
  - Pain and suffering
- Death
  - Funeral costs
  - Maintenance
- Property
  - Reduction in value
  - Cost of repair
  - Loss of income

## Contributory negligence

- SKL 6:1 Damages awarded based on injuries to a person can be reduced if person intentionally or by gross negligence contributed to the injury.
- SKL 6:1 Damages arising based on an injury to property or pure economic loss can be reduced if injured person contributed to the injury.

## Swedish Insurance System

- Low level of damages in tort cases due to comprehensive insurance system.
- SKL damages reduced by existing insurance or insurance possibilities.
- Extensive system of social and collective insurance reduces the practical importance of tort law.
- Up to 1970s, Swedish tort law developed in same way as other European Countries.
- 1970s welfare state introduced comprehensive insurance schemes.

## Mitigation

- SKL 6:2 If an obligation to pay damages in unfairly onerous taking into consideration the tortfeasor's financial circumstances, the damages can be reduced to a "fair" amount taking into account the injured person's need of damages and any other relevant circumstances.
- Emanation of the Swedish social welfare state.
  - Somewhat at odds with the idea of tort law as a deterrent.



## Part 6: How is debt created and paid?

- Created – voluntarily/involuntarily

## Creditors and Debtors

The law concerning creditors and debtors technically is taken up in different areas of law, such as property law (*sakrätt*) and contract law.

No form requirements with respect to debt, can arise in any context, contractual, tort, gift, etc.

## Creditor/Debtor Law

Often referred to in Swedish as *sakrätt* with respect to property, but no good translation to English of this term (deviation of the adoption of Roman law), literally law of the thing, sometimes property law is used, some times an action classed as *in rem*.

## 1734 Commerce Code

If more than one debtor, joint and several liability. Assert claim against any of the debtors, who then have a right of regress.

A creditor can also request a surety (main rule, strict surety, as for my own debt, joint and several liability).

Lex mercatoria/Law Merchant

## Statute of limitations

Statute of limitations set out in the act governing such, main rule is ten years that can easily be renewed.

Certain consumer cases three years, but also can easily be renewed.

No limit as to the number of renewals.

After the statute of limitations has expired, a creditor can set have a right of set off.

## Promissory Notes

Promissory notes

- Written
- Unilateral
- Undertaking to pay monies
- Two parties

## Payment and Debt Instruments

- Promissory notes – negotiable/non-negotiable
- Bills of Exchange
- Checks
- Giros

## Promissory Notes

Non-negotiable – Pay to Johanna

Negotiable

- Pay to Holder
- Pay to Johanna or order

## Negotiability

Non-negotiable – original objections and defenses remain

Negotiable – holder in due course takes free of any objections or defenses with certain exceptions (extreme duress, forgery)

Payable to Bearer/Holder – possession sufficient

Payable to X eller order – chain of assignments

## Giro

Three parties, but Party A directs B to pay C, and B does so without being presented with the order/check.

Pay Pal a giro system.

## Bills of Exchange

Three parties: Party A, drawer, issues order to Party B, drawee, who pays party C, payee.

Checks – Party B a financial institution, otherwise the same.

Payee has to present the order (check).

## Perfecting Security Interests

All systems built on the pledge and physical possession of the secured property.

Security interests created through deeds and possession of the deeds possible with real estate, airplanes, ships and floating charges.

## Deeds

Still a pledge system in that the debtor has a deed created (government authority or a court), then gives the deed over to the creditor (now possible digitally).

Stamp duty on deeds.

## Payment and Discharge

Debtor's responsibility to insure payment that discharges the debt: right party, right amount, right time, right place, right currency.

No statutory right to interest, but a right to late payment interest.

Set-off: Same tender, both amounts due. Voluntary or involuntary.

## Right of Retention

Certain statutory rights of retention:

Hotel guests

Commercial provider of services

## Enforcing Debts

- Rules as to debt collection
- Government agency to enforce debts, Swedish Enforcement Authority
- 2008 – 980,000 applications for enforcement of payments
- Summary procedure – judicial process – false invoices
- Levying property

## Bankruptcy

- Bankruptcy can be requested by creditor (state) or debtor
- Discharges all debts for legal persons (legal person liquidated)
- Debts can remain for individuals
- Secured v. Unsecured creditors, rules as to priority

## Priority Rules

- Semi-secured (general) Creditors
  - Specific right of priority, employee wages
  - General right of priority, pensions
- Unsecured creditors
- Criminal penalties

## Priority Rules

- Secured (specific) Creditors
  - Certain debt instruments, i.e. Secure debentures
  - Maritime liens, aircraft liens, pledges of personal property
  - Insurance policy holders
  - Floating charges
  - Real property liens, site leaseholds

## Debt Restructuring

- Corporate debt restructuring
- Private individuals – minimum standard of living for three to five years (all debts have to be included or they can remain)
- Both pay certain % of debt, for example, 20 crowns for every 100.