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Companies in the law

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Legal areas relevant for companies

- Basically all, but in particular:
  - ⇒Company Law
  - ⇒Tort Law
  - ⇒Competition Law
  - ⇒Sales Law
  - ⇒Agency and Employment Law
  - ⇒Contract Law
  - ⇒Tax law
  - ⇒Financial law

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Structure

- Legal capacity
- Agency
- Types of business entities
- Liability
- Debt and credit

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Legal capacity

- Every natural person is a legal subject, cannot be deprived of certain rights
- Legal person, born under the law, dies under the law

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Legal capacity

- Legal capacity of natural persons can be restricted:
  - ⇒ *minors*
  - ⇒ *persons in bankruptcy (bankruptcy trustee has legal capacity)*
  - ⇒ *persons with mental disorder (guardian)*
  - ⇒ *persons on whom a prohibition has been imposed to engage in certain acitivites*

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Legal capacity – examples of restrictions

- Prohibition to provide legal or financial advice
- Revocation of a real estate broker's license (prohibition to sell/buy real property)

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Business entities

- Can be a legal person and therefore have legal capacity
  - ⇒ *e.g. capacity to enter into contracts*
- Activities can be limited
  - ⇒ *e.g. during bankruptcy proceedings*

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Agency

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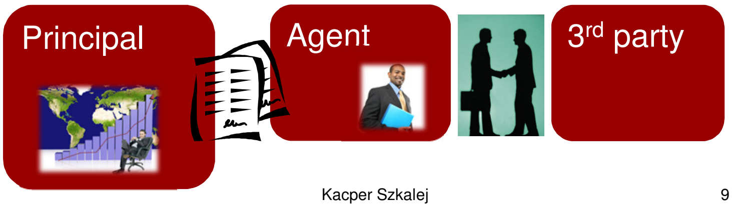
Agency

- Voluntary delegation of legal authority to another party
- Three parties involved: principal, agent, third party
- Principal agrees to be bound by the acts of the agents vis-à-vis a 3rd party



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Agency – 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
- Actions **outside the scope** the authority **do not bind** the principal **but** the agent can be labile for damages to a third party in good faith (bona fide)

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Agency – examples (SWE)

- General agents *(swe – prokura)*
  - ⇒ Need to register with the Companies Registration Office (Sweden)
  - ⇒ Can bind the principal to **any** legal transaction except the sale of real property (special authority required)
- Professional service provider *(swe - syssloman)*
  - ⇒ Attorneys (licensed lawyers), accountants, insurance brokers etc.
- Commercial agents *(swe – kommission / handelsagent)*
  - ⇒ sell//buy products on behalf of a known/unknown principal and acts as their representative to the customer/seller (who in the case of problems will turn to the agent)

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Types of business entities

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Types of business entities

- Company / Corporation
- Partnership
- Limited partnership
- Joint venture

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Company

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Company

- Limited (liability) company
- Unlimited (liability) company

- Private company
- Public (limited) company

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Unlimited (liability) company

- Liability of members is unlimited

- Can be required to pay the company’s debts without limit if it defaults and is wound up

- Advantage of secrecy – full accounts need not be filed.

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Private LLC

- Private (share capital SEK 50,000)
- Anything from small family business to a subsidiary in a larger group
- Can be a substantial entity on its own, but also a trading vehicle for one or more people (who want to benefit from LLC, or trading as a company)
- Flexible as it can fit various puroses
- But cannot offer shares to the public (must become public)

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Private LLC

- Usually therefore fewer shareholders than plc
- Might be restrictions on the tranfer of shares, e.g. llc's with small no of shareholders can ban transfers of shares that are not approved by the board of directors. Consequently board of directors can control who becomes a shareholder
- All depends on internal rules because others can first offer option for existing shareholders to purchase before another can do it.

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Public LLC (PLC)

- Public (share capital SEK 500,000, GBP 50,000).
  - ⇒ e.g. issue 50,000 shars for 1 GBP, or 100,00 for 0,50p.
- Private companies can prepare abbreviated accoutnts each year. Pubilc have to prepare and file with the relevant authority (Company Registration Office) full set of accounts
- Company secretary + general meeting every year.

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Public LLC (PLC)

- Why go public?
  - ⇒ Expansion (generate capital)
  - ⇒ Publicity
  - ⇒ Increase in market share
  - ⇒ Cash in on successful companies (venture capitalists)
- Negative:
  - ⇒ added disclosure for investors
  - ⇒ complying with regulatory requirements (costs can be high)
    - ⇒ *e.g. generation of financial reports, audit fees etc.*
  - ⇒ added pressure of the market.
    - ⇒ *management increasingly scrutinized as investors constatnly look for rising profits. Bad management = no money for them*

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Partnership

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

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Limited Partnership

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

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Joint venture

- Not a legal person
- Agreement between two or more parties to do a specific thing
- Common form of co-operation as parties cannot bind each other and no joint and several liability

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Vertical relation

- Holding company (mother)
- Subsidiary (daughter) / Branch / Commercial Agent

Horizontal relation

- Sister company

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European company

- Share capital EUR 120,000
- European Company can be created by:
  - ⇒ merger of natonal companes form different member states
  - ⇒ creation of joint venture between companies (or other entities) in differnet MS
  - ⇒ creation of a European subsdiary of a national company
  - ⇒ conversion of a national company to a European company

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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

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Code of corporate Governance

- No general fiduciary duty
- Code of Corporate Governance drafter by private industry actors, self-regulation
- Requires tha certain actions be taken openly, and if not, explained in the coporate documents such as year and statements

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Liability

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Liability

- Distinction between individuals and legal persons is drawn to protect individuals against liability
  - ⇒ Depends on type of business
- Liability can arise in different contexts
  - ⇒ vountarily, e.g. by signing a contract (loan)
  - ⇒ 'involutarily', e.g. through the comission of a tort

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Debt and credit

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Creation

- Volunarily
- Involuntarily

Regulation

- Various areas of law
- Property law, contract law, maritime law, procedural law etc.

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Nomenclature

- Debtor
- Creditor
  - Secured creditor
  - Unsecured creditor
- *Pari passu* – equally and without preference

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Payment and Debt Instruments

- Negotiable instruments, e.g.
  - ⇒ Promissory note (if unconditional)
  - ⇒ Bills of Exchange
- Guarantee
- Letter of Comfort? – it's a matter of construction

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Insolvency / bankruptcy

- When a company is not able to meet its liabilities (debts) it is insolvent
- When a company is insolvent it may restructure its debts, or go into liquidation = existing assets are disposed of by a liquidator
  - ⇒ The aim is to pay off the debts to the creditors as much as possible

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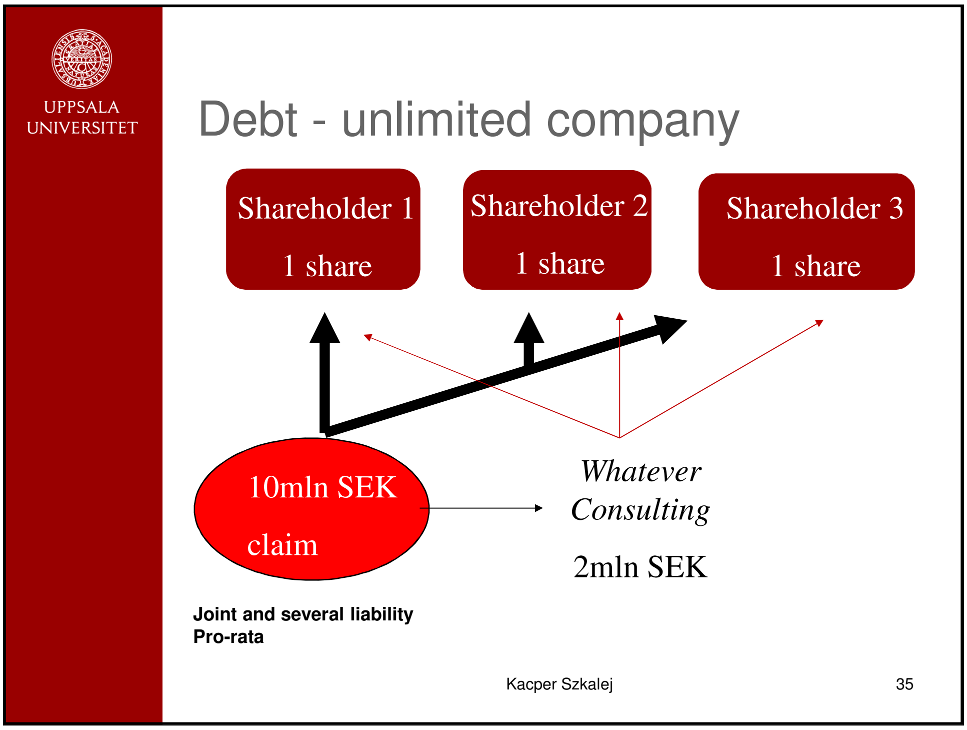
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Debt - unlimited company
Shareholder 1
1 share
Shareholder 2
1 share
Shareholder 3
1 share
10mln SEK
claim
Whatever Consulting
2mln SEK
Joint and several liability
Pro-rata
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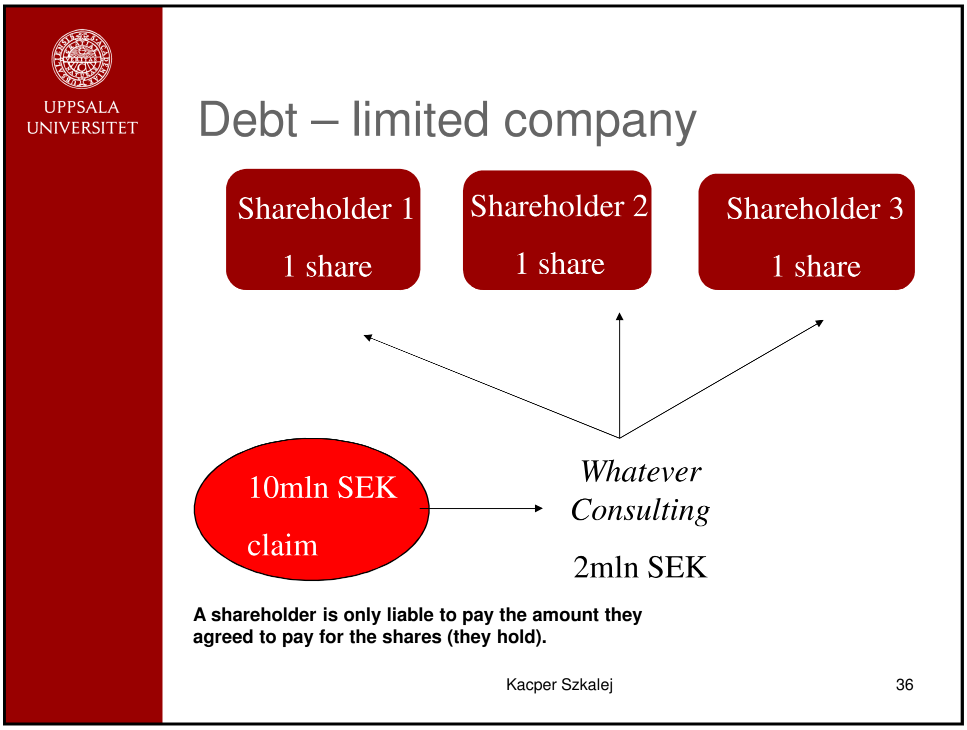
UPPSALA UNIVERSITET
Debt – limited company
Shareholder 1
1 share
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2mln SEK
A shareholder is only liable to pay the amount they agreed to pay for the shares (they hold).
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Insolvency / bankruptcy - priority

- Secured vs unsecured debt
- Priority for secured creditors
  - ⇒ Debt instruments -> secure debenture
  - ⇒ Maritime lien/aircraft lien, pledge of personal property,
  - ⇒ Real property lien, site leashold
- Unsecured creditors – *pari passu*