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Stock, Corporations, and Native Land Claims Settlement: One of a Series of Articles on the Native Land Claims

Stephen Conn

Summary

This article focuses on the role of village and regional corporations as established under the Alaska Native Claims Settlement Act (ANCSA) of 1972. The booklet presents a simulated case study and open-ended class discussion questions relative to the use, purpose, and development of corporations, how corporations are managed and governed, and provisions of the Alaska Native Claims Settlement Act which led to changes in Alaska law with regard to Alaska Native shares in ANCSA corporations. The article is one of a series by different authors designed to stimulate reading and discussion at an advanced secondary or adult level.

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One of a Series of Articles on

THE NATIVE LAND CLAIMS

STOCK, CORPORATIONS, AND THE NATIVE LAND CLAIMS SETTLEMENT

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One of a Series of Articles on

THE NATIVE LAND CLAIMS

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TO THE READER

This booklet is one of a collection of articles written by people who are interested in Native land claims. As you will see, all of the people do not agree. They present their ideas for you to read and discuss. You may be excited about some of their ideas because you think they are absolutely right, or very wrong. When you have finished reading the articles, you will probably have done a lot of thinking about Native land claims and Alaskan politics.

Politics is not an easy field to understand. And yet politics is what the Native land claims are all about. Most of the articles were written by people who have spent a lot of time working in the world of politics. These people have a whole vocabulary which most students have not yet learned. So, to help students understand the reading, there is at the beginning of each article a list of definitions of terms. Any words in *italics* are explained for you at the beginning of that article, or an earlier one.

At the end of some articles are questions which you can ask yourself. In the margin, next to the question are numbers. If you go back to paragraphs in the article with the same numbers, and reread, you can increase your understanding. We cannot say you will always have definite answers but you may form your point of view.

ARTICLES AND AUTHORS

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Environmental Issues in the Land Claims	Guy Martin Alaska Legislative Aide to the Late Congressman, Nick Begich
New Tribes for New Times	Guy Martin Alaska Legislative Aide to the Late Congressman, Nick Begich
The Politics of Passage	Guy Martin Alaska Legislative Aide to the Late Congressman, Nick Begich
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STOCK, CORPORATIONS, AND THE NATIVE LAND CLAIMS SETTLEMENT

The Alaska Native Land Claims Settlement Act gave every Alaskan Native the right to be a shareholder in at least two corporations.

What are Corporations?

Why did this important law give people shares of stock in corporations instead of just dividing up all of the land and money between them?

Think about the store where you and your parents purchase food and clothing. You probably know the name of the man who runs it. It may be his personal business. The money he makes and the money he owes go in and out of his pocket. If that is true, the law says that the store and the owner are the same. More likely, however, he keeps the store money separate from his own money and family expenses. If that is true, the store may be a corporation with its own separate and special legal identity and legal name. This is hard to understand but is something we will discuss again and again. It is one of the most important points about a corporation. A corporation is an independent legal person, just like you or me. It is given life not by birth but by a charter issued by the state government. Its organizers must file papers, called the Articles of Incorporation, with the state. These Articles of Incorporation give the name of the organization (its legal name, such as Alaska Airlines, Incorporated) and tell the state what its purposes will be, what businesses it plans to pursue.

The main place of business is listed. This is the company's legal headquarters. Also listed are the names of the organizers (the incorporators) and the managers of the business (called the directors).

There is another important legal paper that the state receives. It is called the bylaws. The details of how the corporation's officers and directors will be chosen are included in the bylaws. Also how the corporation will give shares of stock to people who have investments in the corporation. The bylaws tell how many shares of stock will be issued. Sometimes they place a dollar value on each share.

What does it mean to be independent under the law from the people who invest money or property in you. What does it mean to be a shareholder in a corporation as you and other members of your family are?

The Corporation can buy and sell things. It can borrow money or lend it just as you or I can as adults under the law. It pay taxes. It can get rich. It can go broke.

In a small village store one man may be the only stockholder and the manager because only he invested money in it. In the regional and village corporations, the government has invested money and land that belongs to Natives into corporations and made the Natives shareholders. Some of these same shareholders will help to run the corporations.

How Your Money and Land Will Be Used

You and each member of your family are shareholders in a regional corporation and possibly in a village corporation as well. This means that you are a part owner in each of these. It does not mean that you have lent money to somebody else. You start off as owner.

Forty million acres of land owned by Alaskan Natives and $962.5 million dollars will go to the corporations. The corporations will manage the land and the money for the owners of these corporations: this is for you and other shareholders.

You still receive some of the money from the corporations. They will pass it on to you to spend, save, and enjoy. Each corporation will also hold some of the money and most of the land and work with it to make profits. These profits, called dividends will be divided up among shareholders. Dividends can be money or part-ownership in other corporations - other shares of stock that have money value.

So far we have talked in general about many important things. Let us step back a little and consider the real reasons for corporations, investments, stockholders, etc.

Why Corporations?

To understand what a corporation is and why corporations got the land and money to manage, first think about the way people cooperate to get things done and to provide the things they want or need to live happy lives.

For example, to hunt a whale for a village, can a single man do it alone? No, in a boat there are many different jobs to be done. Also, it costs a great deal to outfit a crew. There must be a number of people, each doing different and important jobs. Also, there must be one man who is rich or several men with money and gear who are ready to furnish a boat and gear.

But even where one man (as is the case of an umealik in Northern Eskimo villages) provides the gear and the boat and gets the men together for a crew, is that enough? Usually not. A village needs several crews to hunt the whale to help get it in, cut it up and divide it for people in the village. Several crews also mean that there is a better chance to get a whale and to do the necessary work - to win the fight against time and weather - and to guarantee that whale meat will be divided and stored for the enjoyment of the entire village.

The problem for people who need whales is not that there is not enough whale meat to feed a large number of people. The main reason that Eskimo people have worked together to hunt whales is that it was necessary to combine the work and property of many people in just the right way.

One of your classmates might ask, "Suppose that twenty of us go up to the Arctic next spring and pool our money, can we get ourselves a whale?"

The answer is, "Of course not." Now there is a law to protect whales against non-Native hunting. But even without the law people who work on a whaling crew don't just get together in Fairbanks and go up there to hunt one. They have not learned how to do specific jobs. Having money in your pocket will not get you anywhere. You need special skills and special equipment for the hunt.

Finally, and most important, you need to know how to work together to get a whale. You need to know the rules. Crew members look to their whaling captain to organize them and their work. And there are rules that these people know for dividing up a catch. Once again, it isn't just any group of people and their money, but trained people and special equipment used in the right way that gets a whale.

Suppose that in days gone by you lived in Seattle. You had never hunted whales. You knew other people who wanted to buy whale oil, baleen, and whale meat in Seattle. You also knew experienced whalers in Seattle; but these men did not have money for the food and equipment necessary to make the long trip. What would be the best way to handle your problem?

1. You could give up.

2. You could quit your job, sell your house and move to an Eskimo village. But maybe the local people in the village would not like that. And maybe your family would object.

3. You could send the other people whaling because they knew how to do it.

If your idea were to hunt whales in order to sell the oil, baleen and make money from this to live better in Seattle, you would be smarter to invest your money in people and in equipment and let them get the whale.

Money to Spend and Money to Invest

We all know what we can do with money in our pockets. We can buy food and things for our family to enjoy when we cannot make them ourselves. But how will the large amount of money and land that Alaska's Natives receive be used to give us money we need now and to make money for our children and for their children? This was the question that lawmakers and Native people asked themselves. How can land and money that belongs to many different people in many villages and cities work for the benefit of all of these people? How can these large groups of Eskimos and Indians organize their property to "hunt the whale" (or buy businesses) without doing all of the work as individuals?

Can all people who are owners, women, men and even little children, share the work of drilling for oil or mining on their land? Of course not. Do they want to do this work. Of course not.

The answer is to hire people, Natives and non-Natives, to do things with this land and money to make more money so that this wealth will last for generation after generation.

A corporation is the way the law provides to:

1. Bring together the property of different people who may be widely scattered, young and old, and who have different skills and ideas about how to spend their time.

2. Put men and women who have been specially trained in charge of that property to manage it for the owners.

3. Have managers do what is necessary to make money for the owners.

Investment - Familiar Ways

There are different ways that people invest their money, their property, and even their own labor in order to get things for themselves or their families. Let us look at a few examples.

Sole Proprietorship

Do you know a man in your village who runs a trapline to catch fox or some other animal? He buys some of his food and equipment when he sells or trades furs. Nobody pays him. He dosen't get a paycheck unless he has another job. He does get money and other things for the products of his work, his furs.

This man is investing in himself. The time, money, and equipment that he puts into his job are his investment. It could be called his working capital. The cost of his traps and gear, feed for his dogs, or his snowmobile and its fuel, are all expenses paid out of his investment. What he makes after getting money for his furs and subtracting costs (paying his bills) are his earnings or profits. He may take all of his profits and buy things for his family to enjoy - for example, a radio or cassette player or an oil stove. He may decide to keep some of his earnings in a bank or at home to buy new traps or a new snowmobile for next winter. The money he holds back for his work is called retained earnings. He holds that money back to have working money (capital) for next year.

This man's business is not a corporation. It is a sole proprietorship, big words that mean that the law sees that he works for himself. He is his own boss. His business is not separate.

Can you think of other examples of people who work for themselves in your village (e.g., an ivory carver or a man who makes baleen boats)? What do they need to buy? What do they do with the money they make?

Partnership

Let's suppose that our friend the trapper did not have enough money to buy new traps or to buy a snowmobile. However, he met Ted, an Eskimo who lived in Fairbanks and went to the University. Ted had some savings and agreed to pay for half of the payments on the snowmobile and to split the cost of the traps. So, Ted was investing money in our friend's work.

You probably know of many examples of family members who help one another in situtations such as this. But family members who help each other (or neighbors in the village who hunt together) are a different sort of thing. Hunting partners who are neighbors, or family members, understand how they will share the work and rewards of work. They see each other in the village and can talk about their work together as they do it. They can invest money or sweat or gear in other people's work because they understand how they will split up what they get to "pay back." Even if one person does not pay back another, he knows that he will do a favor for the other person when the other person needs one.

But the story we are discussing is a little different. Ted is not from the village and doesn't know how things work there. He puts money into our friend's business because he wants to share the profits or earnings from the furs. He does not want to wait for a favor when he needs one.

Ted and our friend are partners. They are in business together but they do not own a corporation. The business, again, is not separate from them. Why does this matter? We will see several reasons later. Let us return to our story about the man from Seattle who wanted to go whaling to get products from whales.

Corporations Protect People

Suppose the man in Seattle did not organize a corporation. Instead he put up money and other men put up their time and went whaling. They also hired other men to go. The one man stayed in Seattle. But he was a partner.

Now suppose that the ship the whaler took was rotten and sunk on the way to the whaling grounds. The man in Seattle and his partners owned the ship. The widows and children of all the men on the ship could go to the court and sue the man left in Seattle. They could ask the judge to make him pay for the loss of their husbands. The man in Seattle would be in a lot of trouble. He had been willing to take a chance with some of his money by buying a ship, and hiring men to run it. But now because he owned the ship, the court might ask for all of his money to pay the widows and children—including money that he had saved for his own family.

This trouble would not happen if the man and his partners had invested in a corporation. The corporation would have hired the men and bought the ship and things needed to hunt the whale. If he and the others had invested their money in a corporation, the equipment would have belonged to the corporation. The men would have worked for the corporation. If anything happened, the corporation would be responsible. The man from Seattle and his associates would each be part-owners of the corporation. If a tragedy occured, they would only lose money that they had invested. They would not lose their own family's property.

You may say, "You talk about a corporation just as if it were a person like you or me." In a way you are right.

Do you have a social security number? A corporation has a number too, to use on its tax returns. It pays taxes too. It has to obey the law. The people who own a corporation ,called the stockholders, and the people who work for the corporation, employees, are seen by the law as different from the corporation. But sometimes they can do things that the corporation can be blamed for, and made to pay for.

For example, Joe Kootook works for Arctic Snowshoe company and is out delivering snowshoes to stores in Fairbanks. He hits your uncle's car. Both Joe as driver and Arctic Snowshoe Company, as a corporation, can be ordered to pay for the damage. Joe is called an agent of the Arctic Snowshoe

Company because he was driving the truck when he was doing his job for the company.

But he is not the agent of William James. Who is William James? He is part owner of Arctic Snowshoe. He bought ten shares of stock for ten dollars each. Does this mean that he is completely safe? As a person, yes, he is safe. His stock may be worth less if Arctic has to pay your uncle a great deal of money. But other wise, no policemen will come to see him. He will not go to court.

Is there ever a time when people who own stock in a corporation is engaged in illegal activities which they know about. Sometimes crooked individuals create a dummy corporation that has all the legal papers but is not real. They don't put enough money or property into it so that it can do its job. These people never expect the corporation to offer the services that people pay for. They are trying to cheat people. Sometimes they want to sell their shares of stock and lie about its true value.

In cases such as these, a court of law can look behind the corporation and make the owners pay the damages. Sometimes lawvers call this "piercing the corporate veil" because the corporation is not really an organization with money and property. It is just a flimsy curtain of words and paper that crooks are trying to hide behind.

Important: The regional and village corporations are not like these dummy corporations because they will begin business with enough land and money to do many things.

Working for the Corporations

"What happens," someone may ask you, "if I go to work for my regional corporation?" Suppose the corporation needs someone to post the land around the village to keep hunters from trespassing on private property? It seems confusing because I am an owner. I am also an employee. Am I working for myself like when I go trapping? The answer is "No." You work for the corporation.

The law keeps all of this separate. It says:

1. You are a part owner of the corporation and will receive dividends if the corporation makes profits and the directors decide to divide some of the profits up. You will not pay taxes on special land claims money given you, for twenty years. But you will pay taxes on dividends that are profits.

2. You are an employee of the regional corporation. You will pay taxes on your wages just as if you were working for a company you did not own.

3. The corporation will pay its share of social security and taxes for you just as every boss does, just as if you did not own part of the corporation. This is an expense of the corporation. The corporation subtracts expenses from its working money and from its profits (the money that it can divide up for you and other owners).

The Building Blocks of a Corporation

We know a little bit about a corporation and how it is a special way to organize people and people's property to get things done. Now let us look at it another way - from the owners' point of view.

The owners, people who own part of the corporation, are shareholders. Each receives a certificate, a legal paper, that explains how many parts (shares) he or she owns. The certificate also tells what his rights as a stockholder are.

Stock can usually be bought and sold by people called stockholders. Remember that stock in regional and village corporations cannot be sold for twenty years, according to the Alaska Native Claims Settlement Act. But whether for sale or not, the value of a share of stock depends upon how much the corporation is worth. To figure the value of a share of stock, add the amount invested in the company and the money that the company has made. Subtract the money that the company has lost or owes from the first figure. Then divide this by the number of shares to figure a price. Besides this, the price that someone is willing to pay is also figured according to the opinion of people about the company's future. Will it make money or lose money? This depends on things that the employees of the company do and on special problems or hopes of industries or business in general. But to get a simple picture of this, let's look at an example.

Suppose the Acme Land Company has three equal owners. Each has a share of stock. You are one of the owners. If Acme owned a piece of land worth $100, your stock would be worth $33 (not looking at the money Acme may owe or have to pay to its employees or to Uncle Sam in taxes.) If someone made a deal with Acme to look for oil and paid Acme $100 to do this with a promise to split the profits, your stock would be worth the value of the land plus the money you made on renting your land to look for oil, divided by three. If you could sell your stock there would be two other things to consider. First, a negative factor that the land could not be used for, say, hunting, while oil is being looked for. Second, a positive factor, that there is a possibility that if oil is found, the company will earn lots of money in royalties. These are the things that people consider when they put a value on stock.

Let's suppose that the company gets $500 as royalties (profits) when oil is discovered. After Acme pays all of its expenses to the people who work for it, the directors meet and declare a dividend. This means that they vote go give shareholders a certain amount of the profits. The amount you get depends on the shares you own. For example, if you bought another share of stock you would get twice as much as the man who owns only one share.

What about the money that the company made but does not distribute? What will it do with the money?

The directors might take it and buy other land. They might buy stock in another company. Then your company would be a shareholder or part owner in another corporation. The dividends it received would become part of the profits of Acme.

A corporation takes money invested and made and:

1. Pays expenses with some of it.

2. Invests some of it to earn more money in business activities.

3. Pays some of it out to its owners (shareholders).

Stock in a company has a certain money value. The amount printed on the stock may reflect the original value of money or other property invested in the corporation. This par value is confusing to many people since it is almo always much lower than the real value of the shares of stock and not a go description of the stock's money value. To figure out how much the stock person gets is really worth, you have to look at the money and things that th Company owns (called its assets) and subtract from that the expenses of th Company and the debts that it owes others. All of this information is printe every year on a balance sheet. It is reported to the stockholders who attend meeting. Stockholders who cannot attend the meeting send representative (proxies) to vote and make decisions for them.

Differences Between Co-operatives and Corporations

You or some of your classmates may have heard about cooperatives. In some villages, people have cooperatives to run the local store. In other places, cooperatives manage the fishing activities or provide electricity.

Cooperatives are a special kind of corporation. They are similar to other corporations in many ways. However the law about a cooperatives is different in some ways from the law about corporations. The main reason cooperatives are organized is to provide some kind of service to the people who own them.

The people who own shares in the cooperative probably have people working for them (the store manager, for example). But when important decisions are made about the cooperative, the law requires that most of the owners meet and agree upon them.

The things a cooperative can do are more limited by state law than the things a corporation can do. With cooperatives, making a profit for the owners (dividends for them) is not an important consideration. Most important is providing some service such as selling them the food and clothing that they cannot make or buying electricity from a state agency to provide the village.

Cooperatives usually don't have much money or property to work with, just enough to get their job done.

In the case of a big corporation such as the regional corporation, we have seen that it starts off managing land and money that belongs to people who live all over one part of Alaska. People can't get together as well to make all the dicisions necessary to make the regional corporation function. Some of the investments that the corporation will want to make and business that it will want to do will take place far from the homes of the owners. For example, there are some people who think that a corporation should buy a hotel in Anchorage. Other people say that they should invest in a bank in Fairbanks or Anchorage.

When the goal is making profits in all kinds of businesses, very detailed studies of those businesses are necessary. The corporation will have to depend on highly skilled persons, both Natives and non-Natives, to make important decisions based on those studies. The owners, you and your family, also must depend on these people. The law about corporations allows the managers to make many decisions without asking the owners for their approval. It is fair to say that the control of the corporation (and the way its employees carry out the activities of the corporation) is in the hands of the managers.

A stockholder has special ways to check the work of the managers of the corporation. The law protects the owner to make up for his loss of control over his land and money when both are handled by the managers of a corporation. In the next section are some of the steps a stockholder may take to protect his money in the corporations.

Three Students Discuss a Corporation

There were three Native students at the University: Ronald from Barrow, Mark from Bethel, and Jim from Tanacross. They all thought it would be a good idea to set up a business that could sell snowmobile parts to people in the villages. They understood that they could buy the parts in Seattle from the Ajax Company at lower than sale price (wholesale). The Ajax Company would send the parts by truck to Fairbanks. Ajax said that it wanted a written agreement, called a contract, with the buyers. This agreement would state that the buyer would pay the whole price of parts sixty days after it received the parts. Ajax said that it wanted as a downpayment (money ahead of time) half the price of the parts.

Ronald, Mark and Jim sat down to discuss the matter over coffee at the Espresso Bar in the University's Wood Center. They made a list of different problems.

1. None of them had much money, only $50 each to invest. But Jim had a fine stereo that he would pawn to get the rest of the money they needed. The cost of borrowing money in a pawn shop (interest on a loan) is higher than the cost (interest) on a loan from a bank. But the boys did not have a reputation for borrowing money or buying things on time so they could not go to the bank.

Was it right for Jim to put in three times as much as Ronald and Mark, they asked themselves. How could they see to it that he had a chance to get more of the profits? Someone mentioned shares of stock. How many shares of stock would Jim get if he put in three times as much?

Ronald said that he knew people in the village who would like to invest in a business like this, but none of them wanted to leave the village. How could they do this?

Mark was good at keeping records. He could send out price lists to the villages and ask for deposits. But suppose something happened. Would the people think Mark had to pay?

Mark said he could borrow a truck to take parts up to the villages on the highway. But suppose the truck had an accident? Who would pay for insurance to make sure that the damages could be paid?

What the students realized was that they needed some way to sort out the different rights and duties so that people shared the risk and the profit according to the amount of money they invested. Also, they saw that some of them should be paid for the skills that helped others. Finally, they saw expenses in this business and serious legal responsibility for the one who signed the agreement with Ajax.

They agreed that things like these could be handled fairly easily when they took place in the village. There people knew what to expect when one person used the property of another. But now they saw that in business there were some serious risks that no single individual wanted.

They visited a lawyer, a man or woman who goes to college and then to law school and takes a special test to practice law in the state. The lawyer's name was Miss Claire. She listened and then suggested that they form a corporation (incorporate).

"I am not worried about you boys trusting one another," Miss Claire explained. "But your problems are not about trust. How would the law help or hurt you with these problems if you organize with a handshake or a corporation? First, from what you have said I see you are going to need money to meet the expenses of your business. You need working money (investment capital)."

"Well," said Ronald, "I didn't think of it before but what about selling our stock in the regional corporations? Or pawn it, perhaps?"

"No dice," said the attorney. "That can't be sold or traded or put up as security for a loan for a long time. Federal law says so."

"What about people we know in the village who might like to invest?" asked Mark.

"Maybe people in the villages will invest," said the lawyer. "Maybe they like your idea and know that the three of you are hardworking. But I doubt that they will want to be partners because they do not have time to come to Fairbanks and join in the business. They may want to be stockholders. This would protect their other money if Ajax or someone else says that the business owes it money."

"If they bought stock in a corporation, would that be like money borrowed from a bank?" asked Ronald.

"No," said the lawyer. "A loan and an investment are not the same thing even when they are both with a corporation. A corporation can go to the bank or to other persons and borrow money. It agrees to pay that amount (called the principal) back in such-and-such a time. The lender gets his money back and also gets interest. Interest is the cost of borrowing money. Borrowing money is not free."

"Is that like getting credit at the village, when you do not have money to pay right then?" asks Jim.

"Yes," said the lawyer. 'Credit in the store is also not free. You pay a higher price for food, or there is a special charge added on your bill."

"Why will people lend a corporation money?" asks Ronald.

"They will lend it money because they think that there is a good chance that it will be repaid," answers Miss Claire.

"Why will people invest in a corporation instead of just lending it money?" asked Ronald.

"Because they decide that the corporation can make more money for them in profits than they can get by putting their money into the bank and getting interest on it."

"Will banks lend the regional corporations money?" asks Mark.

"Yes," says Miss Claire, " if they feel that the people who run the corporation will make money with the land and other assets that will guarantee repayment."

"It sounds like the more money you have, the more you can borrow," said Mark.

"Yes," said the lawyer, "sometimes that is true. Anyone who lends money wants to be sure that he will be repaid. Another important thing is that a corporation with property of its own can usually borrow money for less than you or I. Also they are in a position to make money with that borrowed cash."

"If the people in the village invest, then they are part owners. They will share in the profits of the organization. And they will share in some of the risks."

"Well, suppose someone wants his money back, what must we do?" asked Jim.

"He can sell his stock to a person who will buy it for what he thinks that share of your organization is worth. He may have to offer it to one of you first. This will depend upon the rules that you write down about how you want your organization to work. These rules are called the bylaws. They are the rules of your company that will state how important decisions will be made and who will run the corporation."

"Do you mean," said Jim, "that all of the owners will not run the corporation?"

"That is right," said the lawyer. "You can elect directors and they will run the corporation. A director can be an owner too. Or, if you decide, he can be someone who does not own any stock. In your case, it seems that at least the three of you will be the owners.

"The board of directors is chosen by the stockholders. Then the directors choose employees to do certain things. All of the stockholders elect the board of directors, but all of the stockholders let the directors make decisions on who can best serve the corporation."

"So," said Ronald, "it seems that a person could be a stockholder, a director, and an employee of the corporation. But the law divides things up."

"Yes," said the lawyer, "and there are good reasons for this. Suppose that one of you wants to stop the business. Suppose that one of you die. If you had a partnership, it would end and you would have to organize all over again. With a corporation, the stock would go to your relatives according to the law, or by a will.

The corporation has a life of its own unless the stockholders (or the law, in certain cases) take away that life by voting to liquidate the corporation. This means that the corporation pays its debts and what is left goes back to the stockholders.

"Can we vote to liquidate the Regional Corporations?" Ronald asked.

"Not for twenty years," said the lawyer, "but the stock will go by will or by law to your heirs (the people who can get property from you when you die)."

Lessons Ronald, Jim, and Mark Learned.

1. The boys can get capital (money) for investment by making other people part owners in a corporation. This will also protect these investors from risk larger than the amount that they invest.

2. If the boys own a majority (more than half) of the shares in the corporation, they can elect the directors. The directors will make the basic decisions about how the business will be operated.

3. Any of the investors can sell their stock without ending the business. Also, if one of the investors dies, the investor's family will get his share in the business.

They also learned that for twenty years they cannot sell the stock in the regional corporation or use it to get loans for twenty years. That stock will also go to heirs if one of them dies. The regional corporation will also have directors who are elected by stockholders and who will hire employees to do different things.

A corporation has a name of its own. What are the names of corporations that you know about?

McDonald's is one. General Motors, the car company, is another. How about your regional corporation, what is it called?

Does it matter if the corporation has the name of the man who owns all of its stock? The Smith Moose Hide Company, for example? No, it doesn't matter.

How does a corporation get a name? The people who decide on organizing it send the name to the Commerce Department of the Alaska State government. It checks to make sure that the name isn't being used by another corporation in Alaska. Then, it reserves the name for a few months for a small fee until the incorporators can organize their business according to the law. How is the corporation name used? Just as your name or mine would be used if we carried on business deals.

A Legal Contract

You recall that the boys wanted to make a contract with the Ajax company. Let's suppose that they decided to call their company, the North Alaska Snowmobile Service Inc. But what is a contract?

A legal contract is usually a written agreement between "persons" that describes the rights and the duties that each will have. Companies can have rights and duties - remember that they are legal. Ajax offers to sell snowmobile parts for, say, $100. North Alaska Snowmobile accepts the offer and agrees to pay $100. If one company or the other does not do what it has promised, the other company can go to court because the contract has been broken. The contract gives legal rights and legal duties to each company, not to Jim, Mark, or Ronald or to the owners of the Ajax Company, but to the companies. Remember, the law says that companies can go to court, just like people and bring a legal action called a suit with the help of a lawyer who is licensed by the state.

If one company breaks the contract, will the judge fine the company? No, the contract is a private agreement. The corporation that sues proves that there was a contract. The judge may order the company to pay money damages or to do what the contract says.

This kind of legal hearing in front of a judge is not the same as one where a person is arrested. it is between two "persons." It is called a civil action. The other kind of hearing is a criminal action where lawyers for a city and state try to convict a person they say has broken a law.

Can companies break the law? Yes, there are laws about the way that companies act. Companies and the directors of companies can be fined if they cheat people who deal with them. These people can also go to court and get money damages awarded to them. So, there can be civil and criminal actions.

Ronald asks this important question. "Suppose that I am a stockholder and I know that Ajax has this contract. Ajax breaks the contract and this hurts our company. However, the directors are lazy and do not want to get a lawyer to sue Ajax. What can I do?"

As a stockholder, Ronald first should ask the directors to sue Ajax, Inc. He may also have to get the other stockholders to agree with him. (This depends on the state law and the rules of the corporation, the bylaws.) If the directors refuse to sue the other company, he can hire a lawyer to go to court for the corporation. The law expects the company (and its directors) to protect itself (and Ronald's investment). But when it does not do this, a shareholder can act for the corporation. Does that mean the judge would give a money award to Ronald? No, Ronald is suing for the company. The company gets the money that the judge says should be paid. But Ronald will get all of his expenses paid (lawyer costs, etc.) if he wins for the corporation.

Suppose one of the directors that we stockholders elect makes a mistake that costs us money. Can we sue him too?"

"Only when his mistake is based on something other than poor business judgment. For example, the director thinks that people will need new snowmobile helmets because he hears that the safety law is going to change. So he orders a case of helmets. But then the law doesn't change and the company loses money. This is just poor business judgment. The stockholders can vote him out of office. The bylaws give them that right. But he probably should not be sued in court by the company."

"But how about if a director takes money that belongs to the corporation and buys a new car with it for himself? Can I or the corporation get the money back?" asks Mark.

"Yes, the corporation can sue him or you can sue him for the corporation (if the board of directors refuses to do so). Again, the money will go back to the treasury of the corporation but you will get your expenses."

"Is all of this about going to court the same with my regional corporation? Can I make them protect my money and land against people who don't live by their agreements, or directors or employees who cheat the company?"

"Yes, although the bylaws, the internal rules of the corporation will be different. The law of Alaska allows you to protect your rights in this way."

"But," said Ronald, "nobody in our village has money enough to hire a lawyer. Only the corporation can do this."

"That is not necessarily true," answers the attorney. "There are legal services attorneys for people with small incomes. Also, there are private attorneys who will take your case. The Alaska State Bar Association will help you find an attorney."

Directors

The directors of a corporation are usually elected by the stockholders. The directors then elect officers of the corporation (except where the bylaws let the stockholders do this). Directors sit as a group called a board. They work together to direct the way that the corporation will conduct its business. The law holds them responsible as individuals if they work against the corporation for personal profit.

How is an officer of the corporation, a president, vice-president, treasurer, etc. different from a director? (Even if an individual is an officer and director at the same time, the law and the courts look at the two jobs separately.) In general, the officer acts for (is an agent) of the corporation. He acts according to directions of the directors.

This is the same as when a village council president directs a man in the village to supervise the spring clean up. The council members give him a general idea of what they want to do. The man that the council selects then decides how best to get people to work together to clean up the village. The council also gives the man the power to do this. It may post a sign in the store and say, "Harold K. is in charge of Spring Clean Up - Listen to Him." Or the council may promise to fine people whom Harold reports are not taking part.

What is the job of a director then? The director's job, in a corporation is so special that some law teachers say that there is nothing like it. He is not an agent like an officer. He is more like a person who takes care of the property of other people and does what is necessary to protect and improve it.

Law professors do not know as much about hunting caribou or whale as you may know. They do not know about an umealik. But an umealik who organizes a hunt to feed a village is something like a corporate director. He is picked because he is already skillful at this job. But his main job is not to tell everybody how to hunt. It is to organize the boat, gear and men so that the village gets a whale. The umealik has a feeling of responsibility for the village and people in it who cannot hunt. This is why he provides whale meat or caribou from his extra share to people in the village. In a corporation the law gives the directors this same responsibility, to be concerned about the whole company and all its stockholders.

Compare the Old Days With the Future

Compare the ideas about a corporation's owning things with the way things were owned in days gone by. Let us make a list of things that were owned: An individual owned his kayak, clothing, tools, weapons, charms, and songs. A family owned a umiak, sled or house. They all owned it together.

This is different from a corporation that many people own because the stock gives each person a specific part of ownership. Everyone does not own the whole thing. It can be divided up.

You cannot divide up a sled unless you want a stack of wood. But people did share things they hunted. Things that were hunted together were divided up. People got shares of the game.

In the old days there were trading partners among Eskimos and Indians. A man from the sea coast traded seal and whale oil for caribou hides and wolf and fox pelts. And just as people hunted together they went to trade together. A person from one band would trade with a person from another band again and again. They had a personal relationship that was as good as the contracts that people use today because both partners understood what the other wanted. If a man did not give what he had promised, the trading would end.

The corporations and their employees will trade with other people. But the contracts will describe the deals made and the courts and the law will protect both sides. A man who breaks a contract can be taken to court. The judge may make him pay damages.

Review of Corporations

How many corporations are there in the United States? About a million and a half. Some are small with only a few stockholders like the ones we have talked about. Others are huge with millions of stockholders. The telephone company is like that. How much business do corporations do? At least 90 percent of American business is done by corporations that provide people or other corporations with services or things. In fact, only about 700 corporations do three quarters of all the business in the country. These are the biggest ones. Can you guess their names? General Motors is one. The steel companies are others.

Each year, the business magazine named Fortune prints lists of the 500 corporations in the United States that earn most money for owners, manage most money, etc. Did you know that the regional corporations of Alaska native people will probably join these lists?

How does a business become a corporation? A corporation gets its special and separate identity from the state, and not from the individuals who decide to organize it. Although they will invest time and money in the corporation, it is created by following the laws of the state. By filing the correct papers, the incorporators ask for a special grant from the state for a new business. Every state has laws that tell businesses how to become corporations. Lawyers direct ordinary people on the correct papers and legal fees that are necessary.

What kind of papers are filed? The articles of incorporation, which describe to the state the legal name of the organization, its general purposes, and what it plans to do. The articles also list the main place of business and the names of the incorporators and directors. Along with these articles are more detailed rules of operation called the bylaws.

The bylaws describe such things as this:

1. How many shares of stock are in the corporation.

2. What rights the stockholders have.

3. When the meetings will be held.

The articles of incorporation and by-laws do two important things:

1. They tell the state what business the corporation is going to do.

2. They tell the stockholders what the corporation can do and cannot do.

Together they are the rules of life for the corporation.

Alaska Law and Native Claims Stock

You and other members of your family will receive shares of stock in a corporation that was organized under the Alaska Native Claims Settlement Act. You have learned something about stock and corporations in general. How are the regional and village corporations different?

Federal Law is made by Congress and signed by the President. State law is made by the state legislature and signed by the Governor. The Constitution says that federal law is superior to state law. This means that where federal and state law say two different things about the same topic, usually the state law will have to be changed (or amended). This is what happened to some parts of the law about corporations in Alaska after the Alaska Native Claims Settlement Act was passed.

The special things that the Native claims act said were these:

1. Native claims stock will only be given to people who prove that they had at least one grandparent who was an Alaskan Native as of the date when the bill was passed. Not everyone can receive this stock.

2. Native claims stock cannot be sold or transferred for twenty years. But it can go to the people in your family if you die or if you get a divorce. Some other kinds of stock can be sold whenever the stockholder can find a buyer.

3. Native claim stock will not be taxed when you get it; other stock is often taxed.

4. The land that is transferred to corporations will not be taxed for about 20 years unless it is worked on or leased to other people. Then it can be taxed. Usually all owners of land (real property) must pay taxes.

5. The money that the U.S. Government and Alaska give to the corporations to pay directly to the Natives is not taxable as dividends. Dividends are usually taxable under special rules.

6. The Native claims corporations will have to pay taxes on land rents, royalties (shares in profits from oil or mineral on its land) or other profits. However, if the corporation is a non-profit corporation special laws apply.

7. If a child owns stock, the decisions are made by someone else who has responsibility for the affairs of the child, like his parents or some other legal guardian.

8. The corporation will see that stock goes to the right person in the family if someone dies. The superior court will handle arguments between people if the corporation cannot, or if it makes a mistake.

What special problems do Native Land Claims stockholders have that are different from problems of other stockholders?

1. Native claims stockholders cannot sell their stock for the value of their share in the land and money held by the regional or village corporation for twenty years. Other stockholders can sell if they can find a buyer.

2. Native stockholders do not pay taxes on money they receive as yearly Land Claims payments. They do pay taxes on profits of the regional corporation which the directors divide up (dividends).

Class Discussions

Many Native children know a great deal about some aspect of hunting or fishing that their parents or relatives in the village carry out. It might be caribou hunting, trapping for furs, fishing for salmon, or hunting walrus. Pick one or any of these and discuss along the following avenues:

1. Does your relative do this by himself? With other persons? Why do these people work together?

2. What kind of gear does he need to carry out this work? Does he make it himself? Does he buy some of it or trade for it? Where does he get the money or goods to do this?

3. Suppose he spends his time trapping and wants some fish? What does he do?

4. Does your family buy canned goods at the store? Does the storekeeper grow these things and put them in cans? Why do different people do these things (e.g., grow vegetables, put them into cans, ship them to Alaska, sell them to your mother at the store)? Can any one person do all these things? Can the people in one village or town do all these things? Does one person or even one village have the time and money to grow things, produce metal and make cans, put the vegetables into cans, build or buy the airplanes to send them to many places, sell them to other people?.

Each of these jobs requires organization and men and women and money. Corporations do each of these things.

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Stock, Corporations, and the Native Land Claims Settlement

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