LAW 122: Business Law

TRAIN TO LEARN EFFECTIVELY: TIP SHEETS

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BASIC FORMS OF BUSINESS ORGANIZATIONS

Sole Proprietorship

- A **sole proprietorship** conducts business in their own name, with no separate legal structure or separation between the owner and the business.
- The owner is exclusively and personally responsible for conducting business.
- The income or loss from the business is included directly in the owner's income/loss.
- The advantages are that it is the least costly business to operate and the least costly to dissolve.
- The disadvantages are the unrestricted and unlimited personal liability and the barriers to raising capital.

Partnership

- A **partnership** consists of the following characteristics:
    1. Two or more people carry on a business with a view to a profit
    2. It is not a legal entity separate from the partners
    3. Subject to any contrary agreement between the partners, if a partner leaves the partnership, it is terminated
    4. For income tax purposes, the income or loss of the partnership is calculated at the firm level and then allocated to each partner for inclusion in their income according to each partner's entitlement to the profits or losses of the partnership
- A partnership is also often called a **firm**.

General Partnership

- A **general partnership** does not require any particular formality, except for certain specific purposes like the use of a particular partnership name.
- The indications of a general partnership include:
    1. Shared profit and loss
    2. Joint ownership and property
    3. Joint contribution of capital
    4. Joint involvement in the business
    5. Joint access to relevant business information
- Furthermore, the **Ontario Partnerships Act (OPA)** provides general rules for determining if a partnership exists.

- The critical general partnership feature is **mutual agency**: each partner of the partnership business binds the partnership under the concept of joint and several liability.
- Under the concept of joint and several liability, all partners are personally liable for the actions of the other partners, including any tortious and breach-of-contract liability.
- To dissolve a partnership, one can do so by:
    1. Notice of one partner to the others
    2. Automatically on death or insolvency
    3. On completion of any special-purpose partnership
    4. At the expiration of a time-limited or project-limited partnership

Limited Partnership

- A **limited partnership** is a specialized form of partnership reflected in specific legislation, where the liability of at least one of the partners is limited or restricted to its investment in the partnership.
- In return, the limited partner cannot take part in the "control of the business" or allow their name to be included in the firm name.

Limited Liability Partnership

- A **limited liability partnership** is restricted to certain professions (e.g., lawyers, chartered accountants) whose governing organizations permit their members to form these partnerships.
- The key feature of limited liability partnerships is that a partner is not personally liable unless the act or omission was criminal or fraudulent or the partner knew, or should have known, of the wrongful or negligent act and did not take steps to prevent it.
- This limitation does not apply to debts, liabilities or other obligations arising from the partner's own wrongful or negligent acts or omissions.

Corporation

- A **corporation** is the most common form of business organization, being a separate legal person, where the corporation itself carries on business, incurs liabilities, and generates revenue, profits, losses, etc.
- A corporation can be incorporated federally (under the **Canada Business Corporations Act, CBCA**) or provincially (under the **Ontario Business Corporations Act, OBCA**).
- Corporations must complete **articles of incorporation**: describing the basic characteristics of the corporation. These include the name, class and number of shares, restrictions (if any) on transfer of shares, signing authority of contracts, and restrictions on the business.

- Corporations also can create a **shareholders agreement**: a contract among the shareholders customizing their relationship.
- In absence of a shareholder agreement, the corporation is governed by the CBCA or OBCA.
- The two forms of corporate financing are **debt financing** and **shareholder investment**/**equity**.
- When corporations distribute shares, shareholders have three basic rights:
    1. To elect directors
    2. To receive dividends
    3. To receive the property of the corporation after dissolution and debt payments
- A corporation can also choose to allocate different share classes and add rights.
- For instance, corporations can distribute **preferred shares**, with rights including:
    1. Dividends paid on a regular basis (before common shareholders)
    2. On dissolution, preferred shares are paid before common shares
    3. Preferred shareholders also typically have their voting rights removed