

Business Law

Chapter 15: Methods of Carrying on Business

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|---|---------|
| 1. Sole Proprietorship | 109 |
| 2. Partnership: 2+ people carrying on business in common with a view to profit | |
| • <u>General Partnership</u> (<i>Partnership Act</i>) – unlimited liability | 110 |
| • <u>Limited Partnership</u> (<i>Limited Partnership Act</i>) – 1 general part (unlimited) + 1 limited par (limited) | |
| • <u>LLP</u> (<i>Partnership Act</i>) - partners liable for own negligence/prop/employees under supervision | |
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| 4. Corporations (separate legal entity) | |
| • Shareholders liability is limited (they own corporation, but not its property) unless guarantee | |
| • Dissolution: ((i) majority vote, (ii) court order, (iii) breached statute) | 111 |
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| • Association of 2+ people for a limited purpose | 112 |
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| • Franchise: Franchisor grants franchisee right to use trade-mark/trade name | 112 |
| o <u>Master Franchising Relationships</u> (right to carry on multiple outlets) | 112 |
| o <u>Single Franchise Agreement</u> (right to operate a single outlet) | 113 |
| o <i>Arthur Wishart Act</i> : Franchisor provides prospective franchisee with disclosure of info | |
| • License: owner of IP grants to another the right to use property for up front fee and ongoing royalty | |
| • Tax Consequences: Cost expensed on straight line basis (CCA) | |
| 7. Not-for-profit organizations and charities | |
| • Not-for-Profit: Not taxed...social clubs, professional groups, sport clubs (<i>Not-for Profit Corp Act</i>) | 113 |
| • Charity: Must apply under ITA and satisfy “registered charity” definition | 113-114 |
| 8. Choosing Best Method of Carrying on Business | 115 |
| • Factors: Legally possible, Limited Liability, Perpetual Existence, Estate planning, Proposed Proprietors, Relationship of Proposed Proprietors, Employees, Costs, Citizenship, Flexible Structure, Tax | |

Chapter 16: Partnerships

| | |
|---|---------|
| 1. General Partnerships | |
| • <u>Formation of Partnership</u> ((i) Business, (ii) View to profit, (iii) Agreement to share profit) | 119 |
| • <u>Registration of General Partnerships</u> (S. 2 of Business Names Act) | |
| • <u>Characteristics of General Partnerships</u> | |
| o No Separate Legal Existence: partnership is not separate legal entity from partners | |
| o Agency: Partnership is bound UNLESS (i) no authority (ii) not act in normal biz course | 120 |
| o Liability: No <u>liability</u> for anything done before partner, <u>retired partner</u> remains liable unless discharge | |
| o Duty of loyalty and good faith don't compete with partners, don't hide benefits | 120 |
| o Partnership Property: NOT divisible (only get proceeds on dissolution after liabilities paid out) | 120 |
| o Relation of partners to another: share equally, indemnification, no interest on K, manage | 120-121 |
| o Dissolution: <u>expiration of term</u> , <u>termination of adventure</u> , <u>partner gives notice</u> , <u>death/insolvency</u> | 121 |
| 2. Limited Partnerships (1+ General Partners and 1+ Limited Partners) | |
| • Principle Feature: <u>Liability</u> limited to amount of money/property partners contribute | |
| • <u>Formation</u> by applying to Ministry of Gov't & Consumer Services (*declaration expires 5 years) | 121 |
| • <u>Characteristics of limited partnership:</u> share profits in proportion to contribution (passive investors) | |
| o Share in assets in proportion to contribution | 122 |
| o Control: If lim partner takes part in control of business = loses liability and becomes General Partner | |
| o Assignable Interest: can assign interest to a substitute limited partner upon partner consent | |
| ▪ Non substituted limited partner can only receive share of profits (cant inspect) | |
| o Dissolution (i) <u>gen partner dies</u> , (ii) <u>retires</u> , (iii) <u>incompetent</u> ...unless agreement states otherwise | 122 |
| ▪ Priority: Limited Partners > General Partners | |
| o Extra-Provincial Limited Partnerships: cant carry on biz in Ont unless <u>file declaration</u> + <u>PoA</u> | 123 |
| o Limited Partnership Agreements: deals with matters not addressed in the act or LPA | 123 |

Chapter 27: Unsecured Creditors' Rights and Remedies

Bankruptcy and other unsecured creditors' remedies

1. Judgments, Executions and Garnishments

- Judgments and executions: obtain judgment of court v debtor (judgment creditor) – writ of execution 255
- Garnishment: interception of third party payments owed to debtor
- Priority in bankruptcy: Trustee-in-bankruptcy has priority over all executions/garnishments
- Distinction from secured creditors: Secured Creditors = Seize assets without judgment/order of court 255

2. Unpaid Suppliers

- Special rights over unsecured creditors (even sec creditors), but **must satisfy s. 81.1** 256
- Priority: priority over other claims against purchaser but NOT subsequent bona fide purchaser for value
- Wage Earner Protection Program Act: employees paid up to 3,000 unpaid wages (employer bankrupt) 257

3. Landlords and Right of Distress

- Become unsecured creditors for rent/damage claims – preferred claim (3 months arrears/rent) 257

4. Bankruptcy

- Three ways for debtor to become bankrupt ((i) assignment, (ii) filing proposal, (iii) court order) 257-258
- Who?: Debtor must be INSOLVENT to be bankrupt (defin't of insolvent) – cash flow/balance sheet 258
- Involuntary bankruptcy: upon creditor application to court (appointing trustee in bankruptcy)
 - **Act of Bankruptcy** (ceased to meet liabilities as they due), **Procedure** (SCJ) onus = applicant 258
 - Serve debtor with notice of bankruptcy at least 10 days before hearing
 - **Disputed Applications** (debtor disputes application – SCJ hearing) - notice of dispute 2 days 259
 - **Remedies**: (i) declare bankrupt, (ii) dismiss application, (iii) stay indefinitely/limited period
- Trustee-in-bankruptcy (e.g. accounting firm)
 - Debtor ceases to have legal capacity to dispose - debtors prop vests in trustee (subject to sec)
 - **Trustees Duties & Powers**: Main Role = liquidate assets and distribute proceeds
 - (i) report to court, (ii) convene meetings, (iii) notices to creditors (iv) report periodically 259
 - Inspectors (limit the trustees powers) 260
 - **Treatment of secured creditors in bankruptcy**
 - Trustee has right to redeem secured creditors security for amount indebtedness owed

5. Stay of Proceedings

- When insolvent person files assignment OR bankruptcy order v insolvent = proceedings by unsec cred stayed
- Unsecured creditors must file proof of claim
- Leave lift to stay: creditors will be materially prejudices OR it is equitable to declare stay 260

6. Administration of bankrupts estate

- First meeting of creditors: Within 5 days of appointment, trustee sends to creditors notice + meeting notice
 - Meeting held within 21 days of trustees appointment (no earlier than 10 days before notice sent) 261
 - **Discussion**- (i) Affirmation of trustee appointment (ii) review of bankrupt affairs (iii) inspectors
- Affirmation of trustee: affirmed at first meeting of creditors (ordinary resolution)
- Review of bankrupts affairs: review bankrupts statements of affairs; provide report re examination
- Inspectors: at first creditors meeting can elect inspectors, Appoint up to 5 inspectors on ordinary resolution 261
 - **Trustee requires inspector approval**: certain powers of trustee need inspector approval 262
 - **Conflicts with inspectors**: Creditors > inspectors; trustee v inspector = apply to court
- Proof of claims and VOTING at first creditors' meeting
 - **Proof of claim** (creditors file), **Secured Creditors** claim for unsecured portion; can vote
 - **Rights to share in distribution**: if creditors don't prove claims, cnt share in distribution
 - **Restricted parties**: related persons prohibited from voting so remains objective 262

7. Personal Liability of trustee

- Labour/employee-related liability (trustee may not liable), Environmental Liability (liable) 263-264

8. Liquidation of bankrupt's assets

- Trustee may sell assets by: (i) tender, (ii) public auction, (iii) private contract (with court approval)
- Sale of Real Property: Bankruptcy order must be registered on title to real property before it can be conveyed

9. Rights of occupation of leased premises and assignment of leases

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- Occupation rights (3 months), Election to retain and right to assign, Disclaimer of leases (landlord claim rent)