Bob Farley

Blaw 321 - Law of Business Organizations

Weekly Information Sheet 05

SOLE PROPRIETORSHIPS

1. Sole Proprietorships

A sole proprietorship is a business established, owned, and controlled by a single person.

Sole proprietorships come in all shapes and sizes.

The owner realizes all the profits and assumes responsibility for all losses.

They also personally manage the business and are responsible for making all management decisions.

Advantages of a Sole Proprietorship

- Sole proprietorships are simple to start.
- No formal action is required.
- May be started immediately.
- The owner has total control.
- The business is nimble / easily adaptable.
- The owner receives all the profits.
- The business itself pays no income tax.

Disadvantages of a Sole Proprietorship

- No Liability Protection.
- The business can be easily dissolved or ended.
- The owner has total control.
- The owner is solely responsible for all capital
- The business is inherently limited
- Owner is solely liable for all losses / damages.
- The owner pays all the taxes for the business

The sole proprietorship is still today the most prominent of the four forms of business organization ownership in America.

2. DBA's – "Doing Business As"

A DBA is a certificate filed with a local government that designates that a sole proprietorship is being operated within that community under a specific name.

The local government will require the business owner to provide their name, address, and type of business operated on the DBA application.

There is often a small filing fee for a DBA

3. Franchises

Franchises are licensing agreements under intellectual property laws that allow businesses to operate in a standardized, uniform manner.

These businesses are individually and privately owned, but conform to uniform standards due to the franchise agreement.

Such agreements allow for standardization of products and processes so as to build brand uniformity and satisfy customer expectation. Famous franchises include businesses such as Subway, McDonalds, and Exxon-Mobil Gas Stations. Franchises do not include big companies like GE, Walmart, Microsoft or wholly owned private companies like Price Chopper, Koch Industries and Dell Computers.

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PARTNERSHIPS

1. Defined

• "Partnership" Defined

The Uniform Partnership Act ("U.P.A.") [Chapter 39, McKinney's Consolidated Laws of New York] defines a partnership as

"An association of two or more persons to carry on as co-owners of a business for profit, and includes a registered limited liability partnership". [P.L. §10 (1)]

The law of partnership is based on the law of **contracts** and **agency**.

• Joint Venture Vs A Partnership

Courts sometimes seek to distinguish a joint venture (i.e., a single or limited enterprise or venture) from a partnership. However, a joint venture is a partnership, and the legal consequences of a joint venture are almost identical to those of a partnership. [See Pedersen v. Manitowoc Co., 25 N.Y.2d 412 (1969)].

2. Not A Legal Entity

A partnership is unlike a corporation in that it lacks some of the entity characteristics of a corporation.

For example, the debts of the partnership are the debts of the individual partners, and any one partner may be held liable for the partnership's entire indebtedness.

However, in some cases, the partnership, at least in form, is treated as an entity.

• Title to Land

Title to land may be taken in the partnership name. [P.L. §12 (3)]

• Lawsuits

A partnership may sue or be sued in the partnership name. [N.Y. Civ. Prac. L. & R. (hereafter "CPLR") 1025]. But this is really a legal fiction, as the individual partners themselves are the actual plaintiffs and defendants, and must pay, and get to receive, any judgments. Additionally, service of process on any one partner is service on the partnership. [CPLR 310(a)].

PARTNERSHIPS Continued

3. Important Attributes of Partnerships

- ### Partnership Agreements

Not all partnership agreements must be in writing. They can be oral.

Only those partnership agreements which cannot by their terms be performed within a year must be in written form, signed by the party to be charged (Under the statute of frauds).

- ### Illegal Activities

As with all Agency-Principal relationships, a partnership formed for an illegal activity will not be recognized under New York law.

- ### Disposition of Property

Absent an agreement to the contrary, partners share equally in the profits and losses of the business.

- ### Partnership Relations

Upon the establishment of a partnership, partners have:

- A fiduciary duty to each other;
- A right to participate in the management of the business; and
- A right to distributions.

4. The Law of Agency under Partnerships

The legal authority of a partner to bind the partnership when dealing with third parties is governed by the law of agency.

- ### Imputed Knowledge

Knowledge of one Partner can be legally imputed to the other partners (they are legally deemed to have the same knowledge even if they don't actually have such knowledge). This is based upon a duty of one partner to inform the others.

- ### Dissolution

A partnership can be dissolved by:

- Act of the Partners: Agreement, Mutual Assent, Expulsion of Partner
- Operation of Law: Death of a Partner, Illegal Activity, Bankruptcy

5. Major Partnerships

Some prime example of Major Partnerships include:

- Major Law Firms
- Big Four Accounting Firms
- Major Movie Production Firms