

## BUSINESS LAW – COMPANY LAW (lecture 7 AND 8) – Business Organisations

Unincorporated: no legal difference between the business and the owner! non-business and business types; does not have a separate legal identity; unlimited liability; few formalities – flexible, but could lack clarity.  
 Incorporated: LLP, PLC, LTD and companies created by Royal Charter, Act of Parliament, Community Interest Companies - has a separate legal personality; also has statutory formalities that it must follow; private and public companies.

### UNINCORPORATED: SOLE TRADER

\*One-person business, commonly found in trades where only small amounts of finance are required to set up.

\*Formalities – no special regulations, no duty to disclose accounts, just have to comply with statute including employment laws, health and safety, income tax, etc. ST is meant to inform HM Revenue and Customs re finance.

\*Name?- ST have to comply with requirements of business names - 1200-1206 Companies Act.

\*Advantages –lack of formalities; flexibility; have full control of the business and enjoy all the profits; can bring business to an end at any time without need for formalities.

\*Disadvantages –unlimited liability; have to provide all the finances and bear all the risks.

### UNINCORPORATED ASSOCIATIONS: PARTNERSHIP

\*Association of individuals. Rights and duties between partners set out in the PA 1890 eg division of profits will be split equal, which applies by default if not in the partnership agreement.

\*Each partner is responsible for the debts of the partnership and therefore you would need to choose your partners carefully and draw up an agreement on the responsibilities and rights of each partner (Deed of Partnership or The Articles of Partnership).

\*Unlimited liability for debts, except if there is a limited partnership. This is where a partnership may wish to raise additional finance, but does not wish to take on any new active partners.

\*To overcome this problem, the partnership may take on as many Sleeping (or Silent) Partners as they wish - these people will provide finance for the business to use, but will not have any input into how the business is run. –*M Young Legal Associates ltd v Zahid*.

\*Minimum partners – 2. Maximum – none although used to be 20.

\*Single venture partnerships – *Mann v Darcy*

\*When does a partnership come into existence? –*Khan v Miah* – does not matter if business is yet to be opened.

\*Equity partner (sharing in the profits) – *Stekel v Ellice* – have to look at facts and circumstances to determine ‘title’

\*Salaried partner (receiving salary) – *Nationwide Anglia Building Society v Lewis*

\*Name? Section 4 PA 1890. Cannot link your name to government, bank, etc or similar to an existing name, or could be subject to passing off proceedings – *Ewing v Buttercup Margarine ltd; Croft v Day*

\*Same rule applies with domain name – check with ‘nominate.’

\*Fiduciary relationship – general duty of care, trust, honesty and good faith between partners.

\*Specific duties- PA 1890 ss28-30 – s28: duty to disclose (*Law v Law*); s29: duty to account (*Bentley v Craven*); s30: duty not to compete (*Don King Productions Inc v Warren*).

### Rights of partners

\*Applicability of s24 PA 1890, which will step in by default eg to share equally in the capital and profits of the business (also to contribute equally to the losses)(s24(1)); to be indemnified by the firm for any liabilities incurred or payments made in the course of the business (24(2)); entitlement to interest (24(3)-(4)); to take part in the management of the business (24(5)); entitlement to a salary (24(6)); right to elect to be a partner (s24(7)); change of the business (s24(8))

\*Partners are jointly and severally liable for the firm’s contracts; liability for torts: partners are jointly and severally liable in torts or other wrongful acts committed by a partner in the ordinary course of business or done with the actual authority of the co-partners.

### Ending a Partnership

\*Expelling a partner (PA 1890 S25) ie express provision – *Bliseet v Daniel; Kelly v Denman* – partners must exercise in good faith.

\*Dissolution by: ---agreement  
 ---automatically under ss32-34 PA 1890 (expiry of fixed term, expiry of a particular purpose, by giving notice, death/bankruptcy, creation of a charge, illegality –*Hudgell, Yeates and co v Watson*); ---- court order s35 PA (mental illness/incapacitation, prejudicial conduct/unreasonable behavior, business can only be carried on at a loss, just and equitable grounds – breakdown of relationship)

### LIMITED PARTNERSHIPS

\*The Limited Partnerships Act 1907 - a partner can have limited liability provided they don’t withdraw their funds until partnership comes to an end and their role is limited.

\*Has to be registered at Companies House.

\*Restrictions on choice of name same as before and has to say it is a limited partnership in its name.

### INCORPORATED - LIMITED LIABILITY PARTNERSHIP (LLP) -The Limited Partnership Act 2000.

\*Distinctions from a General Partnership or Limited Partnership – it is a legal entity, but liability of its member are limited. They can cease to be members without it affecting the business (like a shareholder).

\*Advantages – LLP is flexible and no formalities like partnerships; internal working is private; income tax rather than corporate tax. Disadvantages – must register its accounts annually and have them available for public inspection

\*Formalities – 2 or more legal persons with a view to a profit, but no maximum; general partnership may convert; has to be registered at companies house; has to be a statement of compliance; has to have LLP at the end of its name.

\*Members right will cease upon death, agreement with members, or giving reasonable notice. A member can withdraw its capital at any time, with consent.

\*LLPA 2000 and 2009 Regulations – equal share in capital and profits, indemnity of members, management rights, payment for participation, introduction of new members, changes to type of business, availability of books and records at place of business, provision of accounts and information, disclosure of any benefit/connections, exclusion.

**PRIVATE LIMITED COMPANIES – LTD** -Limited by shares; limited by guarantee; role of promoter – liability on pre-incorporation contracts (*Kelner v Baxter/s51 CA 2006*). NB Novation and buying a company ‘off the shelf’, which can ratify contracts. Promoter will have to change companies name, objects, directors names, but cost effective.

**PUBLIC LIMITED COMPANIES – PLC** - In order to start up as a PLC have to have 2 directors and company secretary, have an allocated share capital of at least £50k; separate certification of incorporation confirming PLC status; offer shares to public; shareholders have interest in value of shares.

\*Registration of a new company – register at companies house; Memorandum of Association (names of people forming the company); articles of association (internal rule book – legally binding on company and members); application for registration (required details); statement of compliance; fee.

\*Choosing a name- Part 5 CA 2006 (restrictions) – ss58/59,ss54/55. Offensive names-s53 – *R v Registrar of Companies ex p AG*; passing off- *British Telecommunications plc v One in a Million Ltd*.

\*Formalities a company must comply with – annual return, audited accounts (criminal offence not to file), provision of company name and address, filing obligations with Companies House- change of name/directors. PLC have to hold AGM within 6 months of end of financial meeting and account to shareholders.

\*Corporate entity – separate legal personality –*Salomon v Salomon & Co; Lee v Lee’s Air Farming*. The concept of perpetual succession -continuation of a corporation’s existence despite change in membership. Along with a common seal, it is one of features defining a corporation’s legal existence as a separate from those of its owners. Ownership of property is the companies– *Macaura v Northern Assurance*.