

**Business Law II**  
**BUSINESS ORGANIZATIONS**  
**Sole Proprietorships and Franchises**  
**(Chapter 1)**

1. Sole Proprietorships
  - a. An organizational form of business
  - b. Simplest form
  - c. Owner is the business
    - i. Usually indistinguishable
  - d. Doesn't require an actual filing
  - e. A default category
  - f. Covers at least 2/3 of all business
  - g. Can be for any type of enterprise
    - i. Other rules/laws still apply
  - h. Advantages
    - i. Pays only personal Income Taxes
      1. Schedule C
    - ii. Eligible for creating certain retirement accounts
    - iii. All benefits accrue to owner
  - i. Dis-advantages
    - i. All liabilities accrue to the Owner
    - ii. No legal protections
      1. Unlimited liability beyond value of business
      2. Personal assets at risk
    - iii. Difficulty in raising capital
    - iv. Lack of continuity upon death/illness
2. Franchise
  - a. Not a form of business organization per se
  - b. Very common
  - c. A legal arrangement (contract) in which the owner of intellectual property licenses others to use it to sell goods or services and access its integrated business system
    - i. Franchisee
      1. purchaser.
      2. Gets advantages of a regional/national organization
      3. Advantages of existing branding
      4. Restricted territory
      5. Exclusive territory
    - ii. Franchisor – seller
      1. Can still have corporate operations
      2. Growth
      3. Selectivity

4. Standardized or prescribed methods of operation
  5. Minimum standards of performance
  6. Exclusivity for products and supplies
  7. Can mandate business structure
  8. Can require minimum capital structure
  9. Provides training
  10. Can control administrative aspects
  11. Supervision to protect brand
    - a. Quality control
  12. Can restrict re-sale of license
  13. Has risk of *respondeat superior* (“let the master answer”) if too controlling
- iii. Interdependent relationship
- iv. Types
1. Distributorship
  2. Chain – style business operation
  3. Manufacturer
- v. Examples
1. Car dealerships
  2. Bottling companies
    - a. Beer
    - b. sodas
  3. Fast food chains
  4. Gas stations
  5. Tax preparation offices
  6. Real estate brokerages
- vi. Laws
1. Contract
    - a. Emphasis on good faith and fair dealing
      - i. Implied covenant in contract
      - ii. Uneven bargaining position
      - iii. Duty to disclose
        1. Confidential relationship
        2. Information particularly within the knowledge of one party
    - b. Remedies
      - i. Breach of contract
      - ii. Terminate contract
        1. Fraudulent misrepresentation
  2. UCC – sales
  3. Regulations
    - a. Federal Trade Commission (FTC)
      - i. Franchise Rule - Informed Consent
        1. Written Disclosures

2. Reasonable Basis for Representations
    3. Projected Earnings figures
    4. Actual Data
    5. Explanation of Terms
    6. Civil penalties
    7. FTC can sue
  - b. Anti-trust laws
    - i. Price fixing
  - c. State laws
    - i. Not all states
    - ii. Presale disclosures
    - iii. Approved advertising
    - iv. Deceptive trade practices prohibition
    - v. Termination rules
- vii. Costs
  1. Initial fee
  2. Lump sum price for license
  3. Product costs
  4. Percentage of sales/volume
- viii. Business Premises
  1. Standardized
  2. May have to purchase specific fixtures
  3. May lease from franchisor for a specific duration
    - a. Subject to renewal
  4. May have to update
  5. May have to purchase
  6. Restricted territory – usually identified in advance
- ix. Grounds for Termination
  1. Must be for cause
  2. Cannot be arbitrary
    - a. Uneven bargaining position
  3. Outlined in contract
  4. Death or disability
  5. Insolvency
  6. Breach of material term of agreement
    - a. Duty of honesty and fidelity
    - b. Right to Cure
  7. Failure to meet financial objectives
  8. Notice requirements
    - a. Per contract
    - b. Implied covenant of a reasonable time period
  9. Remedy – wrongful termination