

**BTF2000: AUSTRALIAN  
CORPORATION LAW**  
EXAM NOTES

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# 1AB. BUSINESS STRUCTURES & ORGANISATIONS

## Choosing Business Structures

- Choice of legal structure which the business will operate
- Depends on the size and nature of business
- Other issues to consider:
  - What activities will the business undertake
  - How much will it cost to set up
  - How can funds be raised to grow the business
  - What records will the business need to keep
  - Tax advantages and disadvantages
- As businesses change the need may arise to modify the business structure or create new or additional legal structures to meet particular requirements

## Sole Trader

**Sole trader** = a business owned by one person and that has no legal existence separate from that person

- Quick and inexpensive to establish
- No legal distinction between the owner and the business
  - **Unlimited liability** = personally responsible for debts of the business
  - Creditors can claim against assets of business AND owner's personal assets
- Owner would not include personal affairs in accounting records
- Commonly used by newsagents, hairdressers, personal trainers, tradespeople etc.

<b>Advantages</b>	<b>Disadvantages</b>
<ul style="list-style-type: none"><li>• <u>Full management</u> authority</li><li>• <u>Fewer regulatory</u> and reporting obligations<ul style="list-style-type: none"><li>◦ limited disclosure obligations</li></ul></li><li>• Business affairs are relatively <u>private</u></li><li>• <u>Minimal costs</u> to establish and operate</li></ul>	<ul style="list-style-type: none"><li>• <u>Unlimited</u> liability</li><li>• More <u>difficult to raise</u> financial capital</li><li>• <u>Life</u> of the business is <u>limited</u> to when the sole trader ceases to work (business can be sold though)</li><li>• <u>Higher tax rate</u> than companies</li></ul>

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|---|--|
| <ul style="list-style-type: none"> <li>• <u>Free to close or wind up</u> the business whenever desired</li> </ul> |  |
|---|--|

## Partnership

**Partnership** = relationship or association between two or more entities, carrying on a business in a common with a view to making a profit. Each partner in a partnership is personally liable for all the debts of the partnership, even if they are caused by decisions or acts by other partners

- **4 Elements:**
  - A group of people
    - 2-20 people
      - Exception: Accounting 1000, Lawfirm 400, Stockbroker 50
  - Carrying on business
    - Activities have significant commercial purpose or character of an *ongoing or continuous* nature
  - In common, and
    - Business relationship is mutual, share or reciprocated as its rights and obligations
  - With a view to a profit
    - Common purpose/aim to make a profit
    - Expectation --> do not actually need to make profit and can have losses
- **Not** separate legal entity
- **Partnership agreement** = contract (written/oral) that regulates how the partnership will operate
  - Rights and obligations of the partnership, particular partners
  - Rules that determine the way in which the partnership is managed
  - Can be varied by consent between parties
  - If silent on matter - Partnership Act has default rules for management matters
- Not necessarily equal
- A partner may be 'silent' - does not actively participate in management but still liable for debts and wrongful doings

**Canny Gabriel Castle Jackson Advertising Pty Ltd v Volume Sales (Finance) Pty Ltd**

**1974**

Example of

*Avoiding disadvantages of partnership by describing business as something else (eg joint venture) in all their business documentation*

Facts

- Volume Sales financed tour promotion company
- Had written agreement of 'joint venture' where net profits were to be shared but not losses
- Tour promoter entered a contract with Canny to advertise tour but there was a conflict as to whether Canny or Volume Sales had first right over box office receipts

Held

Just because it was described as a JV does not mean that it is not a partnership - it met all tests of a partnership even though documentation described it as a JV.