**Chapter 26: Sole Proprietorships and Partnerships**

**Sole Proprietorship** – an unincorporated business owned by a single individual

**Partnerships** – the relationship between two or more persons carrying on a business with a view to profit

Advantages: Can work together and use both partners’ expertise and financial resources  
Disadvantages: Dishonesty/incompetence of one member, time-consuming to make decisions

Partnership is consensual and contractual. A formal written partnership agreement is normally drawn up and signed by all partners. If a partner dies or retires or a new partner is admitted, the partnership comes to an end and is replaced by a new relationship.

**Firm** – collective reference to the partners in a partnership

Until the creditors of the partnership have been paid, it is impossible to identify and distribute the share of an individual partner. If no assets remain after the creditors have been paid, the partner has no share for personal creditors to seize.

**Partnership Agreement** – an agreement between persons to create a partnership and setting out the terms of the relationship  
- may be wholly oral and yet valid and enforceable

**Contents of a partnership agreement:**  
- identity of the partners  
- name of the firm  
- nature of the business to be carried on  
- duration of the relationship  
- method of terminating the partnership  
- rules for introducing new partners  
- what is to happen on the retirement or death of an existing partner  
- participation in management and in making major decisions  
- contribution of each partner in terms of work and responsibilities  
- capital contribution of each partner  
- ownership of property used in the business  
- sharing of profits and losses  
- procedure for resolving disputes

It is usually inadvisable for partners to draft their own agreement. The usual problems of ambiguous words can create the same misunderstandings that arise in the law of contracts.

**Joint Liability** – the situation where each of a number of persons is personally liable for the full amount of a debt  
- each partner is personally liable for the full amount of the firm’s debts

When the liabilities of a partnership exceed its assets, a creditor or injured party, having obtained judgement against the partnership and exhausted its assets in trying to satisfy judgement, may look to the personal assets of any partner or partners until the judgement has been satisfied.

A person who is admitted as a partner into an existing firm doesn’t become liable to the creditors of the firm for anything done before he became a partner. Similarly, a partner who retires from a firm does not thereby cease to be liable for partnership debts or obligations incurred before his retirement. It is an important precaution to make sure the retiring partner’s name is removed from the list of partners.

Steps to be Take on Retirement from a Partnership  
To protect himself against possible liability for future acts of his partners, a retiring partner should:  
- ensure that all existing clients of the firm are notified  
- place a notice in the official gazette of the province  
- ensure that his name is removed from the register  
- ensure to the best of his ability that any letterheads are destroyed/altered to remove his name

The liability of a firm and its partners is not restricted to contracts. The firm is liable for “any wrongful act or omission of any partner acting in the ordinary course of the business or the firm.”

A partnership is dissolved by any event that makes it unlawful for the business of the firm to be carried on or for members of the firm to carry it on in partnership:  
- a partner is found to be mentally incompetent  
- a partner becomes permanently incapable of performing his part of the agreement  
- a partner has been guilty of conduct likely to prejudicially affect the business  
- a partner commits a breach of the agreement

When a partnership is dissolved, the property of the partnership is applied in payment of the debts and liabilities of the firm, and the surplus assets are applied in payment of what is due to the partners.

The assets of the firm must be applied in the following sequence:  
1. Payment of the debts of the firm owed to non-partners  
2. Repayment of loans made to the firm by partners  
3. Repayment of the capital contributed by partners  
4. Sharing any surplus among the partners according to their entitlement to share in profits

**Limited Partnership** – a partnership in which some of the partners limit their liability to the amount of their capital contributions

**General Partner** – a partner in a limited partnership whose liability is not limited

**Limited Partner** – a partner in a limited partnership whose liability is limited to the amount of his or her capital contribution

**Limited Liability Partnership** – a partnership in which non-negligent partners are not personally liable for losses caused by the negligence of a partner

**Joint Venture** – a business venture undertaken jointly by two or more parties

**Contractual Joint Venture** – a joint venture affected by agreement without the creation of any separate legal entity

**Equity Joint Venture** – a corporation formed, and jointly owned, by the parties to a joint venture for the purpose of carrying on the venture

**Declaration of Trust** – an agreement that establishes a trust and designates the trustees

**Unitholders** – beneficiaries of an income trust