

# BUSINESS LAW

## Sources of Law:

Statutes / Acts

Legislation

Cases  
precedence

Criminal  
"offence"  
State vs Defendant

Proceedings:  
Civil

private rights & obligations  
Plaintiff vs Defendant

## Civil Dispute Resolution

### LITIGATION

State & Supreme Court

Cost ↑

No consent needed

### Small Claims Tribunal

Less than \$20,000  
\$30,000 if both agree in writing

No lawyers involved

### ARBITRATION

Singapore International  
Arbitration Centre

Cheaper & Faster  
Informal & Privacy  
Both must agree  
Contractually obliged

### MEDIATION

Singapore  
Mediation Centre

International enforceability  
& Arbitrator impartiality  
↳ More creative settlement  
Both must agree

### BINDING

## UNLIMITED LIABILITY Business Structure

### Sole Proprietorship

- 1 person

### Partnership

- 2-20 people generally

- share profit/loss equally

- equal right to manage business

- dissolved upon death/agreement

- all partnership property belongs to partners

→ fiduciary duty

Authority

Actual written

Implied Usually does

Apparent Appears to

### LIMITED PARTNERSHIP

- Mix of both
- min 1 general partner  
1 limited partner
- not separate entity

### GENERAL PARTNER

- unlimited liability

### LIMITED PARTNER

- Limited by agreed contribution
- Cannot take part in management

### LIMITED LIABILITY COMPANIES

#### Companies

- Complex & Expensive
- Can own property in its name
- Debts belong to company
- Perpetual succession
- Sue and be sued in its name

#### Private

<50 people, share transfer limited  
Limited by shares

#### Public

Branch Some legal entity

Subsidiary Separate legal entity

### LIMITED LIABILITY PARTNERSHIP

- 2+ people
- Internally like partnership
- Externally like company

# Contract

**Offer** + **Acceptance**

need not written

clear intention  
of being bound

X Invitation to  
treat

- Advert
- Display goods
- Tender

**Termination**

- withdrawal
- counter-offer
- lapse of time
- condition not satisfied

**Acceptance**

communicated

X silence

**Consideration**

- do something for other party's promise
- need not be adequate
- not needed if deed under seal

**Intention to  
create legal  
relations**

X domestic

X subject to contract

X letter of intent

X MOU

## Variation

- If original contract expressly states allowed  
or

**Offer & Acceptance**

**Consideration**

**Fresh Consideration**

**Seal or Deed**

**Promissory Estoppel**

X initiates change, Y agrees

- clear representation by Y

- X acted on information

- unfair or inequitable to X

## TERMS

### Express

Parol Evidence Rule

Need not be fair

### Implied

**Statutes**

Acts

**Custom**

long-standing,  
well established  
custom in industry

**Courts**

obvious & goes  
without saying  
or  
necessary for  
business viability

## RESTRAINT OF TRADE

★ reasonableness

- legitimate reason
  - ↳ trade secret / confidential info
  - ↳ pull away customers
- area / time / scope

## EXCLUSION

- introduced when contract made
- reasonable notice
- cannot exclude death / injury
- exclude loss / damage reasonably
  - ↳ bargained strength equal
  - ↳ ought to know clause
  - ↳ not easy to insure loss

# Factors

## Illegality

- \* Case Law
  - contact to commit crime
  - contact prejudicial to administration of justice
- \* Statute Law
  - innocent party still has rights

## Undue Influence

- \* Nature of relationship
  - ↳ one party dependent on another
- \* Background
  - ↳ old / illiterate
  - ↳ independent legal advice given
  - \* "Victim" suffer detriment
  - \* "Perpetrator" receive unfair benefit
    - ↳ deal grossly unfair

## Duress

- \* Violence
- \* Threat of violence
- \* Unlawful commercial pressure (Economic duress)
  - ↳ No choice
  - ↳ Agree under protest
  - ↳ Lack of good faith

## Mistake

- ↳ Both parties mistake something fundamental
- ↳ One party under pressure takes advantage about something fundamental

# MISREPRESENTATION

## False statement of fact

- X Sales talk
- X Opinion
  - ↳ Unless maker never believed opinion
- X Silence
  - ↳ Unless half-truth

## Inducement

- \* relied on false statement before entering contract
- + need not be sole factor

## Exclusion Reasonable

## Types

- Fraudulent
- Negligent
- Innocent

## Remedies

- Rescind contract
  - ↳ Physically impossible
  - ↳ Lapse of time
  - Sue for damages

## Parties

only parties to a contract can sue & be sued

## Agents

- ↳ intention
- ↳ contact wording
- ↳ informed on arrangements
- ↳ 3rd party's knowledge of you
- ↳ who's name
- ↳ method of payment (lump sum vs commission)

## Assignment

- Transfer of contractual rights
- ↳ cannot transfer liability

## Rights of Third Parties

- If he is conferred a benefit

# Termination

## Performance

- \* When the job is done
- \* Payment on complete performance
  - ↳ Substantial performance
  - ↳ Divisible contract

## Agreement

- \* Express clause provision
- \* Parties agree
- \* Implied clause allowing termination

## Frustration

- \* Illegal
- \* Impossible
- \* Radically different from both parties envisaged
  - X Less profitable
  - X Self-induced

## Force Majeure

- ↳ Which events
- ↳ Period of suspension

## Fundamental Breach

- \* Expressly states you can be terminated for breach
- \* Substantially deprived of whole benefit of contract
- \* "Condition" is breached
  - ↳ fundamental
  - X "warranty"
  - ↳ trivial

# Breach

## Unliquidated damages

- Must have suffered loss
- Cannot claim profits
- Cannot ask for punitive damages
- Cannot sue for distress
- Cannot be remote / far-fetched
- Must be mitigated
  - ↳ Reasonable steps to minimize losses

## Type

- Expectation
- Future profit
- Reliance
- Expense before breach
- Consequential / Incidental
- Expense after breach

## Liquidated damages

- Pre-agreed in contract
- Must not be extravagant
- Amount vary according to extent of loss vs single amount
- Valid → only can claim stated
- Invalid → still can claim actual loss

## Injunctions

- Court order or negative covenant  
o.e. not to do something

## Specific Performance

- Court order for contract to be carried out
- Not granted when
  - ↳ damages will be adequate
  - ↳ contracts of personal service e.g. painting

Generally claims within 6 years of breach

Longer: fraud/mistake

Shorter: misrepresentation / specific performance

# Tort: Recognized civil wrong → Civil Remedy

## Negligence

### Duty of Care

- close & proximate relationship
- no policy considerations negating duty
- Negligent Misstatement:
- more constrained circumstances

### Breach

- how another reasonable man would have acted
- balance risk & cost of taking preventive measures

secondary

### Vicarious Liability

### Causation

- loss must be caused by defendant

#### Defense:

- Voluntary Assumption of Risk  
→ totally not liable
- Contributory negligence  
→ reduced damages
- Exclusion clause

### Remoteness

- reasonably foreseeable

### Employee/Agent

Copyrights, Patents

### Legal Wrong Cause of Employment

### Intellectual Property

Registered Designs

### Trade Marks

- any "sign" represented graphically & distinguish yours from others
- must be registered to be protected under Trademark Act  
⇒ civil & criminal liability
- Registration → genuine
- must have bona fide intention to use trademarks
- must be distinctive e.g. Tom
- (unless long well known & stylized form) e.g. Sweet
- must not be descriptive of quality, purpose, origin
- identical mark + identical goods ⇒ NO
- identical / similar mark + identical / similar goods  
⇒ NO if public will be confused
- identical / similar mark + identical / similar / different goods  
⇒ NO if earlier mark is well known in the industry in S6  
↳ new mark indicates connection between them & damage interests of earlier trade mark holder  
- if earlier mark is well known to the public in S6 or  
↳ new mark causes dilution in unfair manner  
↳ take unfair advantage of the distinctiveness of mark

### Passing off

#### Goodwill

- plaintiff has goodwill
- defendant makes use of goodwill

#### Misrepresentation

- public is deceived

#### Likely to suffer loss

##### Consequences

- liable for losses
- return profits
- injunction

### Confidential Information

- one receives confidential info imparting an obligation of confidence
- contract between parties with express/ implied terms relating to confidentiality  
⇒ damages / injunction, but no criminal

### PDPA

- data cannot be collected without consent
- (except in news reporting / public data)
- business must protect collected data
- breach results in financial penalties (civil action if have losses)  
↳ quasi-criminal action

### Rights

- use / authorise use
- assign (sell) / license (rent)

### Infringement Defence

- honest use of descriptive marks in commercial matters
- non-commercial purposes