



# Business Law

## LO3



# Legal solutions for different types of business

# Application of Company law in forming companies.

- ▶ It is important to note that each country will have its individual legislations stipulating the requirements which must be followed in order to form a company.
- ▶ Section 3 of the Companies Act (2004) of Jamaica states for example

“One or more persons may form a company by signing and sending articles of incorporation to the Registrar and otherwise complying with the requirements of this Act in respect of registration”.

It is important to note that a company is a separate legal entity from the person who has formed or those who operate the company and such a company may sue and be sued.

**What are the implications of this?**

<http://www.slideshare.net/IrwanJohn/effect-of-incorporation-in-company-law>

# Effect of Company Law on raising capital


## ► What is Capital?

1. Wealth in the form of money or assets, taken as a sign of the financial strength of an individual, organization, or nation, and assumed to be available for development or investment.
2. Accounting: Money invested in a business to generate income.
3. Economics: Factors of production that are used to create goods or services and are not themselves in the process.

## What does it mean to raise capital?

Raising Capital refers to obtaining money or assets from investors or venture capital sources.



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- ▶ It should be noted that based on the type of company which is formed (public vs private company), the law requires that capital is raised in certain ways.
  - ▶ Public companies for example are allowed to issue invitations to subscribe for any shares or debentures whereas private companies are not allowed to issue such invitations. Section 25 of the Companies Act of Jamaica speaks about the differences between what a public company is permitted to do and what a private company is permitted to do.
  - ▶ It should also be noted that the issuing of shares is one way in which a company may raise its capital.
  - ▶ <https://www.library.ca.gov/crb/00/04/00-005.pdf>

# Effect of Company Law on the formation of a company.

- ▶ Students should look at sections 3 and 9 of the Companies Act 2004.
- ▶ In Summary those sections state

## Section 3

One or more persons may form a company by signing and sending articles of incorporation to the Registrar and otherwise complying with the requirements of this Act in respect of registration.

## Section 9

In the case of an unlimited company or a company limited by guarantee the articles must state the number of members with which the company proposes to be registered and, if the company has a share capital, the amount of share capital with which the company proposes to be registered.

1. Do you think that the law has an impact on the wages which a person receives?
2. What effect does the Employers liability Act which we spoke about last week last week have on wages?

# Termination of Contracts

## ➤ What are contracts?

A contract is a legally binding agreement between parties which may or may not be written. In order for this contract to be valid, it must contain essential elements. These are:

1. Offer
2. Acceptance
3. Intention to create legal relations
4. Consideration
5. Capacity
6. Legality
7. Consent



# How are Contracts terminated?

1. Breach of contract?

- What is a breach of contract?

2. Frustration

3. Effluxion of Time

4. Merger

5. Surrender

**When a contract is breached the party who is wronged by the breach may sue for damages.**

# How are employment contracts terminated?

Employment contracts may be terminated either by law or by the terms of the contract.

However, the law provides that where a contract is being terminated based on the duration of the employment, notice must be given to the employee.

# What is liquidation?

- ▶ A company is placed into liquidation when it is unable to pay its debts. This is done voluntarily or by a court order.
- ▶ A liquidator is appointed to investigate the company's financial affairs, establish the reason why the company failed, investigate possible offences, and identify and sell any assets to help repay creditors. Officers of the company must assist the liquidator by providing information and answering questions.

## **Solvent and insolvent liquidations**

- ▶ If the company is insolvent, this means it is unable to pay its debts as they fall due. In this situation there is potential conflict between creditors (those to whom money is owed), as there will be insufficient assets for all creditors to be paid in full.
- ▶ The law attempts to maintain an equality between creditors, so the assets are distributed proportionately according to the size of each creditor's claim. However, the law gives priority to secured creditors (those with a charge over some of the company's property as security for the debt). In addition, a number of rules exist to prevent one or more creditors from gaining an unfair advantage.

# The Liquidation Process

- ▶ A liquidator is appointed, either by the company shareholders passing a resolution (voluntary liquidation) or by the Court making an order (compulsory liquidation).
- ▶ The liquidator collects the assets of the company (including uncalled capital; that is, amounts unpaid on shares) and pays the creditors in order of priority.
- ▶ The liquidator distributes any surplus funds to the shareholders.
- ▶ The company is then formally dissolved.



# Rescuing a company

## ► What is Business rescue?

Business rescue proceedings are proceedings aimed to facilitate the rehabilitation of a company that is financially distressed by providing for –

1. the temporary supervision of the company, and the management of its affairs, business and property by a business rescue practitioner;

2. a temporary moratorium (stay) on the rights of claimants against the company or in respect of property in its possession; and

3. the development and implementation, if approved, of a business rescue plan to rescue the company by restructuring its business, property, debt, affairs, other liabilities and equity.



# What is the aim of rescuing a company?

- ▶ The aim of business rescue is to restructure the affairs of a company in such a way that either maximises the likelihood of the company continuing in existence on a solvent basis, or results in a better return for the creditors of the company than would ordinarily result from the liquidation of the company.
- ▶ <http://www.werksmans.com/wp-content/uploads/2013/05/Basics-of-Business-Rescue-guide.pdf>