

The case national biscuit vs stroud law company business partnership essay

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Name: Professor: Course Code: Date of Submission: The business under consideration is a general partnership. A partnership is a business association between two or more than two people who establish a business enterprise for purposes of sharing profits and losses. MacIntyre (2013) denotes that 101 of the revised uniform partnership act define partnership as a business establishment under an owner of more than one person. On this basis, any conduct of the partners in relation to carrying out the affairs of the business has an impact on the liability of the partners. Section 15 of the 1994 revised uniform partnership act denotes that all partners of a business association are jointly liable for the obligations of the partnership. This position is further reinforced in the case National Biscuit vs. Stroud (1959). Agency plays an important role in a partnership agreement. Agency refers to a fiduciary relationship that arises from the manifestation of an agreement that an agent will act on behalf of the principal, and subject to his or her control (Blowfield, 2013). In order to effectively explain the role of an agent in a business association, it is important to identify who a principal is and the types of agents. A principal is the person who hires the agent to perform specific tasks for him. There are four types of agents, namely general, specific, factors and subagents. These people perform different roles and duties. The duties of a general agent in a business association are to conduct a number of transactions that involve the continuity of service. A special agent on the other hand has a duty to carry out only specific transactions of the business. For example, a general agent will be involved in the day to day running of the affairs of the business, this includes managing the financial transactions of the business, carrying out administrative duties,

and even handling the customers of an organization (Blowfield, 2013). A special agent on the other hand will only involve himself in a special task, for instance he can be hired to carry out an annual audit of the business transactions or provide an advice in regard to management of other issues affecting the business. His association with the business partners is not on a continual basis. Partners of the business organization will only contact him when they require his or her services. A factor on the other hand is a commercial agent. His or her main duty is to sell the products of the principle using his or her name (Klein, 2013). A subagent on the other is an agent appointed by the original agent. This person will transact the businesses of the principal in line with the roles in which the other agent appointed him. For instance, if he is appointed by a factor agent, a subagent will perform the roles that the factor agent does for the principle. Blowfield (2013) denotes that subagents will sale the products of the principle in his own name. Even though he will be acting on behalf of the principle, the agent who authorized his transactions is primarily liable for his or her actions, while the principle has a secondary liability for his or her actions. Apart from a partnership, there are various kinds of business associations. The businesses are limited liability companies and corporations. A limited liability company blends the elements of corporate structure with that of a partnership. Limited Liability Company act (ULLCA) of the 2006 gives a legal recognition of these types of companies (MacIntyre, 2013). For instance, ULLCA section 18/108 defines an agreement emanating from the limited liability company as a consensus, whether oral or written that regulate the affairs of the limited liability, and conduct of the business. A limited Liability company has numerous

advantages (Klein, 2013). Klein (2013) further observes that a limited liability company can make a decision on how to pay taxes to the federal or the state government. That is it can either pay taxes as a corporation, or a partnership. This choice of taxation only depends if the limited liability companies satisfy the regulations established under the treasury regulation number 26CFR (Klein, 2013). The owners of the company are also protected from all the liabilities of the company, including the debts it incurs during its operations. One disadvantage of a limited liability company is that it is difficult to raise financial capital for its operations. This is because investors are more comfortable investing their money in a corporation that is better understood, with a prospect of trading in a stock exchange. These companies are heavily taxed on Franchise taxes, and this normally affects their profitability (Blowfield, 2013). This is because the taxes can be calculated on the basis of their revenue, capital employed, and profits of the company. A corporation on the other hand refers to a separate and a legal business association incorporated through the registration and the legislative process. This is a process described by section 2. 05 of the model business corporation act. Corporations have liabilities and legal rights that are different from that of the shareholders. This aspect is recognized by the Delaware corporation law, section number 102 (Klein, 2013). They can either be stock or non-stock corporations. Stock corporations are established for purposes of making profits and they normally have a group of share-holders. Most non-stock corporations are not established for purposes of making profits, but for charity or provision of an essential service. Section 141 of the Delaware Corporation law denotes the manner in which a corporation should

be managed. That is by a board of directors. A corporation has numerous advantages and disadvantages. One advantage of a corporation is that the responsibility of shareholders is limited in regard to the debts and legal trials against the company. The courts cannot recover the debts of the company from the shareholders, and this is because the corporation is a separate legal entity with the shareholders (MacIntyre, 2013). Shareholders are only accountable for their shares in the corporation. On the other hand, the directors are accountable for the operations of the company. This is a position taken by section 8. 01 (B) of the model corporation act. Another advantage of a corporation is that it is easier to raise capital through the IPOs, and the Stock exchange (Klein, 2013). A corporation can issue its shares to the public through an IPO for the purposes of raising capital. This is an important method of raising capital for these organizations in their bid to expand their services. A corporation also has some disadvantages. For instance, the formation and integration process of a corporation requires too much money, and more time. This is in comparison to a limited liability company, and a partnership. There are numerous federal and state rules that regulate the operations of a corporation, and they must strictly comply with those rules (Klein, 2013). Corporations are also heavily taxed, both on the profits they make, and the dividends they pay to the shareholders. On this basis, the business model that best fits my association is the partnership. One reason of choosing a partnership business is that it is easier to acquire capital by engaging in a partnership business. It is easy because partners contribute capital for purposes of running and managing the affairs of the company. This would also mean possibilities of business growth, and

thus an increase in profits. There is also room for flexibility in a partnership business. A partnership company is easy to run, and this is because the process of decision is easy. It only needs the consent of various partners for a decision to be arrived at (MacIntyre, 2013). A partnership business is flexible because there are different types of partnership associations that business partners can engage in. This includes a general partnership, a traditional limited partnership. Other forms of partnership include a limited liability partnership, and associations with a corporate partner. In a general partnership, partners engage in the business activity as equal partners, sharing the profits and losses of the organization in an equal manner. In a limited liability partnership, have no liability for the obligations of the company, on matters that exceed the value of the assets of the organization. In other words, the partners are not liable to the debts of the company, if the value of the debts exceed the value of the assets of the company (MacIntyre, 2013). Traditional limited partnership is a combination of a general partnership with a limited partnership. Having a provision of these different types of partnership makes the association a good venture to engage in. This is because associates of the business have a right to choose what type of a partner they can be, either a limited partner or a general partner. A limited partner is a passive partner, and in case of debts, he stands to lose only what he or she has invested in the business. Partners also share their profits and losses. In *Richert vs. Handly* (1958), the court gave a ruling that partners are liable for the losses of the company, in relation to their contributions in the association (Klein, 2013). They are also to benefit from the profits of the organization, in relation to their contributions and investments into the

association. However, despite these advantages, a partnership association has some disadvantages. This includes the risk of a disagreement occurring. This is because people normally have different ideas and views on how a business operation should be run, on this basis, chances are high that partners will disagree. Another disadvantage is the high taxations that partners face. Partners are taxed in the same manner as a sole proprietorship (Klein, 2013). Finally, considering that there different forms of partnership, the best form of a partnership association I would recommend is a general partnership. This is because it is very easy to form, and it has a simple management structure. All they need to do is to write an agreement on how partners will share responsibilities, profits and losses. And finally, general partners enjoy an aspect referred to as pass through taxation and profits. That is they can deduct their business losses in their tax returns.