

The New Entrepreneur's Get-Started Toolkit*

Prepared by Curt Bender, J.D.**

Florida State University College of Law
Business Law Certificate
Cum Laude, December 2017

*This toolkit is intended to provide general information. It is not intended to advise; however, sometimes, it does provide “unsolicited advice.” You should contact an attorney or/and a CPA for advice before engaging in business.

**Curt Bender, Esq. as of September 2018.

Introduction

The most critical advice I can share on how to use this toolkit is **to read it**. While this may seem like common sense, many educators learn that their most frequent challenge is getting students to read—regardless of whether the materials were assigned or suggested. This toolkit does not assign reading materials, but each section begins with additional, suggested reading material to increase your comprehension of the material discussed.

The vast majority of successful entrepreneurs share a familiar experience – they have failed before. This toolkit will not ensure the success of your (ad)venture.ⁱ Rather, it merely provides some information and light suggestions as you begin the business journey. The rest is up to you.

I begin this toolkit with the business model canvas and its nine building blocksⁱ before moving to the scientific method of entrepreneurialism.ⁱⁱ I then discusses some of the most frequently used business entity forms. Lastly, I provided a rudimentary overview of some basic considerations in determining which business entity may serve as the best vehicle for your needs.

This toolkit aggregates information from a variety of sources to expose you to various concepts. It is by no stretch of the imagination “inclusive.” Therefore, you should consult an attorney or/and a CPA before engaging in business. You should definitely not “hire” anyone for the business before consulting with an attorney or/and CPA.

Remember, life is an adventure. Do not look at this toolkit and the current adventure you are embarking upon as the end-all-be-all. Rather, venture to add arrows to your quiver. This particular adventure may not be your “golden ticket;” but what you are learning through the current adventure may be a necessary building block for the next adventure. With that said, here is some unsolicited life advice: be excellent in all endeavors. That way, you will stack excellence on top of excellence.

Think of it this way: suppose you are building a stone wall. You have segmented out nice, symmetrical stones. You lay the stones meticulously on top of one another to create a uniform, symmetrical wall. You come across a weirdly shaped stone. You decided to place the “odd” stone on the “otherwise perfect” wall and you decisively use the same standard of care as with the symmetrical stones. On the next level of stones (you are building upwards), you notice that there is another awkwardly shaped stone. Fortunately, that second awkward stone fits perfectly on the top of the first, carefully placed awkward stone. Life is like that – you may not see how the pieces fit together. What is important is the standard of care you use while building: your absolute best. In business and life, try, fail, learn, repeat, and always improve.

ⁱ I learned that we embark upon adventures, as opposed to ventures, from Elton Rivas, a serial entrepreneur, while I was an intern at one and a half of the companies he co-founded. Check him out: <http://www.eltonrivas.com/>

Bender's Formula for Success

As a bonus, here is my personal formula for success: Bender's Formula for Success, in which success equals the proper balancing of time and effort with resources as a catalyst. It is represented by the formulaic expression: $S = TE + R_x$. T is a matter of duration, E is a matter of intensity, and both T and E are on a continuum. (see Figure 1). The more T you invest, the less E is required for a certain level of results and vice versa. R stands for resources and is an optional variable in the equation for its effect can be incremental (hence plus in "+" R_x) or exponential (hence the exponential power of the variable "x"). While R is not necessary, unlike T and E, R can be very helpful. Like the quote from the early 2000s Disney show *Lizzie Maguire* goes, "You don't have to be tall to play in the NBA. You don't have to be funny looking to be the queen of England. You don't have to be 700 pounds to be a sumo wrestler, but it helps."

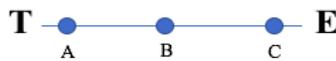


Figure 1 – Bender's Formula for Success

But here is a more applicable example. If you are preparing for an exam, you could study with little E over a long duration or you could study with great intensity over a short duration, i.e., cramming. If you have excellent notes from a friend (R), you can supplement or maybe even replace a portion of T or E. In the context of business, the same principles apply. You can work on your business incrementally over time, or plunge all-in with great intensity, and either case you may also utilize the insight from a mentor who improves your learning curve to supplement or replace some of your T or E. After all, experience is the best teacher – especially when it is someone else's prior, bad experience.

Of course, this formula is not an exact science – it is a guiding perspective, and you will have to find your correct balance. Be read to "pivot" or make adjustments as demanded. Be cautious of too high of an E without sufficient commitment to T, for that might lead to burn-outs. In the same vein, be weary of the long shot T without sufficient investment of E, which might lead to treading water.

Here is another example: Say you set the goal to complete a marathon. You can commit to training over the course of one year, starting with running one mile every day and incrementally increasing your mileage throughout the year. Alternatively, you can train over the course of six months, beginning with running five miles every day and incrementally increasing the mileage over six months. The former focuses on T, and the latter focuses more on E.

To belabor the point, let's look at the extremes. Setting a two-year goal, but only running one lap around the track every day, would not be a good formula. Similarly, training by *attempting* to run 26.2 miles the week before is also a sprint on the track to failure. Clearly, there is, pretty much, an infinite amount of combinations of T and E. Starting and running a successful business is a marathon, too. The trick is to consider Bender's Formula for Success *during* the goal identification and goal-setting process instead of during the execution process when it might be too late. Pro tip: after identifying the left side of Bender's Formula for Success, start with R – identify what resources are available.

I hope you create and enjoy successful adventures.

Stay Awesome,
Curt Bender

| | |
|--|-----|
| Introduction | ii |
| Bender’s Formula for Success | iii |
| Section A: Exit | 1 |
| Interest..... | 1 |
| Exit..... | 2 |
| Section B: The Business Model Canvas and Its Nine Building Blocks | 3 |
| How to Read Section B..... | 3 |
| Customer Segments | 4 |
| Value Propositions | 4 |
| Channels..... | 5 |
| Customer Relations..... | 5 |
| Revenue Streams..... | 7 |
| Key Resources | 8 |
| Key Activities | 9 |
| Key Partnerships | 10 |
| Cost Structure..... | 11 |
| Wrap Up..... | 11 |
| Section C: Examples of The Business Model Canvas | 13 |
| How to Read Section C..... | 13 |
| Sample For-profit BMC..... | 13 |
| Sample Nonprofit BMC..... | 16 |
| Section D: The Scientific Method of Entrepreneurialism | 19 |
| How to Read Section D..... | 19 |
| Section E: Business Entities | 22 |
| How to Read Section E..... | 22 |
| General Need to Knows | 22 |
| <i>Formation of An Entity</i> | 22 |
| <i>Liability</i> | 24 |
| <i>Agency</i> | 26 |
| <i>Fiduciary Duties</i> | 27 |
| <i>Formalities</i> | 29 |
| <i>Piercing the Veil</i> | 29 |
| <i>Capital Accounts</i> | 30 |

| | |
|---|----|
| <i>Basis</i> | 32 |
| <i>Units of Ownership</i> | 33 |
| Types of Entities | 33 |
| <i>Partnerships</i> | 33 |
| <i>Limited Liability Company</i> | 34 |
| <i>C Corporation</i> | 35 |
| <i>S Corporation</i> | 36 |
| <i>Nonprofit Corporation</i> | 37 |
| <i>Service Corporations</i> | 38 |
| Section F: Tax Considerations | 40 |
| Conclusion | 41 |
| Glossary | 41 |
| Appendices | 42 |
| Appendix A - Non-Exhaustive List of Corporate Formalities | 42 |
| References | 44 |

Section A: Exit

This toolkit begins with exits. An “exit” is the disposition of interest in a business. For example, a co-founder could exit because of a dispute. Also, all of the co-founders can exit by selling the company to a competitor.

Interest

You must understand what an “interest” in a business is because it is critical to being a businessowner. Interest does not refer to the reasons you find the business to be fascinating.² Rather, interest can be “ownership interest,” “financial interest,” “voting interest,” and etc. Interest is also property and its associated rights.³

For example, if Owen starts Oracles, Inc. as the sole owner, Owen has a 100% ownership interest in the Oracles, Inc. If Owen partners 50/50 with Patty, Owen and Patty each have 50% ownership interest in Oracles, Inc. In the latter situation, Owen and Patty each “own” their respective ownership interest, and absent other agreement(s), they can do whatever they like with their respective interests. Owen could enter into a contract with Creditor Craig to give Craig 100% of the financial interest from Owen’s 50% ownership interest in Oracles, Inc. Craig would then be entitled to any dividends entitled to Owen from his ownership interest. Note, absent any agreement to the contrary, Owen still has all of the other rights associated with his 50% ownership interest – such as the right to vote based on his 50% ownership interest. He merely assigned his “financial interest” from his ownership interest to Craig.

Based on this example, when starting your business, you may want to have all the owners agree not to assign or otherwise transfer their interests to neither the Craig’s of the business world nor his creepy friends.

Other protections are also available. The right to receive the financial interest to Craig’s ownership interest does *not* force Oracles, Inc. to pay dividends. Craig merely has the right to a dividend *if* Owen would receive a dividend. In other words, Craig can have the right to the financial interests without ever receiving the benefits of having a financial interest, especially if Oracles, Inc. never pays a dividend. In that scenario, Craig has an ownership interest with no immediate value.

Lastly, if Oracles, Inc. had three owners, Craig, Patty, and Tim, they collectively could agree that if any owner who assigns away their financial interest would automatically have to sell their ownership interest (the entire bundle of sticks) to either Patty, Tim, or the corporation itself, Oracles, Inc.

² The concept of interest is further discussed on page 32 in the section “units of ownership.”

³ I cannot help but to torture you with the “bundle of sticks” analogy. Think of “interest” as a bundle of sticks, as opposed to one log. You can give away, loan, etc. many sticks from the bundle. For example, as you will see, you have a bundle of interests, and you can give away this stick (financial interest) or that stick (voting interest), but still own the remaining bundle. There are many sticks. Hope this analogy sticks. If the “bundle of sticks” analogy is too complex, as it is for nearly all first-year law students, think a bean (stick) versus a jar of beans (bundle of sticks). You can give away a red bean or all of the red beans and still keep the rest of the jar of beans.

Exit

An exit is how the owners dispose of their ownership interest. Suppose Oracles, Inc. manufactures bicycle tires. When they started the business, Owen, Patty, and Tim, decided that they did not want to be owners of Oracles, Inc. forever. They just wanted to run the company until they each earned a million dollars. Thus, they planned to grow the business just to the point where they can “cash out” as millionaires. What, then, are their available exit strategies?

Conventional exits are a buy-out, a merger, an acquisition, and an initial public offering (“IPO”). Mergers and acquisitions occur for similar ends. The variable is how the end will come about. A merger is the sale of an entire business, or the entire bundle of stick (including the assets and liabilities held by business), which is known a sale “as a going concern.”ⁱⁱⁱ In a merger, two entities “combine forces” to become one, meaning there will be a change in control of at least one of the merged companies. A successful start-up is more likely to be acquired than merged.

Conversely, an acquisition can be of the company as a going concern or of key assets (key resources)⁴. Assets include human capital. Unlike a merger, an acquired company can become a subsidiary. Company A can buy Company B as a going concern (bundle of sticks) and turn Company B into Subsidiary Ab. Alternatively, Company A can cause Company B to merge with Subsidiary A. This strategy is different in the scenario involving Bigger Company, Inc., which chooses to buy this asset (stick) or that asset (stick) from a business.

Another exit is the IPO, which occurs when a company begins listing its stock on a public stock exchange, such as the Nasdaq or New York Stock Exchange.

Logically, business can be thought of as a pyramid. At the bottom lies many smaller companies, while a few large companies loom around the top. The companies at the top routinely buy out the smaller companies.⁵ This can be for strategic or financial purposes. Company A may notice that the oddly shaped widget Company B produces fits perfectly within the five-year plan of Company A. Facebook, in its process of exploring (or discovering) solutions for virtual chat for its Messenger purchased Oculus. Facebook can probably create a similar technology as Oculus or it believes it can improve the technology better than Oculus can, so it acquires Oculus (as a going concern) after realizing how valuable having the founder of Oculus, who is a visionary, on its team will be. This also happened with one of my favorite role models, Jamie Dimon, the CEO of JP Morgan Chase.⁶ JP Morgan bought Bank One, the then third largest bank, pretty much to have Jamie. This is at least what many people believe.

⁴ See pg. 8.

⁵ Or sometimes smaller, heavily leveraged company.

⁶ After Jamie was fired from Citi Bank, which he had helped to become the first “too big to fail bank,” he took a hiatus (probably because of a noncompete agreement). Then, he became the CEO of Bank One in Chicago. Know what happened next? JP Morgan bought Bank One, pretty much so they could have Jamie. As the story goes, he was co-CEO for a bit, but that was just a formality of respect for the soon to be outgoing CEO. Read Last Man Standing. It is a really, really good book.

Section B: The Business Model Canvas and Its Nine Building Blocks

How to Read Section B

Suggested reading: The Business Model Generation: A Handbook for Visionaries, Game Changers, and Challengers by Alexander Osterwalder and Yves Pigneur.

Have you ever been in the shower then BAM!, you thought up a billion-dollar-idea? Perhaps, it was the next Microsoft, Facebook, or, maybe, you figured out how to combine a fan and skateboard to create a hoverboard. Well, do you remember the undoubtedly well-thought-out details of that idea? If not, do not worry, because it will come back to you or a better idea will come about soon enough. If you do remember that idea or you have another one, use the Business Model Canvas (the “BMC”) to bring the idea to life.

Alexander Osterwalder, Yves Pigneur, and a host of other intelligent individuals boiled down the business plan to a canvas – a single sheet of paper. There are nine blocks on the canvas,⁷ which work to create a BMC. I suggest stopping now to read The Business Model Generation before continuing.

This Section B begins with an overview of the building blocks of the BMC. It will then pass over the for-profit and nonprofit variances on the BMC.

At the end of this Section B, you should understand the nine building blocks and how they flow both independently and together. You should also be able to formulate your ideas into actionable plans for each of the building blocks and for the overall business. For illustration purposes, Section C will use the APP, the Adventure Planning Professional, and the nonprofit, The Florida State Law Entrepreneurship Initiative, to provide examples of the concepts of the BMC.

First though, an overview of the nine building blocks of the BMC. The buildings blocks are:

1. Customer Segments;
2. Value Propositions;
3. Channels;
4. Customer Relations;
5. Revenue Streams;
6. Key Resources;
7. Key Activities;
8. Key Partnerships; and
9. Cost Structure.

⁷ See Figure 2 on pg. 11.

Customer Segments

A customer segment is not the answer to “who is my customer?” The answer to that question is, of course, “anyone who buys or would buy the product.” Customer segments have to be much more targeted. The goal is to be as narrow and specific as your research permits. Aim to tackle one narrow, particular customer segment before building upon that success. Keep in mind that the great pyramids of Egypt and the Great Wall of China were built one stone at a time. Let us turn now to Facebook as an example.

If you ask who uses Facebook, the answer would be, “like, everyone;” however, in its infancy, The Facebook had a narrowly tailored customer segment – undergraduate college students at Harvard. Not “young adults,” not “people who use MySpace,” and not “college students.” The Facebook narrowly tailored its customer segment – undergraduate college students at Harvard.

Here is another way to think of customer segments using a modified story of the three little pigs and the big bad wolf (the “Wolf”). Wolf huffed and puffed but just could not blow down the third pig's house made of bricks. Oh, how, the pigs probably partied, laughed, and threw some corn husks at Wolf. Wolf huffed, puffed, banged, and dug, but the house made of brick would not fall. All of Wolf's E barely chipped the corner of a single brick. Wolf had plenty T on its paws, as did the pigs, but Wolf could not put forth any more E. Maybe some R such as a bulldozer or dynamite would have helped Wolf.

Frustrated, Wolf strolled alongside the house, observing that the only damage was to the well dug lawn and a dry moat. Upon closer inspection, Wolf noticed an obscure, discolored brick near the base on the side of the house. It had the words, “**WARNING! DO NOT REMOVE!**” written in bold lettering. Wolf meticulously chiseled out the brick, then, BOOM! The wall came tumbling down like Humpty Dumpty. The moral of the story? Rather than attempting to bang down the entire wall in one blow, especially your first blow, find the right brick or couple of bricks.

Since you read the Business Model Generation, you know that there are many types of customer segments. The above advocates aiming for a narrow and specific customer segment for a single-sided business model. The BMC lists six approaches, and this toolkit only covers two.

Another type of customer segment is the multi-sided customer segment. Most nonprofits have multi-sided customer segments. Nonprofits have beneficiaries, on one side, and customers or donors on the other side. Uber also has a multi-sided customer segment model. Uber provides value propositions to both riders and drivers. Quintessentially, Facebook has users and advertisers, and now we are learning, foreign governments in presidential campaigns. . . Eek! The contributions of all sides of the platform are necessary for each side to have a value proposition.

Value Propositions

The ultimate goal of a value proposition is to get the customer segment to exclaim, “shut up and take my money!” If you are not acquainted with that Futurama reference, imagine you are draped in a royal purple suit and selling a car to a potential customer, Nevh, who has never seen a vehicle. Why should Nevh buy a car, and more importantly, why should Nevh buy a car from you?

The answers to those questions are value propositions. Such as to the second question, Nevh obviously wants to buy from someone wearing a purple suit.

To further illuminate what a value proposition is, imagine that your ubiquitous car lot also has LED signs, pickup trucks, vans, SUVs, and all kinds of other vehicles, motorcycles, and even some water toys. How would you sell those vehicles differently than the car? If you are thinking, "well, it depends on the preferences of Nevh. More information is needed as to whether Nevh has a large family, substantial income, or simply desires to own a weekend vehicle for when the bus route is limited." That line of thinking is on the correct path of how you should understand the importance of narrowly tailoring your customer segment so that you can deliver the correct value proposition.

Section E provides some tips on how to identify the correct customer segment and its correlating value proposition.

Channels

Channels are how you get the value proposition to the customer segment. In the above example of the car sale, the car lot is a channel. A channel need not be exclusive, though. The car lot owner can use Craigslist to list vehicles online, too. Your channels would be the 1) physical car lot and 2) online car lot. To segment further, which is a good thing, you may list your vehicles on your 2a) business's website, 2b) Cars.com, and 2c) the local Facebook classified. The more precise, the better.

Let's drive the concept of a channel home with an example that is deceptively simple at first glance: athletic apparel. What is the customer segment? If you are thinking, "athletes." The correct answer is "maybe." If athletes, then, of what sport? Would a value proposition that is appropriate for surfers be appropriate for soccer players? Do geographical factors such as weather and climate matter? On a higher level, is the customer segment individuals who are athletes or is it athletic stores that retail to individuals who are athletes? If the customer segment is the former, the athletic store is the correct channel. If the customer segment is the later, perhaps a catalog is the correct channel. Focus on the most important channel as a brick in your wall. Do not lay two or three bricks at once.

Customer Relations

Customer relations can be very detailed. After determining the channel with which you will deliver the value proposition to the customer segment, you must now decide the customer relationship you desire with the customer segment. Ask yourself this question, "what type of relationship do I want my business to have with its customer segment?" After answering that question, ask, "how would that relationship work?"

A customer relationship has three stages: customer segment acquisition, retention, and upselling. The amount of focus on the various stages may differ depending on the customer segment. For example, a vending machine company may neglect retention, relatively, in favor of acquisition and upselling. Even if the vending machine has "profiles," getting the customer to buy

and to have them buy more, right there and then, takes priority. Upselling is good – would you like some fries with that? My favorite is the concept of "layering" knitted into the very fabric of sales associates at retail stores. Upselling does not have to mean an increase in revenue. It merely means delivering additional value in the value proposition. In the service industry, excellent customer service may escalate satisfied to impressed.

Think of Yelp. What type of relationship does Yelp have with its customer segment? It has a direct relationship with its customer segment. Yelp's customer segment creates its own value propositions. How does that work? Yelp's customers post useful feedback on various business establishments that other customers use to make decisions.

It is helpful to also determine whether the customer relationship will be transactional or long-term. The creation of a "profile" is steering towards a long-term relationship. A pay-as-you-go, such as a vending machine, is an example of a transactional relationship. What if vending machines had profiles, and it can tell you how many Coke Zeroes you purchased last year? Think about whether nail salons and gyms have the same long-term and/or transactional objectives?

So far, this Section discussed that a customer relationship could be transactional or long-term and after determining that, allocate focus on the three stages – acquisition, retention and upselling. This toolkit then discusses the six types of a customer relationship: 1) personal assistance; 2) dedicated personal assistance; 3) self-service; 4) automated services; 5) communities; and 6) co-creation.

Personal Assistance

Personal assistance is having the assistance of an individual such as a sales or customer service representative before or after the sale. The representative has no particular client. The relationships with a server at a Chili's or the technician at an IT help desk are examples of a personal assistance relationship. Uber drivers are personal assistances. Think about the relationship with a barber?

Dedicated Personal Assistance

Some entrepreneurs do not prefer a dedicated personal assistance relationship with any barber. Instead, they prefer a personal assistance relationship, preferring the next available barber rather than the one who previously cut their hair so they can return quicker to their day if the previous barber is busy. However, they may settle for only a dedicated personal assistance relationship with their attorney. Also, there should be a significant disparity towards retention over upselling if the attorney intends to have a long-term relationship. On the other hand, consider the upsell of socks and insoles by a sales associate at a shoe store (this is personal assistance).

Self-service

If you have ever filled out the "what type of princess are you" questionnaires on the Timmy Net,⁸ you engaged in a self-service relationship. Simplicity and cost-cutting are virtues of this

⁸ Despite popular belief, Timmy Turner actually invented the inter-webs – **not** Al Gore.

relationship, which aim be user-friendly and obviate the need for employees. For example, McDonalds and other fast food chains provide a kiosk so customers can order and pay without even speaking to a cashier.

Automated Services

Automated services are to self-service what dedicated personal assistance is to dedicated personal assistance relationships. While automatic services are the next, more personal level, the “personal” is automated customization based on history of interests. This is observed when Netflix suggests shows to watch based on your viewing history or when your business attorney knows your propensity toward making risky investments with the creepy friends of Creditor Craig. These examples are hardly the same, but they are both upgrades from the self-service relationships provided by Redbox and LegalZoom.⁹

Community

Reddit and other forums utilize community relationships. Having a community relationship is an excellent tool for retention of and gathering data from customer segments. Imagine how precise Reddit can target ad sales based on the title of a subreddit and the data (posts) contained within. Same goes for Facebook and pages.

Co-Creation

Remember how Yelp’s customer segment creates a value proposition for itself? Yelp has a co-creation relationship with its customer segment, like Rotten Tomatoes, Amazon, and YouTube.com, in which customer segments create the content.

Revenue Streams

There are two ways to make money: (1) increase revenue; and (2) decrease expenses. This is just a brute fact that you should know.

Moving on, similar to how a customer relationship can be long-term or transactional, a revenue stream can be reoccurring or transactional. Take a moment. Think about how you can tease out the similarities and differences?

Here is an example using Microsoft and Microsoft Office. Back in the days, you could purchase Microsoft Office and own whatever version you bought indefinitely. If Microsoft developed a new version of Office, you could pay for the new version or stick with the old version. Nowadays, Microsoft transitioned good-ole Office from a transitional revenue stream to Office 365, a reoccurring, subscription-based revenue stream (note that subscription-as-a-service (SaaS) is a thing). Microsoft also created "Windows 365." Adobe switched from transaction to SaaS revenue streams when it rolled out Adobe Creative Suite. There are SaaS "boxes" for socks, ties, hair products, and all kinds of other goodies.

⁹ LegalZoom provides the option to speak with an attorney or create a legal plan. Guess some things are inherently personal.

Now, determine whether the following are transactional or recurring: Gillet razor handles with disposable blades vs. Bic disposable razors vs. Dollar Shave Club.

The revenue stream is a function of price and sale. Price could be either fixed or dynamic and can be price listing, product feature dependent, customer segment dependent, and volume dependent. Fixed price listing is when the price of a product is fixed at a specific listing price by the seller. For example, the cost of a Caesar-cut or skin-fade listed on the wall at a barbershop. Product feature dependent is when the product is priced based on the various features of the product. For example, it is the difference between a base model of a vehicle and the upgraded model that consists of seat warmers, premium sound, navigation, and other bells and whistles. Customer segment dependent considers the customer segment and its traits. For example, the owner of two identical restaurants set different prices based on socioeconomic and geographic considerations. Volume dependent is the inverse relationship of price per unit and the number of units bought. In other words, as more consumers purchase the product, the price usually decreases. Conversely, fixed pricing is valuable to a customer. Knowing a barbershop's price per cut ahead of time is just as good as knowing every patron pays the same fixed price, because, this way, you know you are being treated equally.

Dynamic pricing, on the other hand, considers and adjusts prices according to variables such as market conditions, product development, and ability to purchase. Negotiation or bargaining, auctioning, yield management, and a real-time market are types of dynamic pricing. Yield management is pricing that is dependent on inventory, time of purchase, and the strategic use of customer intelligence. For instance, in Tampa, Florida, the waitlist and pricing for hotels are sky-high the week of the Florida Bar Exam when thousands of recent law school graduates invade the city twice a year. Uber's surge pricing that starts when there are more riders on the road than drivers is also an example of yield management. It is important to note the strategies and tactics behind yield management. Because hotels can generally predict with a good degree of certainty the number of vacant rooms it will have in a given season, it can lower or raise prices per room accordingly. Refer back to the above example of Uber using surge pricing when there are not enough drivers. Further, Uber uses a type of real-time market because it sends out alerts to off-duty drivers offering pay incentives to drive during peak hours. A real-time market is basic supply and demand – the price is variable to the amount demanded relative to the amount available.

The sale is simple. Sale connects the value proposition to the customer segment in an attempt to get a customer to exchange perfectly good green-backs for your product or service (product is used from here on out).

Key Resources

A key resource is a resource that is available or needed to create and deliver a value proposition. Thus, a key resource can be a channel, customer relationship, or key partnership (discussed below) and can be physical, intellectual, human, financial, etc. Inventory, equipment, and even distribution channels can be physical resources. Ownership or access to land in Napa Valley is a key resource for a winemaker in California. Intellectual resources (intellectual property or IP) such as copyrights, trademarks, and patents can be vital.

In 2015, Martin Shkreli (“Pharma Bro”) made headlines when his company, Touring Pharmaceuticals, raised the price on Daraprim, a pharmaceutical drug that treats symptoms of HIV, from \$13.50 to \$750 per pill. Pharma Bro became “the most hated man in America.” Touring Pharmaceuticals had the ability to do this because it owned IP for Daraprim. IP does not have to be a provisional patent or a copyrighted poem. Trade secrets, customer lists, and algorithms can be IP, too. Conversely, others viewed Pharma Bro as a serial entrepreneur.^{iv} In 2015, Pharma Bro bought the most expensive music album ever, *Once Upon a Time in Shaolin* by the Wu-Tang Clan. He won it for two million dollars at an auction. He then threatened to destroy the one-copy-only album. Probably, because he threatened to destroy the Wu-Tang album, Shkreli was convicted of securities fraud relating to a hedge fund and a pharmaceutical company he co-founded and ran before Touring Pharmaceuticals.

Also, human capital, or human resources, is often a necessary resource. Apple needed both Steve Wozniak and Steve Jobs. Wozniak was a genius with technical skills, and Jobs was a visionary with an entrepreneurial spirit. The technicians at Geek Squad, the bakers at a bakery, and the sales force of IBM are examples of human capital that also serve as key resources.

A key resource does not have to be internal. Many businesses outsource their customer services departments to call centers, license IP from third parties, and partner with other businesses’ channels to create economies of scope.

Key Activities

As a personal philosophy question, ask yourself “what should I do?” and respond by doing that very thing. For example, I know I should read books on topics of certain interests and therefore, I do this often (enough).

Next, ask yourself “What can I do tomorrow?” Put differently, what imminent, planned steps should you be taking immediately. A key activity is a combination of “what should I do” and “what can I do.” Ask yourself, what should you do tomorrow to deliver a value proposition to the customer segment. The answer might be to establish a channel, key partnership, or to secure a key resource. The answer might also include doing your homework on your customer segment by conducting market research. Typical key activities are research and development, establishing a legal entity, securing production and supply chains, marketing, etc.

While I was a part of a nonprofit, STEM Veterans USA, that focuses on employing military veterans in STEM (science, technology, engineering, and mathematics) jobs, I thought the “personal development” of the veterans were a key activity. I realized I was wrong because “personal development” is not an activity that is performed by the business. Instead, it is a value proposition provided to a customer segment. A key activity is a trackable activity or goal that you can accomplish, more like the tasks of developing an online job platform that “connects veterans in STEM with opportunity through internships, employment, research, and networking.”

Key Partnerships

Who does your business need to partner with in order to develop, manufacture, or deliver its value proposition to its customer segment? The three motivations for forming a key partnership are optimization of economy of scale and scope, reduction of risk and uncertainty, and the acquisition of resources and activities.

An economy of scope key partnership aims to provide various, related value propositions to the customer segments. For example, to provide more convenience to patrons, a hotel may form a key partnership with a valet company. Perhaps, a student incubator could form a key partnership with a school's graphic design club to ensure the incubator's students have access to graphic designers for the students' companies' logos. Uber partnered with Getaround to provide car rentals, and it partnered with Masabi so people can purchase public transit tickets through the Uber app.^v

Forming a key partnership to reduce risk and uncertainty often occurs in “standard setting” or bringing new products to market. The classic example occurs when companies partnered to create Blu-ray and establish a standard for it. Note that the key partnership does not prevent various companies from competing against one another by developing and selling competing Blu-ray products. The goal, though, is to disperse risks of charting into uncertain territories among the different key partners instead of one business bearing all of the risks. Why else may this type of partnership be valuable?

The acquisition of resources is another motivator for creating key partnerships. Do you think that Apple manufacture each component of the iPhone? Or do you think that Apple formed key partnerships with different, specialized manufacturers to acquire the various components?

Similarly, Microsoft is wildly popular for forming its business model around its key partners. Only recently has Microsoft become a manufacturer with "successful" products like the Surface Tablet. "Successful" is in quotes, because have you ever *heard* of Zune? If you have not, do not worry because you are not alone.

Before this pivot, Microsoft "merely" licensed its Windows operating system to various computer manufacturers such as Dell, Toshiba, and Lenovo. Microsoft, using a multi-sided customer segment model, created the operating system and formed key partnerships with computer manufacturers to deliver its value propositions to its customer segments. Why did Microsoft do this instead of just building computers? Probably because manufacturing physical products is costly, and Microsoft figured it could make way more money by licensing its operating system by managing the balance of its time, energy and resources more efficiently if it focused on a single element (operating system) instead of competing with other manufacturers. As the legend goes, IBM invited prospective software developers to design software for its new computer. The only persons that showed up was Microsoft.

An advantage Microsoft realized by focusing on software is the high rate of return. The most expensive software to make is the first one sold. After that, the next sale is merely an additional sale. For example, if it costs \$100k to develop a software, the first sale costs \$100k, and the second sale costs approximately \$50k (\$100k divided by two also considering other factors

such as licensure enforcement), and the millionth costs: I am not going to do the math, but you get the idea. Juxtapose Microsoft's key partnership approach to Apple's exclusivity approach with its operating system.

Cost Structure

The cost structure is intricate. It is a derivation of the other parts of the BMC. For example, there are costs associated with a customer relationship (the cost of acquiring, retaining, and upselling the customer) that is dependent upon whether the customer relationship will be long-term or transactional. There are cost considerations with a key activity (how much does it cost to develop your business's mobile app?) that may interplay with a key resource (do you have an on-staff developer?) or key partnership (are you delivering your value proposition through the channel of a key partner. For example, are you selling your products on the Groupon app?).

You might now be questioning, what exactly is a business? Naturally, a business is something that creates a value proposition and delivers that proposition to a customer segment for a profit, hopefully. Following that logic, a business must know its cost structure to determine whether it is operating well. As you may have figured, understanding and managing cost structure is critical. Remember, there are two ways to make money: increase revenue and/or decrease costs.

A cost structure can be either cost-driven or value-driven. Cost-driven is all about bottom line and margins. A cost-driven model focus on delivering the value proposition to the customer segment as cheaply and efficiently as possible. Value-driven models, such as luxury hotels and airlines, focus on providing a certain standard of value rather than cutting costs. For example, a Toyota Corolla is more cost-driven than a Toyota Camry that is, relatively, more value-driven. I mention this example because my first car was a Corolla and my girlfriend currently drives a Camry, and she definitely adds the value in our relationship.¹⁰ Also, compare Toyota to Mercedes. Within Mercedes, compare a C class to an S class.

The two basic types of costs are fixed and variable costs. Fixed costs are costs that are fixed regardless of volume produced. For example, the owner of a barbershop pays a fixed cost for the lease payment regardless of the number of haircuts given. On the other hand, the number of razors used to shave beards is variable to the number of beards shaved.

Wrap Up

Now is as good of a time as any to step back from the one-sheet of the BMC and take a wholistic view because the whole is more than the sum of the parts.

The BMC is a potent *tool*. The power behind the BMC is that it provides a funnel to organize your thought process. For instance, use the tool after you *thought up* the idea that will be the next Facebook or Apple, you get out of the shower and have all of these great, detailed aspects

¹⁰ Clearly, a KP, and not me, Curt, wrote this, because it does not accurately reflect my life: that Corolla was the first car of my older sister, Astacia. and I just borrow it from time to time when my Accord . . . ugh . . . protected me from harm, as it likes to do from time to time, to remind me how much it cares about me.

of your plan bouncing around in your head. With the BMC as a tool, you can place fluctuating possibilities in a definitive spot on the BMC. How do you start? How do you get this idea going from the moment the idea is conceived?

Here is some unsolicited advice: begin with the customer segment. As the ideas bounce around, catch them, and place them into one of the nine building blocks. After you intercepted the last thought, you now have a BMC and a solid starting point to bring the idea to market.

Now, part of the hardest work for an entrepreneur – the writing portion – has been banged out.¹¹ From this point, when more ideas come, you can place them nearly into a building block instead of getting drowned in a sea of mental confusion. So if you are walking down the street and BAM! – some random thing inspires your solution of what channel to use to deliver the value proposition to the customer segment. Even if you do not have your BMC handy, you know exactly where to put the channel and how it will relate to the other building blocks such as key partnerships and key activities.¹² If this toolkit gets you to that point, congratulations because you are on a whole new level.

Now, you are *looking at* your thoughts and ideas as opposed to merely *thinking about* them. Do you understand the distinction? When you are looking at your thoughts, you can *place your thoughts* into various categories – such as the building blocks – instead of merely *having ideas*. Everyone has billion-dollar-ideas, but you need a business model with precise plans that are actionable.¹³ Further, by understanding the BMC you can know how the addition of a potential key partner you met at a conference can affect your channel or key activity, and this *thought process* is playing out in real time during your chat with the potential key partner.

But wait, there's more! Do not make "a" BMC. Why? Ideas and concepts might come along that could change the way you chose to approach. Pivot. Pivot. Pivot. Consider WhatsApp. It was originally designed to provide “away messages.” Then, Apple introduced push notifications. All of a sudden, WhatsApp could be used to push messages to its users. Update your BMC by creating new versions as you explore and develop. After all, it is only one sheet of paper. Place you BMCs into a folder. Over the course of a year, look back at your progress to gain insight.

Note, you will encounter obstacles. It's just a part of the game. You will feel apprehension and fear, but it does not have to stop or even effect you. As a friend, Julia Decker, states, “I define fear by two mindsets: the people who feel the (overwhelming) intensity of a challenge in front of them and back down; and the people who look for a mode to push through. Both feel the same intimidation, but only one makes the transition to see the uncertainty as an area for excitement and it is those types of folks that continue to astonish the world.” Choose wisely, my friend.

¹¹ A friend and research assistant twin for Professor Spottswood, Bailey, once posted on Facebook something along the lines of “writing is hard, because you have to know what you are doing the entire time!” P.S. plug: you can check out the article Bailey (mostly Bailey) and I helped with by researching, Unraveling the Conjunction Paradox, here: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2742408

¹² Reader and Bailey, please excuse that

¹³ As wise professor shared with me: do not worry about someone stealing your idea, focus on shoving it down people's throats. Note, it's easier to show your idea down the throat of the correct customer segment.

Section C: Examples of The Business Model Canvas

How to Read Section C

Now, it is time to create your first BMC. Below is an explanation of The APP,¹⁴ The Adventure Planning Professional and The Florida State Law Entrepreneurship Initiative (the "Initiative"). The APP is a for-profit business, and the Initiative is a nonprofit business.

The section below on The APP begins with a summary before providing a blank BMC. Try to fill in the blank BMC based on the overview of The APP. The same goes for the Initiative.

Sample For-profit BMC

The APP will allow users to create, discover, plan, and share adventures by connecting users with local businesses.

For example, suppose your chosen form of an Adventure was a date. You are planning the Adventure, and you set a budget of \$100 for three Activities: walk in Alfred B. Maclay Gardens State Park (\$6),^{vi} movies, and ice cream. The APP would direct you to Maclay Gardens, aggregate movie options, and anticipate what time you will arrive at Brewster's. Of course, you would not share the itinerary with your date, but you might share the itinerary with your friends, if it is a girls or guys night out to inform everyone of what they are doing, where to go, and how much it would cost. If you did not have any particular ideas in mind, you could browse popular Activities and Adventures based on your interests or browse your favorite content creator's profile. The APP will also help you plan road trips or vacations as Adventures.

The users are hyper-targeted to freshmen and sophomore students at the Florida State University and the Florida Agricultural and Mechanical University (the "User Profile"). The local businesses range from restaurants, bowling alleys, museums, and other activity destinations. The APP will reach its User Profile through connections with student groups, student clubs, and university recreations. The APP will be free of cost for users and most local businesses, who may choose to purchase an upgraded version of their business profile to allow additional features.

Below that is a blank BMC. See whether you can complete a BMC for The APP.

¹⁴ <http://www.jacksonville.com/news/metro/2014-03-17/story/one-spark-creator-profile-entrepreneur-envisions-new-app-help-users-plan>

| | | | | |
|----------------------------------|----------------------|---------------------|-------------------|--------|
| <i>The Business Model Canvas</i> | <i>Designed for:</i> | <i>Designed by:</i> | <i>Date:</i> | |
| | | | <i>Iteration:</i> | Sample |

| | | | | |
|------------------------------|------------------------------|----------------------------------|--------------------------------------|---------------------------------|
| <i>Key Partners</i> | <i>Key Activities</i> | <i>Value Propositions</i> | <i>Customer Relationships</i> | <i>Customer Segments</i> |
| | <i>Key Resources</i> | | <i>Channels</i> | |
| <i>Cost Structure</i> | | | <i>Revenue Streams</i> | |

| | | | | |
|---|---|--|---|--|
| <p><i>Key Partners</i></p> <ul style="list-style-type: none"> • Greek life • Dating apps • Business owners • School orientation departments • School recreation departments • Ridesharing apps | <p><i>Key Activities</i></p> <ul style="list-style-type: none"> • Develop mobile application/platform • Grow the platform <ul style="list-style-type: none"> ○ Partnerships ○ Users | <p><i>Value Propositions</i></p> <ul style="list-style-type: none"> • Consumers <ul style="list-style-type: none"> ○ Discounts ○ “Adventures” <ul style="list-style-type: none"> ▪ Discover ▪ Create ▪ Share • Business establishments <ul style="list-style-type: none"> ○ Additional revenue ○ Listings and promotions ○ Special offers, gift, vouchers, loyalty offers • Content creators <ul style="list-style-type: none"> ○ Social exchange and recognition ○ Engagement and fun | <p><i>Customer Relationships</i></p> <ul style="list-style-type: none"> • Co-creation among Users • Personal service | <p><i>Customer Segments</i></p> <ul style="list-style-type: none"> • Users: <ul style="list-style-type: none"> ○ Segmented by: <ul style="list-style-type: none"> ○ Demographics ○ Frequent locations ○ Interests ○ Spending profile ○ Students 18-22 • Local business: <ul style="list-style-type: none"> ○ Segmented by: <ul style="list-style-type: none"> ○ Location ○ Category ○ Price category ○ Hours of operation ○ Meal/product type ○ Features |
| | <p><i>Key Resources</i></p> <ul style="list-style-type: none"> • FSU community • JMS • App Developer | | <p><i>Channels</i></p> <ul style="list-style-type: none"> • School clubs/organizations • Mobile app | |
| <p><i>Cost Structure</i></p> <ul style="list-style-type: none"> • Fixed Costs <ul style="list-style-type: none"> ○ Incorporation and other filing fees (\$150) ○ Trademark (\$500) ○ App development (\$7.5k) | | <p><i>Revenue Streams</i></p> <ul style="list-style-type: none"> • Multi-Sided <ul style="list-style-type: none"> ○ User <ul style="list-style-type: none"> ▪ Free-offer based on subsidization from local businesses ○ Local Businesses <ul style="list-style-type: none"> ▪ Freemium ▪ Bait and Switch | | |

Florida State Law Entrepreneurship Initiative

There is a problem in which small business owners and entrepreneurs face a lack of access to legal representation. Florida State University College of Law is in a unique position to help bridge that gap by facilitating an initiative that brings law students and local business law attorneys together to aid local small business owners and entrepreneurs, who would otherwise be unable to obtain necessary legal services.

Beginning with FSU law, students will partner with business law attorneys from the local bar associations. This partnership will allow the parties to invest in their community via pro bono work and foster mutually beneficial mentor/mentee relationships. Additionally, the students can complete their respective pro bono graduation requirements, and the attorneys can complete their annual pro bono hours by supervising the students. We intend to amend Rule 4-6.1 of the Florida Rules of Professional Conduct on pro bono legal work to allow legal work done for entrepreneurs and small business owners to meet certain qualifying criteria for pro bono. Additionally, the Initiative would seek to obtain a memorandum from the Florida Bar allowing attorneys to receive pro bono hours for this legal work.

The benefits of this Initiative would extend beyond the relationships and pro bono hours for the law students and local attorneys. The local bar associations involved could acquire future members by introducing the law students to their organization. The local community, as well as the State of Florida, would benefit from the inherent advantages associated with entrepreneurship, including economic gains, the creation of additional jobs, and by assisting an underserved sector in our society. Lastly, FSU Law would gain recognition for both spearheading this rewarding Initiative that will be expanded state-wide and increasing students' post-graduation marketability.

Phase I of the Initiative would be the pilot program in Tallahassee. Phase II involves scaling the Initiative to the Orlando community, which would ensue once Phase I is running smoothly.

FSU Law: The FSU Committee, consisting of law students and school administrators, shall initiate, oversee, and ensure the continuation of the Initiative. The students' responsibilities include handling administrative matters (e.g., coordinating the various parties involved) and recruiting law students into the Initiative. Recruitment can be accomplished through social media, student organizations like the Business Law Society and FSU Business Review, the Business Law Certificate tracking form, and by any other means the FSU Committee deems appropriate. The

Administrators would be responsible for helping the students establish a compliance procedure to ensure the various Pro Bono requirements are continually met.

Legal Community Partners: The Legal Community Partners (“LCP”) responsibilities would recruit business law attorneys into the Initiative and ensure the work satisfies the Florida Bar’s pro bono requirements.

Clients: There will be a collaboration tool that directs qualifying clients with appropriate attorneys based on their needs by identifying and recruiting clients. The LCP and other organizations in Tallahassee would provide significant insight into developing the client recruitment method. The collaboration tool is expected to be developed within the next year to efficiently route the clients to appropriate attorneys.

NOTE: This Nonprofit Canvas was created and promulgated by the Jim Moran Institute for Global Entrepreneurship.

| Key Resources (6) | Key Activities (5) | Value Proposition (1) | Relationships (4) | Beneficiaries of services (2) | Programs |
|--|---|---|---|---|-------------|
| Business Law Students | Form Not For Profit Entity Establish Pro Bono Requirements | <ul style="list-style-type: none"> Mission Key Programs Brand | Referrals Word-of-mouth | Low Income Entrepreneurs Business Law Students | |
| Key Partners (7) | Create Online Platform | Mission Increase access to justice to underserved low income entrepreneurs while advancing law students' practical experience. | Program Delivery (3) | | |
| Law School Organizations Business Law Attorneys | | Clients: Access to Free Legal Services | Online Collaboration Tool Work Product | | |
| | | Students: Pro Bono Hours Mentorships Practical Experience | | | |
| Key Resources (6A) | Key Activities (5A) | Attorneys: "Assisted" Legal Work Business Development | Relationships (4A) | Customer/Donor Segments (2A) | Fundraising |
| Business Law Students & Organizations Business Law Attorneys & Organizations FSU Law Admin & Faculty | Bring in Key Partners Complete Funding Activities | | Student Organizations Pro Bono Hours Business Development | Business Law Students Business Law Attorneys | |
| Key Partners (7A) FSU Admin & Faculty Local Attorneys Law Students Jim Moran School | | | Channels (3A) Online Collaboration Tool Professional Development - Work Product - Client Intake/Interaction | | |
| Expenditures (8) → | Incorporation = \$70; 501(c)(3) = \$300; Online Collaboration Tool = \$6,000; | Revenues (9) → | Charitable Contributions; InNOLEvation Challenge; Jim Moran Institute Grant | | |

Section D: The Scientific Method of Entrepreneurialism

Suggested Reading: *All In Startup* by Diana Kander

How to Read Section D

Remember, using *this toolkit alone is not sufficient to make your (ad)venture successful*. Instead, it provides some information and light suggestions. The rest is up to your ambition, ability to fail well and pivot, and your ability to execute. The same goes for utilizing the steps of the scientific method. Just because a scientist asks a question, researches, formulates a hypothesis, tests the hypothesis with an experiment, and analyzes the results, she is not guaranteed success. Yet, the scientific method has been proven to produce *consistent results*.

Likewise, an entrepreneur begins with an idea then execute actionable key activities to deliver the value proposition to the customer segment. More often than not, the first iteration of the product is not a hit. There could be unaccounted for issues in the design and/or manufacturing. You have to redesign or remanufacture. This duplication of effort is costly, but it is better to expand the necessary expenses to deliver the correct value product than to proceed with an incorrect product. When the product is manufactured to design specifications it sometimes does not become the “hit” product with customers as the entrepreneurs thought it would be. But you should continue to iterate.

You can reduce the number of necessary iterations by using a scientific approach. Begin with the idea, discover customers, design the product, and check back with the customers. prototyping. Make sure you have what the customer desires. Think about this, if you knew what value proposition your customer wanted, would you not provide it to them?

Take McDonald in the UK, for example. There, McDonalds does not offer plastic straws because McDonald’s UK CEO said, “customers have told us that they don’t want to be given a straw and that they want to have to ask for one, so we’re acting on that.”^{vii} Understand this: your billion-dollar-idea is an “assumption.” You assume that customers want the value proposition. In fact, you assume you know the identity of the customer segment. You can make your assumption more concrete through gathering additional data and research.

This is as good of a time as any to take another drive-through into the importance of a narrowly-tailored customer segment. Unlike the UK McDonalds, McDonalds in the U.S. has stated it is “not ready to let go of plastic straws.”^{viii} This is not two-faced, rather it is precisely what it is supposed to be. McDonalds is offering one value proposition for its UK customer segment and another for its U.S. that it is not ready to immediately move forward with the straw ask.

Now, up to the thirty-thousand-foot view: McDonalds intends to phase out plastic straws globally by 2025. It started in the UK probably because the customer relationship consists of a more liberal UK customer segment, which is different than the gas guzzling customer segment in the U.S. Why would McDonalds do that? Perhaps, as this Section D will illustrate, it is using the entrepreneurial scientific method to “test” hypothesis before going “all-in.”

Here is the crux of the entrepreneurial scientific method: customer interviews. To find out if you have a viable idea, interview a couple hundred potential customers. Literally, go find a couple hundred people you assume is your customer segment and see what design, features, and manufacturing the customers would like. You might be surprised to find what customers actually think is important. After all, to be a successful entrepreneur, you have to convince customers to exchange their perfectly good green-backs for your product. With enough feedback, you will notice *how* customers would sell your product to themselves.

Let's use an example. Say that you are creating a subscription box for natural hair products, Natural Hair Box, LLC. The idea is for you to curate hair care products for customers. You will buy in bulk to save your customers a few dollars on the products. Prior to setting up a website and purchasing packaging and products, you should know whether people would subscribe, and if so, who would subscribe.

While the natural answer is "people with natural hair," it turns out that is just an assumption. After talking to a hundred or so potential customers, you may be inspired by unexpected discoveries. You may learn that customers do not prioritize price as a deciding factor because of frequent they purchase their products. They may figure it's worth getting the good stuff because it's only purchased once a month. On the other hand, you might realize that some customers simply enjoy the process of going to a beauty salon and selecting their products. You may learn that the best value proposition is recommending products to customers that they may not otherwise be aware of, and that the subscription service is merely a feature as opposed to the central value proposition.

A fortunate consequence would be that after speaking to a couple hundred potential customers, you now have a couple hundred potential customers interested in your product. Do not forget to collect contact information from potential customers you interview and remember to update them as you progress throughout the *process*. Later, update them again and provide more feedback when you start selecting products for the box.

Interviewing potential customers makes customers feel invested. Looping back to the building blocks of the BMC, customer interviews are a great way to begin a customer relationship. Also, the following are some of the mechanics of customer interviews. The most important thing to note is that customer interviews are conducted to *discover information*, not to sell the product. Do not go into sales mode. While people tend to not like being approached and sold, you may not be surprised to find that many individuals would be open to sharing their opinion on all kinds of matters regardless of whether the opinion was solicited. Solicit an opinion, and oh boy, you may be surprised at all of the nuggets of gold a potential customer "reveals." The approach and its aptitude are important, too. The best advice is to begin with a conversation. For example, as the owner of Hair Care, LLC., you may approach a potential customer by complementing them on their hair and asking what products they use. Build a rapport. Make the potential customer *feel* as if a friend is asking for a recommendation. How do they get their products? How much it costs? How often do they buy products? What are their favorite products? What products did not work well? How do they find out about new products? Notice that you are not mentioning your subscription box at all in the initial contact.

In her book, *All In Startup*, Diana Kanler notes that you should never ask "would you" questions, such as would you use a subscription box for your hair care needs? It is a bad question because it is a closed question. The potential customer may answer "yes" or "no" and end the conversation with that simple reply, which is not valuable. At this very moment in my Amazon cart, there are probably a few items that I thought I wanted. In all reality, I may not buy the items. See the similarity? A potential customer may genuinely like your product and would actually purchase it, but, then, you leave and they forget. Now, you do not have a customer nor do you have valuable feedback. With an open-ended question, you will learn *something*.

Second, asking "would you" questions lead to inaccurate information. Because people are busy, they may respond with whatever *they think you want to hear* which is not helpful. Diving a bit deeper into social dynamics, many individuals like to feel valuable. By you seeking "advice," a potential customer may inadvertently try to appeal to you by being relevant when that potential customer may not fit your targeted customer segment. Of course, all information is valuable to an extent, and you should actually get outside-of-customer-segment-perspectives, but that should be its own decisive goal. In the grander scheme, interviewing customers is a form of aggregating data. Your goal is to maximize overall data while reducing inaccurate data. It is difficult to do so with closed questions.

The better approach is to ask open-ended questions because they solicit useful information. Further, open-ended questions are naturally conducive to rapport building, which is what you want in your customer relationships. Asking "how do you get your hair products," allows the potential customer the *opportunity* to give an expansive answer. For example, you may learn that there is a local supplier that has excellent products. From the responses, simply dig deeper. "Does that source have all of the products you need, or do you have to aggregate?" If they answer yes, ask, "if you wanted to only make one stop, how can that happen?"

During a panel on "Starting Your Business" at the 2018 Women in Leadership Conference hosted by the Florida State University, I met an entrepreneur whose business was an errand assistant service for busy professionals. After discussing the concept of customer interviews, an entrepreneur asked what would be a good question for her to begin with. After the panel, I suggested to the questioner to find a busy professional and ask "wow, you are such a busy person, how do you find the time to do everyday things such as going to the grocery store or the post office?" The potential customer would probably respond, "I don't!," to which the entrepreneur should respond, "what would allow you to accomplish your errands and carry on your busy life?" Perhaps, the potential customer may answer, "if there was an Uber for errands," or maybe even, "I wish I had a personal errand person." Trust, you want the customer to provide their own solution that you capitalize upon rather than "selling" a solution to them. Dale Carnegie, in his book *How to Win Friends and Influence People*, asserted that the most important sound in any language to a person is that person's name. Surely, I think we can deduce that the best idea for most individuals is their own. Can you see that asking an open-ended question is a better approach than, "wow, you are such a busy person, would you use a personal errand service?"

Make no mistake about it, interviewing customers is a skill. Therefore, you should develop that skill of customer interviews and use it for customer discovery for customer segments. Use customer interviews to determine value propositions. Use customer interviews to identify

channels. Interview. Interview. Interview. Interviews are helpful at each step: idea, design, manufacturing, and delivery.

Section E: Business Entities

Suggested Reading: *Closely Held Organizations* by Shawn Bayern.

This Section E begins with a discussion of commonalities among the business entities have in common before providing a cursory overview of the relevant entities and finally some considerations in choosing an entity. The types of entities covered are partnerships, limited liability companies (an "LLC"), and a few types of corporations - C Corps, S Corps, nonprofits, and service corporations (benefit and social purpose corporations and "B Corps"). Note, again, that this toolkit merely provides a summary. You should consult with an attorney or/and CPA for advice.

How to Read Section E

I know you are about to skip to the entity type that you think you want to form and read just that part. DO NOT DO THAT! Instead, you should read this Section E with the intent of gaining an appreciation for some of the differences and similarities among the various types of business entities. You are likely just beginning your lifelong entrepreneurial adventure. Reading this Section E with consideration towards long-term understanding will be more beneficial and advantageous to you. For example, if you skipped ahead to LLCs because you think an LLC is the best for this particular adventure, you will be remiss of the other bricks you failed to lay in your wall. Think about the future: what if a corporation was more appropriate for your next adventure, but you squeezed it into an LLC because you never understood some basic variances between the two entities? Further, you cannot truly appreciate an LLC if you do not understand a general partnership.

The owners of any partnership are "partners," the owners of an LLC are "owners," the owners of a for-profit corporation are the "shareholders," and a nonprofit does not have "owners." Throughout this toolkit, the terms may be used interchangeably. For example, one section may refer to the owners of a partnership as partners and another section may refer to them as owners. If the term "owners" is used for a nonprofit, know that was a typo.

General Need to Knows

Formation of An Entity

Entities are creatures of state statutes. To create an entity, a person (different from an "individual") has to file articles of organization for unincorporated entities (partnerships and LLCs) or articles of incorporation for corporations. Naturally, at least two persons are required to create a partnership, one person for a corporation or an LLC, and three individuals for a nonprofit corporation.

An entity is considered a legal "person." It can be personally liable for civil suits, can open bank accounts, buy, sell, and hold property, and a variety of things that an individual can. It is considered a person separate from its owner(s). For this toolkit, the term "person" can be an entity or an individual.

An individual in business solo-dolo and without an entity is considered a sole proprietor, and in turn, has a sole proprietorship. A sole proprietorship is not an entity. Thus, it does not have the same protections and rights as an entity. Most states, including Florida, require that a sole proprietorship register as a business and use a "fictitious name." How else would the state make sure businesses pay sales taxes and are not operating sweatshops?

You will learn later that a general partnership is not an entity, and therefore forming a general partnership does not require state filings, aside from a fictitious name similar to the sole proprietorship. Other forms of a partnership, such as a "limited partnership" (an "LP") or a "limited liability partnership" (an "LLP") are entities and thus require state filings. The documents for a partnership include:

- founders' agreement;
- partnership agreement; and the
- articles of organization filed with the state.

The documents for an LLC include:

- founders' agreement if multiple founders;
- operating agreement; and the
- articles of organization filed with the state.

The documents for a corporation include:

- founders' agreement;
- bylaws;
- employment agreements;
- stock register and stock certificates;
- pre-incorporation agreement;
- shareholders agreement; and the
- articles of incorporation.

What is the simplest way to tell if an entity was correctly created? Look at its governing documents, because they have a hierarchy. For unincorporated entities, at the top of the hierarchy for governing documents is the articles of organization and below that is the partnership agreement or the operating agreement. For corporations, the articles of incorporation are at the top, then the bylaws, shareholders agreement, etc. Some entrepreneurs set up an LLC without first documenting the understanding with other founders or creating an operating agreement, which are critical documents.

What if an owner exits? Does the entity or the other owners buy the departing owner's interest in the business? An operating agreement (or partnership agreement) records how the entity will operate and be managed from formation to dissolution. Sure, state statutes provide default rules, but those default rules are merely gap fillers to guide a court. It behooves you to speak with a professional when forming an entity. Certainly, before you begin accepting money.

In Florida, the cost to stand up a partnership with the optional certificates is \$111.25. The organizational documents for a partnership are the articles of organization and the partnership agreement. It is also good to have a founders' agreement even before the operating agreement.

An LLC is similar. The organizational documents for an LLC include the articles of organization and the operating agreement. A partnership agreement is often referred to as an operating agreement. They have the same function essentially, partnership agreements are for partnerships and operating agreement are for LLCs. In an article in the Florida State University Law Review, Dean Emeritus Weidner notes of operating and partnership agreements:

[a] attorney drafting either an operating agreement for a limited liability company or a partnership agreement will be attempting to tease out, and reduce to writing, the basic economic understanding of the co-owners. Core matters include: the contributions each owner will make; how much credit each will be given for those contributions, be they of property or of services; how the owners will share in profits; how they will share in losses; how they will share in operating distributions; the price to be paid in the event of a buyout; and the right to any liquidating distributions, including the right to require another owner to “pony up” a final amount on liquidation.^{ix}

As you may have gathered, a governing document *covers* many details. The governing documents must also be entity-specific, and it should consider the various circumstances of the owners.

Liability

Liability can be used formally or informally. The formal term is a judgment in a civil lawsuit. A defendant in a civil lawsuit can be found to be “liable” or “not liable” similar to how a defendant in a criminal case can be found to be “guilty” or “not guilty.” Liable can be used informally to mean, basically, “possibly on the hook.” You can be on the hook without being found liable. For example, say ABC, LLC. fails to perform the duties of a contract with a customer, the customer sues, and a court rules that ABC, LLC. owes the customer \$5,000 for breach of contract. Are you, as an owner, liable for the \$5,000? Because of the limited liability protections of an LLC, generally, the answer is “no.” You are not personally liable as an owner *generally*. “Generally” because of the concept of piercing the veil, which this toolkit discusses later.

Limited liability protection is one of the principal benefits of forming an entity. Limited liability protection comes in two flavors, inside and outside liability protection. Inside liabilities are liabilities generated by and through the entity where outside liabilities are liabilities caused by an owner of the entity. Inside liability gets most of the spotlight, but your protection against the

creditors of a co-owner is also vital. For example, if a co-owner lost a lawsuit to a plaintiff for one million dollars, without outside liability protection, the plaintiff could attach the outside liability of the co-owner to the business. Thankfully, inside liability would prevent the plaintiff's judgment from attaching to you, but your pocketbook would still be affected if the business has an additional creditor.

In addition to a breach of contract, limited liability protection can protect against debts and tort damages. For example, say that Real Estate Investment Group, LLC. ("Real Estate, LLC.") took out bank loans for ten million dollars to build three apartment complexes. Real Estate, LLC. failed for whatever reasons. Do the owners of Real Estate, LLC. owe the bank ten million dollars? The answer is, "probably," but, probably not for the reason you are thinking. Yes, the owners, as persons, are generally not liable for the debts of the entity that provided the owners limited liability protection. Further, nothing indicates that the veil (discussed below) has been pierced. Why then are the owners of Real Estate LLC "probably" liable to the bank for the ten-million-dollar debt of Real Estate LLC? The answer is rather simple: because the owners of Real Estate LLC have limited liability protection.

Any sophisticated party such as a bank would not loan ten million dollars to an LLC without entering into a second contract with the owners to personally guarantee the debt in the event the LLC becomes insolvent. So, because the bank knows of the limited liability protections of an LLC, the bank would "probably" make sure that the owners guarantee the debt, too. Be on the watch-out for that when entering into contracts on behalf of an entity.

This next example is particularly fun for me to write. This is the quintessential example of "vicarious liability" for a tort. What is a tort? A tort is a wrongful act or an infringement of a right (other than under a contract) leading to civil legal liability.^x I.e., there are intentional torts such as assault, battery, defamation, and etc. Negligence is in its own category. Torts are brought by private persons (individuals and entities) and governments in Tort Court.¹⁵ On the other hand, only the government can file criminal charges. Specifically, the state attorney or district attorney (prosecutors) are generally the only individuals who can file a criminal charge.

Back to liabilities. Suppose you owned Your Pizza, LLC. ("Pizza, LLC."). Pizza, LLC. has a few delivery drivers who have worked for the company for a while. One day, a delivery driver, Dave, got into a physical altercation with a customer. What had happened was . . . the customer, Charles, refused to tip Dave because Dave took 31 minutes to deliver the pizza . . . so . . . Dave said he was going to deck Charles square in the face, and that is exactly what Dave did. Apparently, Charles needs a new nose that costs tens of thousands of dollars.

Who has to pay for the new nose? Likely, Charles will sue both Dave and Pizza, LLC. through a concept called *respondeat superior* for assault and battery. Dave is probably "judgment proof,"¹⁶ and Pizza, LLC. may be on the hook. Generally, though, you, as the owner, will not be

¹⁵ There is no such thing as Tort Court, but it is a fun word used by a then fellow first-semester law student in Professor Ziegler's Tort Law course. I believe the student asked, "how do I know if I need to file criminal thing or if we go to Tort Court?" So, with that said, do not be discouraged if you cannot understand the difference between civil and criminal court. "Don't tort me, bro."

¹⁶ "Go ahead, sue me, you won't get a slice outta me, because I have no money!"

on the hook because the tort was intentional and out of the scope of employment. However, if it was you who was making the delivery and you decked Charles, both you and Pizza LLC may be vicariously liable. Generally, you are liable for your own intentional torts regardless of the limited liability protections of an entity. To be sure, do not create “Your Name” LLC and think that you can go around, act all crazy like, and think that you can hide behind the limited liability protections of the entity.

Saving the best for last, joint and severable liability is a doozy. In essence, joint and severable liability means that multiple persons can be sued, and the plaintiff can recover the damages for whichever party has the money. In this situation, it is up to the person who “paid up” to figure it out among the co-defendants. Operating a business without limited liability protection can open your personal assets to satisfy the debts of your business or the co-owners of your business.

Agency

Every entrepreneur should understand an agency relationship. An agency relationship results from the manifestation of consent by one person (the principal or P) to another person, (the agent or A) that A shall act on the behalf of and subject to control of P. In plain English, an agent may have authority to bind the principal to agreement or be a liability for the principal. There can be multiple agents. An owner is an agent for the LLC, and a media company can also be an agent for the same LLC.

An agent may have different types of authority such as actual authority, apparent authority, or no authority. Actual authority is present when the agent is actually authorized to act and it determined by the agent's perspective. The test is whether when A acted, A believed, based on the manifestations of P, that P wanted A to so act. A manifestation may be expressed (written or verbal) or implied (circumstantial). For example, handing an employee a WeedWacker and telling him to knock himself out gives the agent actual authority to WeedWack. Giving the employee and telling him to knock himself out *arguably* gives the employee implied authority to WeedWack, too.

An agent without actual authority may still have apparent authority. The test for apparent authority is whether a third party reasonably believed that based on the actions of P and A, A had the authority to act, and the third party relied on A’s apparent authority. For example, you can assume that the woman in a store-branded button down behind the counter has the authority to take your payment even if it turns out that she was never trained as a cashier.

An agent can bind the business to contracts and can be a source of liability for the business. The scope of authority is essential because it would not be reasonable for a customer to believe that the cashier has the actual or apparent authority to sell the restaurant's building right there and then. It is reasonable, perhaps, to believe that the cashier has authority to mark-down your meal without the need for a manager. Sole proprietors in sole proprietorships, partners in partnerships, owners in LLCs, and officers and board members in corporations generally have actual, implied and apparent authority to bind the business to a contract.

Say you were sitting in the office of Your Company, LLC. when a person, Cleo, walked into your office. You recognize Cleo as the CEO of the local theme park. Cleo tells you that word of your great work has circulated around town. Flattered, you ask if there is anything you can do for Cleo. Cleo asks you to enter into a contract for one year of service for an agreeable amount of money. Did you and Cleo each have the authority to bind your respective businesses? If so, under what type of authority?

Remember Dave, the delivery driver for Pizza LLC? Charles would argue in a civil suit against Pizza LLC that Dave was an agent of Pizza LLC and thus Pizza LLC should be vicariously liable for the actions of Dave. Pizza LLC would argue that Dave was acting way beyond the scope of authority for his agency relationship, and therefore, Pizza LLC should not be liable for the damages that result from the actions of Dave.

It is essential to understand agency relationships because agents have fiduciary duties.

Fiduciary Duties

Suggested Reading

Florida Partnership Statute regarding fiduciary duties for partnerships^{xi};
Florida LLC Statute regarding fiduciary duties for LLCs;^{xii} and the
Florida Corporation Statute regarding fiduciary duties for corporations.^{xiii}

If you are the partner, owner, officer, director, etc. of a business, you must understand the concept of fiduciary duties. A fiduciary duty exists when one person is entrusted with acting for the benefit of another and is therefore required to take up the interest of the corporation over their own personal interest. The fiduciary duties typically owed by state statutes are the "duty of loyalty" and the "duty of care." Also, there is an obligation of "good faith and fair dealing."^{xiv} A fiduciary duty can be owed to either or both the entity and the other owners. Note that fiduciary duties are "owed," meaning that fiduciary duties must be satisfied.

The duty of loyalty for partners includes the "trustee" obligations and the duty to refrain from dealing on behalf of someone with an adverse interest to the partnership. For example, suppose you were co-owner of Pizza Shop, LLC. Suppose someone knew that you were a co-owner of the hottest pizza shop in town (was that pun too cheesy?) and approached you with a great lease offer for a different location. Can you take the lease and open another pizza shop, My Za LLC, without telling the other owner of Pizza Shop, LLC.? The answer is "no," your duty of loyalty prevents that. The central theme of the duty of loyalty is whether a conflict of interest exists and then whether the conflict was disclosed. Note, an owner does not breach their duty of loyalty because they pursue their own interests.^{xv} The test is whether the other owners were deprived of their "opportunity to enjoy" any benefit that came to the breaching partner by virtue of the partnership. The duty of loyalty to partners also includes the duty to hold as trustee for the partnership any property, profit, or benefit derived by the partner.

The duties of care for owners differ among states (remember, entities are creatures of the state laws, and therefore, the duties imposed upon the owners are state-imposed). The test in

Florida of whether the duty of care has been breached is whether the harm caused by the owner was foreseeable. California, on the other hand, has a multifactor test:

- the foreseeability of harm to the injured party;
- the degree of certainty he or she suffered injury;
- the closeness of the connection between the defendant's conduct and the injury suffered;
- the moral blame attached to the defendant's conduct;
- the policy of preventing future harm;
- the extent of the burden to the defendant and the consequences to the community of imposing a duty of care with resulting liability for breach;
- and the availability, cost, and prevalence of insurance for the risk involved.[21]
- the social utility of the defendant's conduct from which the injury arose.

The duty of good faith and fair dealing means that owners must act truthfully, in good faith (honest and sincere intention) and fairly when making decisions for or acting on behalf of the business.

Each entity has different default rules by state statute for the number of fiduciary duties owed by an Owner. For example, the fiduciary duties of the officers and directors of a corporation are much more stringent than those of the owners of a partnership or LLC. The corporation's duty of care includes the duty of the board of director members to inform themselves on corporate matter so that they can inform the shareholders. Directors are expected to understand the corporation's business and how it works, keep informed about the corporation's activities, be engaged in general monitoring of corporate affairs, attend board meetings regularly, and routinely review financial statements. In most cases, directors can opt to be shielded from liability for monetary damages resulting from the breach of care.

The duty of loyalty for corporate fiduciaries (those who owe and are bound to fiduciary duties) are much more stringent than those of a partner's for a partnership. A corporate fiduciary must place the interest of the corporation before her own. For example, a corporate cannot "usurp a corporate opportunity." That means that the fiduciary cannot seize an opportunity if the corporation is financially able to afford the opportunity, the opportunity is within the line of business of the corporation, the corporation has a contractual interest or expectancy in the opportunity, and by seizing the opportunity as her own, and by if seizing the opportunity, whether fiduciary be in a position inimical to the duties owed to the corporation. If the corporation can capitalize on an opportunity, the fiduciary cannot seize that opportunity without at least first informing the board.

How is that different from the duty of loyalty owed by the owner of a partnership? Remember, a partner is free to make decisions based on their own self-interest. Thus, if the undertaking of a contract for a job may be good for a partnership but bad for a particular partner, that partner can vote against the taking of the job because of its adverse effect on that partner. A corporate fiduciary must vote or act in the manner that the fiduciary believes is in the best interest of the corporation. Thus, a corporate fiduciary must vote to take the job even though doing so may have an adverse effect on that corporate fiduciary. The fiduciary can also disclose the conflict and

abstain from voting. Shareholders of a corporation generally do not have fiduciary duties to the corporation or other shareholders. However, "dominant shareholders" have the fiduciary duties of the board imputed onto them because the dominant shareholder's power could influence the director's independence.

What happens if a duty is breached? In Florida, if a corporate duty is breached, and it is breached in a certain manner, the directors of the corporation can be personally liable for monetary damages incurred by the corporation as a result of the breach.^{xvi} For example, if the duty of loyalty was breached as the result of "[a] transaction from which the director derived an improper personal benefit, either directly or indirectly."^{xvii}

Formalities

Corporations are well-known entities. Investors appreciate corporations because they know what they are getting into with a corporation. The investors can count on certain corporate formalities being followed. Those formalities include the adoption of bylaws, conduction board meetings, diligent management of finances, and a host of recordkeeping requirements.^{xviii} If these duties are not followed, the corporate veil could be pierced (see below).

Appendix A provides a non-exhaustive list of corporate formalities.

Piercing the Veil

The owners of an entity with limited liability protection are not liable to the creditors of the business; however, the creditor can "pierce the corporate veil" and pursue the shareholders personally for the liabilities of the corporation. Piercing the corporate veil is a two-step dance. The first step requires a showing of such unity of interest and ownership that the separate personalities of the entity and its owners no longer exist. Remember, an entity is a person aside from its owners. The distinction can be broken by failing to maintain adequate corporate records or failure to comply with corporate formalities, comingling of funds or assets between the owner and corporation, undercapitalizing the corporation, or by the owner treating the assets of the corporation as its own.

The second step of the dance is to show that adhering to the fiction of a separation of existence between the entity and owner as persons would sanction fraud or promote injustice. Some courts require more.

If the corporate veil is pierced, the owners can be held liable to the creditors of the corporation. The term of art is "piercing the *corporate* veil," but modern courts are piercing the veil on other entities such as a partnership or an LLC. It is, however, easier to pierce the veil of a corporation because a corporation has formality requirements that must be followed. Meaning, the absence of something that should have been done reflects easier that matters are not up to snuff.

Capital Accounts

Suggested Reading: Capital Accounts in LLCs and Partnerships by Donald J. Weidner, Dean Emeritus at the Florida State University College of Law.^{xix}

You may have never heard of a capital account. In a partnership or an LLC, a capital account is a ledger that reflects a partner's share of the partnership's assets minus the partner's share of the liabilities of the partnership. Capital accounts are essential for the management of partnerships and LLCs.

I think the simplest and most effective way to explain capital accounts is with an example. Suppose that you and your friend, Frank, wanted to enter the lawn care business. You contributed \$5k to Lawn Company LLC ("Lawn Company") to buy equipment. Frank did not contribute any money because Frank "knows the business" and will be doing the work. Frank did, however, contribute a lawnmower worth \$1k. Lawn Company nets \$30k its first year. Because you and Frank "are in this 50-50," Lawn Company distributes 10k to you and 10k to Frank. Lawn Company now has \$10k in the bank. Fast forward a year, and the lawn equipment that was worth \$5k is now worth \$4k, and the lawnmower Frank contributed is worth \$800.

The above is a rather complex example. Let's begin with financial accounting before turning to capital accounts. In the beginning, you contributed \$5k to Lawn Company and Frank contributed a lawnmower worth \$1k and his "expertise." At the end of the year, the financial books show that Lawn Company profited \$30k and has \$10k in the bank.¹⁷ At the end of the year, Lawn Company has \$14,800 in assets.¹⁸ Note that Lawn Company "distributed" \$10k to you and Frank. A distribution is a share of profits, not a salary or wage. Thus, the \$10k came from the profits. If, on the other hand, the scenario was that Lawn Company "paid" 10k to you and \$10k to Frank, there would still be \$10k in the bank. Capital accounts explain the practical difference.

In the very beginning, the capital accounts of you and Frank had a balance of \$0. When you contributed \$5k, the balance in your capital account increased to \$5k. When Frank contributed the lawnmower worth \$1k, the balance in his capital account increased to \$1k. Lawn Company profits \$30k, and per the 50-50 agreement, you and Frank share the profits equally. Thus, both your and Frank's capital account increased by \$15k, which puts your capital account at \$20k and Frank's capital account at \$16k. Because there was a \$10k distribution to both you and Frank, that amount must be subtracted from both capital accounts. Thus, the balance in your capital account is \$10k and the balance in Frank's capital account is \$6k.

By default, losses are shared as profits are shared. So, that means that you and Frank share the losses of Lawn Company 50-50, too.¹⁹

So, at this point of the calculations, you have \$10k in your capital account and Frank has \$6k in his. Let's consider depreciation of the equipment. For simplicity's sake, let's say that the

¹⁷ \$30k - \$20k (you and Frank's share) = \$10k.

¹⁸ \$14,800k = \$10k cash balance + \$4k equipment after depreciation + \$800 lawnmower after depreciation

¹⁹ Note, that "special allocations" are a primary factor in the choice of entity. Special allocations allow the owners to allocate profits and losses and depreciation in all kinds of gymnastic ways, to an extent, of course.

depreciation of assets is allocated to you and Frank 50-50. There was a total of \$1,200 in depreciation. Depreciation is deducted from capital accounts. Considering the \$1,200 in depreciation, you and Frank have \$9,400k and \$5,400k in your capital accounts, respectively. Notice how the balance sheet balanced: \$14.8k in capital accounts and \$14.8k in assets. Below is one of the ways capital accounts have significance.

It is the second year and Lawn Company took on new clients but did not have to buy more equipment. At the end of year two, there were no distributions and Lawn Company had a \$15k loss. Since you and Frank also agreed to split the losses 50-50, the losses are deducted from the capital accounts of you and Frank equally. Thus, your capital account has a balance of \$1,900 and Frank's capital account has a balance of -\$2,100. That's it. You and Frank no longer want to continue the business. Let's do an accounting. Capital accounts of you and Frank are \$1,900 and -\$2,100, respectively. Lawn Company's assets are \$14.8k. How is the \$14.8k split? Well, for \$10k of it, we know that it is distributed evenly. So, the \$5k distribution will reduce each of your capital accounts proportionally. Thus, the balance on your capital account will be -\$3,100 and the balance on Frank's capital account will be -\$7,100. Let's liquidate the assets of Lawn Company. There is \$4.8k. How will that \$4.8k be distributed? 50-50? So, you and Frank each receive \$2.4k. End of story? Maybe, if you were not using capitals, that is.

Distributions decrease capital accounts. So, the \$2.4k distribution to you and Frank leaves the balances on the capital accounts at -\$5,500 and -\$9,500, respectively. What do those negative balances mean? First, notice that the total negative balance is \$15k, which is the same as the loss in year two. I understand that this is extremely dense material, and I am curious as to whether anyone reads this portion. If you are reading this, please shoot to me an email at curt.bender@firmawesome.com and I will give you a virtual high-five!

Next, understand that the capital accounts must balance. The balance must equal zero. Thus, if your capital account has a positive balance, it must be distributed to you, and if your capital account has a negative balance, you owe money to the entity. You owe \$5,500 and Frank owes \$9,500. Frank may ask, "we went into this 50-50, how come I'm paying more than you?" You will tell Frank that, by default, services do not count towards a capital account. Thus, Frank owes \$4k more than you do because you contributed \$5k and Frank contributed only \$1k (the lawnmower).

Moral of the story? Capital accounts matter. Take away from the story? If you are the "services" partner, make sure your services are credited a monetary value such as "goodwill"^{xx} or "prepaid services" on the capital accounts.

Proper management of capital accounts is especially critical when investors are involved. The above example with Lawn Company does not consider "special allocations." Prototypically, an investor invests cash and other tangible assets while the founder invests services. Because the investor is likely to have a higher tax burden than the founder, who is often broke, the investor and founder could have agreed to allocate more of the losses to the investor. The investor, in turn, uses the losses to offset their personal tax liability.

Basis

Let's discuss the concept of "basis." There is an inside and outside basis. Inside basis is the partnership's basis, and outside basis is the partners' basis in the partnership. Let's say that when Frank bought the lawnmower, it was worth \$500. I know, it is unlikely that a lawnmower is an asset that appreciates, but work with me here. When Frank contributed the lawnmower, its fair market value was \$1k. What's the inside and outside basis? Lawn Company's basis (inside basis) is \$1k, and Frank's basis (outside basis) is \$500. Frank's capital account would be increased by \$500, his personal basis in the lawnmower, instead of \$1k, the lawnmower's fair market value.

When you contributed \$5k to Lawn Company, your basis in Lawn Company became \$5k. Frank's basis is \$1k. Each owner's share of the profits increases basis and distributions (think, like a dividend) decrease basis. Thus, when Lawn Company profited \$30k, both you and Frank's basis in Lawn Company increased by \$15k (per the 50-50 agreement). So, right now, your basis in Lawn Company is \$20k (\$5k initial contribution plus your \$15k share of the year one profits). If Lawn Company distributes the \$10k to you and Frank, your capital accounts are decreased by the amount of the distribution. Your basis would be \$10k (\$20k minus \$10k) and Frank's basis would be \$6k (\$16k - \$10k).

Debt owed by the partnership to a partner increases that partner's basis by the amount of the debt. Suppose that you did not want to contribute the \$5k outright to Lawn Company. You could loan the \$5k to Lawn Company. As the business pays off the debt, your basis decreases proportionately.

Let's recap. You made an initial contribution of \$5k to Lawn Company which gave you a basis of \$5k in the business. When Lawn Company profited \$30k in year one, your basis in the business increased based on your share of the profits regardless of whether the profit was distributed. For the sake of simplicity, ignore the depreciation. You now have \$20k in basis (\$5k + \$15k = \$20k). You and Frank both received a \$10k distribution from the business. Your basis in the businesses was decreased by the amount of the distribution.

Your basis is now \$10k, Frank's basis is now \$6k, and the business has \$16k²⁰ in assets. Suppose you and Frank sold the business for \$16k and split the money 50-50. That split will decrease basis. Your basis will be \$2k ($\$10k - (\$16k/2)$) and Frank's basis will be $-\$2k$ ($\$6k - (\$16k/2)$). Here is another instance in which capital accounts become valuable. Guess where the above calculations in this basis section were recorded? You got it – you and Frank's capital accounts. Thus, your capital account has a positive balance of \$2k and Frank's capital account has a negative balance of $-\$2k$. Frank owes \$2k to the partnership. When he pays that debt, it can distribute it to you so that the capital accounts balance at \$0 when the business is sold.

You may be thinking, "did you just repackage capital accounts with a varied example?" The answer is, "sort of." Basis and capital accounts are related in this sense: capital accounts track investments which are reflected through basis. Back to the example. It is the end of year one and your basis is \$10k, Frank's basis is \$6k, and the business has \$16k in assets. If the business was sold for \$32k, how much in taxes would you have to pay? You would be liable for the difference

²⁰ $\$10k$ (remainder of the undistributed profits) + $\$6k$ (you and Frank's undepreciated contributions) = $\$16k$.

of your basis and your share of the sale price. Thus, you would have tax liabilities for \$6k (\$16k - \$10k).

Units of Ownership

Corporations have “stock,” and the owners of corporations are shareholders who have “shares” of the corporation’s stock. Stocks are typically "preferred" or "common." Preferred stock has priority over common stock in regard to receiving dividends. As a tradeoff, preferred stock does not come with voting rights while common stock does. Common stock can have different "classes." For example, Class A or Class B stock. The difference is typically the number of voting rights assigned to each stock.

Partnerships and LLCs have "units." The units of a partnership are not as flexible as the units of an LLC. Units in a partnership denote the percentage of ownership. Units in an LLC are akin to stock in a corporation. An LLC can have various classes of units that have various rights. Units can be voting and nonvoting, preferred and non-preferred, and many other options. Do as thou please-eth so long as you do not run afoul of the law. As you will see in a later section, the law on LLCs is not as developed as other types of entities.

Types of Entities

Partnerships

A partnership is two or more persons carrying on a for-profit business as owners, regardless of whether they intended to form a partnership. That creates a "general partnership," as opposed to an LP or LLP. A general partnership is not an entity. The owners in a partnership are "partners," and the owners in a general partnership are "general partners." A general partnership is basically a sole proprietorship if the "sole" in sole proprietorship was two or more persons. A sole proprietor is to a sole proprietorship as general partners are to a general partnership. Thus, if today, you go buy a lawnmower, WeedWacker, and a leaf blower, and tomorrow, you begin cutting the lawn for your first customer, you are a sole proprietor. If you went half with a friend, you two are general partners in a general partnership. Because the partners in a general partnership are exposed to unlimited personal liability to the creditors of the partnership, you and your friend are both personally on the hook for the liabilities of the general partnership. Thus, if your friend botched the law and you cut down the wrong tree, the customer could sue you, your friend, the business or a combination of all three for the liabilities of the general partnership.²¹

A general partnership can be created by a written agreement, oral agreement, or even a handshake. Importantly, general partnerships and its associated sharing of liability can be created “accidentally.” Reread the first sentence of the previous paragraph. Can you understand how a general partnership can be formed accidentally? Be aware, “inadvertent partnerships” happens often enough for it to be a common term. Each general partner is an agent of the partnership and owes fiduciary duties to the partnership and other partners.^{xxi}

²¹ There is a concept called a “joint venture.”

A general partnership does not offer limited liability protection. On the other hand, an LP or LLP are entities and the partners, for the most part, are afforded limited liability protection. An LP has at least one “limited” and one “general” partner. The limited partner enjoys limited liability protection. The general partner does not. For example, suppose you were considering going into the lawn care business with Frank as Lawn Company, but you did not want to do any of the work, and you wanted limited liability protection. An LP would allow you to invest some money and let Frank run the business. In an LP, you could be the limited partner, and your partner would be the general partner. The limited partner can be a financial backer, often investing the startup capital. The limited partner has limited liability protection, but also has limited authority in the management of the partnership. The general partner “controls” the business, and courts have classified limited partners as general partners when the limited partner was too active in management. Limited partners do not have fiduciary duties to the LP or the other partners. On the other hand, a general partner does have fiduciary duties to the LP and the other partners.^{.xxii}

An LLP is essentially an LP where the general partner has limited liability protection. Why even form an LP? Perhaps you want a stick, as opposed to a carrot, so that your general partner is “invested” in the business, too. For example, in the olden days, law firms and other professional organizations were general partners to show how seriously they took their business. Beyond their reputation, their names on the door were their livelihood on the line. Alternatively, perhaps you do not want your limited partner giving too much input. Florida recognizes a limited liability limited partnership (an “LLLP”), which is what happens when an LP elects to be an LLP.^{.xxiii}

Limited Liability Company

All of the members or managers of an LLC enjoy limited liability protection. In that sense, it is like an LLP. What is the difference between an LLC and an LLP? The simplest answer is “statute.” An LLC is governed by its state's LLC statute, and an LLP is governed by its own statute. If an LLP does not have its own statute, the state's partnership statute will provide guidance. This is hardly a distinction without a difference. Well, so is its governing statute. What difference does that make? Flexibility is an important factor for consideration for many business owners. A downside is that the case law from courts is not as developed as the case law for corporations and partnerships. That means that there are not as many cases to guide a judge in deciding disputes. Predictability is a tradeoff of the flexibility.

Before filing Example LLC, a few matters had to be determined. Will Example LLC have members and/or managers or will it be member-managed or manager-managed. What is the difference or why does it matter? For one, the members of a member-managed and the managers in a manager-managed have fiduciary duties.^{.xxiv} In a similar vein, as with limited partners in an LP, members in a manager-managed LLC can invest money, enjoy limited liability protection, and not owe fiduciary duties to the entity. Further, like the different class of stock in a corporation, an LLC can have a different class of units. Thus, members and managers can have nonvoting and voting units, respectively. This feature is not available to partnerships. Another cool feature of an LLC is that it can be taxed as both a pass-through entity or as a corporation.

The beginning of this Section E notes that entities are creatures of state statutes. That means that entities are created by and through state law, as opposed to federal law. Let's together, right

now, file for an LLC in Florida with the optional certificates. That just cost \$160, and we now have Example LLC.^{xxv} That name is too stiff, lets register a fictitious name, right now, also, with all of the optional certificates. That just cost \$90, and we now have E Company. Oh yeah, nearly forgot to include the cost of publishing the fictitious name in a local newspaper, which is required before filing for a fictitious name.^{xxvi}

Now, we are co-owners of E Company. All of that was at the state level. If E Company sells a product, it will have to pay sales tax and reemployment (employment) taxes. Because of state statutes, the owners of E Company enjoy limited liability protection. Example LLC also has to file an annual report before May 1st, which costs \$138.75 if on time and an extra \$400 if late.^{xxvii} Oh yeah, E Company also has to renew its fictitious name annually for \$50.^{xxviii} Those are some of the responsibilities that E Company has at the state level. The above is not exhaustive of E Company's responsibilities; for example, workers' compensation, a host of state and local taxes, etc.

After registering E Company with the state, E Company has to get a Federal Employer Identification Number (an "EIN"). An EIN is how the IRS identifies a business. Since E Company has two owners and it does not "check-the-box" to be taxed as a corporation, it will by default be taxed as a partnership. The government does not play with its revenue (taxes). Thus, it is necessary to consult with a professional (tax and legal) before, or, at the least, shortly after going into business or forming an entity.

E Company has responsibilities at both the state and federal level. The above backdrop is intended to have you understand that there is a bifurcation between state and federal responsibilities.

C Corporation

Corporations come in a few flavors. Typically, when someone thinks of "a corporation," they are thinking of a C Corp. When used without distinction, in this toolkit, "corporation" means C Corp. There are also S Corps, nonprofits, and service corporations. C-Corps and S-Corps are for-profit, nonprofits are, well, for not-for-profit.

A corporation is a true stand-alone entity. It is its own individual at the state and federal level. Partnerships, LLCs, and S-Corps are not separate tax-paying entities at the federal level - the profits and losses are passed through to the individual owners' taxes. Yes, both a partnership and an LLC have an EIN, however, a corporation is taxed at the entity level. A bit more detail in some tax matters is provided later.

A for-profit corporation is an entity that begins its personhood life at the state level as a C Corp. Unlike a partnership or an LLC, C-Corps are not pass-through entities. C-Corps are taxed as an entity with its own tax bracket, as opposed to the personal taxes and brackets of its owners. Regarding limited liability protections, a corporation provides the most protections. Before going any further, it is time for a drive down story road. This proverbial road trip will provide the purpose of corporations.

The story takes place back in the days in Michigan in 1919. The setting: a courtroom dispute between the Dodge brothers and Henry Ford. Yes, that Dodge as in the car company. The brothers were suing Henry Ford. As you may know, Henry Ford "invented" the assembly line process to automate manufacturing of the automobile with his Model T. As history goes, Henry Ford was making cars full of money. The brothers were shareholders in Ford and while Ford was making ridiculous money, the brothers knew Ford could make more. What was the problem?

Henry Ford was too benevolent. The Dodge brothers sued Henry Ford because Ford's benevolence was not maximizing shareholder value. As the story goes, Henry Ford purposely sold his automobiles below market price. The price started at \$900 then Ford dropped it to \$440 then \$360. Henry Ford dropped the price of the automobile because he intended to spread the benefits of owning an automobile to society, which meant he had to lower the price. Apparently, the Dodge thought making money was more important. The court ruled that the Dodge brothers, as shareholders, were in the right, and that Ford was required to maximize the value of the shares for its shareholders. The court signaled that the job of a corporation is to make as much money for its shareholders as legally and economically possible and that Ford's ambitions, though altruistic and nice and all, was wrong. Corporations must maximize shareholder value.

The board of directors runs a corporation. The directors have fiduciary duties to the corporation. All of the authority to run and manage a corporation rests with the board of directors. The board of directors, in turn, delegate authority to officers, who are sometimes referred to as executives. The bylaws detail how the corporation will be managed in accordance to the articles of incorporation. The bylaws will also dictate how directors are elected and dismissed, and the same goes for officers.

As mentioned earlier, a corporation has certain formalities that must be followed. For example, a corporation must hold regular board meetings and minutes must be taken. The same goes for S Corps. If the formalities are not followed, the corporate veil may be pierced. A partnership and an LLC do not have such formal requirements although following the requirements would be good.

S Corporation

An S-Corp is the same as a C-Corp on the state level. The "S" designation is a federal matter. A C-Corp can use IRS Form 2553 to elect to be an S-Corp if it meets certain requirements. An S-Corp is taxed as a pass-through like a partnership. So, you are asking, "why doesn't everyone just form an S-Corp and enjoy its benefits instead of forming a C Corp?" Well, many C-Corps are not eligible to become S Corps, because S-Corps has the following limitations:

- there can be no more than 100 shareholders;
- shareholders must be individuals, estates, tax-exempt organizations, or certain trusts – not partnerships, LLCs, corporations, etc.
- there can be only one class of stock (voting and nonvoting classes are permitted)

Nonprofit Corporation

A nonprofit corporation has the same formal requirements as any other corporation. A nonprofit corporation is a corporation in which there are no “owners” or “shareholders.” Like a C-Corp and unlike an S Corp, a nonprofit is registered as an entity at the state level.

There can be no “private inurement.” To explain this, it is important to start with what private inurement is not. A nonprofit corporation *can* make a profit - in fact, it is encouraged. The pivotal point is that the profit cannot inure (pass) to the members, managers, officers, directors, i.e., private persons. If the nonprofit corporation makes a profit, the profit cannot be paid to private persons. For example, if the Red Cross has a bunch of money as a surplus, it cannot split the money among its officers.

A nonprofit corporation can be member-managed or managed by its board and officers. In a member-managed nonprofit, the members, well, manage, the nonprofit corporation through voting. An example would be a maker-space or co-work that has members. Another example is a fraternity. The members, or “brothers,” manage each “chapter,” which is its own nonprofit. “Nationals” is its own nonprofit that is managed by the board of directors. As you know, the board of directors assigns some of their authority to officers.

What about tax-exemptions? At the state level, where the nonprofit corporation is created, the state provides certain exemptions for taxes. For instance, exemption from sales taxes. At the federal level, a nonprofit can file a Form 1023 to be recognized as a charitable organization if the nonprofit’s purpose fits within a certain category per Section 501(c)(3) of the Internal Revenue Code (the “IRC”). The nonprofit must be “organized and operated exclusively for religious, charitable, scientific, testing for public safety, or educational purposes, . . .” Once the IRS determines that the nonprofit qualifies as a charitable organization under IRC 501(c)(3), the now charitable organization, or, colloquially, “the 501(c)(3)” is exempt from federal income taxes.

Do not be confused or misled. Many individuals use the term “nonprofit” and “501(c)(3)” interchangeably. They are different concepts. A 501(c)(3) is a nonprofit (state level) that has been designated as a charitable organization by the IRS. Pointedly, contributions to a nonprofit that is not a 501(c)(3) are not “tax deductible.” The cost of filing a Form 1023 is \$600 and \$275 for the “long form” 1023 and the 1023EZ, respectively. The IRS requires a statement in the articles of incorporation preventing private inurement for a successful 501(c)(3) application. Below is Section 501(c)(3) of the IRC:

Corporations, and any community chest, fund, or foundation, organized and **operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition** (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, **no part of the net earnings of which inures to the benefit of any private shareholder or individual**, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of

statements), any political campaign on behalf of (or in opposition to) any candidate for public office. (emphasis added).

To recap, how does a nonprofit corporation become a 501(c)(3)? It begins as a nonprofit at the state level then it files a Form 1023 with the IRS to be designated as a charitable organization exempt for federal income taxes. The Form 1023 is rather long and cumbersome. Thus, the IRS created Form 1023-EZ, which is three pages compared to the often-twenty-plus-pages Form 1023. Not all nonprofits qualify to file the Form 1023-EZ.

Service Corporations

Suggested Reading: *Now It's Easier Being Green: Florida's New Benefit and Social Purpose Corporations* by Stuart R. Cohn and Stuart D. Ames^{xxxix}

Remember the Henry Ford story. It was true. What was Henry Ford to do? Well, I do not know what he could have done back then, but, today, a service corporation may have done the trick. Why not a nonprofit corporation? Remember, nonprofit corporations prohibit private inurement. On the other hand, a service corporation has the flexibility of aiming to do social good as a purpose. The Florida Statutes use the terms “general public benefit” and “public benefit.”

In Florida, owners have the option of creating a benefit corporation or a social purpose corporation. “The intent of [a Benefit corporation or social purpose corporation] is to accommodate entrepreneurs and investors who want a for-profit corporation that may engage in substantial socially beneficial activities to an extent beyond what may be allowed from traditional corporations.”^{xxx} What is the difference between a benefit corporation and a social purpose corporation? You tell me. Below are quotes from Florida’s statutes:

A benefit corporation has the purpose of creating general public benefit^{xxxix}

A social purpose corporation has the purpose of creating a public benefit^{xxxix}

Figured it out? Here is a hint: *expressio unius est exclusio alterius*.²² For those not fluent in Latin, the difference is a matter of dedication or scope. Benefit corporations create a “general public benefit,” while social purpose corporations create a “public benefit.” Benefit corporations are for general public causes, and social purpose corporations can be used for specific social purposes. Being able to limit the scope is valuable.

An incorporator forms a social purpose corporation by including a statement in the articles of incorporation that it is social purpose corporation. An existing corporation can convert to a social purpose corporation by amending its articles of incorporation to include a statement that it is a social purpose corporation.^{xxxix} Pretty simple but know that a “benefit enforcement proceeding” is a thing.

(3) “Benefit enforcement proceeding” means any claim or action for:

²² From Google: the explicit mention of one (thing) is the exclusion of another]: a principle in statutory construction: when one or more things of a class are expressly mentioned others of the same class are excluded.

(a) The failure of a benefit [or social purpose] corporation to pursue or create a general public benefit or a specific public purpose set forth in its articles of incorporation; . . . “^{xxxiv}

Thus, if you are forming a social purpose corporation, it behooves you to further a social purpose. So, what is a B Corp? Is it a benefit corporation or a social purpose corporation? Well, it can be. A benefit corporation or a social purpose corporation can become a “Certified B Corp™” by if they meet “the highest standards of verified, overall social and environmental performance, public transparency, and legal accountability.”^{xxxv}

Section F: Tax Considerations

This section provides an overview on some of the basic tax considerations of selecting among the types of business entities. This section will begin with state taxes then move federal taxes. Remember, this toolkit merely provides a cursory overview of the matters discussed within, and that professional advice should be sought.

In Florida, the corporate tax rate is 5.5%.^{.xxxvi} The tax is not assessed on partnerships and LLCs unless the entities have a corporation as an owner or elected to be taxed as a corporation (see below under the section on federal taxes). In addition to corporate taxes, businesses must pay sales taxes on goods sold or rented. The state tax rate is 6%.^{.xxxvii} Each county can also assess a “discretionary sales surtax” up to an additional 1.5% sales tax.^{.xxxviii} For example, in Leon County, Florida, the total sales tax rate is 7.5% (6% state rate plus 1.5% county tax).

On the federal level, entities can be “pass-through” or not. The profits and losses of a pass-through entity “pass through” the entity to be taxed on the tax return, and at the tax rate, of the individual owners. Typically, through a Form 1065. For example, if Lawn Company LLC made \$100k, the taxes will be assessed on you and Frank’s personal tax return at your personal tax rates. Pass-through entities include partnerships, LLCs, and S Corps. A C-Corp is not a pass-through entity. As noted above, a C Corp, for federal taxation purposes, is a stand-alone entity. It is taxed at its own corporate rate. If Lawn Company Inc. made \$100k, it would be taxed at the entity level, and any payments (salaries or otherwise) would be taxed again when received by you and Frank. Hence, double taxation. Also, a nonprofit is not a pass-through entity, of course, because it does not pass any profits or losses on to its nonexistent owners.

The effect of federal taxes on both the business and its owners is a driving force in selecting a business entity. Small, closely held businesses tend to select pass-through entities. Businesses that deal in real estate generally select pass-through entities to capitalize on depreciation deductions of real property. The exit strategy matters, too. Many investors may feel more familiar with corporations and would feel more comfortable investing large sums of capital into corporations. Nearly all of the companies listed on the stock exchanges are corporations. A corporation is not a pass-through entity, but salaries and other expenses can leave a corporation to have no taxable income.

As noted, an entity can be pass-through or not. A pass-through entity can also be a “disregarded entity.” For example, the tax return of a sole proprietorship, which is not an entity, is filed with a Schedule C. Similarly, a single-member LLC, an LLC with only one owner, is treated as a disregarded entity, and it is taxed like a sole proprietorship on a Schedule C. So, for federal tax purposes, a sole proprietorship and a single-member LLC, are treated the same.

However, you understand that there are multiple parts at play. You understand that though the single-member LLC is taxed like a sole proprietorship, there is a significant difference in liability protection between the two. You understand that the tax considerations are merely *considerations*. In considering tax matters in selecting an entity, do not “allow the tail to wag the dog.” You should contact a CPA to review your unique tax circumstances.

Federal taxation recognizes disregarded entities, partnerships, and corporations. Given those three options, can you tell why a single-member LLC is treated as a disregarded entity for federal tax purposes? Disregarded entities and partnerships are pass-through entities, and a corporation is not a pass-through.

Conclusion

I hope this toolkit was helpful and that you enjoyed it. Reread it. You will learn a lot more, and jokes will be funnier, too !

Glossary

Alleviate: to make easier to bear; “medicine alleviates the symptoms of sickness”

Belabor: to push harder than needed; “to beat a dead horse”

Catalyst: a substance that speeds up a process; “heat is a catalyst that makes clothes dry faster”

Dispose: to get rid of something; “dispose the trash in the dumpster”

Variable: a place holder; something that can change; “the player will score ‘X’ points in the game tonight”

Appendices

Appendix A - Non-Exhaustive List of Corporate Formalities

Limited liability protection is a primary benefit of incorporating a business; however, the protection is not infallible. Failing to follow corporate formalities could cause a governing authority such as a court or the IRS to “pierce the corporate veil” and hold the directors and officers of a corporation liable for the corporation’s actions and debts. Accordingly, directors and officers should take care to follow corporate formalities.

Below is a non-exhaustive list of corporate formalities that must be followed:

Meeting Requirement

- Organizational meeting: a Board of Directors (the “BOD”) meeting that resolves (a corporate resolution) the following:
 - Adoption of Bylaws;
 - Appointment of BOD Chairman and officers;
 - Authority of officers to bind the corporation in contracts;
 - Adoption of conflict of interest policy; and
 - Approval of 501(c)(3) application.
- Regular BOD meeting. The Bylaws provides for the frequency of and manner in which BOD meetings should be held.
- Annual meeting.

Records Requirement

- BOD meetings
 - Minutes that reflect the matters discussed, results of votes and results of corporate resolutions.
 - Regarding matters of compensation, memorialize the vote count by director.
- Record book (corporate records that must be maintained and keep at the corporation’s principal office)
 - Articles of Incorporation and all amendments.
 - Bylaws and all amendments.
 - Minutes of all BOD meetings (including votes and resolutions) and records of all strategic actions taken without a BOD meeting for the past three years. It is good practice to log a copy of key votes and resolutions apart from the minutes.
 - Names and addresses (business address if possible) of current directors and officers.
 - Most recent annual report delivered to the Florida Department of State.
- Finances
 - Banking
 - The corporation should establish a bank account in its name, and it should make all corporate purchases in the name of the corporation.
 - Accounting
 - The corporation should maintain accurate accounting records.

- Tax
 - Copies of all tax documents for the past three years.
- Contracting
 - All contracts should be entered into on behalf of and in the name of the corporation.

Annual State Filings

- The corporation must file an annual report with Florida's Department of State each year on or before May 1st.
- Florida Department of Agriculture and Consumer Services
 - If the corporation solicits donations from people in the State of Florida, it must register with the Florida Department of Agriculture and Consumer Services prior to making solicitations, and it must renew its registration annually.

Other Requirements

- Compliance with Articles of Incorporation and Bylaws
- Governance
 - The corporation must follow a governance structure where the BOD is charged with making strategic decisions and appointing and removing officers, and the officers are charged with overseeing the day-to-day affairs of the corporation.
- Fiduciary Duties
 - Directors and officers owe to the corporation a duty of care, loyalty and good faith and fair dealing. Oversimplified, those duties are:
 - Care: directors and officers must act (reasonably) prudently when making decisions for or acting on behalf of the corporation;
 - Loyalty: directors and officers cannot have unapproved conflicts of interest when making decisions for or acting on behalf of the corporation; and
 - Good faith and fair dealing: directors and officers must act honestly, in good faith (honest and sincere intention) and fairly when making decisions for or acting on behalf of the corporation.
- Capitalization
 - The corporation should be adequately capitalized by maintaining adequate capital in the corporate bank account to meet all current and foreseeable debts.

References

- i Osterwalder, Alexander, and Yves Pigneur. *Business Model Generation: a Handbook for Visionaries , Game Changers, and Challengers*. John Willey & Sons, 2010.
- ii Kander, Diana. *All in Startup: Launching a New Idea When Everything Is on the Line*. Wiley, 2014.
- iii A business can be sold as a going concern or the assets can be sold à la carte.
- iv https://en.wikipedia.org/wiki/Martin_Shkrelid.
- v <https://techcrunch.com/2018/04/11/uber-gets-into-car-rentals-and-public-transit/>
- vi <https://www.floridastateparks.org/hours-and-fees/Maclay-Gardens>.
- vii <http://fortune.com/2018/03/28/mcdonalds-plastic-straw-ban/>
- viii <https://finance.yahoo.com/news/mcdonalds-not-ready-let-plastic-straws-155331346--finance.html>
- ix Weidner, Donald J. “Capital Accounts in LLCs and in Partnerships.” *Research Handbook on Partnerships, LLCs and Alternative Forms of Business Organizations*, pp. 168–186., doi:10.4337/9781783474400.00020.
- x <http://imgtfy.com/?q=what+is+a+torf>.
- xi Fla. Stat. § 620.8404 (2017) (general partnership); Fla. Stat. § 620.1305 (limited partners) (2017) (20117); Fla. Stat. § 620.1408 (general partners) (2017); Fla. Stat. § 605.04091(4) (LLC) (2017).
- xii Fla. Stat. § 605.04091 (2017).
- xiii Fla. Stat. § 607.0830 (2017) (directors).
- xiv Fla. Stat. § 620.8404(4) (2017) (general partnership); Fla. Stat. § 620.1305(2) (2017) (limited partners); Fla. Stat. § 620.1408(2) (2017) (general partners).
- xv Fla. Stat. § 605.04091(5) (2017) (LLC); Fla. Stat. § 620.1408(5) (2017) (general partnership); Fla. Stat. § 620.1305(3) (2017) (limited partners); Fla. Stat. § 620.1408(5) (2017) (general partners).
- xvi Fla. Stat. § 607.0831 (2017).
- xvii Fla. Stat. § 607.0831(2) (2017).
- xviii Fla. Stat. § 607.1601 (2017).
- xix Weidner, Donald J. “Capital Accounts in LLCs and in Partnerships.” *Research Handbook on Partnerships, LLCs and Alternative Forms of Business Organizations*, pp. 168–186., doi:10.4337/9781783474400.00020.
- xx Write this article
- xxi Fla. Stat. § 620.8404(1) (2017).
- xxii Fla. Stat. § 620.1305(1) (2017).
- xxiii Fla. Stat. § 620.1201(1)(d) (2017); Fla. Stat. § 620.1102(10) (2017).
- xxiv Fla. Stat. § 605.04091(1) (2017).
- xxv <http://dos.myflorida.com/sunbiz/forms/fees/>
- xxvi Fla. Stat. § 865.09(3)(a)(5) (“ . . . such fictitious name has been advertised at least once in a newspaper as defined in chapter 50.”); Fla. Stat. § 50.031 (2017).
- xxvii <http://dos.myflorida.com/sunbiz/forms/fees/>
- xxviii <http://dos.myflorida.com/sunbiz/forms/fees/>
- xxix <https://www.floridabar.org/news/tfb-journal/?durl=%2FDIVCOM%2FJN%2Fjnjournal01.nsf%2FArticles%2FC655F4F9D7D009B585257D7E004BCB18>
- xxx <https://www.floridabar.org/news/tfb-journal/?durl=%2FDIVCOM%2FJN%2Fjnjournal01.nsf%2FArticles%2FC655F4F9D7D009B585257D7E004BCB18>
- xxxi Fla. Stat. § 607.606(1) (2017).
- xxxii Fla. Stat. § 607.506(1) (2017).
- xxxiii Fla. Stat. § 607.604(1) (2017); Fla. Stat. § 607.504(1) (2017).
- xxxiv Fla. Stat. § 607.602(3) (2017).
- xxxv <https://www.bcorporation.net/what-are-b-corps/about-b-lab>;
- xxxvi http://floridarevenue.com/Forms_library/current/gt800017.pdf
- xxxvii http://floridarevenue.com/taxes/taxesfees/Pages/tax_interest_rates.aspx
- xxxviii http://floridarevenue.com/taxes/taxesfees/Pages/tax_interest_rates.aspx