

FORMS OF BUSINESS AND FRANCHISE LAW

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SOLE PROPRIETORSHIP

no distinction between the
natural person and the business entity

unlimited personal liability
for debts of the business

PARTNERSHIP LAW

borrowes heavily from agency law
every partner is simultaneously a
principal and an agent
for the other partners

partnership and each of the partners
has unlimited liability

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CORPORATION LAW

borrowes heavily from agency law

adjusts for the facts
the principal has no physical existence
and
the principal can only act
through the actions of others

corporation has unlimited liability
while
shareholders have limited personal liability

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LLC
Limited Liability Company

borrows heavily from limited partnership
and
corporation law

federal taxation pass through
4 of 6 rule dropped
so much easier to use LLC

LLC has unlimited liability
while
shareholders have limited personal liability

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FRANCHISE LAW

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CONFLICTING SOCIAL GOALS
favor the franchisor
versus
favor the franchisee

1) **FAVOR FRANCHISOR** *in the judicial context*
A) **LEGITIMATE BUSINESS INTEREST**
1. **quality control**
objective or subjective
2. **trademark**
duty: Lanham Act
B) **ECONOMIC POLICY**
1. **reduce vertical integration**
2. **benefits to small business**
and **economies of size**

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CONFLICTING SOCIAL GOALS
 favor the franchisor
 versus
 favor the franchisee

2) **FAVOR FRANCHISEES** *in the legislative context*
 A) unequal bargaining power
 B) disparate impact, (and?)
 C) history of abuse

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Federal FRANCHISE regulations

FTC Rule
 deceptive trade practices

focus on disclosure

to establish FTC jurisdiction over a "franchise"

1) trademark	1) business plan
2) quality control	2) significant control
3) \$500 within 6 months	3) \$500 within 6 months

Earnings claims
 must be have a pre-existing reasonable basis

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Federal ANTITRUST Law and Franchises
 proportional to legitimate business interest

horizontal v. vertical

Rule of Reason
 exclusive dealings
 substantial lessening

Per Se Unreasonable
 price fix
 agree v. other legitimate concerns
 group boycott
 tying: transfer monopoly power
 trademark: product? power?

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State's FRANCHISE regulation

States tend to address the symptom
federal government tends address the cause

merit review
versus
federal full disclosure

good cause for termination
prohibit contractually agreed upon
termination absent good cause

versus
federal fully disclose termination terms
at time of contract

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