

CE Entrepreneurship

A few thoughts on legal matters

Introduction

This section very briefly introduces you to some of the many matters that have legal consequences. In business most things will have legal connotations, those noted below are ones you are likely to come into contact with sooner rather than later. In these and all matters legal, you should seek professional help and guidance before starting out.

Financial

The first legal matter you will need to deal with is the name of your enterprise. This has already been addressed in the finance section so please refer to that section if this is still an issue.

Other financial matters that have legal implications are loans, hire purchase and leasing agreements, guarantees, shares, invoices issued and received, tenders, proposals and offers. All of these are legal documents and carry legal liability on both the issuing and receiving parties.

This section may well sound like it is all doom and gloom. But a very large number of small businesses are established each year without incurring any legal issues. Just be aware of the potential problems that can occur and keep your eyes wide open and seek advice from wherever you can get it, ideally by using what is on offer from local Training and Enterprise bodies, free introductory offers from solicitors or Advice Bureau's.

Premises

Many small businesses start life from the owner/manager's home. A small bedroom or outbuilding is converted into an office and the business starts. Such a move strictly requires local authority planning permission. Change of usage will affect rates and utilities costs and has taxation implications when you come to sell your home. There are also implications on contents and buildings insurance.

If you currently rent your house or accommodation there may well be clauses written into your rental agreement that will be affected if you start to run a business from the property.

Selling

The most important legislation relating to selling are the:

- Sale of Goods Act 1979
- Supply of Goods and Services Act 1982

These are the foundation Acts relating to the sale of goods and contracts for the supply of goods or services. All consumer contracts must comply with these Acts. The key points are:

- That the seller has the legal right to sell the goods. If the goods turn out to be stolen, the purchaser can claim their money back
- That the goods are of 'merchantable quality'. This means that the goods are fit for the purpose for which they have been sold and fit for the normal expected use
- That the goods are as described in the marketing brochure or sales literature

Misrepresentation

“A ‘representation’ is a statement of fact made, by one party to a Contract to another, which does not form part of the Contract but is one of the reasons that makes one party enter a Contract. A misrepresentation is a representation that is untrue.” (extract from The Barclays Guide to Law for the Small Business”

Stephen Lloyd, ISBN 0-631-17349-8).

Misrepresentation is covered by the Misrepresentation Act of 1967, a complex law, covering what should be a straightforward issue. The Act accepts that salespeople make statements that are not always representations and that exaggerations are frequently used to sell products and services. Exaggerating words such as ‘great’ do not necessarily constitute a misrepresentation. Likewise statements of opinion, even if nobody else agrees, are not misrepresentations.

Misrepresentations must relate to facts. If a fact is stated, like a characteristic of the product, for example, “it will last for ever”, and it breaks after 5 years, then this is a

misrepresentation, even if the salesperson believed it to be true. The misrepresentation can be written or oral but must have been relied on by the buyer to their detriment.

Protecting your ideas

How you are allowed to protect your idea or product depends on what it is and what is novel about it.

Business and Consumer Contracts

There are a number of different Acts which can come into play when a business contract is agreed. The Acts are complex and professional advice should be sought before any contracts are entered into. Some of the Acts are:

- Sale of Goods Act 1979
- Supply of Goods and Services Act 1982
- Misrepresentation Act 1967
- Unfair Contract Terms Act 1977
- Consumer Arbitration Agreements Act 1988
- Consumer Protection Act 1987
- Weights and Measures Act 1985
- Trade Descriptions Act 1968 and 1972
- Food Act 1984

Employing people

Employment law is now, fairly restrictive. You are no longer allowed to 'hire and fire' staff at will. For more information on the rules and regulations governing employing people start with the free pamphlets available from the Department of Employment and the Advisory and Conciliation Service (ACAS).

Other resources:

Department of Trade and Industry (Employment section)

<http://www.dti.gov.uk/IR/index.htm>

ACAS

<http://www.acas.org.uk/>

Insurance

There are many different forms of insurance you might want to consider in establishing a small business including:

- Compulsory insurance: employer's liability, motor vehicles
- Insurances you should have: buildings, contents, business interruption, public and product liability, professional indemnity
- Insurances you might consider: directors and officers, legal expenses, libel, bad debt

Again the best advice here is seek professional help as to which insurances you should take out, this will clearly vary depending on the nature of your business. You may be able to get better deals by going directly to an insurance company once you know what you want – or you may find a broker who will arrange all the insurances you need for you for a preferential price. Shop around once you have the professional advice as to what you need.

Taxation

You cannot avoid taxation nor can you pass on responsibility for your taxation affairs to another person other than a professional accountant. Some of the taxes you need to be aware of are those relating to:

- Your form of organisation (Sole Trader, Partnership, Limited Company)
- Capital Gains Tax
- PAYE and National Insurance
- VAT and Customs and Excise Taxes (see also Section 4)

Customs and Excise have a wealth of information relating to VAT on their web site. Look at:

Other resources:

<http://www.hmce.gov.uk/bus/vat/index.htm>

if you are interested and in particular the publications page

<http://www.hmce.gov.uk/bus/info/books.htm>

which lists the publications available on the subject

An accountant will be able to advise you on other taxation matters and how your business situation impacts your personal taxation.

Record Keeping and Information Management

Irrespective of whether you keep records, in particular records relating to personnel, in paper form or on a computer, you need to be aware of the Data Protection Act 1998.

The General Rule

The general rules of matters legal are:

‘seek advice before it is too late’

‘if in doubt, ask!’