

THE BUSINESS LEGAL LIFECYCLE

How to Successfully Navigate
Your Way from Start Up to Success



JEREMY STRETEN

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For Abigail and Benjamin

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Foreword

I believe entrepreneurs are extraordinary. Starting, scaling, and selling a business is one of the greatest endeavours a person can embark on. This endeavour has the potential for great financial rewards as well as personal growth but it also comes with enormous risks and many pitfalls.

Being an entrepreneur can be a lonely journey with no one to turn to for guidance, support or advice. For many entrepreneurs, they can't talk about their challenges with their employees, their family or their friends because they "just won't understand" or they fear being perceived as arrogant when talking about their business. This leaves many entrepreneurs feeling isolated when trying to figure it out on their own or, worse still, being guided by what they read on the internet or social media. From what I have learnt by helping over 1160 entrepreneurs grow sustainable businesses, this is never more true than when looking at the legal side of growing a business.

One of the blessings of growing a business is that you get multiple opportunities to test and measure, tweak and improve in all areas of business. If you make a mistake, you learn from it and do it better next time. Unfortunately, this does not apply to the laws around growing a business; for the most part, you only get one shot to get it right, so it has to be done right the first time.

Unfortunately, entrepreneurs often seek professional legal advice way too late, often to their personal peril or sometimes to the demise of their business. That's where the Business Legal Lifecycle steps in. It will give you early and accurate knowledge before it's too late.

This practical and easy-to-read book will become your companion guide as you discover the legal obligations and options that await you at each phase. Written with insightful intelligence and full of practical examples and anecdotes, this is a legal and business book that is easy to read and simple to follow. It is a book every entrepreneur should have within arm's reach because it will help you safely navigate the often nerve wracking and treacherous waters of the laws associated with running a business.

Although there are many books on how to grow a successful business (of which I have written one), there are few, if any, that focus on the legal steps associated with starting, scaling and selling a business. This book is the missing and critical piece of the puzzle that aims to support entrepreneurs in any phase of their business development. It is a long overdue and much needed resource to be added to the bookshelves of small to medium business owners everywhere. It gives the reader insight with the ability to predict and prepare for the future. Properly applied, it will allow entrepreneurs to not only grow a sustainable business but to make sure their treasured asset is also well protected.

The Business Legal Lifecycle is laid out like an old 'choose your own adventure'

novel, allowing you to enter at the place that is right for you. It then gives you the options you can take with the pros and cons of each, so you can be well-informed and grow your business with confidence and certainty.

This is a refreshing book not written by some lawyer sitting in their ivory tower pointing their judgmental finger at you like your school teacher did when you didn't do your homework. It's written by someone who not only cares about entrepreneurs but who has walked the path himself. Jeremy started his business from scratch and has grown it into an iconic boutique legal practice. He is also an entrepreneur who has experienced the highs and lows of growing a sustainable enterprise. Unlike many legal texts which are long, boring and full of legalese, this book is written in plain English, making it simple to understand and easy to apply. It is also written with compassion, care and clarity.

In my experience, people want more direction, not more information. While this is an informative book, you will also come away with very clear direction as to what your next business legal steps should be. I expect it will help you navigate safely through your entrepreneurial pathway as you set out to achieve your dreams and desires in business.

Enjoy.

Dr David Dugan

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Preface

As a lawyer and a business owner I am often frustrated with the legal industry as a whole. All too often, advice from lawyers is boring and repetitive with no thought for the client's actual situation. What happens more often than not is that clients are scared of going to their lawyer, scared of being told that they need to spend tens of thousands of dollars to do everything that they need to do. There is no commercial advice given and legal advice becomes unworkable in the real world. This frustration led to the creation of the Business Legal Lifecycle, a concept to shift legal advice away from the simple 'do everything at once' approach to a more commercial set of instructions for every business owner to use.

This book is all about demystifying the legal processes and unlocking the often confusing world of legal advice for business owners. My aim is to give business owners a reference guide to be able to use in business, to give guidance on legal terms, and to give a clear direction of where a business is and should be going. The 13 phases of the Business Legal Lifecycle have been developed to solve these issues and give business owners a clear path for their business.

As with anything in life, business owners are on a journey of discovery. In writing this book, I have developed a deeper understanding of the Business Legal Lifecycle in general and discovered new and interesting ways to look at businesses. The examples I have given are designed to give that clarity to business owners to be able to identify whether they have encountered a similar problem in the past or as a beacon saying to a business owner that they are not alone and that issues that they face in business are normal. Moreover I want to give you the knowledge and confidence to tackle problems head on and know that other business owners have been there before and there is always light at the end of the tunnel.

In writing this book I have researched other business books and legal processes and have also undertaken an extensive review of the business owners that I have dealt with over the years. I have examined where businesses did things correctly and where they did not, and I have developed the phases of the Business Legal Lifecycle as a guide to where the most successful businesses did things correctly.

Your journey as a business owner will be fraught with danger but it should be a journey that is interesting and allows you to develop many different skills. Whether you are a small, medium or large business owner, you will at some stage of your business life have many different roles, embrace them and learn from your mistakes and also from your successes. This book has been designed for you to establish and build a successful business.

Introduction

Business owners are in business to take control

When you first start out in business, you need to do everything yourself to keep your business going. You need to be the marketer, strategist, salesperson, manager and even the cleaner. Staying in control of all aspects of your business is vitally important to its ongoing success. As your business grows and develops, it is critical that you are aware of the changes and cycles that it will go through. All businesses go through very predictable and repetitive cycles that are both positive and negative. They are all very important and you need to be proactive and ready to take action when the time comes. I have examined not only what successful business owners have done well, but also where business owners have failed, in order to work out what went wrong. This led me to develop the 'Business Legal Lifecycle' based on my experiences as a lawyer working with over 5200 business owners and their businesses.

The main problem that I observe is that many business owners do not know what they need to do with regards to the legal side of their business. They often do not establish the appropriate structure for their business and do not know when certain legal processes of the business should be undertaken. I developed the Business Legal Lifecycle to guide businesses through what legal steps they need to take and when they need to take them.

Experiences

As a young corporate solicitor during the 2000s it was drilled into me that a business should have every single legal document in place before it starts to trade. Part of this is due to the increasingly litigious nature of our society, and part is due to the commercialisation of legal businesses.

Crossing the t's and dotting the i's before you start trading is critical in order to make sure that you are ready for the challenges that you will face as a business owner.

What we see from many business owners

All too often, a business owner, struggling to get their product off the ground, engages with clients and starts employing staff without having the resources or the time to implement all the necessary steps at the beginning of their journey. Setting up your business properly from day one is crucial as the decisions you make at the start will have huge impacts down the track, and could be the difference between success, failure and even bankruptcy.

The Business Legal Lifecycle was developed to help business owners overcome the challenges and protect yourself from the risks that you will face at different stages of your business' development. When your business is about to transition to the next

phase, it is critical for you to understand what your legal options and obligations are so as to ensure that the transition from one stage to the next is successful.

The aim of the Business Legal Lifecycle

The aim of this book is to demystify the legal processes, explain the different legal practices, and demonstrate why they are necessary through the use of real-life examples. I will also attempt to fight my inner lawyer by doing all of this in plain English! The focus of this book is not specific to any particular type of business and can be used by all types of businesses and business owners.

It should be used by entrepreneurs, existing business owners, accountants, lawyers, financial planners, business mentors, business coaches, mortgage brokers, business brokers, real estate agents and other professionals as a guide to the legal aspects of a business.

It may be that some steps occur in a different order or certain events trigger the phases slightly differently, but from my experience, both as a business owner and as a lawyer, successful businesses generally follow a predictable pattern as presented in the Business Legal Lifecycle.

How to use this book

Before we begin, a word of warning: specific businesses and business owners have requirements that are unique to their particular circumstances. This book is a general discussion on the phases of the Business Legal Lifecycle but it should not replace the advice that you, as a business or business owner, receive from your professional team of advisors which is specific to your own particular circumstances.

I have included many different case studies and examples to show how following the phases in the Business Legal Lifecycle can help your business grow into an asset that can either be sold or be used as a lifestyle business (a business set up to fund your ideal lifestyle as opposed to a larger type business). I have not included any names and some of the details have been changed for privacy. The effect of what happened in each case study or example, whether it is positive or negative, is very real. Ideally, you should read this book from cover to cover at least once and I encourage you to flag chapters that are especially relevant to you and scribble notes as you go. You may discover things that you have done correctly (or incorrectly) and, as you reach each transition to a new phase in your business, I encourage you to continually revisit the book to ensure that you follow the correct processes and seek the appropriate advice from your consultants.

What is the Business Legal Lifecycle?

Starting a new business is an exciting venture for any entrepreneur. I know from my personal experience of starting three businesses that sometimes you get swept up in the excitement and resist getting bogged down in important, but let's face it, often boring, legal matters. There is a long list of considerations that a business owner needs to think about when starting a business, with initial start-up costs typically

being the driving factor behind making decisions.

This is one of the reasons that the Business Legal Lifecycle was developed: to ensure that you are aware that you need to start thinking about implementing the different legal processes from the very beginning.

The different phases of the Business Legal Lifecycle are:

- (a) Phase 1 - Conception
- (b) Phase 2 - Start-Up
- (c) Phase 3 - Initial Clients
- (d) Phase 4 - Bringing on Employees
- (e) Phase 5 - Protecting Intellectual Property
- (f) Phase 6 - Maximising your Business/Bringing in Investors
- (g) Phase 7 - Expansion/Franchising/Licensing or
Buying an Existing Business
- (h) Phase 8 - Estate Planning
- (i) Phase 9 - Investing in Property
- (j) Phase 10 - Litigation and Dispute Resolution
- (k) Phase 11 - Sale of Whole or Part of your Business or the
Listing on a Stock Exchange
- (l) Phase 12 - Retirement
- (m) Phase 13 - Insolvency/Winding up

Each phase of the Business Legal Lifecycle will have a different impact on your efficiency and profitability. Consequently, you may decide not to go through a particular phase, or another phase may present itself earlier for you. Your company may enter into litigation much earlier in its lifecycle, or you may decide to invest in property sooner than others typically do. Some business owners decide never to franchise their business.

The phases of the Business Legal Lifecycle were created as a general guide based on our experience in dealing with business owners and the stages we see them experience during the life of their business. Whether you follow the cycle exactly or not, the book is designed to give you an idea of where your business is currently situated and where it is headed.

A word on contracts

Throughout the book I use various terms that refer to a contract, such as: a company constitution, a lease, agreements with your staff and so forth. These are all forms of contracts which are very important legal documents. There is an old saying in the

legal profession, “in any dispute there is your belief as to the truth, there is the other side’s view on the truth and then the actual truth is somewhere in the middle.” This is especially true if you do not have a contract in writing as each party to the contract will have a different interpretation of the agreement. In the ever-increasingly litigious nature of our society, putting a contract in writing is imperative for any agreement so that all parties can agree upon the terms and conditions.

CHAPTER 13

Phase 13 – Insolvency / Winding Up

The Insolvency/Winding up phase is the last phase and completes the Business Legal Lifecycle, which means that the business has come to an end. Some business owners will never get to this point as they may retire or sell their business before they get to this phase. However, more often than not, the vehicle that operates the business will need to go through this process once the business is sold to ensure that all of the funds and obligations are properly dealt with from a legal and tax perspective.

For this reason, this phase is not necessarily a negative one and, properly managed, you can avoid some of the common pitfalls. If a business reaches this phase without the opportunity to go through the preceding phases of the Business Legal Lifecycle, then something has gone terribly wrong and the previous phases were not properly completed.

By successfully navigating your way through this phase you will come through to the other side and will be able to start a new business and go through the Business Legal Lifecycle all over again. Failing this phase can cause significant costs and problems for you in the future. Obtaining the right advice during this phase is critical to ensure that this does not happen.

In this phase I will discuss the consequences of insolvency, winding up and bankruptcy to give you an idea of what you could be dealing with.

Important considerations during this phase are:

- Do I want to prevent insolvency?
- If so, what can be done to prevent insolvency?
- What are the consequences to my business if I prevent insolvency?
- How can I deal with those issues?
- Am I comfortable with my creditors not being paid?
- Is there any way that I can deal with creditors moving forward?

Dangerous considerations during this phase are:

- I do not need advice—I can do this myself
- If I do not do anything, then it will all go away
- The other side have been mean to me so I am not going to pay their debts

- I will not pay them out of principle

13.1 Insolvency

There are a number of different legal definitions of the term 'insolvency' but I think the best definition of the term is that when a company or a person is not able to pay its debts as and when they due and payable, then the company or the person is insolvent.

If a company or a person has lots of debts, however, but they are not due and payable at a particular point in time but at some time in the future, they are not insolvent. This means that a debt-ridden company or person may be able to continue trading and be able to raise the funds to pay their debts in due course. However, if that same company or person cannot pay all of their debts as they fall due and owing, the company or person will be insolvent. In practical terms, determining when a company is solvent and insolvent is not a precise science. There are many different tests including the cash flow test and the balance sheet test. The cash flow test is essentially what I have discussed above as it determines if a company is able to continue to pay its debts. The balance sheet test looks at a company's balance sheet and determines its ability to collect money, and whether it will be enough to pay its creditors in full.

If you are concerned that your business may be insolvent, you should immediately obtain advice from your legal and financial advisors and, if applicable, an insolvency professional to determine whether or not your business is insolvent. Taking early action can help prevent larger problems from developing and allows you an opportunity to manage, as best you can, the insolvency process.

From the Case Files

An example of this difficulty was where a client operating a large steel post manufacturing firm came to me showing their profit on paper to be considerable but with little cash in the bank account. The business was making a great profit but they were not generating the operating cash flow that they needed to survive as they did not have any debt collection procedures in place. This meant that the client thought that everything was going well but that the business was spending more money than the cash it was getting in. The business had so many creditors that would not wait for payment that the company was deemed insolvent because it could not pay its debts. One creditor would not wait for payment and wound up the company. This meant that the business ended abruptly despite being profitable on paper. The company's employees lost their jobs and the customers lost all of the work that they had been waiting for from the business as it simply ceased trading and the half-finished items were sold as scrap metal.

13.2 Winding Up

When a company is insolvent, it can be wound up, which involves a liquidator being appointed to control and finalise the company. The actual process of winding up involves all of the assets of the company being sold, and the remaining money being used to pay off the remaining debts. In the rare event that there are additional funds, the money can be distributed to shareholders. Once this process is completed, the company is then deregistered from the register of companies and no longer exists.

A company can be wound up under a variety of circumstances but the more common instances are:

- (a) where a company owes a debt and will not (or cannot) pay it, the unpaid creditors can apply to the courts to have that company wound up
- (b) in some circumstances where the directors of the company determine that it cannot pay its debts, the directors can seek to appoint a liquidator to wind up the company
- (c) in some circumstances the shareholders of the company can decide that the company does not have the funds to continue trading and pay its debts and seek to appoint a liquidator to wind up the company.

A liquidator is an independent third party, often with an accounting background, who manages the affairs of the company to wind the company up. Before the winding up process commences, the company can also have administrators appointed (by its directors) to analyse the company's financial position and attempt to restructure the company or trade it out of difficulty.

Receivers and managers are often appointed by a creditor who has security over an asset (such as a motor vehicle) to sell that asset and settle their debt but not over the balance of the company or the other assets.

Strict rules apply in the event of the winding up of a company. Once a liquidator is appointed, the directors of the company lose their control over the company and the liquidator assumes the responsibility and control over the company's operational matters.

Often, the debts of the company are compromised and the directors can be banned from managing companies for a number of years (depending on the severity of their actions).

This section is only a very brief overview of the winding up process and the effect that such a decision has on a company. Where you are subject to such a decision you should obtain advice from your lawyer, accountant and other advisors to ensure that the debts are fairly dealt with and the process is managed properly.

13.3 Bankruptcy

When an individual is insolvent, they can be declared bankrupt. There are two ways

this can happen:

- a person can declare themselves bankrupt or
- a person's creditors can apply to court to have the person declared bankrupt

When a person is bankrupted they have a sequestration order made against their estate. This sequestration order has the effect of taking all of the assets of the person, which are then sold and used to pay the debts of the individual.

Most of the debts that the person owes are compromised (although there are some exceptions to that rule, such as in Australia where government fines are not compromised) and the person will be bankrupted for a mandatory period of time (in Australia that time is three years).

(a) If a person becomes bankrupt what debts form part of their bankrupt estate?

When a person is declared bankrupt, they are obliged to complete a 'Statement of Affairs'. The majority of debts are proved as valid (provable debts) in bankruptcy; however, a number of government-imposed expenses are not provable such as:

- (i) Penalties and fines imposed by a court such as a fine for a breach of legislation such as a breach of the laws relating to not sending out SPAM text messages
- (ii) debts that a person incurs after the date of bankruptcy
- (iii) spousal maintenance
- (iv) child support
- (v) debts incurred by fraud

When a bankrupt is discharged from bankruptcy, they will be released from provable debts; however, the debts listed above will still be owed by the bankrupt. Any debts of secured creditors (this means that the creditor has a right to recover a person's physical asset such as a mortgage of a person's home) are not affected by a person's bankruptcy. The secured creditor can enforce their rights against the property, sell the property and then become an unsecured creditor of the bankrupt estate for any shortfall.

Unsecured creditors generally do not have the right to repossess goods to sell them, but may receive a partial payment based on the debts that the bankrupt person owes. Any debts that a bankrupt person incurs after they are declared bankrupt are debts that the bankrupt person is personally responsible to repay and do not form part of the estate.

(b) What assets can a bankrupt person keep?

A bankrupt person will generally be entitled to retain their personal belongings but not assets. An asset is anything that can be owned that is not

a personal belonging and includes real property, chattels or possessions. Generally, a bankrupt person's household items, furniture and personal effects, life insurance and superannuation policies are not assets that form part of the bankrupt estate. A bankrupt person may also be able to keep tools that they use to earn an income, as well as vehicles (including cars or motorbikes) so long as certain criteria are met.

A person's residence forms part of their bankrupt estate and is not protected property. If the house is mortgaged there are a variety of options that can be used to protect the house but usually the mortgagee of the property will sell it to settle the mortgage owed by the bankrupt person.

(c) Does bankruptcy affect a person's employment?

Generally, bankruptcy does not prevent a person from working but a number of industries may be affected by a person being declared bankrupt. If the bankrupt person is engaged in particular trades or professions, there may be certain restrictions imposed by their professional organisation or government legislation and rules. For example, if you become bankrupt often it is difficult for you to become a solicitor, bank manager or financial advisor. You also need to be aware that a bankrupt is allowed to earn a certain amount of money before they must give a percentage of their earnings to their bankruptcy trustee.

This is a brief overview of the bankruptcy process and is designed to be read as a starting point. When dealing with these issues, you should seek the advice of your lawyer, accountant, financial consultants and any business mentors to ensure that you can properly navigate your way through this process in a controlled and proper way.

13.4 De-registration

Where your business was operated through a company when it ceases to trade, you can also elect to deregister the company. Deregistration means that the company is removed from the register of companies and ceases to exist as a separate legal entity. This is the effect of a liquidation of a company but you can also choose to do this voluntarily when the business reaches certain criteria. Deregistration is not a simple process and you need to ensure that you have the advice of your accountants, lawyers and financial advisors to ensure that it is done correctly and that no loose ends remain.

13.5 Conclusion

Understanding the rules and regulations around insolvency issues is important but they are complicated. No two are ever the same, and the advice you receive and action you need to take will be specific to your particular circumstances. It is important that, if you are facing bankruptcy or insolvency, you do not obtain 'barbecue advice' from your friends but specialist advice from professionals such as

lawyers, accountants and financial consultants who specialise in these areas, to prevent your situation from becoming worse or further issues from arising in the future as a result of this process.

From the Case Files

An example of this is a situation where a business owner had some large debts that he had amassed. The business that he operated was a large construction company with a significant turnover of over \$5 million but the owner was not able to pay all of the debts that were due for the business. He received 'barbecue advice' to the effect that he should simply declare himself bankrupt or let his creditors do it for him so that he would not have to pay the debt. The business owner owed approximately \$600,000.00 in debts and had over \$2 million worth of assets in his own name. If he had gone down the bankruptcy path, he would have lost most of the \$2 million of assets and would not have had anything to show for his hard work as a business owner for many years. It was not until he received the right advice that he was able to realise that declaring bankruptcy was not the right path and that would have disastrous consequence for him and his assets. Finally given the right advice, the business owner borrowed enough money against his assets to pay the debts that he owed. As a result of our advice he retained his assets and business and was able to keep his lifestyle going the way he wanted to.

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WHERE TO FROM HERE?

1. Is insolvency necessary or is there another path?
2. Have you retired?
3. If you do not want to retire then you need to start from the beginning of the Business Legal Lifecycle all over again with a new business or go and work for someone

— — — —

Conclusion

In business you are always learning new systems, procedures and methodologies. This book is all about educating you on the different aspects of your business and when legal processes and considerations should be implemented. The main reason that I wrote this book and developed the Business Legal Lifecycle was to share my experience as a business owner and a lawyer. We built our law firm on the principle of 'Solutions for a Better Life' and all of the work we do is geared towards that goal.

Understanding the Business Legal Lifecycle is not the end point for any business owner; it is the beginning of how to operate your business, how to grow your business, and how to prepare for your future. It is critical that you understand the different phases and times when different legal processes should be followed. It is also critical that you have a basic understanding of a number of legal concepts when in business. I hope that you have appreciated the explanations that I have given in this book and that it gives you, as a business owner, a greater understanding of the legal processes involved in operating a business.

I have used many examples and case studies in this book to illustrate how legal processes work and why they are important. You may find these examples similar to your own experiences or you may find that when you are faced with a similar situation, you can identify a potential problem and fix it before it becomes an issue. No two situations are ever exactly the same but you need to know when to take action at the appropriate time. This will prevent you from continually treading water or, worse yet, being swept away when problems occur.

It is important to remember that in business you will face tough times; that is the nature of business and it is entirely normal. It is *how* you deal with those problems that will determine how successful you are in the future. I also encourage you to read all you can and take in as much advice (but not 'barbecue advice'!) as you can in relation to operating your business. Do not implement everything you read and hear; consider your options and, if you are not sure of which way to go, it is probably best to take the course of a trusted advisor. Running a business is a rewarding endeavour and is something that I am very glad I have been able to participate in.

As you will have gathered from this book it is important that throughout the Business Legal Lifecycle you obtain advice from the right consultants at the right time.

Often lawyers or accountants will try to do too much, or they will not allow the other consultants to do their job. I have tried to also point out the various types of consultants that I recommend that business owners engage with at different times in their business.

I wish you the best of luck in your journey in business and through the Business Legal Lifecycle. If you have any questions, then please feel free to email me at lifecycle@jeremystreten.com.

“The Business Legal Lifecycle is one of those books every business owner should own. Written in plain English with practical advice, no matter where you are in your business journey there are gems of wisdom on every page.”

Adam Houlahan, Author & International Keynote Speaker

Whether you want to have a large company or a small, lifestyle business; you have to pay attention to the legal aspects – right from the start. If you don't take care of your legal obligations and plan for the inevitable problems that will surface, you will be exposing yourself to strain, stress, loss of business and potentially even bankruptcy.

The Business Legal Lifecycle is designed to guide and empower you with the knowledge you need to successfully navigate your business journey.

In this book you will learn:

- Why and when you need to pay attention to the legal aspects of your business;
- How to successfully start up your business;
- What you need to put in place to sell the business in the future;
- Whom you should consult with along your business journey; and
- What you should look at when your business is coming to an end.

Act now and get ready to build a successful business – today!



Jeremy Streten is a successful entrepreneur and lawyer. His passion is to help entrepreneurs and small to medium-sized business owners to succeed in their business so that they can live the life that they want to live. He has challenged and changed the way that many people look at lawyers. With a personal perspective from acting for thousands of businesses and their owners Jeremy often contradicts conventional wisdom.

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