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**Be in the Know:  
Legal Tips for your  
Ag Start-up**

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Jim Ash, Partner  
Joe Thompson, Partner  
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**Protect Your  
Intellectual  
Property**

2

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## Intellectual Property

- Copyright
- Trademark/Service Mark
- Patent
- Trade Secret



3

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## Copyright

- Overview:
  - Expression of an idea or information; not the idea itself
  - Originality is key
  - Examples: software code, videos, graphics, music, art, text
  - Protection: life of creator plus 70 years
- Tips:
  - Obtain enforceable assignments
  - Do NOT engage in unauthorized use of others' materials

4

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## Trademark/Service Mark

- Overview:
  - Recognizable sign, design or expression used to identify goods or services
  - Protection: 6 years but registration is renewable; possibly perpetual
  - May be lost by cessation of use
  - Registration of Marks
    - Limited “common law” rights
    - Distinctive
    - No likelihood of confusion
- Tips:
  - Perform clearance search or time and money may be wasted
  - Distinction is key



5

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## Patent

- Overview:
  - Allows market control-no obligation to use; right to exclude others
  - Create income streams
  - Country-by-country asset
- Types:
  - Utility: New and useful process, machine, piece, etc. (20 years)
  - Design: Ornamental design (15 years)
  - Plant: Asexual variety only (20 years)

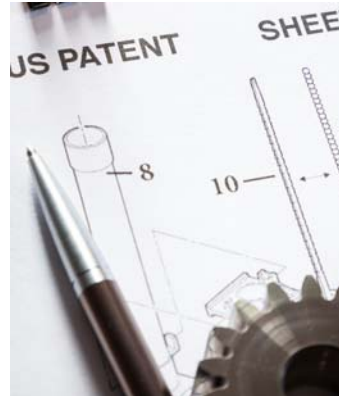
6

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## Patent, cont.

- Provisional Application – saves your place in line by establishing an early file date
  - Lasts one year
  - Is confidential
- Tips:
  - File First: First to file wins
  - File application no later than one year after a public use or disclosure
  - Don't make claims too specific or limited



7

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## Trade Secret

- Overview:
  - Must be kept secret
  - Examples – Coca Cola, Colonel's chicken, Google algorithm
- Tips:
  - No public disclosure
  - Adequate security



8

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## Overarching Issue

- Precious cargo in a leaky boat
  - Employees
  - Contractors
  - Trade shows
  - Consultants
  - Marketing agencies
  - Software developers
  - Joint ventures

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# Business Entity Structuring *Why It Matters*

10

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## U.S. Business Structures

- Four basic structures:
  - Sole proprietorship
  - General partnership
  - Corporation
  - LLC
- Five key characteristics:
  - Formation / legal structure
  - Owner liability
  - Liquidity / capital
  - Tax
  - Governance

11

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## U.S. Business Structures, cont.

- Partnerships / Sole Proprietorship
  - Fundamentally, owners = managers
  - Business plus personal assets at risk
  - Profits taxed at owner/partner level
  - Significant flexibility / private relationships
- Corporations
  - Fundamentally, owners  $\neq$  managers
  - Liability limited to assets of business
  - Profits taxed and retained (double tax)
  - Recognized and standardized investor relationships

12

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## U.S. Business Structures, cont.

- Hybrids
  - Limited Partnership (LP)
  - Limited Liability Partnership (LLP)
  - Limited Liability Company (LLC)

13

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## Sole Proprietorship

- Key characteristics
  - One owner
  - Unlimited liability / no separation
- How created
  - No formal structure
  - No actions to take
- Capital / Liquidity
  - Capital limited to owner
  - Assets may be sold
  - Goodwill is an asset
  - All profits available to owner after one tax

14

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## Sole Proprietorship, cont.

- Tax
  - Single tax
  - No distinction
- Liability
  - Business = personal
- Governance

15

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## General Partnership

- Unlimited liability
  - Liability flows one way – out but not in
  - Joint and several – all for one and one for all
  - Public can depend on this – but can be misleading
- How structured/created
  - Creature of action – definition (two or more persons intending to share profits and losses)
  - Some statutory general guidelines to fill gaps

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## General Partnership, cont.

- Partnership Agreement (may be verbal)
  - Controls; defeats statutory default
  - Often addresses liquidity
  - Not public
- Governance
  - Equal vote
  - Equal management and ability to bind partners

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## General Partnership, cont.

- Capital / Liquidity
  - Limited to partners
  - Interest may be transferred, if allowed
  - Profits available only if distributed
  - Earnings are taxed at individual level, even if no distribution
- Tax
  - Flow-through
  - Phantom income

18

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## Corporations

- Created by statute
  1. Articles of Incorporation
    - Forms the contract
    - Significant latitude available
    - Difficult to change
    - Publicly available
  2. Bylaws
    - Easier to change
    - Not public
    - More day-to-day / administrative matters

19

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## Corporations, cont.

- Governance
  - Owners (shareholders) elect the Board of Directors
  - Board controls all (subject to certain shareholder rights)
    - Hires and fires management
    - Sets policy and strategy
  - Operates under fiduciary duty to all

20

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## Corporations, cont.

- Limited liability
  - Separate entity
  - Individual liability – individual acts
  - Piercing the corporate veil

21

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## Corporations, cont.

- Capital / Liquidity (shares and shareholders)
  - Shares
    - Unlimited number
    - Easily transferable
    - No dividend guaranty
    - Double tax
  - Shareholder relationships
    - Share classes
      - Common
      - Preferred
    - Contractual rights
    - Common stock set by statute
    - Preferred stock set by contract
      - Control provisions
      - Liquidity rights
      - Return on investment
      - Buy/Sell agreements

22

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## Corporations, cont.

- Tax
  - Double Tax
  - Earnings retained

23

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## Hybrid Entities (LLC, LP, LLP)

- Incorporated partnership
- No personal liability
- Flow-through taxation
- Corporate-like governance
- Or partnership-like governance
- Units can be structured from whole cloth

24

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# Employees

25

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## Employees

- IP Protection
  - Assignments
  - Non-competes
  - Confidentiality



26

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## Employees

- Employees vs. contractors
  - Withholding and FLSA issues
  - 20 factor test--control
    - Instruction and training
    - Schedule / flexibility
    - Tools and expenses
    - Opportunity for profit or loss
- Exempt vs. non exempt
  - Overtime
  - Minimum wage

27

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## Employees

- Tips:
  - Financial Person: worth more than you will pay him or her
  - Don't hand out equity – very precious



28

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# Capitalization and Outside Investment

29

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## Capital

- Debt vs. equity
- Friends and family
- Dilution
- Governance – control issues
- Securities laws
  - Rescission rights
  - Offers, not just sales
  - State and federal regulations
  - Anti-fraud statutes

30

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## Outside Investment

- Timeline – take conservative estimate and double it
- Don't employ someone to find you money
  - Pay as you go
- Get an experienced attorney
- Research investors—your new partners
- The economics can be measured
  - Control
  - Dilution

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## Final Tips

- Answer before Asked
  - Anticipate questions
  - Thoughtful and direct responses
- Know and Understand the Goals

32

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## Questions?



**Jim Ash, Partner**  
james.ash@huschblackwell.com  
816.983.8137



**Joe Thompson, Partner**  
joe.thompson@huschblackwell.com  
303.749.7276

33

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