Law in Commerce

FIFTH EDITION

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in the company are acquired or disposed of by buying or selling shares. However, there are disadvantages to companies. A company is more expensive to set up and maintain than a partnership. Company law is more complex than partnership law. An introduction to company law is provided in **Chapter 12**.

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The following chart lists the key advantages and disadvantages of the main types of business organisations.

	Sole trader	Partnership	Proprietary company	Public company
Advantages	• Few legal issues • Set-up costs – low • Maintenance costs – low • Full control • Very little regulatory oversight	• Set-up costs – low • Maintenance costs – relatively low • Control – shared with partners (may be a disadvantage) • Very little regulatory oversight	• Limited liability • Control can be maintained by retaining a majority of shares	• Limited liability • (If listed on stock exchange) it is easy to sell shares • Equity raising
Disadvantages	• Only available where one owner • Personal liability	• Personal liability • Size – limited to 20 partners (except for professional partnerships) • Control – shared with other partners	• Control is limited unless majority shareholder • Can be difficult to dispose of shares when a dispute arises • Regulatory requirements	• Very little control as a shareholder • Set-up costs are very high • Maintenance costs are high • Regulatory oversight is high

Naming the business

11.7 Firms often use a business name for trading purposes. This applies equally to sole traders, partnerships and companies. For example, Joanna Smith, Fred Nerc and Tom Jones may operate a business in partnership and call it 'Simple Things'. They are entitled to do this, but must register the name under the relevant business names legislation. In Australia:

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(1) An entity [which includes an individual, a partnership and a company] commits an offence if:
(a) the entity carries on a business under a name; and
(b) the name is not registered to the entity as a business name on the Business Names Register.

(2) Subsection (1) does not apply if:
(a) the entity is an individual and the name is the individual's name; or
(b) the entity is a corporation and the name is the corporation's name; or
(c) the entity is a partnership and the name consists of all of the partners' names; ...[2]

Registration under the Business Names Registration Act 2011 (Cth) is designed to protect persons dealing with the business which is trading under a business name. The register is a public record and can be inspected by anyone. In this way, it is possible to know who is behind the business name. The registration of business names moved to the Commonwealth Parliament's jurisdiction in 2011–12, when the states and territories referred this power to the Commonwealth under s 51(xxxvii) of the Australian Constitution (see **1.10**).

A common mistake made by traders is to believe that a business names registration protects the business name. It doesn't.

Creation of a partnership

11.8 Partnership law is regulated not by the Commonwealth, but by the various states of Australia. Thus, there is a Partnership Act in each state. This is one of the problems of a federal system of government. Fortunately, the Acts are essentially the same. In this chapter, any reference to the Partnership Act is a reference to the Partnership Act 1958 (Vic). See the table of comparative legislation in the Appendix to this chapter.

ARE ANY FORMALITIES REQUIRED TO CREATE A PARTNERSHIP?

11.9 Unlike the creation of a company, which requires approval and registration, the creation of a partnership requires no formalities whatsoever. If two people decide to open a restaurant together, they are probably forming a partnership. Quite possibly, they will not discuss the legal ramifications of their new business. In particular, they might not discuss the following matters:

- how decisions are to be made in the case of disagreement;
- what property is to become partnership property;
- how the partnership is to be dissolved; or
- what happens on dissolution.

2 Business Names Registration Act 2011 (Cth) s 18.

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Quite probably they will not write anything down. It doesn't matter. The existence of a partnership does not depend on these things. The existence of a partnership depends on the true nature of the relationship between the persons.

Only certain relationships are partnerships. If the relationship between our two restaurateurs is a partnership, the Partnership Act 1958 (Vic) provides the necessary rules for decision making, dissolution and other matters.

Definition of a partnership

11.10 A partnership is defined in the Partnership Act 1958 (Vic) s 5(1). Section 5(2) ensures that shareholders in a company will not be regarded as partners:

> *5(1) A partnership is the relation which subsists between persons carrying on business in common with a view of profit and includes an incorporated limited partnership within the meaning of Part 5.*

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There are three elements to the partnership relationship:

- the carrying on of a business;
- in common;
- with a view of profit.

CARRYING ON BUSINESS

11.11 'Business' is defined to include any 'trade, occupation or profession': s 3. In analysing the meaning of 'carrying on business' the courts have found it necessary to draw some distinctions:

- distinguishing between carrying on business and carrying on a hobby;
- distinguishing between carrying on a business and preparing to carry on a business; and
- distinguishing between carrying on business and carrying out a single venture.

A business or a hobby?

11.12 This issue was discussed in the following case involving questions of income tax. Although the case did not involve a partnership, the principles to be applied in distinguishing a business from a hobby are the same.

Ferguson v Federal Commissioner of Taxation

(1979) 79 ATC 4261 (Federal Court)

Facts

Ferguson was employed in the Australian Navy. He was keen to leave the navy and go into primary production. Therefore, he leased five cattle for breeding purposes. Ferguson then entered into an agreement with a property owner to pasture and manage his cattle. Through judicious breeding, Ferguson intended to increase the herd to 200, which would then be established on a farm which he intended to purchase. Ferguson made losses which he claimed were deductible from his income tax. The Commissioner of Taxation disallowed the deductions on the basis that the losses on the cattle were not incurred in carrying on a business.

Issue

Whether Ferguson's cattle breeding was a hobby or a business.

Decision

The court held that Ferguson was carrying on a business. The operation had a commercial flavour about it. The intention was to make a profit. Repetition and regularity of activities are important but not necessarily decisive. Ferguson's activities were organised in a systematic, business-like manner. Books and records were kept. In certain circumstances the size of an operation may be useful in distinguishing between a business and a hobby.

Similarly, in *Evans v Federal Commissioner of Taxation* (1989) 89 ATC 4540 Evans won $800,000 over the year by betting on races. The Australian Tax Office asserted Evans was carrying on a business of 'professional gambling', but the court held it was merely a hobby due to lack of any business structure, systematic operations or record-keeping.

Carrying on a business or preparing to carry on a business?

11.13 A partnership only exists once the parties are said to be carrying on a business. Preparing to do so is not sufficient.

Goudberg v Herniman Associates Pty Ltd

[2007] VSCA 12 (Supreme Court of Victoria, Court of Appeal)

Facts

Williams had an idea to convert hotel restaurants (mainly in Sydney) into a chain of franchised restaurants. Williams discussed the idea with Goudberg. Together they selected a number of possible US franchises to visit. They held discussions with their preferred US franchisor, Applebee's. They discussed the appropriate structure for the venture and possible financing. At this stage no hotel had been approached, no finance had been sought and no corporate structure set up; indeed, the project was still essentially a 'feasibility study'. Williams then engaged Herniman Associates, architects, to advise on possible architectural requirements. Eventually the project collapsed. Herniman sued Williams and Goudberg for $186,000 for unpaid fees, loss of profits and costs. Goudberg denied liability on the basis that he had not engaged Herniman and was not a partner with Williams.

A partnership is a purely business structure. Therefore, there must be a business being carried on. The partnership relates only to the business activities of a relationship.

Issue

Whether a partnership existed between Williams and Goudberg.

Decision

While the evidence suggested that Williams and Goudberg were acting in common they were not engaged in carrying on a business. Their activities were exploratory and preparatory to setting up a business, but did not constitute carrying on a business. Therefore, no partnership existed. Therefore, Goudberg was not liable.

Carrying on business or a single venture

11.14 In both cases discussed above, repetition and regularity of activities were factors taken into account in determining whether a business was being carried on. This traces back to *Smith v Anderson* (1880) 15 Ch D 247, in which Brett LJ suggested that 'carrying on business' required a succession of acts and did not apply to a relationship which was formed for the purpose of performing a single act.

However, a single venture may create a partnership. This is recognised by the Partnership Act 1958 (Vic) s 36. In *Canny Gabriel Castle Jackson Advertising v Volume Sales (Finance)* (1974) 131 CLR 321, the High Court held that a contract to finance one-off concert tours created a partnership because the parties went into the arrangement with a view of profit, agreed to share profits, agreed to make joint decisions and clearly intended to become joint owners of the benefits of the contract. In contrast see *Television Broadcasters Ltd v Ashton's Nominees Pty Ltd (No 1)* (1979) 22 SASR 552, where the court held that a joint venture set up to promote and exploit a circus tour did not create a partnership.

The expressions 'joint venture', 'syndicate' and 'consortium' have no precise meaning in law. They are merely words used to describe a contractual relationship. The important question is whether that relationship fits into the definition of a partnership. If it does, the law of partnership applies. If it does not, no special laws apply.[3]

Do not make the mistake of concluding that a partnership does not exist merely because the parties call it a joint venture or a syndicate or a consortium.

CARRYING ON A BUSINESS IN COMMON

The problem stated

11.15 For a partnership to exist, the business must be carried on in common. Consider the following situations: in each case, can it be said that a business is being carried on in common?

- A lends a sum of money to B, who operates a small business. In return, B promises to pay A 10 per cent of gross receipts.

3 Even though the business relationship is not a partnership, it may still be a fiduciary relationship. This means that the joint venturers would owe each other various fiduciary duties similar to a partnership: see the discussion by the High Court in *United Dominions Corp Ltd v Brian Pty Ltd* [1985] HCA 49.

- B wishes to start up a business. A agrees to supply $10,000 on condition that she receives 50 per cent of net profits for five years.
- A owns a rural property. B operates a mining business. A agrees to allow B to mine his property, provided B pays A a percentage of the profits realised on the sale of the minerals.
- A owns a rural property. He enters into an agreement with B, whereby B will work the property in return for A receiving a percentage of the profits. A takes no part in the management of the business (see *Harvey v Harvey* in **11.33**), where one of the issues was whether the arrangement between two families was a partnership to farm land or a mere licence to use land.

Mutuality of rights and obligations

11.16 Whether two or more persons are carrying on business in common is often a very difficult factual question. A and B will only be in partnership if it can be said that B is carrying on the business for and on behalf of both A and B. This is what carrying on business in common means. In other words, A must be carrying on the business as agent for himself or herself and B in order for a partnership to exist. It is not necessary that all partners take an equal interest in the management of the business. The management of many family businesses, which are operated as partnerships, is dominated by one person. This does not mean they are not partnerships. In most cases, it is clear that the parties always intended that one person would run the business for the benefit of everyone. The non-active partners are called dormant or silent partners. Although one partner may manage the partnership, it is the essence of a partnership that all partners have a right to a say in the management (see *Momentum Productions Pty Ltd v Lewarne* [2009] FCAFC 30). There must be a mutuality of rights and obligations.

Just because two parties share profits does not mean they are necessarily in partnership. For example, if the sharing of gross receipts or gross or net profits is merely a way of ensuring repayment of a loan, then A is carrying on business for himself or herself and not for B. B is merely a creditor. However, the sharing of profits will often be a strong indicator that a partnership exists, especially where it is combined with an agreement to share losses. If a mutuality of rights and obligations exists the parties cannot declare that a partnership does not exist.

Re Ruddock

(1879) 5 VLR 51 (Supreme Court of Victoria)

Facts

Ruddock carried on business in his own name. He owed a debt to Mrs Bear. Ruddock and Mrs Bear agreed that Mrs Bear would acquire a quarter-share in the business in return for discharging the debt. Mrs Bear was to be solely in control of her quarter-share and to receive 25 per cent of the net profits. It was agreed that Mrs Bear would not be responsible for any losses. Ruddock further agreed that he would not do anything to hold Mrs Bear out as a partner. In other respects, however, Ruddock agreed to treat Mrs Bear in the same way as a partner would be treated. There was no expiry time placed on the agreement.

Ruddock continued to manage the business. Mrs Bear took no part in the day-to-day management. When Ruddock wished to introduce a new person into the business he sought and obtained Mrs Bear's consent. When Ruddock became insolvent, Mrs Bear sought to claim her debt as a creditor. However, she could not do this if she was in partnership with Ruddock.

Issue

Was there a partnership between Ruddock and Bear?

Decision

The court held that Mrs Bear was a partner. Ruddock and Bear treated each other as partners and the relationship was determined by this mutuality of rights and not by the words used by the partners.

To be carrying on a business in common, the parties must be engaged in the same business.

Checker Taxicab Co Ltd v Stone

[1930] NZLR 169 (Supreme Court of New Zealand)

Facts

Checker owned a taxicab. The taxi was hired to a driver under the terms of an agreement between the driver and Checker. The agreement provided that the cab was hired each day to the driver who was required to return it at the end of the day in good condition. The driver agreed to pay a percentage of his takings by way of a hiring fee. The driver was to pay all his own running costs and had complete control over the use of the cab during the hiring period.

Issue

Whether Checker was responsible for the negligence of the driver. Checker would only be responsible if the driver was an employee or a partner.

Decision

The court held that the driver was neither an employee, nor a partner, of Checker. Checker and the driver were carrying on separate businesses.

Partnership Act 1958 (Vic) s 6 — the statutory rules

The Partnership Act contains guidelines for determining whether a bisiness is being carried on in common by two or more people.

11.17 Determining whether a business is being carried on in common is not always easy. To assist in distinguishing partnerships from other relationships, the Partnership Act 1958 (Vic) contains certain statutory rules: s 6. These rules are designed to assist in the interpretation of the main definition (s 5), not replace it:

> 6 *In determining whether a partnership does or does not exist regard shall be had to the following rules —*
>
> *(1) Joint tenancy tenancy in common joint property common property or part ownership does not of itself create a partnership as to anything so held or owned whether the tenants or owners do or do not share any profits made by the use thereof.*
>
> *(2) The sharing of gross returns does not of itself create a partnership whether the persons sharing such returns have or have not a joint or common right or interest in any property from which or from the use of which the returns are derived.*
>
> *(3) The receipt by a person of a share of the profits of a business is prima facie evidence that that person is a partner in the business, but the receipt of such a share or of a payment contingent on or varying with the profits of a business does not of itself make that person a partner in the business and in particular —*
>
> *(a) the receipt by a person of a debt or other liquidated amount by instalments or otherwise out of the accruing profits of a business does not of itself make that person a partner in the business or liable as such;*
>
> *(b) a contract for the remuneration of a servant or agent of a person engaged in a business by a share of the profits of the business does not of itself make the servant or agent a partner in the business or liable as such;*
>
> *(c) a person being the spouse, domestic partner or child of a deceased partner and receiving by way of annuity a portion of the profits made in the business in which the deceased person was a partner is not by reason only of such receipt a partner in the business or liable as such;*
>
> *(d) the advance of money by way of loan to a person engaged or about to engage in any business on a contract with that person that the lender shall receive a rate of interest varying with the profits or shall receive a share of the profits arising from carrying on the business does not of itself make the lender a partner with the person or persons carrying on the business or liable as such: Provided that the contract is in writing and signed by or on behalf of all the parties thereto; (e) a person receiving by way of annuity or otherwise a portion of the profits of a business in consideration of the sale by that person*

of the goodwill of the business is not by reason only of such receipt a partner in the business or liable as such.

Under s 6(1), co-ownership of property does not by itself indicate that the co-owners are in partnership. Likewise, under s 6(2) the sharing of gross returns (turnover) does not by itself indicate a partnership. On the other hand, the sharing of the profits of a business does point to the existence of a partnership, but does not prove it: s 6(3). A person may share in the profits of a business without being a partner. Subsections 6(3)(a)–(e) give five examples where this may occur.

Partnership Act 1958 (Vic) s 6(3)(a)

11.18 This subsection recognises that creditors will often secure the repayment of a debt by agreeing to take a proportion of the annual profits until the debt is repaid. In doing so, the creditor may require powers of control and inspection.

Cox v Hickman

(1860) 11 ER 431 (House of Lords)

Facts

Cox and others were creditors of a trading partnership which got into financial difficulties. The creditors agreed with the partners that the business would be held by the creditors until the debts were paid off at which time the business would revert to the sole ownership of the partners. Until the debts were paid off in full all profits from the partnership business were to be shared by the creditors.

Issue

Whether Cox and the other creditors were partners in the debtor's business.

Decision

The court held that they were not partners even though they had a right to share in the profits. Section 6(3)(a) was based on the decision in this case.

Partnership Act 1958 (Vic) s 6(3)(b)

11.19 This subsection reflects the common situation that employees are often offered a share of the profits as an incentive as part of their overall remuneration package. This does not make the employee a partner. Agents, especially management agents, often receive a commission based on profits as remuneration for providing the management services. This does not in itself create a partnership.

For example, Alan is the manager of the country office of an accounting firm. As an incentive to get Alan to go to the country office, he is paid a base salary plus a share of the net profits generated by that office. The evidence does not establish that Alan is a partner.

Plummer v Thomas

[2002] NSWSC 1185 (Supreme Court of New South Wales)

Facts

Plummer and Thomas entered into an arrangement which Plummer claimed amounted to a partnership. The joint enterprise involved opening up a workshop for the manufacture and sale of ceramics and other craft items. Plummer was a ceramicist. Thomas was a farmer who wanted to set up a business which would involve his four adult children.

According to the arrangement, profits were to be shared 50/50. Otherwise Thomas arranged the lease in his name and paid the bond, registered the business name in his name, opened the bank accounts in his own name, paid all the debts, decided who would be hired and fired, and decided who the accountant would be and what form the financial records would take. Plummer brought a number of specialty items to the workshop. However, when the relationship broke down she claimed these back and Thomas agreed.

Issue

Whether a partnership existed between Plummer and Thomas. Plummer argued that there was a partnership. Thomas denied this.

Decision

Despite the fact that there was an agreement to share profits, the rest of the evidence did not support the existence of a partnership. In particular, there was no suggestion that Plummer had agreed to share losses.

Partnership Act 1958 (Vic) s 6(3)(c)

11.20 This subsection covers the payment of an annuity to a widow, widower or child of a deceased partner. An annuity is an annual payment. For example, Alan, Bill and Cecil are partners in a trading firm. They have a partnership agreement which states, inter alia, that on the death of any partner, the widow of such partner shall be entitled to an annuity based on that year's profit. Cecil dies and his widow is paid a lump sum out of the profits. The widow is not a partner of Alan and Bill.

Partnership Act 1958 (Vic) s 6(3)(d)

11.21 This subsection is designed to protect the bona fide creditor who finances a project in return for a share of the profits. For example, sharing in the profits may be the only way that the financier can ensure repayment of the moneys lent. If repayment of the loan is to be made out of profits, the creditor will require certain powers, such as the right to inspect the debtor's books of account and the

Bona fide is a Latin phrase meaning 'good faith'.

right to sell off the debtor's assets if the profits are insufficient. In such circumstances, the parties never intended a mutuality of rights and obligations. The creditor and the debtor would not be regarded as partners. However, if the financier seeks greater powers and rewards, he or she may become a partner.

Re Megevand; Ex parte Delhasse

(1878) 7 Ch D 511 (Chancery Division)

Facts

Megevand and another intended to set up a business in partnership. Delhasse agreed to lend them £10,000. There was a written agreement between Megevand, Delhasse and the other party. The agreement expressly stated that Delhasse was a creditor and not a partner. The agreement also stated that Delhasse had a right to share in the profits of the business to a fixed percentage, that Delhasse had a right to inspect the books of account and that, in certain circumstances, he was to have the right to dissolve the partnership and conduct the winding-up. All these conditions are consistent with Delhasse being a creditor and not a partner. However, the agreement also stated that the 'loan' was not to be repayable until after the partnership was dissolved. Moreover, the evidence indicated that Delhasse's £10,000 was the only capital of the partnership.

Issue

Whether Delhasse was a partner or a creditor.

Decision

The court held that he was a partner. The terms of the agreement went beyond the requirements of a standard loan. The fact that the 'loan' was not to be repaid until the partnership was dissolved was more consistent with a partner's capital contribution rather than a loan.

See also *Canny Gabriel Castle Jackson Advertising v Volume Sales (Finance)* in **11.14**. Of course, in *Canny Gabriel*, there were other facts which indicated that a partnership existed. Creditors must be careful when drawing up the terms of the loan agreement.

Partnership Act 1958 (Vic) s 6(3)(e)

11.22 This subsection represents a fairly common way of securing payment for the sale of a business. Suppose that Alwyn owns a manufacturing business and he sells it to Bernie for $100,000. The purchase price is to be paid as follows:

- $50,000 on settlement; and
- the balance to be paid by paying to Alwyn 30 per cent of net annual profits of the business until such time as the balance is cleared.

This does not make Alwyn a partner of Bernie.

CARRYING ON BUSINESS IN COMMON WITH A VIEW OF PROFIT

11.23 A partnership must aim to make a profit. This does not mean that it cannot make a loss. In fact, a partnership might never make a profit. The important thing is that making a profit was its original purpose. This part of the definition emphasises that a partnership is a commercial relationship and does not include non-profit associations and clubs.

PARTNERSHIPS ARE CONTRACTUAL RELATIONSHIPS

11.24 Although the definition of a partnership does not refer to a contract, it is clear that the relationship is contractual. The agreement may be wholly in writing, partly in writing or wholly oral. It will contain express terms and, in appropriate circumstances, implied terms. Mostly, these implied terms will come from the Partnership Act 1958 (Vic).

Contracting parties cannot avoid being partners just by agreeing not to be partners. For example, a written agreement between two persons to operate a business jointly may contain a clause stating: 'Nothing in this agreement shall be taken as creating a partnership'. Such a clause would be largely ignored by a court in determining whether a partnership existed (see *Re Ruddock* in **11.16**; *Re Megevand; Ex parte Delhasse* in **11.21**). By the same token, describing a person as a partner does not necessarily make him or her a partner.

A court will decide whether a partnership exists based on the facts of the relationship, rather than relying on how the parties describe their relationship.

Stekel v Ellice

[1973] 1 All ER 465 (Chancery Division)

Facts

Both the plaintiff and the defendant were chartered accountants. Stekel was described as a 'salaried partner'. According to the agreement between Stekel and Ellice, Stekel was to receive a salary and had no interest in or right to the capital of the 'partnership'. All profits belonged to Ellice and all losses were his responsibility.

Issue

Whether Steckel was a partner or just an employee.

Decision

Having said that calling a person a 'salaried partner' does not necessarily make him a partner, Megarry J then decided that in all the circumstances of the case Stekel was a partner and not just an employee. (Megarry J commented that with regard to third parties, Stekel was certainly a partner, if not actually, then by holding out (see **11.49**).)

Rather than relying solely on the parties' stated intention, the court will look at the parties' actions to determine whether a partnership existed, and who the partners were. This is illustrated in *Deputy Commissioner v Tuza* (1995) 31 SATR 261, where three brothers ran a business in partnership. Although the parties stated they did not intend their father to be a partner, the father had use of a partnership car and access to the firm's bank account, he received a share of the firm's income and was referred to as a partner on insurance and other documents. These facts led the court to hold he was a partner.

Rules governing partners' relationship with each other

11.25 The rights and liabilities of the partners with respect to each other are determined by three factors:

- the contract creating the partnership;
- the Partnership Act 1958 (Vic); and
- the law relating to fiduciary relationships. A fiduciary relationship exists between partners.

THE CONTRACT BETWEEN THE PARTNERS

11.26 The contract is supreme in determining the rights and liabilities of the partners between themselves: Partnership Act 1958 (Vic) s 23. The partnership contract is subject to all the normal rules of contract. Consequently, the contract may be totally in writing, partly in writing or it may be inferred from the conduct of the parties. The terms of the contract may be partially express and partially implied. There are certain terms that are normally implied into a trading partnership agreement provided there is no express term to the contrary. Such terms include:

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- a partner has the right to sell the firm's trading stock;
- a partner has the right to buy stock of a kind usually used or traded by the business;
- a partner has the right to receive payments owing to the partnership and to give a valid discharge;
- a partner has the right to make, accept and issue cheques and other negotiable instruments; and
- a partner has the right to pledge the firm's credit for the purchase of stock.

THE PARTNERSHIP ACT

11.27 The Partnership Act 1958 (Vic) contains rules that will apply to the partnership if the partners have not agreed amongst themselves. Matters may arise during the course of a partnership that the partners may not have considered at the time of forming the partnership. For example:

- How are partnership decisions to be made — by majority vote or by unanimous vote? Is there a difference between decisions regarding ordinary or everyday matters and decisions affecting the nature of the partnership business?

- Is a partner entitled to interest on the capital subscribed by her or him? For instance, it is possible that the partners will contribute capital in varying amounts. It is possible that not all partners will contribute capital.
- How are profits, losses and capital to be shared?
- If a partner makes a payment out of his or her own pocket, does the partnership have to indemnify him or her?
- Can a partner claim wages? This could be important where there is a silent partner.
- Can one partner be excluded from management by the other partners?
- Can a majority of partners introduce (or expel) a partner?

In order to answer these questions, it is necessary to look at the agreement between the partners. If, however, the partners have no agreement on these matters, then ss 28 and 29 apply:

> 28 *The interest of partners in the partnership property and their rights and duties in relation to the partnership shall be determined subject to any agreement express or implied between the partners by the following rules:*
>
> (1) *All the partners are entitled to share equally in the capital and profits of the business and must contribute equally towards the losses whether of capital or otherwise sustained by the firm.*
>
> (2) *The firm must indemnify every partner in respect of payments made and personal liabilities incurred by him —*
>
> (a) *in the ordinary and proper conduct of the business of the firm; or*
>
> (b) *in or about anything necessarily done for the preservation of the business or property of the firm.*
>
> (3) *A partner making for the purpose of the partnership any actual payment or advance beyond the amount of capital which he has agreed to subscribe is entitled to interest at the rate of seven per centum per annum from the date of the payment or advance.*
>
> (4) *A partner is not entitled before the ascertainment of profits to interest on the capital subscribed by him.*
>
> (5) *Every partner may take part in the management of the partnership business.*
>
> (6) *No partner shall be entitled to remuneration for acting in the partnership business.*
>
> (7) *No person may be introduced as a partner without the consent of all existing partners.*
>
> (8) *Any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the partners but no change may be made in the nature of the partnership business without the consent of all existing partners.*

(9) The partnership books are to be kept at the place of business of the partnership (or the principal place if there is more than one) and every partner may when he thinks fit have access to and inspect and copy any of them.

29 No majority of the partners can expel any partner unless a power to do so has been conferred by express agreement between the partners.

PARTNERS' DUTIES OF GOOD FAITH

11.28 Because the relationship between partners is one of trust and good faith, partners owe fiduciary duties to each other. Fiduciary duties were previously discussed in relation to principal and agent (see **10.44–10.48**). The fiduciary duties owed by partners are similar. These duties have been expressly incorporated into the Partnership Act 1958 (Vic) by ss 32, 33 and 34.

Two cases (one at the beginning of a partnership and one at the end) demonstrate how a person under a fiduciary duty cannot act in the same manner as a normal business person.

Chan v Zacharia

(1984) 154 CLR 178 (High Court)

Facts

Chan and Zacharia were two doctors who decided to dissolve their partnership. Before the partnership had been wound up Chan (without Zacharia's knowledge) renewed the lease so that he could continue to practise medicine from the same address. Of course, this excluded Zacharia. Zacharia argued that Chan could not keep the lease for himself because at the time the lease was renewed Zacharia and Chan were partners and therefore owed fiduciary duties to each other.

Issue

Whether Chan owed fiduciary duties regarding the lease, or whether he could treat the lease as his own property.

Decision

The High Court held that Chan held the lease on trust for both himself and Zacharia. This meant that Chan owed fiduciary duties to his partner in respect of the lease and would have to account to Zacharia for the benefit Chan was receiving from the lease renewal.

If no partnership existed, or if the partnership had been completely wound up, Chan would have been permitted to act in his own interests even if that disadvantaged Zacharia.

United Dominions Corp Ltd v Brian Pty Ltd

[1985] HCA 49 (High Court)

Facts

Security Projects Ltd (SPL), a property owner, UDC (a finance company) and Brian (an investor) entered into a partnership agreement to develop certain land owned by SPL as a shopping centre. Before the partnership actually commenced, but after detailed negotiations had been held, SPL gave a mortgage over the land to UDC to secure moneys that UDC had lent to SPL not only for the development of the shopping centre land but also other developments which Brian was not involved in. Brian knew nothing about the terms of the mortgage. Eventually the shopping centre was built and sold at a profit. UDC, however, kept the proceeds to pay off other debts that it was owed by SPL and to which it claimed to be entitled under the terms of the mortgage. Brian objected that the terms of the mortgage amounted to a breach of fiduciary duty and were unenforceable against Brian.

Issue

Whether UDC owed a fiduciary duty to Brian.

Decision

The High Court held that in the circumstances UDC owed a fiduciary duty to Brian. Although the partnership had not yet commenced, the parties had moved well beyond the stage of preliminary negotiations. UDC had breached that duty by taking a mortgage that advantaged itself to the disadvantage of Brian without Brian's consent.

In the absence of a fiduciary obligation, UDC would not have been obliged to obtain Brian's consent before entering into such a security arrangement with SPL.

Duty to make disclosure

11.29 Section 32 sets out the broad duty owed by all partners to make full and frank disclosure of all matters relating to the partnership. Section 32 provides:

32 Partners are bound to render true accounts and full information of all things affecting the partnership to any partner or his legal representative.

Each partner is entitled to insist upon a full disclosure being made and, failing that, has a right to demand that partnership accounts be taken, if necessary, by court order. For example, A and B are in partnership in a small business. A leaves the running of the partnership to B. B refuses to provide A with a copy of the accounts or with current details of the business. B also refuses to give A access to the relevant documents.

A is concerned that B is trading beyond the limits of their agreement. A has a right to seek a court order for an account to be taken and for access to be given.

Duty to account for benefits derived from dealings with partnership

11.30 Section 33 prohibits a partner from having dealings with the partnership without disclosing the nature of those dealings to the other partners. For example, A and B are in partnership as builders. The partnership enters into a lucrative contract with Developers Ltd to renovate certain properties owned by Developers Ltd. Unbeknown to B, A is a major shareholder in and director of Developers Ltd:

> *33 (1) Every partner must account to the firm for any benefit derived by him without the consent of the other partners from any transaction concerning the partnership or from any use by him of the partnership property name or business connection.*
>
> *(2) This section applies also to transactions undertaken after a partnership has been dissolved by the death of a partner and before the affairs thereof have been completely wound up either by any surviving partner or by the representatives of the deceased partner.*

Section 33 makes it clear that A is in breach of his fiduciary duty and that any profits he makes as a result of the contract belong to the partnership, even where the contract is highly beneficial to the partnership.

Duty to account for use of partnership assets

11.31 Section 33 also prohibits a partner from deriving a benefit from the partnership name, property or business connection without the consent of the other partners. That is, a partner must not keep a benefit which belongs to the partnership. For example, imagine that A and B are partners in a firm of architects. In the course of the business, A learns of a government tender to design a new office block for one of the government departments. Without disclosing this to B, A submits a tender in his or her own name. If A wins the tender, s 33 will apply. Any benefits obtained by A belong to the firm.

Duty not to compete with partnership

11.32 Section 34 sets out the fiduciary duty not to compete with the partnership:

> *34 If a partner without the consent of the other partners carries on any business of the same nature as and competing with that of the firm he must account for and pay over to the firm all profits made by him in that business.*

For example, imagine that A and B are partners in a firm of architects. In the course of business, the partnership submits a tender for the design of a new house. Without telling A, B also submits a tender in another name. Because of B's knowledge of the partnership, B is able to undercut the partnership and so win the tender. B has breached his or her fiduciary duty under s 34. Any benefit obtained by B belongs to the firm.

Partnership property

WHAT IS PARTNERSHIP PROPERTY?

11.33 Imagine that Mei Ling and George decided to open up a florist. Mei Ling had certain shop fittings left over from her previous business, which were used in the florist shop. Mei Ling also supplied her laptop computer, which remained on the business premises and was used only for business purposes. George had a van which was used for making deliveries. Mei Ling and George's business name was painted on the side of the van. George also used the van for his private purposes. He owned no other vehicle. Mei Ling and George had a fight and dissolved their partnership. At the time of dissolution the business had $2,000 worth of stock. No debts were owing. The sole question to be resolved was who owned the various items of property.

> As every partner has rights (and responsibilities) in respect of the partnership property, it can be important to establish which assets are partnership property. This will depend upon the facts involved.

If any property is partnership property, then it is held for the partnership, and on dissolution of the partnership it must be apportioned according to the agreement between the partners; or if no agreement exists, according to the Partnership Act 1958 (Vic). Thus, if George's van has become partnership property, George cannot just claim it as his own. He must account to Mei Ling for her share of its value.

According to s 24, partnership property includes:

- items brought into the partnership property as partnership property;
- items acquired on account of the firm; and
- items acquired for the purposes of and in the course of the partnership business.

Items bought with partnership money are deemed to have been bought on account of the firm unless a contrary intention appears: s 25. The stock owned by Mei Ling and George is clearly partnership property. It was acquired either on account of the firm or for the purposes of the firm. The shop fittings, the computer and the van will be decided on the basis of the first element. Were they brought into the firm as partnership property? Whether particular items brought into the partnership have become partnership property depends on the parties' intention as evidenced by their actions. Did they intend the items to be partnership property?

Harvey v Harvey

(1970) 120 CLR 529 (High Court)

Facts

H H Harvey (HH) was the owner of certain farming land in Tasmania. Because of ill health, he had considered selling his property. However, he decided against selling when his brother H L Harvey (HL) approached him and suggested that the farm could be worked by HL and HL's sons. The parties agreed that the arrangement had mutually beneficial aspects. It would enable HL's sons to gain experience of pastoral management and it would preserve the property so that it would be available for HH's son who was then aged six. The arrangement was oral.

HL and his sons would contribute skill and labour but no capital. HH was to provide certain stock and implements, but was not to take part in the day-to-day working of the business. Expenses, including the cost of improvements, and profits were to be shared equally. Both parties were aware that substantial improvements had to be made to the property if it was to maximise returns to the partnership. Over time, these improvements were made to the farm and included substantial areas being cleared and cultivated, fences being erected, dams constructed and bores sunk. The improvements significantly increased the value of the land. There was no express agreement as to whether the land would be a partnership asset and it was not treated as such in the books of the partnership. There was no agreement as to how the improvements were to be dealt with in the partnership accounts or otherwise between the partners on the dissolution of the partnership.

The partnership ran for 20 years. In 1967, it was terminated.

Issues

There were three related issues:

1. Did a partnership exist?
2. If a partnership existed, had the land become partnership property?
3. If a partnership existed and the land had not become partnership property, should the value of the improvements be taken into account in assessing each partner's interest in the assets?

Decision

On appeal to the High Court it was held by Menzies and Walsh JJ (Barwick CJ dissenting) that:

1 The arrangement was clearly intended to be a partnership.

2. The land did not become an asset of the partnership. The evidence supported the view that the intention of the parties had been to preserve the land for HH's son. If the land had become partnership property this objective would have been defeated because all partners would have had a beneficial interest in the land. If the property had become partnership property, the land would have to be sold and the proceeds divided between the partners.

3. The additional value of the pastoral property attributable to the improvements made to it in the course of the partnership business should not be taken into account in the final accounts of the partnership. There is no general principle that, in the absence of agreement, a partner whose property has been increased in value by the expenditure of partnership money is bound to allow the other partners to share in the increased value. It was further held by the whole court that the final accounts should be adjusted to the extent that the owner had not been charged in the partnership accounts with the cost of making the improvements and the owner's account should be debited with half the expenses, but that in the making of the adjustments no allowance should be made for the labour contributed by the firm.

The decision meant that H H Harvey not only kept the land but also was under no obligation to pay the other partners any compensation for the improvements that had been made.

WHAT RIGHT DOES EACH PARTNER HAVE TO THE PARTNERSHIP PROPERTY?

11.34 This is a matter of considerable complexity. It was described by Deane J in the Full Federal Court decision in *Federal Commissioner of Taxation v Everett* (1978) 21 ALR 625 (at 635–6):

> *In the absence of agreement to the contrary, a member of a partnership has no definite or separate share or interest in any particular partnership receipt or other item of partnership property. He has an undivided interest in the totality of partnership assets … and is entitled to insist that they be applied for legitimate purposes of the partnership. … [A] partner's separate interest in relation to partnership assets is to share, either equally or in such other proportion as the partners may agree, in any surplus remaining, upon a dissolution, after the realization of the assets and payment of the debts and liabilities of the partnership.*

Thus, although a partner has no title to specific property owned by the partnership, he or she has a beneficial interest in each and every asset of the partnership. This was explained by the High Court in *Canny Gabriel Castle Jackson Advertising v Volume Sales (Finance) Pty Ltd* (at 327) (see **11.14**):

> *The partner's share in the partnership is not a title to specific property but a right to his proportion of the surplus after the realization of assets and the payment of debts and liabilities. However, it has always been accepted that a partner has an interest in every asset of the partnership and this interest has been universally described as a 'beneficial interest' … The assets of a partnership, individually and collectively, are described as partnership property … The description acknowledges that they belong to the partnership, that is, to the members of the partnership.*

Liability of partners to third parties

11.35 As a partnership is not a separate legal entity, individual partners are responsible for the debts and liabilities of the partnership. The relationship between partners and third parties will be discussed under the following headings:

- joint liability for debts and obligations;
- joint and several liability for wrongful acts; and
- joint and several liability for misapplication of money or property.

First, however, it is necessary to briefly mention the concept of limited partnerships.

LIMITED PARTNERSHIPS

11.36 Under the Partnership Act 1958 (Vic), the only way for individual partners to limit their potential liability to third parties is for the partnership to be registered with the Australian Securities and Investments Commission as a limited partnership.[4] In a limited partnership, one or more of the partners can have his or her liability for partnership matters limited to a fixed amount (including nil). Limited partners cannot take part in the management of the firm, or they lose their limited liability. Limited partners also lack the power to bind the partnership. Not all partners in a firm can be limited partners — at least one partner must bear full liability for the partnership debts and liabilities.

Limited partnerships have not been very popular. Most business owners wishing to obtain limited liability for their business's obligations form a limited company instead. However, some businesses, such as accounting and legal firms, have traditionally been barred from incorporating, and some of these firms have registered as limited partnerships. For example, Legal Eagles is a law firm with three equity (profit-sharing) partners and one salaried partner. Legal Eagles could remain as a normal partnership, in which case all four partners would be jointly liable for all partnership liabilities. Alternatively, the firm could register as a limited partnership (Legal Eagles (Limited)), with the salaried partner listed as a limited partner having no liability for firm debts, and the three equity partners listed as the general partners (full liability). This would give the salaried partner the status of a partner, without the normal liability.

Limited partners need to be careful not to hold themselves out as normal partners to credit providers of the firm, or they may still be liable for those debts (see **11.49**).

JOINT LIABILITY FOR A FIRM'S DEBTS AND OBLIGATIONS

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11.37 Liability of all partners for partnership debts is described by s 13:

> 13 *Every partner in a firm is liable jointly with the other partners for all debts and obligations of the firm incurred while he is a partner ...*

What does joint liability mean?

11.38 The easiest way to understand joint liability is to look at an example. Imagine A and B are partners in a building firm. The partnership has borrowed $250,000 from the bank to build a number of units on land which the partnership owns. The partnership is now unable to repay the loan because the property market has collapsed and the units cannot be sold except at a loss. A owns her own house and has significant

4 See Partnership Act 1958 (Vic) Pt 3. Similar provisions exist in New South Wales, Queensland, Western Australia, South Australia and Tasmania.

assets. B has a few assets, including a car, but his house is fully mortgaged to another bank. When the partnership fails to repay the loan, the bank sues A and B jointly as partners. The court gives judgment against A and B. If A and B fail to pay the judgment debt, the bank will first sell the units and recover $150,000. The obvious second move for the bank is to pursue A because she has the money and assets. The bank is not required to recover $50,000 from A and $50,000 from B. It may seek the whole $100,000 from one partner. This is because each partner is jointly liable for the partnership debts: s 13. A is required to pay to the bank $100,000. If B does not pay the bank anything, A can then pursue B for $50,000, provided that the partnership agreement requires losses to be borne equally. If the partnership agreement requires A to bear 75 per cent of losses, A can only recover $25,000 from B. The bank's position, however, remains the same.

Joint liability for debts means that all debtors are used together, and the resulting court order makes them all liable for the whole amount of the debt.

Joint liability is the major disadvantage of partnerships. Contrast this with the position of companies (see **Chapter 12**) where the shareholders cannot be held liable to pay for the company's debts.

What are the firm's debts and obligations?

11.39 A and B run a building firm. A orders a large quantity of timber on credit from the timber mill without telling B. There is no written or unwritten agreement as to who buys the supplies or in what quantities. Is the debt owing to the timber mill a debt of the partnership, or is it A's personal debt? To answer this question, it is necessary to apply the Partnership Act 1958 (Vic) s 9:

> 9. *Every partner is an agent of the firm and his other partners for the purpose of the business of the partnership, and the acts of every partner who does any act for carrying on in the usual way business of the kind carried on by the firm of which he is a member bind the firm and his partners, unless the partner so acting has in fact no authority to act for the firm in the particular matter and the person with whom he is dealing either knows that he has no authority or does not know or believe him to be a partner.*

Just as a commercial agent has the power to bind his or her principal, so does a partner have the power to bind his or her partners. The critical words are *in the usual way business of the kind carried on by the firm*. This means that a partner will bind his or her partners where he or she transacts a deal which is within the scope of:

- the kind of business carried on by the partnership; *and*
- the transaction is within the usual way that partnerships of that kind conduct business; *unless*
- the partner had no authority to so act *and* the third party knew this or did not know or believe that the partner was a partner.

Actual and ostensible authority (also known as apparent authority) are concepts explained in Chapter 10.

To return to the problem posed at the beginning of this section: B is liable because a partner in a building firm would be expected to have authority to purchase reasonable quantities of building supplies. (The position could be different if the quantities are unusually large.) Therefore, the transaction would be a usual type of transaction for the kind of business carried on by A and B (that is, a building business). B is liable jointly with A for the debt under ss 9 and 13.

Another way of expressing s 9 is to say that a partnership will be bound by the acts of one of its partners where that partner is acting within their actual or ostensible authority: *Construction Engineering (Aust) Pty Ltd v Hexyl Pty Ltd* in **11.42**.

Commercial partner's normal authority

11.40 If a partnership is of a general commercial nature, it would normally be within the scope of such a partnership for one partner to:

- buy stock on credit;
- sell stock and other general partnership property;
- borrow money;
- incur debts in the partnership name;
- pay partnership debts;
- receive moneys owing to the partnership;
- sign cheques; and
- hire employees.

The issue in the next case was whether it was within the scope of a partner's normal authority to lease premises on behalf of a retail partnership.

Young v Lamb

[2001] NSWCA 225 (New South Wales Court of Appeal)

Facts

Mr and Mrs Lamb and Mr and Mrs Newell conducted a partnership under the name Moruya Furniture and Bedding. The business was operated from leased premises which were owned by Young. The partnership had operated from the same premises since 1989. Mrs Newell did most of the lease negotiations. She always paid the rent to Young's agent. In 1995 Mrs Newell negotiated a new three-year lease with an option for a further lease. In 1998 Mrs Newell sent a letter to Young's agent stating that the partnership intended to exercise the option. She had no actual authority from the other partners to do this. The partners argued that the partnership was not bound by Mrs Newell's letter.

Issue

Whether Mrs Newell's action fell within the meaning of s 5 of the Partnership Act 1892 (NSW) (equivalent to s 9 of the Victorian Partnership Act).

Decision

Whether one partner's act can be said to be done in the usual course of carrying on a particular business depends on the nature of the business, the duration of the partnership and the practices normally adopted by persons engaged in carrying on businesses of that type. Leasing premises was a necessary act for carrying on the partnership business. The premises had been used by the business since 1989. Mrs Newell had negotiated the lease. Mrs Newell was the contact between the partnership and Young's agent. The letter in 1998 purported to speak for the partnership. In all the circumstances, therefore, Mrs Newell's act in sending the letter taking up the option was an act 'relating to the business of the firm, done in the firm's name, revealing an intention to be bound'. The partnership was bound by Mrs Newell's act.

On the other hand, borrowing money has been held not to be within the normal scope of a partner in a stock and station agency (*Commercial Bank v Lakeman* (1890) 7 WN (NSW) 40) and a moneylending business (*Mandelberg v Adams* (1930) 31 SR (NSW) 50). Even if borrowing is within the normal scope of a partnership, the particular transaction in question must also be the usual way of borrowing in that kind of business.

Goldberg v Jenkins

(1889) 15 VLR 36 (Supreme Court of Victoria)

Facts

Jenkins, a partner in a business, borrowed money in the partnership name and supposedly on behalf of the partnership at an exorbitant rate of interest (60 per cent). In fact, the borrowings were for Jenkins himself. His partner was unaware of Jenkins' activities. Jenkins defaulted in payment and the lender sued the partnership. Jenkins' partner denied that the debt was a partnership debt.

Issue

Whether the loan taken out by Jenkins was binding on all partners in the firm.

Decision

The court held that borrowing money fell within the normal scope of conducting a partnership of the kind in question. However, borrowing at exorbitant rates was not within the usual way and, therefore, the other partners were not bound. Hodge J said (at 38–9):

> *A person conducting his transactions in the ordinary way in the year 1888 would have been able to obtain all the advances which he could reasonably require at rates varying from 6 to 10 per cent; but in this case ... the interest was something over 60 per cent and the person lending money on those terms knows that the person borrowing is not conducting an ordinary business transaction, and that, therefore, the partner borrowing would have no power to bind his co-partners.*

Seiwa Australia Pty Ltd v Beard

[2009] NSWCA 240 (New South Wales Court of Appeal)

Facts

Seeto was a partner in an accounting firm that performed audit and insolvency services. The partners and other employees of this firm also provided other accounting services to clients, but using a separate company structure to run that side of the accounting practice. Seeto's clients included a young businessman, and in the course of their frequent accounting-related meetings Seeto persuaded the client (and the client's companies) to hand over sums totalling US$4.6 million. These funds were to be deposited in a special off-shore 'custodian account' controlled by Seeto (supposedly secured by the firm's insurance policy), where they would become part of an elaborate overseas profit-earning scheme.

When the promised 50 per cent returns were not forthcoming, the clients sought return of their investment. The money had disappeared (withdrawn by a business associate of Seeto), and Seeto was unable to make good the clients' loss. The clients sued Seeto's partners in the accounting firm.

The court had to decide whether the partnership was bound by Seeto's actions. This required interpretation and application of Partnership Act 1892 (NSW) s 5 (equivalent to s 9 of the Victorian Partnership Act). The clients had believed Seeto was a partner and they had been unaware of his lack of actual authority to solicit client investments for investment schemes. However, the firm was only bound by Seeto's actions if those actions fell within 'carrying on in the usual way business of the kind carried on by the firm'.

Issue

Whether Seeto's actions bound the whole firm.

Decision

The clients were unaware of the internal division within the accountants' business (the partnership and the company). Given the circumstances and the correspondence involved, Seeto's action would have appeared to have been conducted in his role as partner and on behalf of the accounting partnership. The court found that operating a trust account could have fallen within the kind of business that accounting firms carried on at that time, and receiving clients' moneys to hold in such a trust account as a temporary measure could have been within the usual way accounting firms might conduct such business. However, the account here was not called a trust account, and nor were the clients' funds to be deposited in the account temporarily. The court held that Seeto's actions — operating the 'custodian account' and depositing of clients' funds into that account as an integral part of an outlandish investment scheme — were not the usual way in which chartered accountants carried on their business. Hence, the partnership was not bound by Seeto's actions.

Ratification

11.41 Even if a partner acts beyond actual and ostensible authority, the partnership may still become liable if the other partners ratify the act. The principle is precisely the same as the agency principle of ratification (see **10.34**).

Ratification normally involves retrospective approval or adoption of an act.

Re Oppenheimer

(1872) 3 VR (I, E & M) 20 (Supreme Court of Victoria)

Facts

The partnership was described as a firm of importers. Goods were purchased in Paris by one partner, transported to Australia and sold in Melbourne by another partner. Contrary to agreement, the Melbourne partner bought stock in Melbourne but was unable to pay for it. The Parisian partner visited Melbourne for the purpose of winding up the partnership. He examined all the transactions, took possession of the stock bought by the Melbourne partner and arranged for its sale. He paid some of the debts incurred by the Melbourne partner. Others, however, he refused to pay, arguing that he had no liability to do so. The unpaid creditors argued that he was liable.

Issue

Whether the contracts made by the Melbourne partner, to purchase stock in Melbourne, were binding on the whole firm.

Decision

The court held that the buying of stock in Melbourne instead of Paris was not within the usual way of doing business and, therefore, the Parisian partner would not normally be bound. However, the Parisian partner was found liable because, on the evidence, he had ratified his co-partner's actions.

Ratification may be inferred from a co-partner's subsequent conduct. However, such subsequent conduct is only relevant if the co-partner had knowledge of the unauthorised transaction — without such knowledge, a co-partner's actions cannot amount to retrospective sanction or approval of the transaction: *Lederberger v Mediterranean Olives Financial Pty Ltd* [2012] VSCA 262.

The proviso to s 9

11.42 The proviso to s 9 states that the firm will not be bound by the actions of a partner where:

(a) the partner had no authority to act; *and*

(b) (i) the third party knew the co-partner had no authority; or

(ii) the third party did not know or believe that the partner was in fact a partner.

Construction Engineering (Aust) Pty Ltd v Hexyl Pty Ltd

[1985] HCA 13 (High Court)

Facts

Two companies (Tambel Pty Ltd and Hexyl Pty Ltd) conducted a business of land development in partnership. Tambel acquired some land in its own name and engaged Construction Engineering, a construction firm, to build home units on it. The contract between Tambel and Construction Engineering was a standard building contract and made no mention of Tambel's partner Hexyl. In fact, Construction Engineering did not know of the existence of Hexyl, nor did it believe that Tambel was acting as anything but a principal. Some of the terms of the construction contract were inconsistent with the idea of Tambel acting as agent for some undisclosed party. A dispute arose and the parties went to arbitration.

Construction Engineering tried to join Hexyl as a party to the dispute, claiming that Hexyl was bound by the construction contract by virtue of its relationship with Tambel. Hexyl denied it was bound.

Issue

Whether the construction contract created by Tambel, was also binding on Hexyl due to the fact that Tambel and Hexyl were partners.

Decision

The High Court found that Tambel did not have actual authority to make contracts on behalf of the partnership. Neither did Tambel have ostensible authority because Construction Engineering was unaware of Hexyl's existence. In reaching its decision, the High Court commented that s 9 of the Partnership Act effectively states the common law notion of actual and ostensible authority.

Imagine that A and B are in partnership. B takes no part in the day-to-day management. In other words, B is a silent partner. The partnership is conducted in the name of A alone. In fact, there is no indication that it is a partnership. A and B have agreed that A will not buy stock from a particular third party. However, A proceeds to buy stock from the third party on credit. Is B bound by the debt to the third party? A's act was within the scope of the partnership. There is no evidence that it was in any way unusual. Therefore, B would be bound unless the proviso to s 9 applies. A did not have authority to make the transaction. If the third party did not know that A was involved in a partnership (that is, the third party thought that A was a sole trader), B would not be bound. Would the result be different if the third party thought A was in partnership with X, but knew nothing about B?

Mercantile Credit Co Ltd v Garrod

[1962] 3 All ER 1103 (Queen's Bench Division)

Facts

G and P operated a garage as a partnership. P managed the business. G was a silent partner. The agreed business of the firm was to repair vehicles and lease out lock-up garage space. G and P expressly agreed that P would not buy and sell vehicles as part of the business. Contrary to this express agreement P fraudulently sold a vehicle to MC. MC's cheque in payment was made out to the partnership. When the fraud was discovered MC sued G and P to get its money back. G denied liability.

Issue

Whether G was liable for the car sale contract created by his partner, P?

Decision

Although P had no authority to sell cars, the firm could still be liable if P was acting within the scope of his authority (in Victoria, this would be within s 9 of the Partnership Act). This depended on whether selling cars was a normal function of this type of business. The evidence suggested that it was quite normal for a garage specialising in repairs also to be involved in selling vehicles. Therefore, G was bound.

The operation of s 9 can be further illustrated by the following problem scenarios:

1. A and B run a building firm. A orders an extremely large quantity of timber on credit from the timber mill without telling B. In fact, the order is three times the normal amount ordered by the firm. There is no written or unwritten agreement as to who buys the supplies or in what quantities. Is the debt owing to the timber mill a debt of the partnership, or is it A's debt? (A and B have been dealing with the same timber mill for a number of years.)
2. A and B run a building firm. Without telling B, A decides that the partnership ought to go into real estate development. So A purchases, in the partnership name, two blocks of land. Is B liable jointly with A for the purchase price?
3. A and B run a development and building business. The business buys land, develops it and then sells at a profit. A and B normally finance their equipment purchases by way of chattel mortgage from the Eastpac Bank. Normally, the interest rate payable to the bank is the bank's standard commercial rate for secured borrowings (usually about 15 per cent). The partnership agreement contains no terms as to permissible borrowings. A purchases a new cement mixer in the partnership name without telling B. The bank refuses to make the necessary loan and so A borrows the necessary funds from a moneylender at a rate of interest of 30 per cent. Is B jointly liable for the principal and interest on the loan?

4. A and B are two young accountants who decide to open an accountancy practice in partnership. As funds are extremely short, they decide that all purchases, except necessary stationery, shall only be made after both partners agree. A is offered a great deal on a small photocopier and a fax machine. Unfortunately, B cannot be contacted, so A purchases the copier and the fax machine on credit terms. Meanwhile, B has been offered a lucrative job with a multinational accounting firm and has decided to terminate the partnership. Is B liable for the purchase of the copier and fax machine? Would the answer be different if the seller of the items was aware that A and B had agreed not to make purchases without the approval of both?

› PROBLEM 1 ‹

Buying timber is a normal transaction for a business of the kind operated by A and B (that is, a building business). However, the quantity purchased by A may not be the usual way of conducting such a business, especially where A was dealing with a regular supplier who was aware of the size of the usual purchases. This example shows how difficult it can often be to determine the extent of a partner's apparent authority.

› PROBLEM 2 ‹

A and B run a building firm, not a development business. Therefore, it is likely that a court would find that the purchase of a block of land was not within the kind of business carried on by the partnership. In other words, the purchase was not within A's actual or apparent authority. As a result, B is not jointly liable for the purchase price unless B ratifies the transaction.

› PROBLEM 3 ‹

Borrowing money to pay for equipment purchases such as a cement mixer is a normal practice for a building and development business. Therefore, A was transacting business of a kind carried on by the partnership. However, A has agreed to pay 30 per cent interest to a moneylender when the partnership normally pays 15 per cent to a bank. Is this the usual way of transacting business for a building and development firm? Probably we would need more evidence of the usual borrowing habits of development businesses. Although A and B normally borrow at 15 per cent, it may be reasonably common in the industry to borrow at higher rates and from moneylenders instead of banks. What is your opinion?

› PROBLEM 4 ‹

Clearly, there was no actual authority for either of these purchases. However, it would seem that a fax machine is a common piece of equipment in an accountancy office, even a small office. It is the type of equipment that one would normally expect one partner to buy. It does not seem necessary that both partners be involved in the actual purchasing. Therefore, the purchase would fall within the apparent authority of A and both A and B would be liable. Would the same apply to the photocopier? If the supplier was aware that A did not have authority, B will not be liable.

11.43 The proviso to s 9 is supported by s 12:

> 12 *If it has been agreed between the partners that any restriction shall be placed on the power of any one or more of them to bind the firm no act done in contravention of the agreement is binding on the firm with respect to persons having notice of the agreement.*

JOINT AND SEVERAL LIABILITY FOR WRONGFUL ACTS

11.44 Partners are jointly and severally liable for wrongful acts or omissions committed by a partner in the ordinary course of the business of the firm. This is the combined effect of ss 14 and 16:

> If negligence, fraud or another tort or wrongful action is involved, a partner's liability depends on the operation of s 14 (that is, liability for 'wrongful acts' — see below).

> 14 *(1) … where by any wrongful act or omission of any partner acting in the ordinary course of the business of the firm or with the authority of his or her copartners loss or injury is caused to any person not being a partner in the firm or any penalty is incurred the firm is liable therefor to the same extent as the partner so acting or omitting to act.*

What are wrongful acts or omissions?

11.45 Wrongful acts include torts. A tort is a civil wrong for which the courts will grant damages to any injured party. It is a separate body of law to contract law. Torts include fraud, negligence, defamation and assault. Negligent driving by one partner of a partnership vehicle is a wrongful act for which the other partners might be liable if the driving occurred in the ordinary course of the business of the firm. Negligence has become an important area, particularly in professional partnerships. Wrongful acts also include misleading and deceptive conduct under the Australian Consumer Law s 18 or the Australian Securities and Investments Commission Act 2001 (Cth) s 12DA.

It should be remembered that civil wrongs can be committed by a failure to act as well as by an overt act. For example, an employer who fails to provide a safe system of work may be liable in negligence if one of his or her employees is injured.

When are acts in the ordinary course of the business of a partnership?

11.46 The first thing to determine under s 14 is the 'business' of the firm. This will be a question of fact and may require an analysis of the partnership agreement, if any, as well as the nature of the transactions conducted by the partnership. Having determined the business of the partnership, it is necessary to consider whether the act in question fell within the ordinary course of such business.

Whether the activity involved falls within the ordinary course of the business is a question of fact, requiring determination of the *kind* of activities the firm might undertake as a normal part of its business. It is not necessary for the partner's improper *manner* of performing that activity to have been authorised or commonplace within the firm's business.

Polkinghorne v Holland & Whittington

(1934) 51 CLR 143 (High Court)

Facts

Holland, Whittington and Harold Holland (son of Holland) conducted a solicitor's office as partners. Harold advised a client of the partnership (Polkinghorne) to sell government bonds and invest in a company run by an acquaintance of Harold's. The company had no assets and the whole scheme was designed to defraud the client. The other two partners were not aware of Harold's activities. Polkinghorne sued the partners. The partners argued that they were not responsible for the actions of Harold because his activities were not within the scope of the kind of business carried on by the partnership. The argument was based on the fact that Harold gave investment advice rather than legal advice.

Issue

Whether Harold's fraudulent advice to the client was within the ordinary course of the firm's business, which would make *all* partners equally liable for Harold's actions.

Decision

The High Court said (at 156):

> *By associating themselves in a partnership with Harold Holland, the [partners] made themselves responsible, as principals are for an agent, for all his acts done in the course of his authority as a partner. That authority was to do on behalf of the firm all things that it is part of the business of a solicitor to do ... On the whole circumstances of this case, the advice and guidance which the appellant [Mrs Polkinghorne] sought from Harold Holland ... involved work which it was in the course of a solicitor's business to perform. ...*

Although a solicitor had no special skill with regard to investment in securities, it is within the ordinary course of a solicitor's business to make inquiries on behalf of a client when consulted. Therefore, the partners were held to be liable to Polkinghorne.

Contrast *National Commercial Banking Corp of Australia Ltd v Batty* [1986] HCA 21, in which the High Court held that a partner in an accountancy practice was not acting in the ordinary course of the business of the firm when he banked cheques payable to a third party in the partnership's account and then withdrew the proceeds for his own use.

Walker v European Electronics Pty Ltd (in liq)

(1990) 23 NSWLR 1 (New South Wales Court of Appeal)

Facts

A firm of chartered accountants included three partners. One partner concentrated on company liquidation work, one partner handled tax and secretarial work and the third partner, Garrity, handled the company receivership work, amongst other things. The partners were fairly much independent operators within their own field of expertise. Garrity misappropriated a large sum of money from a trust account that had been set up in the course of one of his receivership jobs. The other two partners were unaware of Garrity's deeds. European Electronics sued all three partners for the losses caused by Garrity's misappropriation.

Issue

Whether Garrity's operation of the trust account was within the ordinary course of the firm's business, which would make *all* partners equally liable as Garrity for the money misappropriated.

Decision

The New South Wales Court of Appeal held that Garrity was acting in the ordinary course of the business of the firm when operating the trust account in the receivership matter and that, therefore, the other two partners were jointly and severally liable.

As noted above, it is not necessary for the partner's improper *manner* of performing an activity to have been authorised or commonplace within the firm's business. An example of this occurred in the New Zealand case of *Proceedings Commissioner v Ali Hatem* [1999] 1 NZLR 305, where a garage partnership existed, and the partner in charge of recruitment and staff management had sexually harassed some of the firm's employees. Of course, sexual harassment per se was not acting in the ordinary course of the firm's business. However, this conduct had occurred during activities such as staff interviews and other dealings with employees at work, which were indeed part of carrying on the normal course of the firm's business. This made the co-partners equally liable as the partner who had committed the wrongful conduct.

Liability is joint and several

11.47 Once it is determined that the partner's wrongful act occurred in the ordinary course of the partnership's business (or with the co-partners' consent), each partner is liable both jointly and severally for losses suffered by third parties:

> 16 *Every partner is liable jointly with his co-partners and also severally for everything for which the firm while he is a partner therein becomes liable under either of the last two preceding sections.*

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Joint and several liability is best understood by looking at an example. Imagine A, B and C run a demolition business called 'A & B Demolitions'. C takes no part in the management of the business. C is the financier, the partner with the money. A and B, on the other hand, are not wealthy. B has some assets, but A has none. In the course of demolishing a house, A carelessly demolishes the house next door as well. The aggrieved home owner suffers losses totalling $250,000. The home owner knows that A does not have any money and so she sues B alone. Later, the home owner discovers that there is a third partner, C. She is then entitled to sue C, once again without joining A. This is what is meant by joint and several liability. The plaintiff can sue one partner at a time for the whole of the damage suffered.

The difference between joint liability and joint and several liability does not cause any great difficulty in practice, owing to the rule that all the partners in a partnership may be sued under the firm name.

JOINT AND SEVERAL LIABILITY FOR MISAPPLICATION OF MONEY OR PROPERTY

11.48 Section 15 makes the firm liable for money or property misapplied by a partner:

> *15. In the following cases, namely —*
> *(a) where one partner acting within the scope of his apparent authority receives the money or property of a third person and misapplies it; and*
> *(b) where a firm in the course of its business receives money or property of a third person and the money or property so received is misapplied by one or more of the partners while it is in the custody of the firm — the firm is liable to make good the loss.*

For misapplication of money or property, all partners are jointly and severally liable: s 16.

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The missing millions

In March 1998 the partners in a small Melbourne law firm woke to the news that the taxation partner in their firm, Max Green, had been found dead in a hotel room in Cambodia. Green had been severely beaten about the head and face with a brick and then strangled with a tie.

As devastating as this event was in its own right, the situation got even worse for the partners when the firm's trust accounts were investigated. Over $30 million in clients' money was missing. Instead of investing the clients' money in a tax minimisation scheme as he was supposed to, Green had stolen the money and used it for his own purposes in a series of shady schemes involving gems in Cambodia and Laos. The money was never recovered and Green's killers were never found.

Despite knowing nothing about Green's activities the remaining partners were fully liable for Green's misuse of the money belonging to the firm's clients. Green's activities eventually led to a huge number of court cases involving not only the clients and the law firm but also banks, accountants and auditors.

The moral of the story is, select your partner(s) carefully and take out insurance.

LIABILITY BY HOLDING OUT (ESTOPPEL)

11.49 In certain circumstances, a non-partner can become liable for the debts of the partnership. This occurs where a person acts in such a way that people dealing with the partnership reasonably believe him or her to be a partner (s 18):

> *18 (1) Every one who by words spoken or written or by conduct represents himself or who knowingly suffers himself to be represented as a partner in a particular firm is liable as a partner to any one who has on the faith of any such representation given credit to the firm whether the representation has or has not been made or communicated to the person so giving credit by or with the knowledge of the apparent partner making the representation or suffering it to be made.*
> *(2) Where after a partner's death the partnership business is continued in the old firm-name the continued use of that name or of the deceased partner's name as part thereof shall not of itself make his executors or administrators estate or effects liable for any partnership debts contracted after his death.*

In *Stekel v Ellice* (see **11.24**) Megarry J had no doubt that a person who allowed himself or herself to be called a 'salaried partner' and to appear on the firm's letterhead as a partner was holding himself or herself out as a partner. This is another example of estoppel.

D & H Bunny Pty Ltd v Atkins

[1961] VR 31 (Supreme Court of Victoria)

Facts

Bunny operated a business supplying hardware. Atkins and Naughton were interviewed by Barnard, the credit manager of Bunny. There was some confusion as to what was said at the interview.

One version (which the court eventually accepted) was that Atkins and Naughton told Barnard that they had already gone into partnership in a plumbing business and that they were merely waiting for credit from Bunny in order to commence trading. The second version was that Atkins and Naughton told Barnard that they were planning to go into business as partners. Barnard did not ask any questions about the partnership terms, nor ask to see a copy of the agreement. Bunny provided the credit.

In fact, Atkins and Naughton never went ahead with the partnership, although this was never made known to Bunny. Naughton bought goods on credit. The statements of account were regularly made out to 'Atkins and Naughton'. Twice Atkins collected goods from Bunny on behalf of Naughton. On both occasions, he signed for them without commenting on the fact that the account was improperly made out. Twice Atkins paid Naughton's accounts with his own cheque. The accounts were made out to 'Atkins and Naughton'. Eventually, Naughton failed to pay his account. Bunny sued Atkins and Naughton. Atkins argued that he was not liable as he was not a partner.

Issue

Whether on either version of events Atkins was a partner of Naughton's or, because of his actions, was to be treated as a partner.

Decision

The court held that if version one of the interview was correct, Atkins had clearly held himself out as a partner and was liable. If the other version was correct, Atkins was still liable because he knew that the accounts were being issued in joint names and he did nothing to advise Bunny to the contrary. On at least two occasions, Atkins had collected supplies for Naughton from Bunny and signed a receipt made out to joint names. On two occasions, Atkins had paid Bunny's account with one of his own cheques.

Sholl J said of Atkins' conduct (at 34):

> *[H]aving noticed that the plaintiff was supplying to Naughton goods on credit for use in plumbing work to the debit of an account in which he was apparently named as one of the members of a firm, he did nothing to ensure the communication to the plaintiff of any denial by him of his ostensible liability. Such conduct, in my opinion, amounted either to knowingly holding himself out, or to knowingly allowing himself to be held out, as a partner, and … amounted to a representation that the partnership then mentioned [that is, in the interview] was in business, and carrying on as then proposed.*

Leaving the partnership

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11.50 An outgoing partner is particularly susceptible to partnership by holding out. Persons who dealt with the partnership before the partner's retirement are entitled to treat all apparent partners as still partners of the firm unless that person receives notice of the retirement: s 40(1). Therefore, when quitting a partnership, the retiring partner should send a circular letter to all those who have had dealings with the partnership.

To protect himself or herself against an allegation of holding out made by a third party who started dealing with the firm after the partner quit, the retiring partner should take advantage of the notice provisions of s 40(2). By putting a notice in the *Government Gazette* and in a newspaper circulating in each district in which the firm carries on business, the retiring partner is giving notice that he or she has retired. A third party cannot rely on the holding out provision if he or she had notice of the partner's retirement.

Even if a retiring partner fails to give actual notice to all those who have had dealings with the partnership and fails to take out the necessary *Gazette* and newspaper notices, he or she will not be automatically liable for debts incurred after leaving the partnership. There must be a holding out of some type, and the third party must have acted in response to that holding out. Thus, the partner will not be liable in any of the following circumstances:

- the third party was aware, from whatever source, that the retiring partner was no longer a partner (s 40(1)); or
- the third party was never aware that the outgoing partner was a partner (s 40(3)); or
- the outgoing partner did nothing to hold himself or herself out as a continuing partner: see *Tower Cabinet Co Ltd v Ingram*, below. However, this will not work against existing creditors of the firm: s 40(1).

Tower Cabinet Co Ltd v Ingram

[1949] 1 All ER 1033 (King's Bench Division)

Facts

Mr Christmas and Mr Ingram carried on business as household furnishers under the name 'Merry's'. The firm's letterhead mentioned the names of both partners. In 1947, the partnership was dissolved with Christmas agreeing to buy out Ingram. Ingram gave notice of the dissolution to the bank. He failed to put any notice in the newspaper or the relevant Gazette. He did, however, agree with Christmas that Christmas was to notify all those dealing with the business of Ingram's departure. Christmas had a new letterhead prepared which did not refer to Ingram.

Shortly after Ingram's departure, Christmas ordered six sets of furniture from Tower Cabinet. The order was confirmed by letter. Unfortunately, Christmas used one of the old letterheads which included Ingram's name. Tower Cabinet argued that Ingram was liable as if he were a partner.

Issues

The first issue was whether Ingram was to be treated as a partner by holding out (s 18). The second issue was whether Ingram was liable for the partnership debt created after he had left the firm.

Decision

In reference to s 18, the court decided that Ingram had not held himself out, or knowingly allowed himself to be held out, as a partner. The only representation that he was a partner was made by Christmas 'without Mr Ingram's knowledge and without his authority'.

At the time Ingram retired from the partnership, Tower Cabinet was not aware that he was a partner. Therefore, as the debt to Tower Cabinet was incurred after Ingram retired, s 40(3) operated. Under s 40(3) Ingram was not liable for the debt owing to Tower Cabinet.

Section 40 sets out the potential liability of former partners to third parties:

> *40 (1) Where a person deals with a firm after a change in its constitution he is entitled to treat all apparent members of the old firm as still being members of the firm until he has notice of the change.*

(2) An advertisement in the Government Gazette and in at least one newspaper circulating in each district in which the firm carries on business as to a firm whose principal place of business is in Victoria shall be notice as to persons who had not dealings with the firm before the date of the dissolution or change so advertised.

(3) The estate of a partner who dies or who becomes bankrupt or of a partner who not having been known to the person dealing with the firm to be a partner retires from the firm is not liable for partnership debts contracted after the date of the death bankruptcy or retirement respectively.

Elders Pastoral Ltd v Rutherfurd

(1990) 3 NZBLC 99-201 (High Court of New Zealand)

Facts

Mrs Rutherfurd was a partner in a pastoral business for a number of years. During this time, the partnership had dealings with Elders. However, Mrs Rutherfurd's existence was not known to Elders until after she had retired as a partner. When she retired, Mrs Rutherfurd neglected to give any notice of her retirement. Following her retirement, the partnership incurred a number of debts to Elders. Elders sought to make Mrs Rutherfurd liable for these debts jointly with the actual partners.

Issue

Whether Mrs Rutherfurd was liable for the partnership debts, created after she had left the firm.

Decision

The court held that pursuant to s 40(3), Mrs Rutherfurd was not liable for debts incurred by the partnership to Elders after she had retired.

Debts incurred after death or bankruptcy of partner

11.51 The estate of a partner who has died or become bankrupt is not liable for partnership debts incurred after the death or bankruptcy: s 40(3).

Debts incurred before resignation or admission of a new partner

11.52 A partner who has retired or the estate of a partner who has died remain liable for partnership debts incurred when the partner was a member of the firm (s 21(2)) unless released by the creditor and all remaining partners: s 21(3). An incoming partner does not become liable for the debts of the firm incurred prior to becoming a partner: s 21(1).

Assignment of a partnership interest

11.53 A partner cannot sell a partnership interest so that the buyer automatically becomes a partner. However, a partner may assign his or her right to the profits or, on dissolution, the assets of the partnership. Such assignment will not entitle the assignee to take part in the management of the partnership or to inspect the books of the partnership. The assignee does have the right to an account on dissolution of the partnership: s 35.

The lack of transferability of a partner's interest in the business can make partnership a less attractive business structure compared to a company.

Termination of a partnership

11.54 A partnership may be terminated by:

- the partners;
- operation of law;
- supervening illegality; or
- the courts.

TERMINATION BY THE PARTNERS

11.55 Just as partners are free to enter into a partnership agreement, they are also free to terminate it, provided all partners agree: s 36. A partner cannot unilaterally terminate a partnership unless the partnership is for an unspecified period of time and the partner gives reasonable notice of intention to terminate: s 30.

TERMINATION BY OPERATION OF LAW

11.56 A partnership is dissolved by the death or bankruptcy of any partner: s 37. Often, however, the partnership agreement will state that a partnership made up of the remaining partners will continue despite the death or bankruptcy. The Partnership Act also provides that partners may terminate a partnership where one of the partners uses his or her partnership interest as security for a non-partnership debt: s 37(2).

TERMINATION BY SUPERVENING ILLEGALITY

11.57 A partnership is in every case dissolved by the happening of any event which makes it unlawful for the business of the firm to be carried on or for the members of the firm to carry it on in partnership: s 38.

TERMINATION BY THE COURTS

11.58 A partnership may be wound up by the courts for any of the following reasons (s 39):

(a) insanity of a partner;

(b) permanent incapacity of one partner;

(c) prejudicial conduct of a partner (for example, commission of a criminal offence);

(d) willful or persistent breach of the partnership agreement, such as one partner persistently failing to account for moneys received by him or her on behalf of the partnership;

(e) partnership can only be carried on at a loss; or

(f) it is just and equitable that the partnership be dissolved. This would occur where, for example, the mutual trust necessary for the successful operation of a partnership has been irrevocably destroyed: see *Re Yenidje Tobacco Co* [1916] 2 Ch 426, where the two persons involved in the partnership business had reached the stage where they refused to talk to one another.

PARTNERS REMAIN JOINTLY LIABLE FOR DEBTS EVEN AFTER DISSOLUTION OF A PARTNERSHIP

11.59 When a partnership is terminated, there remains the question of what to do about the debts and assets of the defunct partnership. The partners cannot walk away from the debts. They remain jointly liable as previously discussed.

DISTRIBUTION OF ASSETS ON DISSOLUTION

11.60 Section 48 sets out rules for the distribution of assets following the dissolution of a partnership. These rules only apply if the partners haven't agreed on what to do in the event of dissolution. On dissolution, the partnership property is to be applied to pay off the debts of the partnership and, if there is any surplus, to be distributed to the partners: s 43.

ADVICE – LAW IN PRACTICE

Remember:

- There are no legal formalities to becoming a partner. Merely operating a business jointly with another person could make you a partner under the law.
- All partners are jointly and severally liable for the partnership's debts.
- All partners can also be liable (jointly and severally) for one partner's wrongful acts and misappropriations.
- Consequently, it is important to have adequate insurance.
- While you remain in a partnership you owe certain duties to your partners and they to you. These include fiduciary duties.
- If you wish to leave a partnership you must be careful to ensure that you give the necessary notices so that you won't be liable for debts incurred after your departure.