

# Partnership Notes:

## Overview (general definition):

- **S1 of the Partnership Act 1890.**
- Partnership arises where two or more persons agree that they will run a business together and actually do so. The term 'partnership' therefore describes no more than a business relationship based on an agreement (i.e., contract). The agreement may be oral, in writing or implied by conduct.
- Partnership is a relation which subsists between persons carrying on a business in common with a view to profit – *Khan v Miah 2000* and *Young v Zohid 2000* – S1 decided when the partnership commenced not any agreement contrary between the parties. *Rowlands v Hodson 2009* – solicitor was considered to be a partner and therefore was liable for debts of the partnership.

## Fundamental characteristics:

- Right to be involved in making decisions which affect the business.
- Right to share in the profits of the business.
- Right to examine the accounts of the business.
- Right to insist on openness and honesty from fellow partners.
- Right to veto the introduction of a new partner; and
- The responsibility for sharing any losses made by the business.

## Setting up a partnership:

- No necessary formality as existence is established by apply definition, however, written agreement is invaluable evidence of a relationship and its terms.

## Formalities required by statute:

- 1) Business names
- 2) Other statutory obligations – obligations concerning income tax, corporation tax, VAT, national insurance, and notifying HMRC of the identity of partners.

## Law of partnership & its use in joint ventures:

- Partnership may be suitable for group of individuals to engage in a business venture because of the informal nature of partnership. Two companies could also combine forces to start a new venture.

## The partnership agreement (S24 of PA 1890):

### Commencement Date:

- when definition of **S1 PA 1890** is satisfied.

### Name:

- should be stated and is fixed.

### Financial Input:

- agreement should state how much capital each partner is contributing.

### Shares in income/profits/losses:

- Share income/profits/losses will be shared equal as per **PA 1890** unless partners agree otherwise.
- Salary – ensure factors are considered in partners salary (part time, sleeping partners, skills, experience)
- Interest – may be allowed on partners' capital contribution.

- Profit sharing – should be stated.

### Drawings:

- how much can partner withdraw?

### Shares in increases/decreases in asset values:

- **PA 1890** – to be shared equally or partners may specify how this is to be distributed.

### Place and nature of business:

- premises at which business will be carried on.

### Ownership of assets:

- asset where beneficial ownership rests with all partners.

### Work input:

- **PA 1890** implies all partners will take part in the management of the business, or agreement should set out commitment expected of partners.

### Roles:

- Agreement must state partners roles (**S5 of PA 1890**).

### Decision making:

- Unless agreement states otherwise, decisions will be made on a simple majority, except decisions on changing the nature of business/introduction of new partner require unanimity.

### Duration:

- Dissolution by notice- if there is no provision in the agreement, partnership can be dissolved at any time by giving notice to others (**S26 PA 1890** and *Moss v Elphick 1910*). **S32 PA 1890** defines basis on which partnerships of any type are to be dissolved subject to alternative arrangement between the parties.
- Other solutions – minimum period before taking effect, fixed term, partnership to remain until there are two remaining partners.
- Death and bankruptcy – **S33 PA 1890** applies unless there is a contrary agreement which says death or bankruptcy will cause dissolution of entire partnership.
- Court order – **S35 PA 1890** says court can make an order for dissolution which means partner can break his agreement with partners without being liable for breach of contract unless the grounds in act are not satisfied.

### Retirement:

- which means leaving partnership to pursue other business opportunities. **S26 PA 1890** provides for retirement but only for a partnership at will.

### Expulsions:

- **PA 1890** does not provide for a partner being expelled without his consent therefore provisions must be included to deal with this.

### Payment for outgoing partners share:

- For others to continue the partnership, they must pay for outgoing partners share. If agreement is silent and settlement can't be agreed – **S42 PA 1890** becomes relevant.

### Restraint on trade following procedure:

- Competition – nothing preventing partner from setting up competition business/joining a rival so clauses must cover this.
- Drafting a non-competition clause – this is a clause restraining an ex-partners activity.

# Practice Notes On Partnership Law Practice Notes S

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