

Introduction to the law of partnership

1

Applicable Law

- English Law
- The English Partnership Act (1890) and Judicial Decisions of the English Courts

2

What is a Partnership

- As per the Partnership Act (1890)
- “The relation which subsists between persons carrying on a business in common with a view of profit”
- Also referred as a “firm”

3

Four main requirements that must be satisfied for the existence of a partnership

- There should be a valid agreement between the parties
- The partnership must relate to a business
- The business must be carried out by “persons in common”
- The partnership business must be operated with a view of profit.

4

Limitation on the number of partners

- Can not have more than 20 members (this limitation was imposed by the companies Act [No.7 of 2007])

5

The prevention of Frauds Ordinance and the creation of a partnership

- A partnership deed: a document which spell out the agreement between the partners in carrying on the business of the partnership. A partnership deed to be in writing is made compulsory only in one specific instance.
- A patnership should be in writing and signed by all the partners where the capital exceeds Rs.1000. [Section 18 of the Prevention of Fraud Ordinance (No.7 of 1840)]

6

Registration of a partnership

- The Business Names Act [No.7 of 1987] governs the registration of a partnership's name.
- Section 2 of the Act,
- “every firm having a place of business in Sri Lanka and carrying on business under a business name which does not consists of the true full names of all partners who are corporations, shall” register the name under which the partnership business carried on.

7

Registration of a partnership

Registration should include,

- The principal place of business and the address/es of any branch office/s
- The general nature of the business
- Name, nationality, residential address and occupation of each partner
- Any change of above must be notified to the Registrar of Business Names within 30 days of such change.
- Main objective of registration to give the public a chance to get to know the details of the partnership and the individuals who comprise it.

8

How can a partnership sue or to be sued

- A partnership can sue for the wrongs committed against it by third parties
- It can be sued for the wrong it commits
- A delict or tort is a civil wrong, where the affected party can sue the wrongdoer for damages

9

How can a partnership sue or to be sued

- A partnership is **jointly liable** for the civil wrong, committed by any partner under either of the following instances,
 - If such wrongs were done in the ordinary course of the partnership business or,
 - If such wrong were done with the authority of the other partners

10

How can a partnership sue or to be sued

Case law: Partners committing a tort

- Hamlyn v Huston and co.[1903 1 KB 81]
- H and S carried on a partnership business as grain merchants. H bribed a clerk of a rival firm to disclose trade secrets.
- Held: H's conduct amounts to a tort, since it was done within the course of the partnership business and the fact that it helped the business. Therefore H's act is binding on S as well.

11

How can a partnership sue or to be sued

- Jointly liable means that there is only one right of action against the partners for any particular wrongdoing.
- In this context a partnership can sue or be sued in a court of law only in the names of all the partners comprising it.
- A partnership can not be sued in the partnership's name

12

Relationship between partners and third parties

13

Relationship between partners

- Generally governed by the Partnership Deed or the Articles of Partnership
- Partnership Deed or the Articles of Partnership: a written agreement which outlines the basic understanding or relationship between the partners, in carrying on the partnership business.
- If there is no Partnership Deed or the Articles of Partnership relations are governed based on mutual trust and confidence of each partner and the integrity of the other partners.

14

Rights and duties between partners

- All partners are entitled to share equally in the capital and profits of the partnership
- No partner is entitled to interest on capital before the profits are ascertained
- No partner is entitled to remuneration for acting in the partnership business unless remuneration is specifically provided for in the partnership deed
- Every partner is entitled to take part in the management of the partnership business
- The consent of all partners is necessary to introduce a new partner

15

Rights and duties between partners

- While ordinary matters relating to the partnership may be decided by a majority of the partners, no change in the nature of the partnership business can be made in the absence of unanimity
- A partner can be removed only by the consent of all the other partners
- A partner is entitled to indemnity in respect of payment made and liabilities incurred by him in the ordinary business of the firm
- If a partner has made an advance over and above the capital, he is entitled to interest on that amount.

16

Rights and duties between partners

- Every partner is entitled to inspect the partnership books, which must be kept at the principal place of business.
- Every partner should render true accounts and full information on all things affecting the partnership.
- Every partner should account to the firm for any benefit derived by him without the consent of the other partners, from any transaction concerning the partnership
- Not to compete with the firm
- Every partner must disclose any secret profit he makes in dealing with the firm and account for that profit to the firm

17

Rights and duties between partners

- Case law : consent of partners in introducing a new partner
- *Byrne v Reid* [1902] 2 Ch.735
- As per the partnership deed between B and R, B was given the authority to introduce his son (s) as a partner upon attaining the age of 21. S, upon reaching the age of 21 , was proposed by B to be a partner. R refused to consent
- Held: R could not prevent S from being a partner as the particular clause in the partnership deed operated as R's consent.

18

Rights and duties between partners

- Case law :Secret profit
- Bently v Craven [1853] 18 Beav. 75
- B and C were partners. C was employed to buy sugar from firm, without B's knowledge, sold goods of his own to the firm at the market price and made a considerable profit.
- Held: C must account to the firm for the profit so made.

19

Relations between partners and third parties

- General rule : Since every partner is an agent of the firm and of his partners, for the purposes of the firm, the acts of every partner in carrying on the business of the firm in the usual way will be binding on the firm and the other partner.
- This rule is not applied under the following instances.

20

Relations between partners and third parties

- When the partner so acting has no authority to act for the firm in that manner
- When the person with whom he is dealing with either knows that he has no authority, or does not know him as a partner.

21

Relations between partners and third parties

Every partner has Implied authority to act as follows,

- Selling the goods of the firm.
- Purchasing on behalf of the firm, goods of the kind usually employed in the firm's business.
- Receiving payment of the firm 's debts and giving receipts for them
- Engaging servants for the firm's business.

22

Relations between partners and third parties

- In trading firms a partner may, in addition to the above acts, have implied authority to bind the firm by the following acts:
 - Accept, make and issue negotiable instruments in the firm's name .
 - Borrow money on the firm's credit and pledge the firm's goods to effect that purpose.
 - Instruct a solicitor in an action against the firm for a trade debt.

23

Changing partners

1. New partner
2. Retiring / resigning partner
3. Death or bankruptcy of partner

24

Changing partners

New partner

- A new partner doesn't become liable to the creditors of the firm for anything done before he becomes a partner.

25

Changing partners

Retiring / resigning partner

- A retiring partner remains liable for the partnership debts contracted while he was a partner.
- But he may be discharge from such liability by an agreement between himself, the new firm and the creditors.

26

Changing partners

- Case law : retiring partner's liability to persons who had no previous dealings with the firm and did not know him to be a partner
- Tower Cabinet Co.Ltd. V Ingram [1949] 2 K.B.397
- C and I dissolved the partnership, but no notice was given nor any advertisement published. After the dissolution, C ordered goods from T, using the firm's old note paper which showed I as a partner. T did not know that I was a partner before the dissolution

27

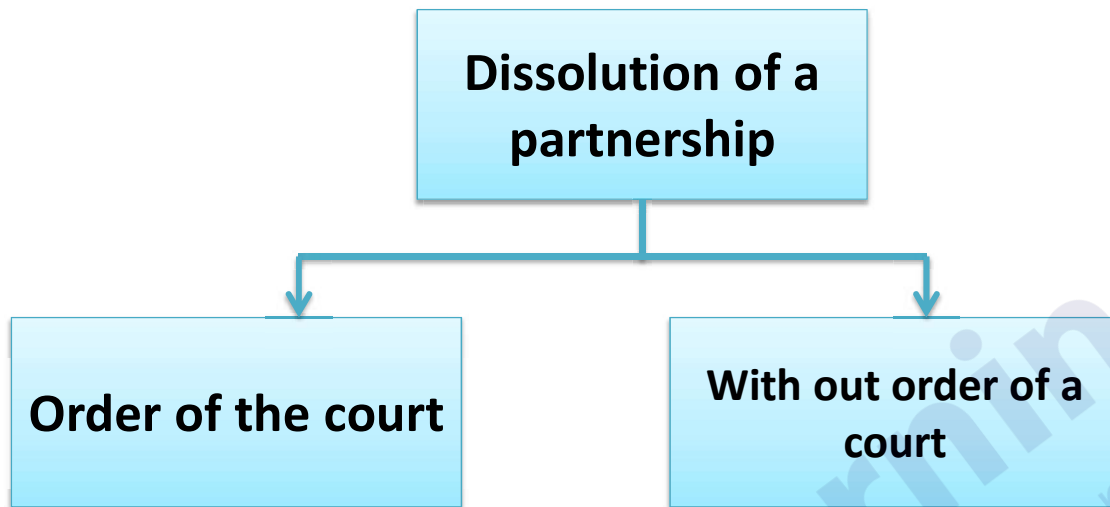
Changing partners

Death or bankruptcy of partner

The estate of a partner who dies or becomes bankrupt is not liable for the debts of the partnership contracted after the death or bankruptcy.

28

Dissolution of a partnership



29

Instances where a dissolution is done through a order of the court

- When a partner get a mental dissolution.
- When a partner is permanently incapable of performing his duties.
- When a partner commits a breach of the partnership agreement.
- When a partner's conduct is prejudicial to the carrying on of the business.
- When the partnership business can be carried on only at a loss.
- Whenever the court thinks it is just and equitable to dissolve the partnership.

30

Instances where a dissolution is done through a order of the court

- Case law: Dishonest conduct by partner
- Carmichael v Evans [1904] 1 Ch. 486
- C and E were partners, and c was convicted of traveling on the railway without a ticket and with the intent to defraud.
- Held: As the conviction was for dishonesty, it is detrimental to the partnership.

31

Instances where a dissolution is done through a order of the court

- Case law: just and equitable to dissolve
- Re: Yenidje Tobacco Co Ltd [1916] 2 Ch.426
- A dead lock had arisen between two partners due to strained relations.
- Held: it was just and equitable to wind up the company (which in substance was actually a partnership in disguise)

32

Instances where a dissolution is done with out any order from the court

1. Expiration or notice
2. Bankruptcy or death
3. Charge
4. Illegality

33

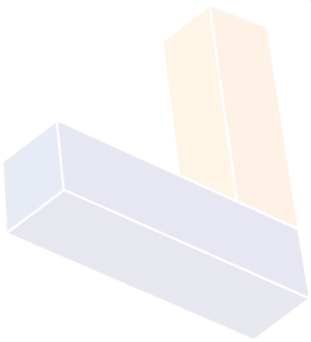
Instances where a dissolution is done with out any order from the court

Expiration or notice

- i. If entered into for a fixed term, by the expiration of that term.
- ii. If entered into for a single adventure or undertaking, by the termination of that adventure or undertaking.
- iii. If entered into for an undefined time, by any partner giving notice of dissolution to the others

34

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