

# LPC BUDDY

**Business Law & Practice**  
**2023 / 24**



**THE DEFINITIVE,  
DISTINCTION QUALITY  
STUDY GUIDE FOR THE LPC**

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EASE YOUR EXAM STRESS.  
GET THE GRADE YOU NEED.**



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## Business Law & Practice

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<sup>1</sup> Textbook references are to the CLP Legal Practice Guides by CLP Publishing.

<sup>2</sup> References to Workshop tasks are to University of Law workshop tasks (which may be adopted by other LPC institutions). The content and structure of Workshops is subject to change at short notice and so task references should be treated as a general guide only.

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# 1. Partnerships

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**Partnerships - Introduction**

❖ *Business Law & Practice, Chapter 13*

<p><b>What is a partnership?</b></p> <p><i>Business Law &amp; Practice, 13.2</i></p>	<ul style="list-style-type: none"> <li>❖ A partnership is a business structure that is formed where two or more people run and own a business together.</li> <li>❖ It is created <b>when the definition in s1 of the Partnership Act 1890 is satisfied</b>. There are <b><i>no further formalities</i></b> required.</li> <li>❖ This means that:             <ul style="list-style-type: none"> <li>➤ There is <b><i>no requirement for a written agreement</i></b> (although it may be advisable to have one); and</li> <li>➤ If the component elements of <a href="#">s1</a> are satisfied, a partnership will exist even if the individuals involved:                 <ul style="list-style-type: none"> <li>▪ <b><i>Did not intend to create a partnership</i></b>; or</li> <li>▪ <b><i>Are unaware of what they have created legally</i></b>.</li> </ul> </li> </ul> </li> </ul>
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<p><b>Definition<sup>1</sup></b></p> <p><i>Business Law &amp; Practice, 13.2.1</i></p>	<ul style="list-style-type: none"> <li>❖ <a href="#">s1 Partnership Act 1890</a>: “Partnership is the relation which subsists:             <ul style="list-style-type: none"> <li>➤ <b><i>Between persons</i></b></li> <li>➤ Carrying on a <b><i>business in common</i></b>.</li> <li>➤ With a view of <b><i>profit</i></b>”</li> </ul> </li> <li>❖ These component elements are broken down as follows:</li> </ul> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 20%; padding: 5px;"><b><i>“Between persons”</i></b></td> <td> <ul style="list-style-type: none"> <li>❖ Partners can be individuals <u>or</u> companies.</li> </ul> </td> </tr> <tr> <td style="padding: 5px;"><b><i>“Carrying on a business in common”</i></b></td> <td> <ul style="list-style-type: none"> <li>❖ The definition of “business” includes <b><i>“every trade, occupation or profession”</i></b> (<a href="#">s45 PA 1890</a>).</li> <li>❖ Therefore, virtually <b><i>any activity of a commercial nature</i></b> is capable of giving rise to a partnership (but not a charity; <a href="#">see below</a>).</li> <li>❖ <b><i>The business must be “carried on”</i></b>:                 <ul style="list-style-type: none"> <li>➤ This means that there must be <b><i>more than “mere agreement”</i></b> for a partnership to be formed (<a href="#">Illot v Williams &amp; Others [2013] EWCA Civ 645</a>).</li> <li>➤ However, there is <b><i>no requirement</i></b> for the parties to have <b><i>actually commenced trading</i></b>:                     <ul style="list-style-type: none"> <li>▪ <a href="#">Khan v Miah [2000] 1 WLR 2123</a>: “There is no rule of law that the parties to a joint venture <b><i>do not become partners until actual trading commences</i></b>. The rule is</li> </ul> </li> </ul> </li> </ul> </td> </tr> </table>	<b><i>“Between persons”</i></b>	<ul style="list-style-type: none"> <li>❖ Partners can be individuals <u>or</u> companies.</li> </ul>	<b><i>“Carrying on a business in common”</i></b>	<ul style="list-style-type: none"> <li>❖ The definition of “business” includes <b><i>“every trade, occupation or profession”</i></b> (<a href="#">s45 PA 1890</a>).</li> <li>❖ Therefore, virtually <b><i>any activity of a commercial nature</i></b> is capable of giving rise to a partnership (but not a charity; <a href="#">see below</a>).</li> <li>❖ <b><i>The business must be “carried on”</i></b>:                 <ul style="list-style-type: none"> <li>➤ This means that there must be <b><i>more than “mere agreement”</i></b> for a partnership to be formed (<a href="#">Illot v Williams &amp; Others [2013] EWCA Civ 645</a>).</li> <li>➤ However, there is <b><i>no requirement</i></b> for the parties to have <b><i>actually commenced trading</i></b>:                     <ul style="list-style-type: none"> <li>▪ <a href="#">Khan v Miah [2000] 1 WLR 2123</a>: “There is no rule of law that the parties to a joint venture <b><i>do not become partners until actual trading commences</i></b>. The rule is</li> </ul> </li> </ul> </li> </ul>
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<sup>1</sup> [Workshop 1, Prep Task 1](#)

		<p><i>that persons who agree to carry on a business activity as a joint venture do not become partners until they actually <b>embark on the activity in question</b></i>”.</p> <ul style="list-style-type: none"> <li>▪ In <a href="#">Khan</a>, a partnership was held to exist where the parties had agreed to open a restaurant together. They had not traded, but <b>had taken steps to pursue the venture</b>, including opening a joint bank account, obtaining a bank loan, and acquiring premises, furniture and equipment.</li> </ul>
<p><b>Effect of creation - no separate legal personality</b></p> <p><a href="#">Business Law &amp; Practice, 13.2.1</a></p>	<p><b><u>“With a view of profit”.</u></b></p>	<ul style="list-style-type: none"> <li>❖ The purpose of the business must be to <b>make money</b>.</li> <li>❖ Charitable motives are <b>unable to constitute partnerships</b>.</li> </ul> <ul style="list-style-type: none"> <li>❖ A partnership is unincorporated; it has <b>no separate legal personality</b>.</li> <li>❖ This means that the partnership, as a business entity, is <b>not considered to be separate from its owners</b> (the partners) in the eyes of the law.</li> <li>❖ Some of the implications of this are:             <ul style="list-style-type: none"> <li>➤ Partners will be <b>personally liable</b> for the debts of the partnership, meaning that if the partnership incurs a debt each partner may have to <b>pay for that debt out of their personal assets</b>.</li> <li>➤ “Partnership assets” are <b>not</b> owned by “the partnership” (because it is not a legal entity), rather they are <b>owned jointly by the partners</b>.</li> </ul> </li> <li>❖ As compared with a company, the benefits of a partnership are:             <ul style="list-style-type: none"> <li>➤ <b>Lack of formality:</b> partners do not have to go through any of the extensive administrative and accounting requirements of a company. Partners are able to focus on the business itself.</li> <li>➤ <b>There is no requirement to make as much information public:</b> Partnerships are not, for instance, required to publish business accounts.</li> </ul> </li> </ul>
<p><b>Fundamental characteristics of a partnership<sup>2</sup></b></p> <p><a href="#">Business Law &amp; Practice, 13.2.2; 15.3</a></p>		<ul style="list-style-type: none"> <li>❖ Partners will tend to have the following rights and responsibilities:             <ul style="list-style-type: none"> <li>➤ To be involved in <b>making decisions which affect the business</b> (<a href="#">s24(5)</a>).</li> <li>➤ To <b>share in the profits of the business</b>; <a href="#">s2(3)</a> provides that this will be <i>prima facie</i> evidence that an individual is a partner (<a href="#">s24(1)</a>).</li> <li>➤ To <b>examine the accounts</b> of the business;</li> <li>➤ To insist on <b>openness and honesty from fellow partners</b>;</li> <li>➤ To <b>veto the introduction of a new partner</b>; and (<a href="#">s24(7)</a>).</li> <li>➤ To <b>share any losses</b> made by the business (<a href="#">s24(1)</a>).</li> <li>➤ To <b>indemnify, as a firm, fellow partners</b> against bearing more than their share of liability connected with the business (<a href="#">s24(2)</a>).</li> </ul> </li> </ul>

<sup>2</sup> [Workshop 1, Prep Task 1](#)

<p><b><u>Decision making</u></b></p> <p><i><a href="#">Business Law &amp; Practice, 14.12</a></i></p>	<ul style="list-style-type: none"> <li>❖ Partners make decisions by a <b>majority vote</b> (<a href="#">s24(8)</a>).</li> <li>❖ However:             <ul style="list-style-type: none"> <li>➤ A decision to change the <b>nature of the partnership business</b> can only be done <b>unanimously</b> (<a href="#">s24(8)</a>); and</li> <li>➤ <b>New partners</b> can only be introduced with the <b>consent of all existing partners</b> (<a href="#">s24(7)</a>).</li> </ul> </li> </ul>
<p><b><u>Naming the Partnership</u></b></p> <p><i><a href="#">Business Law &amp; Practice, 13.4</a></i></p>	<ul style="list-style-type: none"> <li>❖ A partnership can, in general, be called anything that the partners choose, subject to <b>restrictions</b> set out in <a href="#">Chapter 1 of Part 41 of the Companies Act 2006</a>.</li> <li>❖ <a href="#">Chapter 1 of Part 41</a> applies to <b>any</b> business (including partnerships) trading under a name which is <b>not the entity's real name</b>. The provisions, therefore, apply to <b>any partnership</b> where its name does <b>NOT consist solely of the name of the partners</b> (e.g., Smith and Jones) (<a href="#">s1192</a>).</li> <li>❖ Where <a href="#">Chapter 1 of Part 41</a> applies, certain business names (set out in the <a href="#">Company, Limited Liability Partnership and Business Names (Sensitive Words and Expressions) Regulation 2014 (SI 2014/3140)</a>) cannot be used <b>without obtaining approval from the Secretary of State</b>; this includes names such as those which suggest that the business is connected to the Government or Local Authority.</li> </ul>

**A Partner's Duty of Utmost Good Faith**

❖ *[Business Law & Practice, 15.2](#)*

<p><b><u>Overview</u></b></p>	<ul style="list-style-type: none"> <li>❖ Partners are under a duty of the <b>utmost fairness and good faith</b> to each other.</li> <li>❖ As part of this duty, partners must comply with the requirements of <a href="#">s28 – s30 PA 1890</a>. These require partners to comply with the following duties.</li> </ul>
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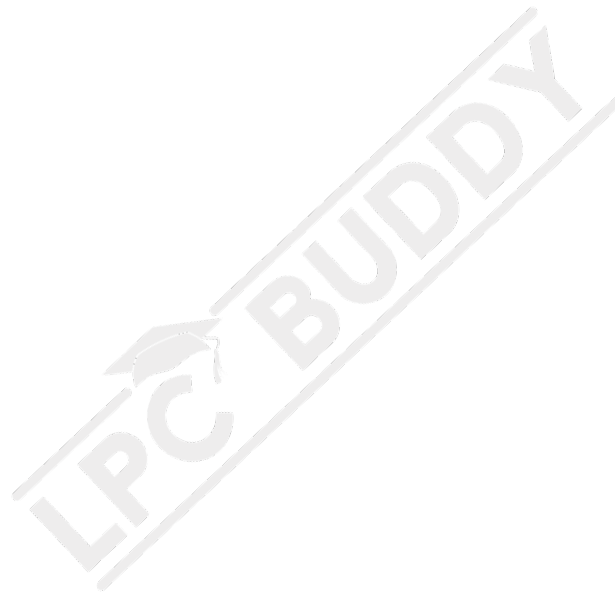
<p><b><u>Divulge information to other partners.</u></b></p> <p><a href="#">s28 PA 1890</a></p>	<ul style="list-style-type: none"> <li>❖ Partners <b>must divulge all information</b> on “all things affecting the partnership” to the other partners.</li> <li>❖ This duty may be breached, for example, when a partner sells their business premises to the partnership, and they suppress information about the value of that premises.</li> </ul>
<p><b><u>Account for benefits.</u></b></p> <p><a href="#">s29 PA 1890</a></p>	<ul style="list-style-type: none"> <li>❖ Partners must <b>account</b> to the firm for <b>any benefit</b> derived, without the consent of the other partners, from a <b>transaction concerning the partnership</b>.</li> <li>❖ For example, if a partner is asked by a client of the firm to do some work in their spare time, the money received from this will be <b>cash of the partnership</b> (unless the other partners consent to the individual partner keeping it).</li> <li>❖ When considering problem questions on this, consider:             <ul style="list-style-type: none"> <li>➤ Has the partner <b>derived a benefit</b>?</li> <li>➤ Was this <b>with the other partner's consent</b>?</li> </ul> </li> </ul>



**Account for profits from competing businesses.**

[s30 PA 1890](#)

- ❖ If a partner **runs a business “of the same nature”** and **competes with the firm**, the partner must **account for any profits** made by the competing business unless they have the consent of the other partners.
- ❖ This **catches businesses in *direct competition* with the partnership.**
- ❖ This does not, however, necessarily include **similar, but non-competing businesses** e.g., if a partner sets up a business in a different part of the supply chain.



**The Partnership Agreement<sup>1</sup>**

❖ *Business Law & Practice, Chapter 14*

<b>Overview</b>	<ul style="list-style-type: none"> <li>❖ The <a href="#">Partnership Act 1890 (PA 1890)</a> provides a <b>default set of rules</b> that apply to partnerships where there is <b><u>no express or implied agreement</u></b> to the contrary</li> <li>❖ The inclusion of the default rules <b>will not necessarily be appropriate for every partnership</b>, and, where they are included, the default rules are <b><u>not necessarily comprehensive in what they cover</u></b>.</li> <li>❖ It is therefore often necessary for the parties to enter into an express written agreement, which modifies or departs from the terms implied by the <a href="#">Act</a>.</li> <li>❖ The key skill students are expected to learn in this area is to understand:             <ul style="list-style-type: none"> <li>➤ What the <a href="#">PA 1890</a> <b>implies</b> in the absence of any agreement; and</li> <li>➤ What <b><u>changes might need to be made to those terms</u></b>, by way of a written agreement, to suit the needs of a client.</li> </ul> </li> </ul>
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Area of Issue (A-Z)	What the Partnership Act Implies	Why is this problematic / what terms are desirable?
<b>Arbitration</b>  <i>Business Law &amp; Practice, 14.8</i>	<ul style="list-style-type: none"> <li>❖ <b>Nothing</b></li> </ul>	<ul style="list-style-type: none"> <li>❖ Arbitration is a form of alternative dispute resolution whereby the parties agree, by way of contract, that they will submit any disputes to an independent third party (“an arbitrator”) who will make a binding decision on the dispute.</li> <li>❖ It can be useful to include an arbitration clause in the partnership agreement to resolve disputes between the partners without recourse to court action, to <b><u>avoid the publicity, delay and expense of litigation</u></b>.</li> </ul>
<b>Commencement date</b>  <i>Business Law &amp; Practice, 14.2</i>	<ul style="list-style-type: none"> <li>❖ <b>Nothing.</b></li> <li>❖ The partnership comes into being when the <a href="#">s1</a> definition is satisfied.</li> </ul>	<ul style="list-style-type: none"> <li>❖ It is often desirable to include a clause which <b><u>specifies the start date of the partnership</u></b> so that it is certain when the parties’ rights and obligations arise.</li> </ul>
<b>Dissolution under <a href="#">s33 PA 1890</a></b>  <i>Business Law &amp; Practice, Chapter 17.2.4</i>	<ul style="list-style-type: none"> <li>❖ The death or bankruptcy of a partner will <b><u>automatically dissolve the partnership (s33)</u></b>.</li> </ul>	<ul style="list-style-type: none"> <li>❖ It is normally desirable to depart from this provision and provide that the <b><u>remaining partners will automatically continue in partnership</u></b> upon buying out the deceased/bankrupt partner’s share.</li> </ul>

<sup>1</sup> [Workshop 1, Prep Task 2](#)

Area of Issue (A-Z)	What the Partnership Act Implies	Why is this problematic / what terms are desirable?
<u>Drawings</u>  <a href="#">Business Law &amp; Practice, 14.6</a>	<ul style="list-style-type: none"> <li>❖ <u>Nothing</u></li> </ul>	<ul style="list-style-type: none"> <li>❖ It may be desirable to <u>place a monthly limit on how much each partner can draw from the business</u> to prevent any one partner from draining funds.</li> </ul>
<u>Duration and dissolution</u>  <a href="#">Business Law &amp; Practice, 14.3</a>	<ul style="list-style-type: none"> <li>❖ <u>No duration</u> is supplied by the <a href="#">Act</a>.</li> <li>❖ If there is no agreement to the contrary, the partnership will be a <u>“partnership at will”</u> (<a href="#">s26</a>).</li> <li>❖ This means that the partnership continues indefinitely, unless and until a partner gives <u>notice to terminate the partnership</u>.</li> </ul>	<ul style="list-style-type: none"> <li>❖ Any partner may terminate the entire partnership <u>“at any time by giving notice of his intention to do so to all the other partners”</u> (<a href="#">s26</a>).</li> <li>❖ If given, a notice to terminate under the Act has <u>immediate effect</u> and <u>does not need to be in writing</u> unless the partnership agreement is made by deed (<a href="#">s26(2)</a>).</li> <li>❖ This is flexible for the partners, but unsecure for the business as the <u>whole partnership can be brought to an end on the whim of a single partner</u>.</li> <li>❖ Suggested amendments to this might include: <ul style="list-style-type: none"> <li>➢ Specifying a <u>minimum period of notice</u>.</li> <li>➢ Requiring any notice to be <u>given in writing</u>.</li> <li>➢ <u>Agreeing a fixed term</u>, whereby the partnership perhaps continues thereafter to be terminable with a minimum notice period.</li> <li>➢ Providing that the partnership shall continue <u>as long as there are two surviving partners</u>.</li> </ul> </li> </ul>
<u>Expulsion of partners</u>  <a href="#">Business Law &amp; Practice, 14.15</a>	<ul style="list-style-type: none"> <li>❖ Nothing</li> <li>❖ <a href="#">The PA 1890</a> <u>does not provide for the possibility of a partner to be expelled</u> by the other partners without that partner’s consent.</li> </ul>	<ul style="list-style-type: none"> <li>❖ It may be desirable to provide a <u>term enabling the partners to expel a partner in prescribed circumstances</u>.</li> </ul>
<u>Non-competition clauses.</u>  <a href="#">Business Law &amp; Practice, 14.17</a>	<ul style="list-style-type: none"> <li>❖ <u>Nothing in the PA 1890 prevents partners from setting up in competition</u> on leaving the partnership.</li> </ul>	<ul style="list-style-type: none"> <li>❖ Where the firm continues on a partner retiring, it is important to provide a <u>term limiting the outgoing partner’s freedom to compete</u>.</li> <li>❖ Such clauses <u>must not be unreasonably broad</u> or they will be void. The clause must: <ul style="list-style-type: none"> <li>➢ <u>Protect a legitimate interest</u>. <ul style="list-style-type: none"> <li>▪ E.g., the <u>firm’s business connections, employees, or confidential information</u>.</li> </ul> </li> </ul> </li> </ul>

Area of Issue (A-Z)	What the Partnership Act Implies	Why is this problematic / what terms are desirable?
		<ul style="list-style-type: none"> <li>➤ <u>Be reasonable to protect that interest.</u> <ul style="list-style-type: none"> <li>▪ Is the clause wider than it needs to be?</li> <li>▪ It should be <b>limited in its geographical scope and duration</b> e.g., restrictions lasting more than 3 years over an unduly wide area more likely to be unreasonable.</li> </ul> </li> <li>❖ In order to draft an agreement that is more likely to be reasonable, a solicitor should consider the use of <b>less burdensome clauses</b> which do not restrict trade as a whole, such as a:           <ul style="list-style-type: none"> <li>➤ <u>Non-dealing clause</u>: prevents the partner from entering contracts with customers etc.</li> <li>➤ <u>Non-solicitation clause</u>: prevents the partner from soliciting contracts.</li> </ul> </li> </ul>
<p><b><u>Outgoing partner's share.</u></b></p> <p><i><a href="#">Business Law &amp; Practice, 14.16</a></i></p>	<ul style="list-style-type: none"> <li>❖ If the partnership continues but there is a delay in payment of an outgoing partner's share, that <b>partner/their estate will be entitled to either:</b> <ul style="list-style-type: none"> <li>➤ <b>5% interest on the partner's share;</b> or</li> <li>➤ <b>Such profits as are attributable</b> to their share (<a href="#">s42</a>).</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>❖ When a partner leaves the business, the remaining partners will need to <b>pay for that partner's share</b>, or otherwise this will need to be sold to an external third party.</li> <li>❖ It is desirable to have terms, set from the outset, which specify:           <ul style="list-style-type: none"> <li>➤ Whether the partners have an <b>obligation or an option</b> to purchase an outgoing partner's share;</li> <li>➤ The <b>basis on which the share will be valued;</b></li> <li>➤ How to <b>resolve disputes</b> as to the valuation (e.g., professional valuation);</li> <li>➤ The date on which <b>payment</b> will be due;</li> <li>➤ <b>An indemnity</b> for the outgoing partner's liabilities; and</li> <li>➤ <b>Valuation of goodwill.</b></li> </ul> </li> </ul>
<p><b><u>Retirement (leaving the partnership).</u></b></p> <p><i><a href="#">Business Law &amp; Practice, 14.14</a></i></p>	<ul style="list-style-type: none"> <li>❖ <b>Nothing.</b></li> <li>❖ Partners have no right to retire under the <a href="#">Act</a>.</li> <li>❖ However, partners CAN vary the partnership agreement (so as to remove a partner) by <b>unanimous consent</b> (<a href="#">s19</a>).</li> </ul>	<ul style="list-style-type: none"> <li>❖ It is desirable to include a term enabling a <b>partner to retire without unanimous agreement.</b></li> </ul>

Area of Issue (A-Z)	What the Partnership Act Implies	Why is this problematic / what terms are desirable?
<p><b>Sale of capital assets and sharing of capital increases.</b></p> <p><i>Business Law &amp; Practice, 14.7</i></p>	<ul style="list-style-type: none"> <li>❖ Partners share <b>equally</b> in the <b>capital</b> of the business (<a href="#">s24(1)</a>).</li> <li>❖ Increases or decreases in the value of assets <b>are therefore also shared equally</b>.</li> </ul>	<ul style="list-style-type: none"> <li>❖ Partners may want to deviate from this to <b>reflect the capital contribution of each partner to the business</b>.</li> <li>❖ E.g., if Partner A provides a factory worth £50,000, and Partner B puts in £10,000 cash, under the <a href="#">PA 1890</a> if the factory increases in value to £60,000, the £10,000 increase would be split 50/50. Similarly, if the factory is sold, Partner A will only receive £30,000 despite contributing an asset worth £50,000.</li> <li>❖ It may be worth <b>specifying in the agreement what assets are “Partnership Assets”</b> in which all partners will have a beneficial interest, and which are assets belonging to individual partners to prevent disputes.</li> </ul>
<p><b>Sharing of Profits / Losses.</b></p> <p><i>Business Law &amp; Practice, 14.5</i></p>	<ul style="list-style-type: none"> <li>❖ Profits/losses of the business are to be <b>shared by the partners equally</b> (<a href="#">s24(1)</a>).</li> <li>❖ <a href="#">s24(6)</a> <b>explicitly prohibits partners from receiving a salary</b> unless an agreement to the contrary excludes this.</li> </ul>	<ul style="list-style-type: none"> <li>❖ Partners may want to deviate from this so that profits are shared in a manner which <b>reflects the contribution of each partner to the business</b> e.g., in terms of time, experience, or capital contribution.</li> <li>❖ This may be done by: <ul style="list-style-type: none"> <li>➢ Paying partners on a <b>salary</b> basis.</li> <li>➢ Specifying that partners are <b>allowed interest in proportion to their capital contributions</b> (this incentivises investment).</li> <li>➢ Providing that <b>profits/losses are shared in specific percentages</b>, as opposed to equally.</li> </ul> </li> </ul>
<p><b>Work Input</b></p> <p><i>Business Law &amp; Practice, 14.10</i></p>	<ul style="list-style-type: none"> <li>❖ Partners have a <b>right, but not an obligation</b>, to take part in the management of the business (<a href="#">s24(5)</a>).</li> </ul>	<ul style="list-style-type: none"> <li>❖ Under the <a href="#">PA 1890</a>, it is permissible to have a “sleeping partner” who effectively contributes nothing to the business.</li> <li>❖ Partners may, therefore want to <b>fix each partner’s obligations</b> and avoid a scenario where a partner can do nothing but nevertheless be entitled to an equal share in the profits of the partnership.</li> <li>❖ E.g., the agreement may specify that a partner must “<i>devote his whole time and attention to the business</i>”, or specify a number of hours per week that they are required to work on the business.</li> <li>❖ The clause would need to cover sick leave and holiday entitlement.</li> </ul>

**Liability for Partnership Debts<sup>1</sup>**

❖ Business Law & Practice, 16.2

<p><b>Overview</b></p>	<ul style="list-style-type: none"> <li>❖ During the course of partnership business, contracts may be entered into by either:             <ul style="list-style-type: none"> <li>➢ <b>All of the partners collectively</b>, or</li> <li>➢ <b>An individual partner, purporting to act on behalf of the partnership.</b></li> </ul> </li> <li>❖ The question arises as to when <b>individual partner(s)</b> may bind a firm, and hence when other partners in the firm can become liable in the event that a contract is breached.</li> </ul>				
<p><b>Summary of the position</b></p>	<ul style="list-style-type: none"> <li>❖ Contracts entered into by an individual partner will:             <ul style="list-style-type: none"> <li>➢ <b>Always</b> bind the partner <b>who entered into the contract</b>, but</li> <li>➢ Only <b>sometimes</b> bind the <b>partnership as a whole</b>.</li> </ul> </li> <li>❖ A debt / liability under such a contract can, in summary, be enforced:             <table border="1" data-bbox="277 732 1513 1688"> <tr> <td data-bbox="277 732 508 894"> <p><b>1. Against the partner who made the contract.</b></p> </td> <td data-bbox="508 732 1513 894"> <ul style="list-style-type: none"> <li>❖ The partner who entered into the contract can <b>always be sued</b>.</li> <li>❖ There will be <b>privity of contract</b> between that partner, and the other party.</li> </ul> </td> </tr> <tr> <td data-bbox="277 894 508 1688"> <p><b>2. The firm, if the partner contracted with actual or apparent authority.</b></p> </td> <td data-bbox="508 894 1513 1688"> <ul style="list-style-type: none"> <li>❖ The firm will be liable if the contracting partner had:                             <ul style="list-style-type: none"> <li>➢ <b>Actual authority</b>; or</li> <li>➢ <b>Apparent / ostensible authority</b> (<a href="#">see below</a>).</li> </ul> </li> <li>❖ The firm will not be liable if the contracting partner had <b>no authority</b> at all.</li> <li>❖ If <b>the firm</b> is liable, a contracting party who goes unpaid can sue:                             <ul style="list-style-type: none"> <li>➢ The <b>firm</b> as a whole, OR</li> <li>➢ Any <b>individual who was a partner</b> at the <b>time the debt was incurred</b>.                                     <ul style="list-style-type: none"> <li>▪ Under <a href="#">s9 PA 1890</a>, partners are <b>jointly and severally liable</b>.</li> <li>▪ I.e., each individual partner is fully liable for the performance of contractual obligations which bind the partnership.</li> <li>▪ If the partner entered into the contract with <b>apparent authority only, they will have to indemnify the other partners</b> for any liability / loss they incur.</li> </ul> </li> </ul> </li> </ul> </td> </tr> </table> </li> </ul>	<p><b>1. Against the partner who made the contract.</b></p>	<ul style="list-style-type: none"> <li>❖ The partner who entered into the contract can <b>always be sued</b>.</li> <li>❖ There will be <b>privity of contract</b> between that partner, and the other party.</li> </ul>	<p><b>2. The firm, if the partner contracted with actual or apparent authority.</b></p>	<ul style="list-style-type: none"> <li>❖ The firm will be liable if the contracting partner had:                             <ul style="list-style-type: none"> <li>➢ <b>Actual authority</b>; or</li> <li>➢ <b>Apparent / ostensible authority</b> (<a href="#">see below</a>).</li> </ul> </li> <li>❖ The firm will not be liable if the contracting partner had <b>no authority</b> at all.</li> <li>❖ If <b>the firm</b> is liable, a contracting party who goes unpaid can sue:                             <ul style="list-style-type: none"> <li>➢ The <b>firm</b> as a whole, OR</li> <li>➢ Any <b>individual who was a partner</b> at the <b>time the debt was incurred</b>.                                     <ul style="list-style-type: none"> <li>▪ Under <a href="#">s9 PA 1890</a>, partners are <b>jointly and severally liable</b>.</li> <li>▪ I.e., each individual partner is fully liable for the performance of contractual obligations which bind the partnership.</li> <li>▪ If the partner entered into the contract with <b>apparent authority only, they will have to indemnify the other partners</b> for any liability / loss they incur.</li> </ul> </li> </ul> </li> </ul>
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<sup>1</sup> [Workshop 1, Workshop Task](#)

**Actual Authority, and Apparent Authority**

❖ [Business Law & Practice, 16.2.1 – 16.2.2](#)

<p><b>Actual authority</b></p> <p><a href="#">s6 PA 1890</a></p> <p><a href="#">Business Law &amp; Practice, 16.2.1</a></p>	<ul style="list-style-type: none"> <li>❖ A partner will contract with actual authority where they are <b>authorised by the partnership to enter into the agreement.</b></li> <li>❖ An agreement entered into where the partner has actual authority will <b>ALWAYS bind the partnership.</b> Per <a href="#">s6 Partnership Act 1890</a>, an instrument executed in the <b>name of the firm</b> by any person <b>authorised to do so</b>, whether a partner or not, will <b>bind the firm</b> and all the partners.</li> <li>❖ Actual authority may be <u>express or implied</u>:             <ul style="list-style-type: none"> <li>➢ <b>Express actual authority</b> arises where there is a specific agreement between the partners granting the partner authority.</li> <li>➢ <b>Implied actual authority</b> arises through a course of conduct; for instance, where one partner is regularly responsible for a <b>particular course of dealing</b> in relation to which the others have acquiesced (i.e., done nothing to stop).</li> </ul> </li> </ul>		
<p><b>Apparent / ostensible authority</b></p> <p><a href="#">s5 PA 1890</a></p> <p><a href="#">Business Law &amp; Practice, 16.2.2</a></p>	<ul style="list-style-type: none"> <li>❖ If a partner does not have actual authority, the partnership <b>may</b> still be bound under <a href="#">s5 PA 1890</a> if the partner nevertheless contracted with “apparent” or “ostensible” authority.</li> <li>❖ <a href="#">s5</a>: “...<i>the acts of every partner who does <b>any act for carrying on in the usual way business of the kind carried on by the firm</b> of which he is a member <b>bind the firm</b> and his partners <b>unless</b> the partner so acting has in fact <b>no authority to act for the firm in the particular matter</b> and the person with whom he is dealing either <b>knows that he has no authority or does not know or believe him to be a partner</b>”.</i></li> <li>❖ A partner will contract with <b>apparent authority</b> and bind the partnership, if:             <ul style="list-style-type: none"> <li>➢ The partner carries on “<i>business of the kind carried on by the firm</i>”;                 <ul style="list-style-type: none"> <li>▪ I.e., the transaction is one which relates to the <b>type of business</b> in which the firm is apparently engaged.</li> </ul> </li> <li>➢ “<i>In the usual way</i>”; and                 <ul style="list-style-type: none"> <li>▪ I.e., the transaction is one for which a partner in such a firm would <b>usually be expected to have the authority to act.</b></li> </ul> </li> <li>➢ The person with whom the partner is dealing:                 <ul style="list-style-type: none"> <li>▪ <b>Does not know</b> the partner <b>does not have authority</b>, but</li> <li>▪ <b>Knows</b>, or believes the partner <b>to be a partner</b>.</li> </ul> </li> </ul> </li> </ul> <table border="1" data-bbox="316 1774 1510 1967"> <tr> <td data-bbox="316 1774 511 1967"> <p><b>Effect of contracting with apparent authority.</b></p> </td> <td data-bbox="511 1774 1510 1967"> <ul style="list-style-type: none"> <li>❖ Contracts entered into by a partner with apparent authority <b>will bind the firm (partnership)</b>, and hence the other partners.</li> </ul> </td> </tr> </table>	<p><b>Effect of contracting with apparent authority.</b></p>	<ul style="list-style-type: none"> <li>❖ Contracts entered into by a partner with apparent authority <b>will bind the firm (partnership)</b>, and hence the other partners.</li> </ul>
<p><b>Effect of contracting with apparent authority.</b></p>	<ul style="list-style-type: none"> <li>❖ Contracts entered into by a partner with apparent authority <b>will bind the firm (partnership)</b>, and hence the other partners.</li> </ul>		

		<ul style="list-style-type: none"> <li>❖ The partner who <b>made the contract</b> (and is responsible for the firm being liable) will have to <b>indemnify the firm</b> for any liability or loss they incur.</li> </ul>
	<b>Example</b>	<ul style="list-style-type: none"> <li>❖ John, a partner in E F Plumbers, agrees, without actual authority, to purchase: <ul style="list-style-type: none"> <li>➤ A quantity of copper piping.</li> <li>➤ A Jacuzzi and luxury bathroom suite.</li> <li>➤ A new van with EF Plumbers printed on the side.</li> <li>➤ A quantity of roofing felt and heavy timber.</li> </ul> </li> <li>❖ If the person that John was dealing with: <ul style="list-style-type: none"> <li>➤ Did not know that John did not have actual authority, but</li> <li>➤ Knew or believed John to be a partner.</li> </ul> </li> <li>❖ John will have <u>apparent authority</u> to make all of the contracts <b>save for the contract for the roofing felt and timber</b>. <ul style="list-style-type: none"> <li>➤ The contract for the roofing felt and timber would <b>not</b> be one which relates to the <i>type of business</i> in which the firm is apparently engaged.</li> </ul> </li> <li>❖ E F Plumbers are <b>plumbers</b>, purchasing roof timbers has no apparent connection to the firm’s business.</li> </ul>
<b>No Authority</b>		<ul style="list-style-type: none"> <li>❖ Contracts entered into without authority <b>do not bind the firm</b>, but the contracting partner will be <b>personally liable</b>.</li> </ul>

**Liability for Debts of Incoming and Outgoing Partners**

❖ *Business Law & Practice, 16.3.5*

<b>Overview</b>	<ul style="list-style-type: none"> <li>❖ A partnership may, over time, be constituted by <b>different partners</b>. Existing partners may <b>leave</b>, and <b>new partners may join</b> the partnership. It is important to understand when these incoming and outgoing partners will be bound by debts incurred by the partnership.</li> </ul>		
<b>Incoming Partners</b>	<ul style="list-style-type: none"> <li>❖ <a href="#">s17(1) PA 1890</a>: a new partner is <b>not liable</b> <i>“to the creditors of the firm for anything done before he became partner”</i>.</li> <li>❖ This means that <i>incoming</i> partners are <b>NOT</b> generally liable for partnership debts that have been <b>incurred before they joined the partnership</b>.</li> </ul>		
<b>Outgoing Partners</b>	<ul style="list-style-type: none"> <li>❖ A partner who <i>retires</i> from the firm <b>remains liable</b> for partnership debts that are incurred before their retirement (<a href="#">s17(2) PA 1890</a>).</li> </ul> <table border="1" data-bbox="292 1806 1510 1932"> <tr> <td><b>How can an outgoing partner</b></td> <td> <ul style="list-style-type: none"> <li>❖ Two potential measures can be taken to prevent an <b>outgoing partner</b> from being liable, after their retirement, for <b>debts incurred before their retirement</b>:</li> </ul> </td> </tr> </table>	<b>How can an outgoing partner</b>	<ul style="list-style-type: none"> <li>❖ Two potential measures can be taken to prevent an <b>outgoing partner</b> from being liable, after their retirement, for <b>debts incurred before their retirement</b>:</li> </ul>
<b>How can an outgoing partner</b>	<ul style="list-style-type: none"> <li>❖ Two potential measures can be taken to prevent an <b>outgoing partner</b> from being liable, after their retirement, for <b>debts incurred before their retirement</b>:</li> </ul>		



<p><b><u>avoid liability for partnership debts?</u></b></p>	<p><b><u>Indemnity</u></b></p> <p><i><u>Business Law and Practice 16.3.5</u></i></p>	<ul style="list-style-type: none"> <li>❖ An indemnity is where the <b>remaining partners</b> contractually <b>agree with the outgoing partner to repay them</b> if the outgoing partner is sued by a creditor for a debt.</li> <li>❖ Technically, the outgoing partner will <i>remain liable to the creditor</i>. The outgoing partner merely agrees contractually <b>with the remaining partners to be repaid if</b> they are sued. It is a “bipartite agreement” which does not involve the creditor at all.</li> </ul>
	<p><b><u>Novation Agreement</u></b></p> <p><i><u>Business Law and Practice, 16.3.5</u></i></p>	<ul style="list-style-type: none"> <li>❖ A novation agreement <b>extinguishes (cancels) one contract and replaces it with another</b>, transferring both the obligations and rights from the original contract to a new one.</li> <li>❖ Where a partner leaves a firm, a creditor can <b>enter into a novation agreement</b> with:             <ul style="list-style-type: none"> <li>➤ The partners at the time the contract was made; and</li> <li>➤ The newly constituted partnership.</li> </ul> </li> <li>❖ The agreement will:             <ul style="list-style-type: none"> <li>➤ <b>Release the original partners from their liability</b> and</li> <li>➤ <b>Result in the firm, as newly constituted, taking over the liability.</b></li> </ul> </li> <li>❖ The result of this is that the outgoing partner, as a member of the <i>original partnership</i> and <b>not</b> the <i>newly constituted partnership</i> will be <b>released from their debt</b>.</li> <li>❖ Note that a novation agreement makes <b>all</b> partners in the firm as newly constituted, including those <b>who have joined the firm since the debts were incurred</b>, liable for those debts.             <ul style="list-style-type: none"> <li>➤ This hence provides a mechanism whereby incoming partners can be liable for debts incurred <b>before</b> they became a partner.</li> </ul> </li> <li>❖ If no new partner joins, for the novation agreement to be contractually binding there must be:             <ul style="list-style-type: none"> <li>➤ <b>Consideration</b> for the creditor’s promise to release the retiring partner from liability; or</li> </ul> </li> </ul>

			➤ The agreement must be <b>executed as a deed</b> (deeds do not require consideration).
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**Liability for Debts Incurred *After a Partner Leaves a Firm***

❖ [Business Law and Practice 16.3.4 – 16.3.4](#)

<b>Overview</b>	<ul style="list-style-type: none"> <li>❖ It is possible for a partner who leaves a firm <b>before</b> a debt is incurred to still be liable for that debt.</li> <li>❖ This can occur where there is either:             <ul style="list-style-type: none"> <li>➤ <b>Holding out</b> (<a href="#">s14 PA 1890</a>); or</li> <li>➤ The outgoing partner <b>fails to give sufficient notice of their departure</b> (<a href="#">s36 PA 1890</a>).</li> </ul> </li> </ul>
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<p><b>Holding Out</b></p> <p><a href="#">s14 PA 1890</a></p> <p><a href="#">Business Law and Practice 16.3.3</a></p>	<ul style="list-style-type: none"> <li>❖ A person (X) may be liable for a debt under <a href="#">s14 of the Partnerships Act 1890</a> if they are <b>“held out” to be a partner</b> to a third-party creditor.</li> <li>❖ There are three elements to “holding out”, per <a href="#">Nationwide Building Society v Lewis [1998] Ch 482</a>. There must be:             <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 20%;"><b>1. A representation.</b></td> <td> <ul style="list-style-type: none"> <li>❖ There must be a representation that X is a partner in the firm either by:                             <ul style="list-style-type: none"> <li>➤ <b>X</b>, or</li> <li>➤ Someone else, but <b>with X’s knowledge</b>.</li> </ul> </li> <li>❖ The representation may be:                             <ul style="list-style-type: none"> <li>➤ <b>Oral</b> (e.g., X is described as being a partner during the course of a conversation).</li> <li>➤ <b>Written</b> (e.g., the firm, with X’s knowledge, continues to use headed note-paper with X’s name on it after X’s retirement).</li> <li>➤ <b>By conduct</b>.</li> </ul> </li> </ul> </td> </tr> <tr> <td><b>2. Reliance.</b></td> <td>❖ There must be <b>reliance</b> upon the representation by the person to whom the representation is made.</td> </tr> <tr> <td><b>3. The consequent giving of credit to the firm.</b></td> <td>❖ The creditor must <b>make payment to the firm</b> as a result of reliance on the representation.</td> </tr> </table> </li> <li>❖ It follows that X may be bound by a debt even if, at the time the representation was made, X was not a partner. This includes circumstances where:             <ul style="list-style-type: none"> <li>➤ X had <b>never been</b> a partner; or</li> <li>➤ X <b>retired before the contract was made</b>.</li> </ul> </li> </ul>	<b>1. A representation.</b>	<ul style="list-style-type: none"> <li>❖ There must be a representation that X is a partner in the firm either by:                             <ul style="list-style-type: none"> <li>➤ <b>X</b>, or</li> <li>➤ Someone else, but <b>with X’s knowledge</b>.</li> </ul> </li> <li>❖ The representation may be:                             <ul style="list-style-type: none"> <li>➤ <b>Oral</b> (e.g., X is described as being a partner during the course of a conversation).</li> <li>➤ <b>Written</b> (e.g., the firm, with X’s knowledge, continues to use headed note-paper with X’s name on it after X’s retirement).</li> <li>➤ <b>By conduct</b>.</li> </ul> </li> </ul>	<b>2. Reliance.</b>	❖ There must be <b>reliance</b> upon the representation by the person to whom the representation is made.	<b>3. The consequent giving of credit to the firm.</b>	❖ The creditor must <b>make payment to the firm</b> as a result of reliance on the representation.
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<b>Example</b>	❖ X is a retired partner.						

	<ul style="list-style-type: none"> <li>❖ The partnership writes to Farmer Giles, after X's retirement, on headed notepaper bearing X's name, offering to purchase his crop of potatoes for a particular price. The result of this is that: <ul style="list-style-type: none"> <li>➤ There is a <b><u>representation that X is a partner in the firm.</u></b></li> <li>➤ If X <b><u>knew of this representation</u></b> i.e., they knew that the partnership was continuing to use the old notepaper; and</li> <li>➤ Farmer Giles <b><u>relied upon this.</u></b></li> <li>➤ X will be liable for the debt <b><u>through holding out.</u></b></li> </ul> </li> <li>❖ By contrast, X would <b><u>not</u></b> be liable for the debt if the remaining partners in the firm, Y and Z, and Farmer Giles <b><u>agreed to the contract orally</u></b> and merely <b><u>confirmed</u></b> this agreement on headed notepaper stating that Partner X was a partner in the firm.</li> <li>❖ Although there is a representation, and X may have known that the firm was continuing to use the old notepaper, Farmer Giles would not have had the necessary <b><u>reliance.</u></b></li> </ul>
<p><b><u>Failure to give appropriate notice of departure.</u></b></p> <p><a href="#">s36 PA 1890</a></p> <p><a href="#">Business Law and Practice 16.3.4</a></p>	<ul style="list-style-type: none"> <li>❖ Alternatively, a partner (X) may be liable for a debt <b><u>after they leave the firm, if:</u></b> <ul style="list-style-type: none"> <li>➤ A creditor enters into a transaction with the company, knowing that <b><u>X was a partner;</u></b> and</li> <li>➤ The creditor is <b><u>unaware</u></b> that X is <b><u>no longer a partner;</u></b> and</li> <li>➤ X has <b><u>failed to give the appropriate notice specified in <a href="#">s36 PA 1890.</a></u></b></li> </ul> </li> <li>❖ <a href="#">s36</a> states that where a person deals with the firm they are “<i>entitled to treat all apparent members of the old firm as <b><u>still being members of the firm</u></b> until he has <b><u>notice of the change</u></b>”.</i></li> <li>❖ Two notices are required: <ul style="list-style-type: none"> <li>➤ <b><u>Actual Notice (s36(1)):</u></b> <ul style="list-style-type: none"> <li>▪ Letters should be sent to <b><u>all existing customers</u></b> announcing that the partner is leaving.</li> </ul> </li> <li>➤ <b><u>Notice in the London Gazette (s36(2)):</u></b> <ul style="list-style-type: none"> <li>▪ A notice must be placed in the <i>London Gazette</i> to notify <b><u>persons who have not previously dealt with the firm.</u></b></li> <li>▪ There is no requirement for a creditor to have actually read the notices in order for them to be effective; all that is required is that they are made public.</li> </ul> </li> </ul> </li> <li>❖ This ground cannot be relied upon if the <b><u>creditor was never aware that the person had been a partner (s36(3)).</u></b></li> <li>❖ There is no requirement for the estate/trustee of a partner who is dead/bankrupt to give notice (<a href="#">s36(3)</a>).</li> </ul>

**Checklist - Liability for Partnership Debts**

❖ A firm's debts can be enforced against:

<b>1. The partner who made the contract.</b>	❖ Always. There is <b><u>privity of contract</u></b> .
<b>2. The firm (and hence all partners individually), IF...</b>	❖ The partner who made the contract had <b><u>actual authority</u></b> or <b><u>ostensible authority</u></b> . ❖ Where the partner had ostensible authority only, they must <b><u>indemnify the firm</u></b> .
<b>3. An outgoing partner, IF...</b>	❖ The debt was: <ul style="list-style-type: none"> <li>➤ Incurred <b><u>before the partner left</u></b> the firm; and</li> <li>➤ The partner has <b><u>NOT signed a novation agreement</u></b> discharging their liability.             <ul style="list-style-type: none"> <li>▪ The partner may, however, be <b><u>reimbursed</u></b> by the remaining partners if they have agreed an <b><u>indemnity</u></b> with the remaining partners.</li> </ul> </li> </ul> ❖ OR, the debt was: <ul style="list-style-type: none"> <li>➤ Incurred <b><u>after the partner left</u></b> the firm; and</li> <li>➤ There has been "<b><u>holding out</u></b>" i.e.:             <ul style="list-style-type: none"> <li>▪ There was a <b><u>representation</u></b> made by the retired partner, or with the retired partner's knowledge, that they are a partner;</li> <li>▪ The creditor <b><u>relied on this</u></b> when contracting with the firm; and</li> <li>▪ The creditor makes <b><u>payment to the firm</u></b> as a result.</li> </ul> </li> <li>➤ OR, the partner has <b><u>NOT given the appropriate notices of their departure</u></b>.             <ul style="list-style-type: none"> <li>▪ The partner will be liable if they:                 <ul style="list-style-type: none"> <li>• <b><u>Failed to give actual notice</u></b> to existing customers; or</li> <li>• Failed to place a notice in the <b><u>London Gazette</u></b> (notifying new customers); and</li> <li>• The creditor:                     <ul style="list-style-type: none"> <li>○ <b><u>Knew that X was a partner</u></b>; and</li> <li>○ Was <b><u>unaware of X having left</u></b> the firm.</li> </ul> </li> </ul> </li> </ul> </li> </ul>
<b>4. An Incoming Partner...</b>	❖ Generally, an incoming partner will <b><u>not</u></b> be liable ( <b><u>s17(1)</u></b> ). ❖ However, they may be liable if they are <b><u>party to a novation agreement</u></b> .