

LPC BUDDY

Business Law & Practice
2022 / 23



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

**CUT DOWN YOUR READING.
EASE YOUR EXAM STRESS.
GET THE GRADE YOU NEED.**



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Colour Coding Guide	<ul style="list-style-type: none"> ❖ Blue Text – Reference to statutes and case law. ❖ Green Text – Reference to textbook¹ paragraphs, workshop tasks² and other notes in LPC Buddy. ❖ Orange Text – Forms to file with Companies House.
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¹ Textbook references are to the CLP Legal Practice Guides by CLP Publishing.

² 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.



1. Partnerships

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Partnerships - Introduction

❖ [Business Law & Practice, Chapter 13](#)

<p>What is a Partnership?</p> <p>Business Law & Practice, 13.2</p>	<ul style="list-style-type: none"> ❖ A partnership is where two or more people run and own a business together. ❖ It is created when the definition in s1 of the Partnership Act 1890 is satisfied. There are no further formalities required. ❖ This means that: <ul style="list-style-type: none"> ➤ There is no requirement for a written agreement (although it may be advisable to have one). ➤ If the component elements are satisfied, a partnership will exist even when the individuals involved are unaware of what they have created legally. 				
<p>Definition¹</p>	<ul style="list-style-type: none"> ❖ s1 Partnership Act 1890: “Partnership is the relation which subsists: <ul style="list-style-type: none"> ➤ Between persons ➤ Carrying on a business in common. ➤ With a view of profit” <table border="1" data-bbox="332 751 1518 1848"> <tr> <td data-bbox="332 751 620 793"> <p>“Between Persons”</p> </td> <td data-bbox="620 751 1518 793"> <ul style="list-style-type: none"> ❖ Partners can be individuals <u>or</u> companies. </td> </tr> <tr> <td data-bbox="332 793 620 1848"> <p>“Carrying on a Business in Common”</p> </td> <td data-bbox="620 793 1518 1848"> <ul style="list-style-type: none"> ❖ “Business” = “includes every trade, occupation or profession” (§45 PA 1890). <ul style="list-style-type: none"> ➤ Virtually any activity of a <u>commercial nature</u> is capable of giving rise to a partnership (but not a charity; see below). ❖ The business must be “<u>carried on</u>”. This means that: <ul style="list-style-type: none"> ➤ There must be more than “mere agreement”. <ul style="list-style-type: none"> ▪ Illot v Williams & Others [2013] EWCA Civ 645 ➤ However, there is no requirement that the parties need to have actually commenced trading for a partnership to be formed: <ul style="list-style-type: none"> ▪ Khan v Miah [2000] 1 WLR 2123: “There is no rule of law that the parties to a joint venture do not become partners until actual trading commences. The rule is that persons who agree to carry on a business activity as a joint venture do not become partners until they actually embark on the activity in question”. ▪ In Khan, a partnership was held to exist where the parties had agreed to open a restaurant together. Whilst they had not traded, they had taken steps to pursue the venture, including opening a joint bank account, obtaining a bank loan, and acquiring premises, furniture and equipment. </td> </tr> </table>	<p>“Between Persons”</p>	<ul style="list-style-type: none"> ❖ Partners can be individuals <u>or</u> companies. 	<p>“Carrying on a Business in Common”</p>	<ul style="list-style-type: none"> ❖ “Business” = “includes every trade, occupation or profession” (§45 PA 1890). <ul style="list-style-type: none"> ➤ Virtually any activity of a <u>commercial nature</u> is capable of giving rise to a partnership (but not a charity; see below). ❖ The business must be “<u>carried on</u>”. This means that: <ul style="list-style-type: none"> ➤ There must be more than “mere agreement”. <ul style="list-style-type: none"> ▪ Illot v Williams & Others [2013] EWCA Civ 645 ➤ However, there is no requirement that the parties need to have actually commenced trading for a partnership to be formed: <ul style="list-style-type: none"> ▪ Khan v Miah [2000] 1 WLR 2123: “There is no rule of law that the parties to a joint venture do not become partners until actual trading commences. The rule is that persons who agree to carry on a business activity as a joint venture do not become partners until they actually embark on the activity in question”. ▪ In Khan, a partnership was held to exist where the parties had agreed to open a restaurant together. Whilst they had not traded, they had taken steps to pursue the venture, including opening a joint bank account, obtaining a bank loan, and acquiring premises, furniture and equipment.
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¹ [Workshop 1, Prep Task 1](#)

	<p><u>"With a view of profit"</u></p> <ul style="list-style-type: none"> ❖ The purpose of the business must be to <u>make money</u>. ❖ Charitable motives are unable to constitute partnerships.
<p><u>Effect of Creation - No Separate Legal Personality</u></p>	<ul style="list-style-type: none"> ❖ A partnership is unincorporated; it has <u>no separate legal personality</u>. ❖ This means that: <ul style="list-style-type: none"> ➤ "Partnership assets" are not owned by the partnership itself (because it is not a legal entity); they are owned by the partners. ➤ Partners will be <u>personally liable</u> for any debts, and their <u>personal assets are at risk</u>. ❖ As compared with a company, the benefits of a partnership are: <ul style="list-style-type: none"> ➤ <u>Lack of formality:</u> <ul style="list-style-type: none"> ▪ 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. ➤ <u>There is no requirement to make as much information public.</u>
<p><u>Fundamental Characteristics of a Partnership²</u></p> <p><i>Business Law & Practice, 13.2.2</i></p>	<ul style="list-style-type: none"> ❖ Partners will tend to have the following rights and responsibilities: <ol style="list-style-type: none"> 1. To be involved in <u>making decisions which affect the business</u> (s24(5)). 2. To <u>share in the profits of the business</u>; (s2(3)) provides that this will be <i>prima facie</i> evidence that an individual is a partner (s24(1)). 3. To <u>examine the accounts</u> of the business; 4. To insist on <u>openness and honesty from fellow partners</u>; 5. To <u>veto the introduction of a new partner</u>; and (s24(7)). 6. <u>Responsibility for sharing any losses</u> made by the business (s24(1)).
<p><u>Decision Making</u></p>	<ul style="list-style-type: none"> ❖ Partners make decisions by a <u>majority vote</u> (s24(8)). ❖ However: <ul style="list-style-type: none"> ➤ A <u>decision to change the nature of the partnership business</u> can only be done <u>unanimously</u> (s24(8)). ➤ <u>New partners</u> can only be introduced with the <u>consent of all existing partners</u> (s24(7)).

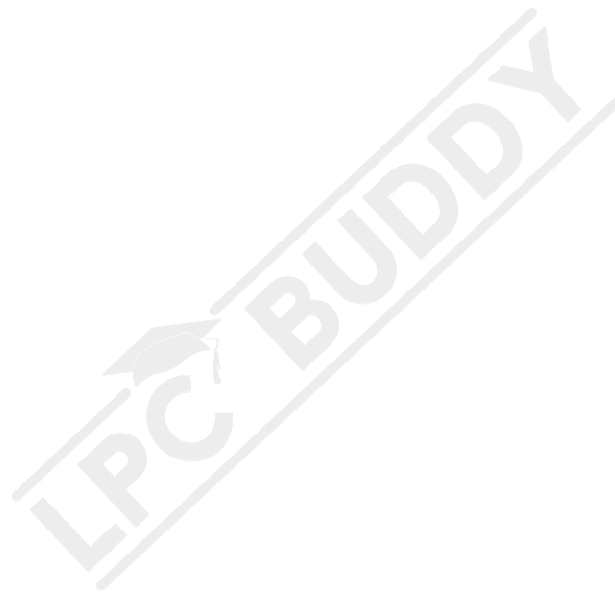
Partner's Responsibilities

- ❖ [*Business Law & Practice, 15.2 – 15.3*](#)
- ❖ Partners are under a duty of the **utmost fairness and good faith** to each other.
- ❖ [s28 – s30 PA 1890](#) expands upon this duty, providing that partners are under the following duties:

<p><u>s28 PA 1890 – Divulge Information to Other Partners</u></p>	<ul style="list-style-type: none"> ❖ Partners <u>must divulge all relevant information</u> connected with the business and their relationship to the other partners. <ul style="list-style-type: none"> ➤ E.g., if, when selling business premises to the partnership, a partner suppresses information about the value of the premises.
<p><u>s28 PA 1890 – Accounting for Benefits</u></p>	<ul style="list-style-type: none"> ❖ Partners <u>must account to the firm for any benefit derived without the consent of the other partners from a transaction</u> concerning the partnership. <ul style="list-style-type: none"> ➤ Has the partner derived a benefit?

² [Workshop 1, Prep Task 1](#)

	<ul style="list-style-type: none">➤ Was this with the other partner's consent?➤ E.g., if a partner is asked by a client of the firm to do some work in his spare time, the money received from this will be <u>cash of the partnership</u> unless the other partners consent to him keeping it.
<p>s30 PA 1890 – <u>Account for profits from competing businesses.</u></p>	<ul style="list-style-type: none">❖ If a partner runs a business “of the same nature” and competes with the firm, he must account for any profits made by this unless he has the consent of the other partners.<ul style="list-style-type: none">➤ This <u>catches businesses in direct competition with the partnership.</u>➤ This does not necessarily include <u>similar, but non-competing businesses</u> e.g., a business in a different part of the supply chain.



The Partnership Agreement¹

❖ [Business Law & Practice, Chapter 14](#)

❖ **Fundamental Principle:**

- The [Partnership Act 1890](#) **implies basic terms** into every partnership agreement.
- These **terms will not necessarily be appropriate for every partnership agreement** and the terms are not comprehensive in what they do cover, so a written agreement is often necessary.

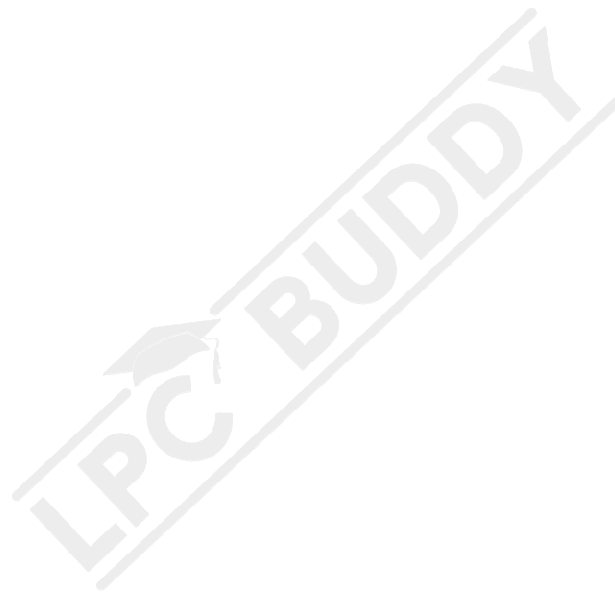
Area of Issue (A-Z)	What the Partnership Act Implies	Why is this problematic/what terms are desirable?
<u>Arbitration</u> Business Law & Practice, 14.8	❖ Nothing	❖ Can be useful to include an arbitration clause to resolve disputes and avoid publicity, delay and expense of litigation.
<u>Commencement Date</u> Business Law & Practice, 14.2	❖ Nothing. ❖ The partnership comes into being when the s1 definition is satisfied.	❖ Desirable to include a clause which specifies the start-date of the partnership so it is certain when rights and obligations arise.
<u>Dissolution Under s33 PA 1890</u> Business Law & Practice, Chapter 17.2.4	❖ Death or bankruptcy of a partner will automatically dissolve the partnership (s33).	❖ It is normally desirable to depart from this and provide that the remaining partners will automatically continue in partnership on buying out the deceased/bankrupt partner's share.
<u>Drawings</u> Business Law & Practice, 14.6	❖ Nothing	❖ It may be desirable place a monthly limit on how much each partner can draw from the business to prevent a partner draining funds.
<u>Duration and Dissolution</u> Business Law & Practice, 14.3	❖ No duration is supplied by the Act. ❖ If there is no agreement to the contrary, the partnership will be a "partnership at will" (s26). ❖ "Partnership at will" means that the partnership continues unless a partner gives notice to terminate the partnership.	❖ Any partner may terminate the entire partnership "at any time by giving notice of his intention to do so to all the other partners" (s26). ❖ Notice is immediate , and does not need to be in writing unless the partnership agreement is made by deed (s26(2)) . ❖ Flexible for the partners, but unsecure for the business as whole partnership can be brought to an end on the whim of a single partner. ❖ Amendments might include: <ul style="list-style-type: none"> ➤ Specifying a minimum period of notice. ➤ Agreeing a fixed term, perhaps continuing thereafter to be terminable with a minimum notice period. ➤ That the partnership shall continue as long as there are two surviving partners.
<u>Expulsion of Partners</u>	❖ Nothing ❖ The PA 1890 does not provide for the	❖ It may be desirable to provide a term enabling the partners to expel a partner in prescribed circumstances.

¹ [Workshop 1, Prep Task 2](#)

<u>Area of Issue (A-Z)</u>	<u>What the Partnership Act Implies</u>	<u>Why is this problematic/what terms are desirable?</u>
<u>Business Law & Practice, 14.15</u>	possibility of a partner to be expelled by the other partners without his consent.	
<u>Non-Competition Clauses</u> <u>Business Law & Practice, 14.17</u>	❖ Nothing in the PA 1890 prevents partners from setting up in competition on leaving the partnership.	❖ Where the firm continues, it is important to provide a term limiting the outgoing partner's freedom to compete . ❖ Such clauses must not be unreasonably broad or they will be void: <ul style="list-style-type: none"> ➤ The clause must: <ul style="list-style-type: none"> ▪ <u>Protect a legitimate interest</u>. <ul style="list-style-type: none"> • E.g., the firm's business connections, employees, confidential information. ▪ <u>Be reasonable to protect that interest</u>. <ul style="list-style-type: none"> • Is the clause wider than it needs to be? • Should be limited in its geographical scope and duration e.g., restrictions lasting more than 3 years over an unduly wide area more likely to be unreasonable. ❖ Consider less burdensome clauses which do not restrict trade as a whole , as these are more likely to be reasonable: <ul style="list-style-type: none"> ➤ <u>Non-dealing clause</u>, i.e., preventing the partner from entering contracts with customers etc. ➤ <u>Non-solicitation clause</u>: preventing the partner from soliciting contracts.
<u>Outgoing Partner's Share</u> <u>Business Law & Practice, 14.16</u>	❖ If the partnership continues but there is a delay in payment of an outgoing partner's share, that partner/his estate will be entitled to either : <ul style="list-style-type: none"> ➤ 5% interest on his share or 	❖ When a partner leaves the business, the remaining partners will need to pay for his share or this could be sold to an external third party. ❖ It is desirable to have terms set from the outset e.g.: <ul style="list-style-type: none"> ➤ Whether the partners have an obligation or an option to purchase an outgoing partner's share.

Area of Issue (A-Z)	What the Partnership Act Implies	Why is this problematic/what terms are desirable?
	<ul style="list-style-type: none"> ➤ Such profits as are attributable to his share (s42). 	<ul style="list-style-type: none"> ➤ The basis on which the share will be valued and how to resolve disputes as to the valuation (e.g., professional valuation). ➤ Date on which payment will be due. ➤ Indemnity for liabilities of the firm. ➤ Valuation of goodwill.
Retirement (leaving the partnership) Business Law & Practice, 14.14	<ul style="list-style-type: none"> ❖ Nothing. ❖ Partners have no right to retire under the Act. ❖ However, partners CAN vary the partnership agreement by unanimous consent (s19). 	<ul style="list-style-type: none"> ❖ It is desirable to include a term enabling a partner to retire without unanimous agreement.
Sale of Capital Assets and Sharing of Capital Increases Business Law & Practice, 14.7	<ul style="list-style-type: none"> ❖ Partners share equally in the capital of the business (s24(1)). ❖ Increases/decreases in the value of assets are therefore also shared equally. 	<ul style="list-style-type: none"> ❖ Partners may want to deviate from this to reflect the capital contribution of each partner to the business. ❖ E.g., if Partner A provides a factory worth £50,000, and Partner B puts in £10,000 cash, under the PA 1890 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. ❖ It may be worth specifying in the agreement what assets are “Partnership Assets” in which all partners will have a beneficial interest, and which are assets belong to individual partners to prevent disputes.
Sharing of Profits/Losses Business Law & Practice, 14.5	<ul style="list-style-type: none"> ❖ Profits/losses of the business are to be shared by the partners equally (s24(1)). ❖ s24(6) explicitly prohibits partners from receiving a salary unless an agreement to the contrary excludes this. 	<ul style="list-style-type: none"> ❖ Partners may want to deviate from this to reflect the contribution of each partner to the business e.g., in terms of time/experience/capital contribution. ❖ E.g.: <ul style="list-style-type: none"> ➤ By paying on a salary basis. ➤ By specifying that partners are allowed interest in proportion to their capital contributions – incentivises investment. ➤ That profits/losses be shared in specific percentages as opposed to equally.
Work Input Business Law & Practice, 14.10	<ul style="list-style-type: none"> ❖ Partners have a right, but not an obligation, to take part in the management of the business (s24(5)). 	<ul style="list-style-type: none"> ❖ Under the PA 1890, it is perfectly permissible to have a “sleeping partner” who effectively contributes nothing to the business. ❖ Partners may, therefore want fix each partner’s obligations and avoid a scenario where a partner

<u>Area of Issue (A-Z)</u>	<u>What the Partnership Act Implies</u>	<u>Why is this problematic/what terms are desirable?</u>
		<p><u>may do nothing but nevertheless be entitled to an equal share in the profits of the partnership.</u></p> <p>❖ E.g., a partner must “<i>devote his whole time and attention to the business</i>” or specify a number of hours per week etc. The clause would need to cover sick leave, holiday entitlement etc.</p>



Liability for Partnership Debts¹

❖ [Business Law & Practice, 16.2](#)

- ❖ During the course of partnership business, contracts may be entered into either by (a) **all of the partners collectively**, or (b) by **an individual partner purporting to act on behalf of the partnership**.
- ❖ Such contracts will always bind the partner(s) who entered into the contract, but will only *sometimes* create liabilities which bind the partnership as a whole. The position, in summary, is as follows:

Summary	❖ The debts / liabilities of a partnership can be enforced against:	
	1. <u>The Partner Who Made the Contract</u>	❖ <u>The partner who entered into the contract can always be sued</u> ; there will be privity of contract between the partner and the other party.
2. <u>The Firm</u>	❖ The firm will be liable if the contracting partner had: <ul style="list-style-type: none"> ➢ <u>Actual authority or</u> ➢ <u>Apparent / ostensible authority (see below)</u>. ❖ If the firm is liable, the creditor can sue: <ul style="list-style-type: none"> ➢ <u>The firm as a whole</u>, OR ➢ <u>Any individual partner at the time the debt was incurred</u>. <ul style="list-style-type: none"> ▪ Under s9, partners are <u>jointly and severally liable</u>; ▪ I.e., each individual partner is fully liable for the performance of contractual obligations which bind the partnership. ▪ If the partner entered into the contract with <u>apparent authority only, he will have to indemnify the other partners</u> for any liability / loss they incur. 	

Actual and Ostensible Authority

<u>Actual Authority</u> s6 PA 1890 Business Law & Practice, 16.2.1	❖ Actual Authority is where a partner was <u>actually authorised by the partnership to enter into an agreement</u> .	
	❖ <u>Such an agreement will ALWAYS bind the partnership</u> : <ul style="list-style-type: none"> ➢ s6 Partnership Act 1890: an instrument executed in the name of the firm by any person authorised to do so, whether a partner or not, will bind the firm and all the partners. 	
	❖ Actual authority may be <u>express or implied</u> : <ul style="list-style-type: none"> ➢ <u>Express</u>: i.e., there was a specific agreement between the partners granting the partner authority. ➢ <u>Implied</u>: e.g., by one partner being <u>regularly responsible for a particular course of dealing in relation to which the others have acquiesced</u>. 	

¹ [Workshop 1, Workshop Task](#)

<p>Apparent / Ostensible Authority</p> <p>s5 PA 1890</p> <p>Business Law & Practice, 16.2.2</p>	<ul style="list-style-type: none"> ❖ If a partner does not have actual authority, the partnership <u>may still be bound under s5 if the partner had “apparent” or “ostensible” authority.</u> ❖ s5: “...the acts of every partner who does <u>any act for carrying on in the usual way business of the kind carried on by the firm</u> of which he is a member bind the firm and his partners <u>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”.</u> ❖ In summary, if a partner contracts <u>without actual authority, they may still contract with apparent authority and bind the partnership,</u> if: <ul style="list-style-type: none"> ➤ The partner carries on <u>“business of the kind carried on by the firm”</u> <ul style="list-style-type: none"> ▪ i.e., the transaction is one which <u>relates to the type of business in which the firm is apparently engaged.</u> ➤ <u>“In the usual way”,</u> and <ul style="list-style-type: none"> ▪ i.e., the transaction is one for which a partner in such a firm would <u>usually be expected to have the authority to act.</u> ➤ The person with whom he is dealing <u>did not know the partner did not actually have authority, and</u> ➤ The person with whom he is dealing <u>knew, or believed him to be a partner.</u> 		
<p>Effect of Contracting with Apparent Authority</p>	<ul style="list-style-type: none"> ❖ Contracts entered into by a partner with apparent authority <u>will bind the firm (partnership), and hence the other partners.</u> ❖ The <u>partner who made the contract (and is responsible for the firm being liable) will have to indemnify the firm</u> for any liability or loss they incur. <table border="1" data-bbox="316 1312 1510 1856"> <tr> <td data-bbox="316 1312 495 1856"> <p>Example</p> </td> <td data-bbox="495 1312 1510 1856"> <ul style="list-style-type: none"> ❖ John, a partner in E F Plumbers, agrees, without actual authority to purchase: <ul style="list-style-type: none"> ➤ A quantity of copper piping. ➤ A Jacuzzi and luxury bathroom suite. ➤ A new van with EF Plumbers printed on the side. ➤ A quantity of roofing felt and heavy timber. ❖ If the person that John was dealing with: <ul style="list-style-type: none"> ➤ Did not know that John did not have actual authority, and ➤ Knew or believed John to be a partner. ❖ John will have <u>apparent authority</u> to make all of the contracts <u>save for the contract for the roofing felt and timber</u> </td> </tr> </table>	<p>Example</p>	<ul style="list-style-type: none"> ❖ John, a partner in E F Plumbers, agrees, without actual authority to purchase: <ul style="list-style-type: none"> ➤ A quantity of copper piping. ➤ A Jacuzzi and luxury bathroom suite. ➤ A new van with EF Plumbers printed on the side. ➤ A quantity of roofing felt and heavy timber. ❖ If the person that John was dealing with: <ul style="list-style-type: none"> ➤ Did not know that John did not have actual authority, and ➤ Knew or believed John to be a partner. ❖ John will have <u>apparent authority</u> to make all of the contracts <u>save for the contract for the roofing felt and timber</u>
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	<ul style="list-style-type: none"> ➤ The contract for the roofing felt and timber would not be one which relates to the type of business in which the firm is apparently engaged. ❖ E F Plumbers are plumbers, purchasing roof timbers has no apparent connection to the firm’s business.
No Authority	❖ Will not bind the firm , though the contracting partner will be personally liable .

Liability for Debts of Incoming and Outgoing Partners

Incoming Partners	<ul style="list-style-type: none"> ❖ Are NOT generally liable for partnership debts incurred before they became a partner. ❖ s17(1) PA 1890: A new partner is not liable “to the creditors of the firm for anything done before he became partner” (s17(1) PA 1890).
Outgoing Partners	❖ A partner who retires from the firm does not cease to be liable for partnership debts incurred before his retirement (s17(2) PA 1890).

How can an Outgoing Partner Avoid Liability for Partnership Debts?

<p>Indemnity</p> <p>Business Law and Practice 16.3.5</p>	<ul style="list-style-type: none"> ❖ An indemnity is where the remaining partners contractually agree with the outgoing partner to repay the outgoing partner in the event that he is sued by a creditor for a debt. ❖ Technically, the outgoing partner will still remain liable to the creditor (this is a “bipartite agreement” which does not involve the creditor at all), but has just agreed a contract with the remaining partners that he will be repaid.
<p>Novation Agreement</p> <p>Business Law and Practice, 16.3.5</p>	<ul style="list-style-type: none"> ❖ Where a partner leaves the firm, a creditor may enter into a novation agreement with: <ul style="list-style-type: none"> ➤ The partners at the time the contract was made and ➤ The newly constituted partnership. ❖ This will: <ul style="list-style-type: none"> ➤ Release the original partners from their liability and ➤ Have the firm, as newly constituted, take over the liability. ❖ The outgoing partner, as a member of the original partnership and not the newly constituted partnership will hence be released from his debt. ❖ Note that a novation agreement would make any new INCOMING PARTNERS liable for any debts incurred before they were a partner. <ul style="list-style-type: none"> ➤ If no new partner joins, for the novation agreement to be contractually binding there must be: <ul style="list-style-type: none"> ▪ <u>Consideration for the creditor’s promise</u> to release the retiring partner from liability or ▪ The agreement must be <u>executed as a deed</u>.

Liability for Debts Incurred After the Partner Leaves the Firm

- ❖ A partner who leaves a firm **before** a debt is incurred may still be liable for that debt through either:
 - 1. Holding Out (s14).
 - 2. Failure to give appropriate notice of departure (s36).

<p><u>Holding Out</u></p> <p>s14 PA 1890</p> <p>Business Law and Practice 16.3.3</p>	<ul style="list-style-type: none"> ❖ A partner (X) may be liable for a debt under s14 of the Partnerships Act 1890 if: <ul style="list-style-type: none"> ➤ <u>A creditor of a partnership relies on a representation that Partner X is a partner in the firm.</u> ➤ Even if, at the time the representation was made, that person was not a partner. ➤ X may therefore be bound by the debt even if: <ul style="list-style-type: none"> ▪ X had <u>never been</u> a partner. ▪ X <u>retired before the contract was made.</u> ❖ There are three elements to “holding out”, per Nationwide Building Society v Lewis [1998] Ch 482. There must be: <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 30%; padding: 5px; vertical-align: top;"> <p>1. <u>A representation.</u></p> </td> <td style="padding: 5px;"> <ul style="list-style-type: none"> ❖ There must be a representation that Partner X is a partner in the firm either by: <ul style="list-style-type: none"> ➤ <u>Partner X,</u> or ➤ Someone else but <u>with Partner X’s knowledge.</u> ❖ The representation may be: <ul style="list-style-type: none"> ➤ <u>Oral</u> (e.g., X is described as being a partner in conversation). ➤ <u>Written</u> (e.g., the firm, with X’s knowledge, continues to use headed note-paper with X’s name on it after his retirement). ➤ <u>By conduct.</u> </td> </tr> <tr> <td style="padding: 5px; vertical-align: top;"> <p>2. <u>Reliance.</u></p> </td> <td style="padding: 5px;"> <ul style="list-style-type: none"> ❖ There must be <u>reliance</u> upon the representation by the person to whom the representation is made. </td> </tr> <tr> <td style="padding: 5px; vertical-align: top;"> <p>3. <u>The consequent giving of credit to the firm.</u></p> </td> <td style="padding: 5px;"> <ul style="list-style-type: none"> ❖ The creditor must make payment to the firm as a result of reliance on the representation. </td> </tr> </table> 	<p>1. <u>A representation.</u></p>	<ul style="list-style-type: none"> ❖ There must be a representation that Partner X is a partner in the firm either by: <ul style="list-style-type: none"> ➤ <u>Partner X,</u> or ➤ Someone else but <u>with Partner X’s knowledge.</u> ❖ The representation may be: <ul style="list-style-type: none"> ➤ <u>Oral</u> (e.g., X is described as being a partner in conversation). ➤ <u>Written</u> (e.g., the firm, with X’s knowledge, continues to use headed note-paper with X’s name on it after his retirement). ➤ <u>By conduct.</u> 	<p>2. <u>Reliance.</u></p>	<ul style="list-style-type: none"> ❖ There must be <u>reliance</u> upon the representation by the person to whom the representation is made. 	<p>3. <u>The consequent giving of credit to the firm.</u></p>	<ul style="list-style-type: none"> ❖ The creditor must make payment to the firm as a result of reliance on the representation.
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<p><u>Example</u></p>	<ul style="list-style-type: none"> ❖ X is a retired partner. If a partnership writes to Farmer Giles after X’s retirement, on headed note paper bearing X’s name, offering to purchase his crop of potatoes for a particular price: <ul style="list-style-type: none"> ➤ There is a <u>representation that X is a partner in the firm.</u> ➤ If X had <u>knowledge</u> of this representation i.e., he knew that the partnership was continuing to use the old notepaper, and ➤ <u>Farmer Giles relied upon this.</u> ➤ X will be liable for the debt through holding out. 						

		<ul style="list-style-type: none"> ❖ By contrast, X would not be liable for the debt if the remaining partners in the firm, Y and Z, and Farmer Giles agreed the contract orally and merely confirmed this agreement on headed note paper stating that Partner X was a partner in the firm. ❖ Although there is a representation, and X may have had knowledge of the firm continuing to use the old notepaper, Farmer Giles would not have had the necessary reliance.
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<p><u>Failure to Give Appropriate Notice of Departure</u></p> <p>s36 PA 1890</p> <p>Business Law and Practice 16.3.4</p>	<ul style="list-style-type: none"> ❖ A partner (X) may be liable for a debt after they leave the firm, if: <ul style="list-style-type: none"> ➤ A creditor enters into a transaction with the company, knowing that <u>X was a partner</u>, and ➤ The creditor is unaware that X is no longer a partner, and ➤ X has failed to give the appropriate notice specified in s36 PA 1890. ❖ s36: states that where a person deals with the firm he is “<i>entitled to treat all apparent members of the old firm as still being members of the firm until he has notice of the change</i>”. ❖ Two notices are therefore required: <ul style="list-style-type: none"> ➤ Actual Notice (s36(1)): <ul style="list-style-type: none"> ▪ Letters should be sent out to <u>all existing customers</u> announcing that the partner is leaving. ➤ Notice in the London Gazette (s36(2)): <ul style="list-style-type: none"> ▪ To notify <u>persons who have not previously dealt with the firm</u>. ▪ Note there is no requirement for the creditor to have actually read the notices, just that they were made public. ❖ This ground cannot be relied upon if the creditor was never aware that the person had been a partner (s36(3)). ❖ There is no requirement for the estate/trustee of a partner who is dead/bankrupt to give notice (s36(3)).
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