



MODULE 5

Partnership Law

Exam (Part B) Booklet:
Introduction to Business Law (2105AFE)
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Template: Is there a Partnership?

A partnership is the relation which subsists between persons carrying on a business in common with a view to profit (**s 5(1) Partnership Act 1891 (Qld) ('PA')**).

{Party A_____} and {Party B_____} were involved in {Describe type of business: _____} (*Canny Gabriel*).

An agency relationship existed between {Party A_____} and {Party B_____} which is apparent by {details of agency(authority to create legal relations on each others behalf_____} and sharing the rights and obligations by {details of shared rights and responsibilities eg business profits, responsibility of organising and paying contractors – to satisfy all parties must have these rights and responsibilities_____} (**Khan v Miah**)

{Party A_____} and {Party B_____} intended to make a profit when they formed the business/partnership.

The existence of the partnership can be further established by applying the rules under **s6 PA** as follows:

{Party A_____} and {Party B_____} held joint ownership of (_____ details of assets – eg property; bank account) (**s6(1)(a)PA**).

{Party A_____} and {Party B_____} shared the gross returns from the (_____ details of the venture) (**s6(1)(b)PA**).

{Party A_____} and {Party B_____} were in receipt of a share of the profits of the business (**s6(1)(c)PA**).

Not a Partnership

If any of the above tests fail there is likely no partnership and may be a joint venture or other business transaction. Points to look for:

- Single transaction (eg land owner and builder building a set of units on a block of land to sell). Single transactions are usually joint ventures.
- Separate responsibilities (eg only one party is liable for responsibilities and obligations and only that party can be sued for failure to comply)
- Only one party receives profit

Although each rule does not in itself prove a partnership has been established, by applying the rules under **s6 PA** together with the definition provided in **s5 PA**, it can be established that a partnership exists between {Party A_____} and {Party B_____}.

Template: Firm liable for partner's actions in <u>CONTRACT</u>	
Actual Authority	<p>The written/oral agreement between {Partners' names} stated that {Partner name_____} was authorised to {details of contract entered into _____} on behalf the firm (Freeman & Lockyer v Buckhurst) (s8(1 PA)). As there was actual authority for {Partner name_____} to enter into the contract, the firm is liable to {detail liability_____}.</p>
Apparent Authority	<p>{Name of firm/partnership_____} was in the business of {what did they do_____}. The {products/services purchased_____} are directly related the kind of business carried on by the partnership (Polkinghorne v Holland)(s8(1) PA). It was usual for {Name of firm/partnership _____} to purchase good/services from {Name of creditor:_____} and the way in which {Partner name_____} entered into the contract with {Name of creditor:_____} was carried out in the usual way (Goldberg v Jenkins) (s8(1) PA). As previous contracts had been entered into in the same way {Name of creditor :_____} was not aware that {Partner name_____} did not have actual authority (Construction Engineering v Hexyl P/L)and (s8(1)(a) PA)</p> <p style="text-align: center;"><u>OR</u></p>

Template: Firm liable for partner's actions in CONTRACT CONT...

<u>Apparent Authority</u>	<p>As previous contracts had been entered into in the same way with {Partner name _____}, {Name of creditor _____} believed/knew that {Partner name _____} was a partner of {Name of firm/partnership _____} (s8(1)(b) Partnership Act 1891 (Qld) ('PA') and (<i>Panorama Developments v Fidelis Furnishing Fabrics</i>).</p>
<u>Implied Authority</u>	<p>It was usual for {Name of firm/partnership ____} to purchase good/services from {Name of creditor: ____} and the way in which {Partner name _____} entered into the contract with {Name of creditor: ____} was carried out in the usual way (<i>Goldberg v Jenkins</i>) (s8(1) PA).</p> <p>(CHOOSE ONE: <u>As there is no written partnership agreement/As the written partnership agreement is silent on the authority of entering into such contracts</u>), the fact that it is not out of the ordinary for the partners to enter into such contracts, {Partner name _____} had implied authority to enter into the contract with {Name of creditor: ____} (<i>Lavery v Nelson</i>).</p>
<p>As {Partner name _____} had <u>actual/apparent/implied</u> authority to enter into the contract with {Name of creditor: ____} the partnership is jointly liable for the debt owed to {Name of creditor: ____} (s 12(1) PA; <i>Kendall v Hamilton</i>)</p>	

Template: Firm liable for partner's actions in TORT

<u>Actual Authority</u>	<p>The written/oral agreement between {Partners' names:___} stated that {Partner name:_____} was authorised to {details of act/conduct/job___} on behalf the firm at the time that {details of complaint/wrongful act or omission___} occurred. (Freeman & Lockyer v Buckhurst) (s8(1 PA).</p>
<u>Apparent Authority</u>	<p>{Name of firm/partnership___} was in the business of {what did they do___}. The {details of act/conduct of partner ___} are directly related the kind of business carried on by the partnership (Polkinghorne v Holland)(s8(1) PA). It was usual for {Partner name:___} to {details of act/conduct/job:___} on behalf of the firm and the way in which {Partner name_____} {details of act/conduct/job___} was carried out in the usual way (Goldberg v Jenkins) (s8(1) PA) and accordingly it was not clear that {Partner name_____} did not have actual authority at the time that {details of complaint/wrongful act or omission___} occurred (s 8(1) Partnership Act 1891 (Qld) ('PA')).</p>