

Re Chop Yew Sing

H: When a known partner retires or a partnership is dissolved, notice of that fact must be given to the world at large by advertisement and to old customers by some special communication.

- Where a partnership has been formed for an indefinite period of time, the partnership can be dissolved by a partner simply giving notice of his intention to do so to the other partners. The partnership will then be dissolved as from the date mentioned in the notice as the date of dissolution or, if no date is mentioned, as from the date of the communication of the notice.
- Communicated to all partners

Kam Hoy Trading v Hup Aik Tin Mining

H: In a dissolution of a partnership, partners should sent notice to all persons who have trusted them as partners...or taken steps to see that their withdrawal was duly registered with the Registrar of Businesses.

- Effective date – once communicated

Teoh Swee Hee v Tio Hock Thye & Ors (unreported, 26 November 1996; Civil Suit No 24225 of 1991), [1996] MLJU 409.

[H]- The court found that the plaintiff's notice to retire vide the newspaper advertisement was effective and the partnership being a partnership at will, it was therefore determined upon its service on the defendants, under s 34(2). The court held that since the defendants in that case had failed to render the true position of the partnership assets, the plaintiff was right in taking the further step to dissolve the partnership under s 34(1)(c).

- Date of communication of notice

Ariff v Yeo

H: Effective date is date of service (not date of filing) of the writ on the defendant.

- Date mentioned in notice

Bell v Nevin (1866) 12 Jur NS 935, 15 WR 85

[H]- If a partner gives notice to determine on a given date and dies before that day, the partnership is dissolved by death.

- Notice once given cannot be withdrawn, unless there is consent from all partners.
- Notice may be prospective.

McLeod v Dowling

The notice would have no effect if before the operative date, an event occurred and it dissolved the partnership.

F: P/ship btwn McL & D. A Clause; if either p'ner died during the term, the biz and goodwill will go to the surviving p'ner. P/ship ws for 7 yrs but continue without new terms.

- Any clause in the partnership agreement which states that the partnership is to continue in the event of illegality was ineffective.
- Illegality is the only ground for automatic/immediate dissolution.

2. With court interference/orders

- **Section 37 of PA**, Any clause in the partnership agreement which states that the partnership is to continue in the event of illegality was ineffective. Illegality is the only ground for automatic/immediate dissolution.
- A partnership may be dissolved by the court on the application of a partner.

Thein Hong Teck & Ors v Mohd Afrizan bin Husain and another appeal [2012] 2 MLJ 299

[H]- Part V of the Partnership Act 1961 deals with the dissolution of partnership. The court may decree a dissolution of a partnership under s 37 of the Partnership Act 1961. However, it must be noted that the application can be made only by a partner of a partnership. A creditor such as the respondents in the instant case cannot make an application under that s 37 to dissolve a partnership.

- Grounds for dissolution of a partnership have included refusal to meet on matters of business, continued quarrelling and such a state of animosity as precludes all reasonable hope of reconciliation and friendly co-operation.
- In practice, the fact that such an application is made and the other partners' response to it, may lead directly or indirectly, to an inference that there is no longer mutual trust and confidence between the partners.
- Appointment of interim receiver: Where a partnership is still subsisting, a receiver will only be appointed where some special grounds for doing so are established or it is clear that an order for the dissolution of the partnership will be made.

i. Insanity

- For dormant partner who became insane, cannot apply for dissolution because his situation does not affect the business except in exceptional circumstances.
- The state of insanity should be permanent
- Court will seek expert evidence

Jones v Noy

Held: Insanity of a partner is a ground for dissolution of a partnership because it is immediate incapacity but it may not be the result prove to be a ground for dissolution if the partner may recover from his malady.

ii. Permanent incapacity

- no prospect of recovery.