

Agent must be self employed, have continuing authority to negotiate the sale or purchase of goods on behalf of the principal and not be excluded by the regulation.

PARTNERSHIP

Company – Companies act 2006
Partnership – Partnership Act 1890
Limited partnership – Limited Partnerships Act 1907
Limited Liability Partnership – Limited Liability Partnerships Act 2000

1. WHAT IS A PARTNERSHIP?

“... the relation which subsists between persons carrying on a business in common with a view of profit”: s 1(1) Partnership Act 1890 – 2 or more people

“... a legal person distinct from the partners of whom it is composed”: s 4(2) Partnership Act 1890

Essential features:

- collective relationship
- business relationship: *Khan v Miah* [2001] WLR 2123-** *Ilott v Williams* [2013] EWCA Civ 645
- profit-making venture

a joint venture may amount to a partnership (*White v McIntyre*)
partnerships can be formed for a short period of time (s27 1890 Act)
s2 1890 act = guidance on identifying a partnership
s24 = default rights in the absence of an agreement.

2. SOURCES OF LAW ON PARTNERSHIP

Partnership Act 1890

General rules – is there a partnership? (ss 1-4)

Mandatory rules – relationships with third parties (ss 5-18)

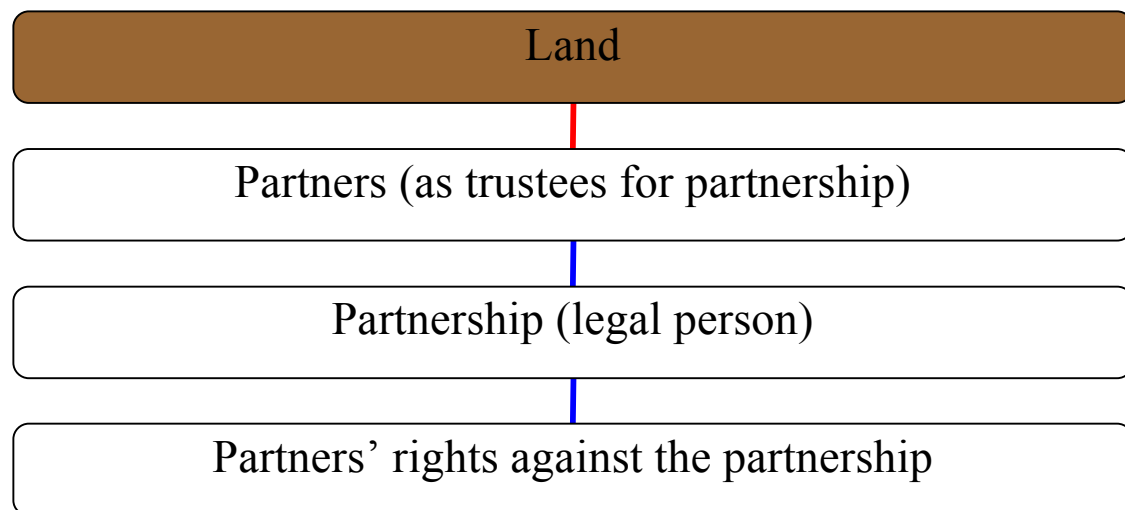
Default rules – internal organization of the partnership (ss 19-44)

The residual role of the common law – s 46

The word “firm” means a partnership.

3. IS THERE A PARTNERSHIP?

s 1(1) Does it fulfil the definition?



The legal nature of a partner's share in a partnership is an incorporeal moveable right: a personal right (or set of personal rights) against the firm

Assignment of a share in a partnership (s 31 of the 1890 Act):

- permitted by s 31(1)
- But the assignee does not assume the rights of a partner unless...
- the existing partners consent to the assignee being admitted as a partner.

5. RELATIONS WITH THIRD PARTIES

Authority

Partners can have any of the forms of authority that are available to an agent.

Section 5 of the Partnership Act 1890 provides a special (statutory) form of implied authority to partners: partners are agents for the firm "for the purpose of the business of the partnership" and have authority for "carrying on in the usual way business of the kind carried on by the firm of which he is a member": *Bank of Scotland v Butcher* [2003] EWCA Civ 67 [2003] 1 BCLC 575, CA. However, where the partner does not in fact have the authority to act in a particular transaction, and the person with whom he is dealing either knows that the partner does not have authority for the transaction, or does not know or believe that the partner is a partner, the transaction will not bind the partnership.

The partnership agreement may limit the authority of the partners: if it does, such limitation is only effective against a third party who has notice of it (s 8). When a partner signs a document on behalf of the partnership, he will bind the partnership (s5), even if as a matter of practice his fellow partners have not permitted him to do so. However, if it is outwith the view of the normal course of business, or is clearly personal, the partnership will not be bound (*Fortune v Young*)

Partners are also said, under s 5, to be agents for each other: *Major v Brodie* [1998] STC 491 (which involved a Scottish partnership, subject to Scots law in an English case; expert evidence was taken from Professor Gretton and Professor Murray QC: their opinions are reproduced in an appendix to the case and make for interesting reading). See too P Stein, "The Mutual Agency of Partners in the Civil Law" (1959) 33 *Tulane L Rev* 595 at 604 ff.

S6 – anyone with apparent authority can bind the firm, does not need to be a partner.

Under the Partnerships (Prosecution) (Scotland) Act 2013, a partnership can be prosecuted for offences committed prior to a change in personnel if it carries on the old partnership's business: s 4. Change in membership does not release prior partners of liability: s 5.

7. RELATIONSHIP OF PARTNERS TO ONE ANOTHER

Ultimate source is the partnership agreement: s 19

Duty of care: *Ross, Harper & Murphy v Banks* 2000 SC 500 at 509–10 *per* Lord Hamilton (Ordinary)

Default rules in 1890 Act ss 19-31

S19 – where express agreement is absent, agreement may be inferred from the partners' course of dealing.

S20 – Each partner is entitled to a pro indiviso share when sold.

Default rules governing the firm in s 24 of the 1890 Act:

Pecuniary rights

- equal share in capital and profits (equal shares): s 24(1)
- right to indemnity for liabilities incurred on firm business: s 24(2)
- no right to interest on agreed capital contribution but right to interest on other advances: s 24(3) and (4)
- no right to remuneration (as distinct from profits): s 24(6)

Management rights

- right to participate in the management of the partnership: s 24(5)
- right to inspect books: s 24(9)
- ordinary matters decided by majority rule: s 24(8)
 - o unanimous consent required to change the nature of business
 - o unanimous consent required to admit new partners: s 24(7)
 - o expulsion of a partner (no partner may be expelled by mere majority, unless the partnership agreement permits this)– s 25 – *Carmichael v Evans* [1904] 1 Ch 486

Fiduciary duties

Barr v Gilchrist [2011] CSOH 72

- duty to render accounts: s 28
- duty to account for private profits: s 29
- duty not to compete with his firm: s 30
- where a partner assigns his interest in the firm to a 3rd party, they have no right of management of that partner's share of the business, instead, they are merely entitled to the share of the profits – s31

8. DISSOLUTION OF PARTNERSHIP

Distinguish “partnership at will” from fixed term partnerships: s 26

Tacit relocation of fixed term partnerships: s 27(1)

- Unlimited
- Public or private
- Listed or unlisted
- ABOVE GOVERNED BY THE COMPANIES ACT 2006 SS 3-6

LIFTING THE CORPORATE VEIL

Daimler – they looked at the idea of control behind the company. In this case, they did pierce the corporate veil.

PIERCING THE CORPORATE VEIL

Fraud or evasion of legal obligations cases

Gilford Motor Co Ltd v Horne

- Breach of non-competing clause
- Award against Horne AND the company

Jones v Lipman

- Breach of obligation to complete contract for sale of house
- Award against Lipman and the company

Adams v Cape Industries

- work accident damages case: no economic entity assumed, despite intentional set up to make Canadian company asset less
- Moral issue – people hiding behind corporate entities to evade liabilities.

Extract – Slade LJ:

“It is not suggested that the arrangements involved any actual or potential illegality or were intended to deprive anyone of their existing rights. Whether or not such a course deserves moral approval, there was nothing illegal as such in Cape arranging its affairs (whether by the use of subsidiaries or otherwise) so as to attract the minimum publicity to its involvement in the sale of Cape asbestos in the United States of America. As to condition (iii), we do not accept as a matter of law that the court is entitled to lift the corporate veil as against a defendant company which is the member of a corporate group merely because the corporate structure has been used so as to ensure that the legal liability (if any) in respect of particular future activities of the group (and correspondingly the risk of enforcement of that liability) will fall on another member of the group rather than the defendant company. Whether or not this is desirable, the right to use a corporate structure in this manner is inherent in our corporate law.”

Chandler v Cape

69. I would emphatically reject any suggestion that this court is in any way concerned with what is usually referred to as piercing the corporate veil. A subsidiary and its company are separate entities. There is no imposition or assumption of responsibility by reason only that a company is the parent company of another company.

70. The question is simply whether what the parent company did amounted to taking on a direct duty to the subsidiary's employees.

- The assets a company has contribute to the value of the company (balance sheet, trade and/or tax)
- Goodwill/brand & reputation also has value

S 8 – Companies Act 2006 – Memorandum of Association

S 18 – Companies Act 2006 - Articles of Association

Ss 19 & 20 – Companies Act 2006 – Model Articles

Model articles – when applied – determine the relationships between the shareholders

S 658 Companies Act 2006 – Companies can't acquire their own shares

Trevor v Whitworth

One of the main objects contemplated by the legislature, in restricting the power of limited companies to reduce the amount of their capital as set forth in the memorandum, is to protect the interest of the outside public who may become their creditors. In my opinion the effect of these statutory restrictions is to prohibit every transaction between a company and a shareholder, by means of which the money paid to the company in respect of his shares [capital] is returned to him, unless the court has sanctioned the transaction.

– SHARE AS A MONETARY INTEREST AND A RIGHT

Borland's Trustee v Steel Bros & Co Ltd. [1901] 1 Ch 279 at 288, Farwell J

“A share is the interest of a shareholder in the company measured by a sum of money, for the purpose of liability in the first place and of interest in the second, but also consisting of a series of mutual covenants entered into by all the shareholders inter se in accordance with s16 of the Companies Act 1862 [now s33 of the Companies Act 2006]. The contract contained in the articles of association is one of the original incidents of the share. A share is not a sum of money settled in the way suggested, but is an interest measured by a sum of money and made up of various rights contained in the contract, including the right to a sum of money of more or less amount.”

In this case, shareholders were arguing that the shares gave them a property right. The company was deemed to be entitled to refuse this – important – directors have the right to refuse people from becoming shareholders. There was a clause in the memorandum entitling the company to repurchase shares at a lesser value. They offered the trustees the original value of the shares.

EXCEPTION; a company can purchase shares but not in normal market conditions

Model article: <https://www.gov.uk/model-articles-of-association-for-limited-companies>

memorandum of association:

<https://www.gov.uk/government/collections/memorandum-of-association-templates-for-limited-companies>