THE LAW OF PARTNERSHIP: SIX LECTURES

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649123797

The law of partnership: Six lectures by Arthur Underhill

Except for use in any review, the reproduction or utilisation of this work in whole or in part in any form by any electronic, mechanical or other means, now known or hereafter invented, including xerography, photocopying and recording, or in any information storage or retrieval system, is forbidden without the permission of the publisher, Trieste Publishing Pty Ltd, PO Box 1576 Collingwood, Victoria 3066 Australia.

All rights reserved.

Edited by Trieste Publishing Pty Ltd. Cover @ 2017

This book is sold subject to the condition that it shall not, by way of trade or otherwise, be lent, re-sold, hired out, or otherwise circulated without the publisher's prior consent in any form or binding or cover other than that in which it is published and without a similar condition including this condition being imposed on the subsequent purchaser.

www.triestepublishing.com

ARTHUR UNDERHILL

THE LAW OF PARTNERSHIP: SIX LECTURES



THE

LAW OF PARTNERSHIP.

Six Lectures

Delivered in the Old Hall, Lincoln's Inn, buring the Hilary Sittings, 1899, at the Request of the Council of Legal Education.

BY

ARTHUR UNDERHILL, M.A., LL.D.,

OF LINCOLN'S INN, BARRISTER-AT-LAW:

Reader of the Law of Real and Personal Property in the Inns of Court;
Author of a "Treatise on the Law of Private Trusts," etc., and
Editor of the 5th Edition of "Pisher on Mortgane,"

LONDON:

BUTTERWORTH & CO., 7, FLEET STREET, E.C.

Law Publishers.

PREFACE.

THESE lectures were delivered at the request of the Council of Legal Education, and as some (I fear too partial) friends, who were good enough to attend, expressed their approbation, I have ventured to print them.

This little work, of course, makes no pretence to the position of a text book; but it is hoped that law students and commercial men may find in it a readable, concise, and accurate view of the main principles of the law of partnerships.

For the convenience of those readers who desire to go deeper into the subject, a number of authorities have been referred to in the footnotes.

Need I make acknowledgment of my indebtedness to the Master of the Rolls, Sir NATHANIEL LINDLEY? It goes without saying. No one who ventures to express any opinion on partnership law can be otherwise than grateful for his monumental

n i

work. Also, I wish to say how much assistance I have derived from Sir Frederick Pollock's book on the subject, and from the very able and concise article of Mr. W. B. Lindley in that excellent compendium, the Encyclopædia of English Law.

A. U.

 New Square, Lincoln's Inn. March, 1899.

CONTENTS.

LECTURE I.

	THE ESSEN	TIAL EI	LEMEN	TS OF	PARTN	ERSHII	(a)	
252101							I*	AGE
	Introductory			***		***	***	1
	Definition of 1					***	25.00	3
	There must be				***			4
(4.)	The Business	must b	e Car	ried o	n with	a Vie	w of	
		***				3.00	3888	8
(5.)	And by or on	Behalf	of the	Allege	d Part	ners	***	8
(6.)	History of the	Law as	to P	rofit Sl	haring	since (loc v.	
W 5	Hickman	100	444	+++	600	444	1944	10
(7.)	Lessons to be	Learnt	from	the D	ecision	s on I	rofit	
	201		•••		•••		•••	29
		LE	CTUI	E II.				
	THE C				TNERSE	HP.		
(1.)	Illegal Partne	rehins			***	***		34
	Personal Capa						1222	40
19.1	How far a Wr	itton A	Processor.	ant is 1	Daniela	.1	***	49
	What Matter							53
	Reasons why							55
(9.)	neasous way	mese at	atters	944(411)	the IA	ant wn		DD
		LEC	TUR	Е Ш.				
134	THE RELATION		RTNEI ITH T		Perso:	vs Dec	LING	
(1.)	Test of Liabil	ity is t	he Ar	quaren	t as D	istingu	shed	
10.000	from the A							71
(2)	What Acts are						0121	
()	Partner	(***)		The second second		CONTRACTOR OF THE OWNER.		75
73.1	Liability for T				***		***	80
	When Liabilit					and Sa		91
14.1	21 OCH 111000H	A	crise4	25, 101, 10	A STREET, S	100	170000	36.4

				1	AGE
(5.) Duration of the Liability		***	***	***	94
(6.) Doctrine of " Holding O	nt "	***	0.000	**4	98
(7.) Continuance of the Ager	cy after D	issolu	tion	•••	100
LECTU	JRE IV.				
THE RELATION OF PAI	TNERS TO	ONE	Акотн	ER.	
(1.) Utmost Good Faith bety	een Partn	ers is	an Imp	lied	
Term of every Partne	rship Agree	ement			103
(2.) Terms as to Manage	ment Imp	lied	where	not	
Expressly Negatived of	r Modified	***	***	***	106
(3.) Terms as to Capital, I	rofits and	Loss	es, Imp	lied	
where not Expressly	Vegatived or	r Mod	lified		111
(4.) Implied Terms as to Ind	emnification	n of l	Partner	8	115
(5.) Partnership Property a	Distingu	ished	from	Pro-	
perty of the Individua	d Partners	***	***		116
(6.) Devolution of Partnershi	p Property	***	***	•••	128
(7.) Voluntary and Involunts	ary Alienat	ions o	f a Part	ner's	
Share in Profits and I					129
LECT	URE V.				
THE DISSOLUT	ON OF THE	Fir	м.		
(1.) Dissolution without hav	ing Recour	se to t	he Cou	rt	133
(2.) Judicial Dissolution			***		134
(3.) Comments on Both Met	hods of Dis			***	134
(4.) Return of Premium on I					142
(5.) Points after Dissolution		1000	***		143
(6.) Realisation of the Assets		***	***	***	147
(7.) Final Settlement of A		d Dis	tributio	m of	
Assets		***	•••		152
LECT	URE VI.				
THE INSOLVENCY OF	ALL OF	Some	OF THE	e.	
	TTNERS.	13.5775		7/1	
(1.) Proofs Against the Join	t and Separ	ate E	states w	here	
all the Partners are I	nsolvent	***	***	***	162
(2,) Proofs of Solvent Parts		st the	Estate	of a	19090
Bankrupt Co-Partner	***	***	1111	***	173

TABLE OF CASES CITED.

			A.					
5 ESC 37								AGE
Aas c. Benham	See and	444	***	***	***	10	4, 105,	106
Abbott c, Smith	***	***	***	***	4 * *	***	***	94
Adam r. Newbigging	in.	(585)	28883	2555	14942	1000	300,	141
Adams v. Bankart	***	***	***	***	***	***	***	79
Adamson, Ex parte	414	+++	444	444	3335	114	471	167
Airey v. Borham	1213	9990	0000	(98.90)	1000	2000	****	107
Albion Life Assuran	ce So	ciety,	Re	***	1		444	113
Aldridge, Re	***	***	100	***	+4.6	444	177	107
Arbnekle r. Taylor	×144	***		1964.65	049040	(3000)	1000	86
Atkins, Ee parte		***	***	***	***	***	444	178
Atwood v. Maude			***	***			143.	111
Austin c. Jackson	•••	2007	***	333	***	100	***	157
			В.					
Radeley v. Consolidat	ted B	ank	3000	9000	3	3, 25,	26, 32,	180
Baker's Case	***	***	***	***	***		***	116
Bank of Australasia	r. Br	eillat	100	200	***	***		77
Barber, Le parte	200	446	+++	3666	130000	0.000	1000	153
Barden v. Keverberg	****	222				***	***	43
Barnes v. Youngs	***		***		***	***	163,	137
Beard c. Webb	×3.4	200	3000	200	400	10+	111	44
Beckham r, Drake	mtm.	9.440	20140	2000	56560		1000	78
Belfield r. Bourne						+++	137.	143
Beningfield v. Baxter	c	222	200	200	***	2000	***	154
Berkeley c. Hardy	***		204		00.00		***	79
Betjemann e. Betjem	18.1111	***		***	***			156
Bignold, Le parte				95%				116
Bilborough r. Holme		2000	200	2000	2000	7000	7000	217
Blyth r. Fladgate		***	***	300	***		***	86
Boubonns, Ee parte				- 30				77
Bond r. Gibson	***	****	3090	200		200	2000	78
Brettel e, Williams		***	200		***	***	***	773
		7.77			2777	55000		

D D	33047						1112777	GE 61
Briusmead r. Briusme			***	***	***	***	107	211/-01/
200	***					***	107,	
Brown, Jausen & Co.		tenin	son & C		***	***	***	131
Bullen r. Sharpe	***	****	***	***	***	***	***	30
Bunden r, Bunden		***	***	***	444	+++	***	108
	***	***		***	***	***	σl,	116
Burgess c. Burgess	0.00	*****	***	***	255	2.55	***	60
Burt e. Bull		***	***	***	***	111	***	146
Bury r. Allen	***	***	***	***	444	***	+++	176
Butchart c. Dresser	***	***	***	***	****	***	77,	101
			C.					
Caddick c. Skid more		***	***	***	***	***	Sec	50
Carpenter, Ee parte	***	***	****	3444	40.40	0680613	Seec	175
Central Bank of Lon	don, L	le pa	rte	***	***		99,	100
Chippendale, Er par	te			***		***	115.	116
Churton r. Douglas	6000	AA II	****	2000	+9.60	3000	***	150
Cleather v. Twisden			2771	222	2.55	***	***	89
Clegg v , Edmondson		***	444	***	***		***	105
Clegg v. Fishwick	***	***	***	***	***	***	54445	105
Clough, Re	***	***	***	***	227		78,	101
Collins v. Barber	***	***					***	146
Colman v. Dry Dock	Co.	111	444		***	2000	+++	84
Const v. Harris	***	*****	2006			(444)	****	146
Cook, Ex parte		***		***			***	172
Cooke r. Benbow	300	***	+++	2004	144		***	115
Court c. Berlin	20161		389.63	500000	come		****	78
Coventry v. Barclay								106
Cox v. Hickman				34500	999	***	91	1. 22
Crawshay v. Maule	3440	***	***	***	2440	0446		138
Croft r. Day			***			***		59
Crutwell v. Lye	***	***		•••	•••	***		149
			D.					
Daguall, Re	***	***			***	***		43
Dale r. Hamilton				***		***		50
Darby v. Darby	***	***	2000	***	54946	***	7.444	124
Davies v. Games	411		0.000		***	1	24, 126	,127
Davies v. Vale of E		Den			***		***	146