



LEGAL ENGLISH

INGLESE GIURIDICO

ONE-CYCLE MA IN LAW

FACULTY OF ECONOMIC, LAW AND POLITICAL SCIENCES

M. Antonietta Marongiu, Ph.D.

marongiuma@unica.it

MARIA ANTONIETTA MARONGIU

RICEVIMENTO: PER APPUNTAMENTO
GIOVEDÌ 12:00-14:00 SU TEAMS
e-mail address: marongiuma@unica.it



LEGAL
ENGLISH
48 hours
6 cfu

Pagina Web: https://www.unica.it/unica/page/it/mariaa_marongiu

- **Orario lezioni e ricevimento, avvisi**
- **Materiale didattico scaricabile relativo alle lezioni:**
 - Materiale usato a lezione,
 - materiali su contenuti specialistici e sulla struttura della lingua,
 - Assignments, Exercises,
 - Mock-test con soluzioni.

T i m e t a b i l e	MONDAY		TUESDAY		WENSDAY		THURSDAY		FRIDAY	
	<u>Aula 10 bis - Edificio A - via S. Ignazio, 70/72/74</u>									
	-----		27 Feb 10:00-12:00		28 Feb 10:00-12:00		29 Feb 10:00-12:00			
	04 Mar 10:00-12:00		05 Mar 10:00-12:00		06 Mar 10:00-12:00		07 Mar 10:00-12:00		08 Mar 10:00-12:00	
	11 Mar 10:00-12:00		12 Mar 10:00-12:00		13 Mar 10:00-12:00		14 Mar 10:00-12:00			
	18 Mar 10:00-12:00		19 Mar 10:00-12:00		20 Mar 10:00-12:00		21 Mar 10:00-12:00			
	25 May 10:00-12:00		26 May 10:00-12:00		27 Mar 10:00-12:00		-----			
	-----		-----		-----		-----			
	08 Apr 10:00-12:00		09 Apr 10:00-12:00		10 Apr 09:00-12:00		11 Apr 09:00-12:00			
	APPELLI									
31 May - 16:30 Lab Ling – Edificio A Sant'Ignazio			28 June – 9:00 Lab Ling – Edificio A Sant'Ignazio			28 July – 12:00 Lab Ling – Edificio A Sant'Ignazio			6 Set – 09:00 Lab Ling – Edificio A Sant'Ignazio	

Unit 4

Business Structures



Entrepreneur / ˌɒntrəprəˈnæː/ =
enterpriser, trader, businessperson,
tycoon, industrialist

IN BRIEF...

Starting a business or investing in the business of others can be a significant step for many people. There are several different types of business entities available for an entrepreneur from the simplistic, sole trader to the highly sophisticated partnership agreements used for multinational joint ventures.

When selecting a business type for the client, lawyers and accountants alike, need to balance the advantages and disadvantages of each one. Clients should do a cost/benefit analysis taking into account risks, duties and obligations arising from the different types of entities, identify assets available for creditors and evaluate options for protecting personal assets if the business runs into financial difficulties.

Another critical element to consider is the taxation of the business entity. Individual tax rates tend to be quite high (45% for income over £150,000), whereas corporate tax rates are low in comparison (a flat rate of 19%). Inevitably, this will be another factor influencing the choice of business structure.

Finally, the ability to keep business affairs private and out of the public domain is an important consideration for the client. The protection of details concerning business turnover, losses or investments may be a high priority for some clients, whilst allowing the exit of business partners without putting the remaining partners at risk, is of utmost importance for others.

ENTERPRISE



Company (UK)
Corporation (US)



Lesson 1 - Sole Traders

Introduction

A **sole trader** is someone who owns and runs their own business. In the US, we often call sole traders, **sole proprietors**. Sole traders are self-employed even though they may employ other people to help them with the day-to-day running of their business. A business run by a sole trader is not a separate legal entity. In other words, the business and the sole trader are the same person in the eyes of the law. Plumbers, electricians, hairdressers, shopkeepers and even lawyers may operate as sole traders. Solicitors operating as sole traders are usually called **sole practitioners** who are in **sole practice**. In fact, sole traders may come from any type of profession or trade. Up to 60% of businesses in the UK are sole traders.

Apart from registering for tax purposes with the HM Revenue & Customs, there are no other formal steps to take if you want to trade as a sole trader in the UK.

There is no single piece of legislation governing sole traders. Instead, sole traders need to follow the law in many pieces of legislation and may also be regulated by their own professional rules and ethics if they are part of a profession. For example, a lawyer trading as a sole practitioner will need to follow the rules published by the **Solicitors' Regulatory Authority (SRA)** and other common law rules covering contracts law, torts law and consumer protection. The same principle applies to hairdressers, accountants and electricians who must also follow the rules set out by their professional bodies, general legislation and the common law.

Advantages There are advantages to trading as a sole trader. Usually, all the **revenue** received from customers or clients is kept by the sole trader and they do not have to share that revenue with any other party. However, this also means that a sole trader could potentially have a high **tax liability** if the business is successful. This is because all the money the business makes is taxed in the hands of the sole trader who pays the amount assessed as tax, personally.

Another advantage of operating as a sole trader is the freedom to run the business without having to ask other owners to approve any of the decisions. The only person involved in the decision-making process is the sole trader.

Finally, operating as a sole trader keeps the internal affairs of the business confidential. The sole trader is not required to file the financial accounts of the business with any regulatory body. The general public cannot get access to these documents through Freedom of Information or consulting the public registers such as those kept by Companies House (UK) or ASIC (Australia).

the money generated from business operations

/ˌlɪɪəˈbɪlɪti/
responsibility

WHAT IF...

... I ask my best friend to lend me some money for my business in exchange for 10% of my profits. Am I still a sole trader?

WHAT IF...

What type of partnership would be better for us in this case?

WHO CAN BE A SOLE TRADER?

- plumbers,
- electricians,
- hairdressers,
- shopkeepers,
- farmers,
- lawyers,
- Who else?

WHAT DO I HAVE TO DO TO BECOME A SOLE TRADER IN THE UK?

- I have to register for tax purposes with the HM Revenue & Customs

WHAT DO I HAVE TO DO TO BECOME A SOLE TRADER IN ITALY?

- I have to (it is your job to find out!)

benefits, properties, resources

Disadvantages One of the main disadvantages of being a sole trader includes the fact that a sole trader is personally liable for all business debts. **Business debts** means that the business has more **liabilities** than **assets**.

As the business itself does not have a *separate legal personality* from the sole trader, the sole trader is personally responsible for paying the debts of the business. This means that the sole trader's own personal assets as well as any business assets are available to creditors if the business gets into financial trouble and fails.

For example, if a hairdresser's business fails, the assets available to pay off the debts may include the assets of the hairdressing business (hair products and other trading stock, furniture and equipment) and all of the personal assets (property, savings, shares, vehicles and personal possessions) belonging to the hairdresser. All of these will be available to the creditors and may be sold to pay off the business debts of the sole trader. This is called **unlimited liability** and when the situation gets really critical, the sole trader may even be forced into bankruptcy.

Lesson 1 - Sole Traders

Therefore, when going into business, it is always a good idea to have a good **business plan** and access to a pool of experts to assist the sole trader if they themselves do not have strong business skills.

One other major disadvantage of being a sole trader is that it is difficult to get finance from a bank if the sole trader needs capital to expand the business. Banks are usually reluctant to lend to sole traders unless they give the banks some form of security over personal assets (for example, a **mortgage** over the family home).

Succession is also a major problem for sole traders. When a sole trader does not continue trading due to their retirement, illness or death, the business comes to an end unless someone is found to buy it.

Finally, running a business as a sole trader can be highly stressful and lonely at times. With no one to share the burden of the day-to-day running of the business it can lead to problems. Many sole traders join trade groups or associations to overcome the isolation that comes from being solely responsible for the success of a business.

VAT (Value Added Tax)

A sole trader may also need to register for VAT (Value added tax), and if they employ staff, will be responsible for pay-roll tax, and maternity and holiday leave. This is in addition to any personal income tax they will need to pay on the business profits.

Business names

Some sole traders or proprietors may wish to use a business name instead of their own name and surname. A **business name** is a pseudonym or a fictitious name. To trade legally in some countries, the business name needs to be registered with a government authority. The records are public. Countries such as the USA, Australia and Canada require you to register business names and use words such as "trading as" (t/a) to show that a business name is being used.

UK Regulations

In the UK, there is no need to file an application to use a business name. However, there are some restrictions concerning the use of certain names and the requirement not to mislead or harm the public by using inappropriate or unacceptable names. This may cover situations where the business name used suggests that the business belongs to, or has some relationship with other businesses or institutions, when it does not. Additionally, words considered offensive or inappropriate are not permitted to be used as business names. A sole trader who decides to use a business name, must use their own name as well as the business name on all business stationery, business emails, invoices and receipts and display these details on signs at their business premises. Additionally, they need to have an address in the UK to allow business correspondence to be sent to them.

DID YOU KNOW?

In some states in the USA, filing what is called a DBA (Doing Business As) requires the applicant not only to register a trade name by filing an official form with the relevant government authority but also publishing an official notice in the local newspaper, so the public is aware that the true owner intends to operate under that trade name. The aim of this requirement is to protect the public against fraud.

Do you know what how it works in Italy?

Important note: A business name does not create a separate legal entity and when a business is entering into a contract or **being sued**, the complete legal name needs to be used (that is the name and surname of the owner) and not just the business name alone. For example, any Court documents will name the business as *John Bean trading as Adventurous Holidays*.

How does it work in Italy?

CAN YOU REMEMBER?

What are the main advantages and disadvantages of being a sole trader?

What type of liability does a sole trader or proprietor have?

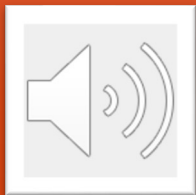
/prəpraɪətər/
owner

PRONUNCIATION TIP

Remember that the words **debt** /dɛt/ and **debtor** /'dɛtə/ have a silent *b*.



4.0.1 Listen and repeat.



1. Read the text and complete it with the missing words from the box.

financial • isolated • liabilities • personal • pressures • retire

Sole traders potentially face high taxation **1**..... if the business is successful, as individual tax rates are higher than the corporate tax rate. As there is no separate legal entity between the sole trader and the business, the sole trader risks all his **2**..... assets should the business encounter **3**..... difficulties. Sole traders often face difficulties in getting loans from the banks and the business will run into succession problems, should the sole trader die, get sick or **4**..... The **5**..... of running the business often leave sole traders feeling **6**....., alone and suffering high levels of stress.

1. Read the text and complete it with the missing words from the box.

financial • isolated • liabilities • personal • pressures • retire

Sole traders potentially face high taxation **1. liabilities** if the business is successful, as individual tax rates are higher than the corporate tax rate. As there is no separate legal entity between the sole trader and the business, the sole trader risks all his **2. personal** assets should the business encounter **3. financial** difficulties. Sole traders often face difficulties in getting loans from the banks and the business will run into succession problems, should the sole trader die, get sick or **4. retire**. The **5. pressures** of running the business often leave sole traders feeling **6. isolated**, alone and suffering high levels of stress.

2. Read the following statements (1-6) and decide whether they are *True* (T) or *False* (F). Correct the false ones using the space provided.

- 1 In the US a sole trader is called a sole proprietor. F
- 2 Sole traders cannot have employees.
- 3 A sole trader's business is not a separate legal entity from the person.
- 4 The types of professions that can be sole traders is limited.
- 5 There are no formal steps to register as a sole trader in the UK, except for tax purposes.
- 6 Sole traders are governed by multiple pieces of legislation, their own professional bodies and the common law.

3. Circle the correct word(s) in each of the following sentences.

- 1 Sole traders are able to keep all revenue / costs that comes into their business.
- 2 Being a sole trader can mean high / low tax liability.
- 3 A sole trader is taxed as a business entity / personally.
- 4 The sole trader has the freedom / restriction of being the only decision-maker.
- 5 The financial accounts of the sole trader are filed with a regulatory body / or are confidential.
- 6 Information on a sole trader cannot / can be accessed through Companies House (UK).

4. Match the words (1-6) with their definitions (A-F).

- | | |
|---------------------|-----------------------|
| 1 business debts | 4 personal assets |
| 2 legal personality | 5 unlimited liability |
| 3 creditor | 6 bankruptcy |
- A a person or company that has legal rights and obligations
 B property and possessions unrelated to a sole trader's business
 C a legal process for those unable to pay creditors
 D the liabilities a business still has after assets are assessed
 E personal responsibility for all debt without limits
 F a person or entity who is owed a debt

1 2 3 4 5 6

3. Circle the correct word(s) in each of the following sentences.

- 1 Sole traders are able to keep all revenue / costs that comes into their business.
- 2 Being a sole trader can mean high / low tax liability.
- 3 A sole trader is taxed as a business entity / personally.
- 4 The sole trader has the freedom / restriction of being the only decision-maker.
- 5 The financial accounts of the sole trader are filed with a regulatory body / or are confidential.
- 6 Information on a sole trader cannot / can be accessed through Companies House (UK).

4. Match the words (1-6) with their definitions (A-F).

- | | |
|---------------------|-----------------------|
| 1 business debts | 4 personal assets |
| 2 legal personality | 5 unlimited liability |
| 3 creditor | 6 bankruptcy |
- A a person or company that has legal rights and obligations
 B property and possessions unrelated to a sole trader's business
 C a legal process for those unable to pay creditors
 D the liabilities a business still has after assets are assessed
 E personal responsibility for all debt without limits
 F a person or entity who is owed a debt

1 **D** 2 **A** 3 **F** 4 **B** 5 **E** 6 **C**

5. Answer the following questions (1-5) in four words or less using the space provided.

- 1 What 3 types of tax is a sole trader liable to pay?
.....
VAT, pay-roll and income.
- 2 What is the pseudonym or fictitious name a sole trader can use called?
.....
Business name.
- 3 What wording is required in the USA, Canada and Australia for registered business names?
.....
“trading as” or t/a.
- 4 In the UK, what must be included with the business name on stationery and signs?
.....
The sole-trader’s name.
- 5 Where does a sole trader’s business address have to be?
.....
Within the UK.

UNIT 4
Lesson 1 Sole Traders
Exercise 6 AUDIO 4.0.2



LESSON 1

Exercise 6 AUDIO 4.0.2




UNIT 4

Lesson 1 Sole Traders

Exercise 6 AUDIO 4.0.2

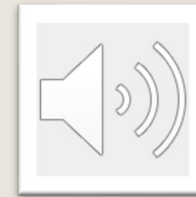
There are many advantages to being a sole trader, including flexibility in decision making and running the business, with little or no formalities apart from registering for taxation purposes with the HMRC. All the profits from the business belong to the sole trader and there is no need to file financial documents with Companies House thus keeping all the business confidential. Finally, a sole trader does not need to get approval from other bodies, such as shareholders, if they wish to change the nature of the business.



6.  **4.0.2** Listen to the audio and complete the text with the missing words.

There are many advantages to being a sole trader, including **1. flexibility**... in decision making and running the business, with little or no formalities apart from registering for **2. taxation**..... purposes with the HMRC. All the profits from the business **3. belong**..... to the sole trader and there is no need to file financial documents with Companies House thus keeping all the business **4. confidential**..... Finally, a sole trader does not need to get **5. approval**..... from other bodies, such as shareholders, if they wish to **6. change**..... the nature of the business.

UNIT 4
Lesson 1 Sole Traders
 Exercise 6 AUDIO 4.0.2



What is a disadvantage of being a Sole Trader?

- 1** — **Limited liability.**
- 2** — **Inability to employ staff.**
- 3** — **Financial accounts are not confidential.**
- 4** — **High taxation.**

Lesson 2 - Partnerships

Deadlock = impasse,
stop, dead end

A **partnership** is defined as two or more parties sharing ownership and the day-to-day running of a business. The objective of the partnership must be to make profit and not be charitable. Like sole traders, partnerships may be suitable to a variety of professions such as tradespeople, architects, accountants, doctors, and lawyers.

Partners in a traditional partnership may be individuals or companies. Companies coming together in a partnership are known as joint ventures. Some partnerships may have hundreds of partners, but a partnership must have at least two. For example, a partnership may be formed when two sole traders decide to join their businesses.

Some partnerships may appoint a managing partner. The **managing partner** is usually the most successful of all the partners, has the most prestigious clients and possesses the necessary skills and experience to guide the partnership. They are usually the most senior of all partners. Some managing partners are given an extra vote to cast during partnership meetings when significant business decisions are being made about the future of the partnership and/or to avoid deadlocks. A **deadlock** is a situation where a decision cannot be made because the parties cannot agree, and they have decided for or against a proposal in equal shares. They may need to approach the Court to make the decision for them, which is expensive, risky, and time-consuming. This may also lead to disputes involving exit procedures if these disagreements cannot be resolved.

Formalities for Setting up a Partnership

Unit 4

Business Structures



Formalities for Setting up a Partnership

Unit 4

Business Structures

In the UK, the Partnership Act 1890 governs the way partnerships operate. Some partners may decide to have a contract with each other. This contract is called a **partnership agreement** and like all agreements, may be written or oral.

A partnership does not need to be registered with any public body, but each partner must register with HM Revenue & Customs to pay tax on the income they earn as partners in the business. The partners operating a partnership will share the profits and losses of the business.

Business names If partners plan to use their own names for the business, there will be no controls or requirements to follow. Imagine Paul Smith and David Jones wish to operate as a partnership, and use the names "Smith & Jones", "P Smith and D Jones", "Paul Smith and David Jones". In this case, they will not be subject to any statutory requirements. However, if they want to use other names which reflect a partnership such as "P Smith", "Smith, Jones & Co", or "PD Services", they may need to satisfy the controls and requirements imposed by the Companies Act 2006. They also must have the written approval of the Secretary of State for Business, Innovation and Skills to use that particular business name.

Other Requirements for partnerships The names of all partners and the partnership's business address in the UK must appear on partnership stationery such as letterheads. If the partners fail to do this, they may be fined. Additionally, they may find themselves in a situation where they are unable to enforce their contracts against a third party, if the third party can show they have been prejudiced by the partnership's failure to comply with this requirement.

WHAT IF...

... you and a friend start making scones and sell them to your friends to make some extra money for your skiing holiday in Cortina. You share the costs and the income with your friend. Have you set up a partnership?

Characteristics of Partnerships

Partners have the right to be involved in the decision making of the business, share in the profits of the business, examine the accounts of the business, have openness and honesty from other partners and may even be given the right to veto the introduction of a new partner into the partnership.

The right to share in the profits of the partnership also means that the partners have the responsibility for sharing losses. Partners may decide to amend or exclude some of these rights and/or responsibilities by using a Partnership Agreement.

Whilst there are many advantages to operating as a partnership, including pooling resources and skills, one of the main disadvantages of a partnership is that it does not have a separate legal entity. Partners, like sole traders, have unlimited liability for the debts of the partnership. **Unlimited Liability** means that if the partnership fails, creditors can claim the personal assets as well as the business assets of the partners to repay the partnership debts. Another disadvantage of a partnership is the joint and several liability. **Joint and Several Liability** means that a creditor may bring legal action to recover a debt from either one of the partners or all of them. Unlimited Liability refers to *the amount* that can be claimed, while Joint and Several Liability is about *who* is liable.

The Partnership Agreement

A Partnership Agreement usually has details of the commencement date of the partnership, the name of the partnership, details of the financial contributions of the partners, their shares in profits or losses, salaries, the business place and a description of the nature of the partnership's business. The Agreement may also state the workload, the role of each partner in the day-to-day running and the decision-making process. If the partners do not enter into a Partnership Agreement, the Partnership Act (1890) may operate instead.

Ending a partnership When a partner dies, the other partners may choose to buy their share in the partnership business. If they do so, the partnership continues. If the partners do not, the partnership comes to an end. In other words, the partnership dissolves.

A partnership may be dissolved when a partner decides to leave (called "retire") the partnership. Usually, a **Dissolution Notice** is given by the partner intending to dissolve the partnership and unless the Partnership Agreement requires notice to be in writing. Oral notice with immediate effect may also be acceptable. This **unfettered freedom** to dissolve a partnership creates insecurity and instability. To avoid such instability, it is always best to require written notice and a set notice period for dissolution in the Partnership Agreement.

Other events that may end a partnership include the bankruptcy of one of the partners, a court order and expulsion of the partner by the others. **Expulsion** is involuntary and usually involves some misconduct. The Partnership Act 1860 does not have a statutory provision covering expulsion and so partners must put it in their own Agreement if they wish to exercise this right.

Unit 4

Business Structures

Payment for outgoing partner's share: when a person ceases to be a partner due to retirement, expulsion, death or bankruptcy, and the other partners decide to continue with the business, they will need to pay for the outgoing partner's share. To avoid disputes for the purchase of these assets, the Partnership Agreement should have a clause detailing how the buy-out will work. If the Agreement is silent, section 42 of the Partnership Act 1890 may force the remaining partners to pay five percent interest on the outgoing partner's capital or a share in the profits.

ADR Clauses in the Agreement

Putting an **Alternative Dispute Resolution Clause** in a Partnership Agreement is a good idea to resolve disputes between partners without going to Court. ADR, not being in the public Court system will ensure, as far as possible, that media attention and adverse publicity between the partners are kept to a minimum and clients are not put in a difficult position of having to choose whether to stay with the partnership or follow the outgoing partner.

Unit 4

Business Structures

Watch the video



Chartered Certified Accountants, Registered Auditors
and Specialist Personal and Corporate Tax Advisers

<https://www.youtube.com/watch?v=YXMAO7Oqe6w>

CAN YOU REMEMBER?

What are the disadvantages of trading as a partnership?

How may the partners bring an end to a partnership?

**UNIT 4****Lesson 2 Partnerships**


Exercise 6 AUDIO 4.0.3

**LESSON 2**

Exercise 6 AUDIO 4.0.3

The common law defines a partnership as two or more parties engaged in running a business with a view to profit. It is always a good idea to draw up a partnership agreement which sets up a contractual relationship between the partners. This means that if a partner behaves in a way which is not permitted by the partnership agreement, the other partners may bring legal proceedings against that partner to recover any losses or damages, caused by that breach.



6.  **4.0.3** Listen to the audio and complete the text with the missing words.

The common law defines a partnership as two or more **1**..... engaged in running a business with a view to **2**..... It is always a good idea to draw up a partnership agreement which sets up a **3**..... relationship between the partners. This means that if a partner **4**..... in a way which is not permitted by the partnership agreement, the other partners may bring **5**..... proceedings against that partner to recover any losses or **6**....., caused by that breach.



Match the words with their definitions.

- The ending of a partnership
- A partner being forced to leave a partnership
- Acronym for Alternative Dispute Resolution
- An equal number of votes at a meeting
- Where partners are liable separately and jointly
- The information about a company printed on stationery

- ✓ Choose...
- Letterhead
- Dissolution
- Joint and Several
- ADR
- Expulsion
- Deadlock

Match the words with their definitions.

- The ending of a partnership
- A partner being forced to leave a partnership
- Acronym for Alternative Dispute Resolution
- An equal number of votes at a meeting
- Where partners are liable separately and jointly
- The information about a company printed on stationery

Dissolution



Expulsion



ADR



Deadlock



Joint and Several



Letterhead



Complete the text.

- **basis – business • defined • form • property • separately**

When two or more people start a together with a view to making a profit, they create a partnership. The partnership has to have a commercial and be acting as a trade, profession or occupation as by the Partnership Act 1890. A standard partnership is unable to hold land and in its name and is not a separate entity from its owners. Each individual is taxed because the partnership is fiscally 'transparent'. Charities and not-for-profit agencies are unable to partnerships.

Complete the text.

- **basis – business • defined • form • property • separately**

When two or more people start a **business** together with a view to making a profit, they create a partnership. The partnership has to have a commercial **basis** and be acting as a trade, profession or occupation as **defined** by the Partnership Act 1890. A standard partnership is unable to hold land and **property** in its name and is not a separate entity from its owners. Each individual is taxed **separately** because the partnership is fiscally 'transparent'. Charities and not-for-profit agencies are unable to **form** partnerships.

Lesson 3 - Limited Liability Partnerships (LLPs)

A **Limited Liability Partnership (LLP)** is formed under the **Limited Liability Partnership Act 2000**. An LLP is a hybrid business combining traditional partnerships and companies. Unlike a traditional partnership, an LLP is a **separate legal entity** – just like companies are. This means that an LLP is separate and distinct from its partners who enjoy **limited liability**. Their personal assets are protected should the LLP get into financial difficulties. Partners in an LLP are called **members**.

Some LLPs may be run in a very informal way but there are others with many hundreds of members spread out geographically in many different parts of the world. The larger LLPs may appoint a board responsible for the overall running of the LLP and may divide decision making between global, regional, and country-specific committees.

An important factor for an LLP concerns taxation. Members are taxed as individuals (as with traditional partnerships) and pay tax on their profits through their own individual tax assessments. The more successful and profitable the LLP, the more tax the members will need to pay as individuals. Many multinational law firms are LLPs, and although there must be at least two designated members to start the LLP (like traditional partnerships), there is no limit to how many partners they may have. Some LLPs are extremely successful with annual turnover of up to £1.6billion.

Formalities for Setting up a Limited Liability Partnership (LLP)

In the UK, an LLP must be registered with Companies House. It is set up when the owners (members) file their application for registration and pay their fee. The fee is currently £10 if the application is filed on-line.

Once the **Registrar of Companies House** is satisfied with the application, the LLP will receive a **Certificate of Incorporation**. The LLP is alive from the date stated on the Certificate of Incorporation. An LLP may have an LLP Agreement between the partners, but this document does not need to be filed with Companies House. The LLP must have at least two designated members who are responsible for filing annual returns and other documents with Companies House. This is seen as the major disadvantage of the LLP structure as all financial documents are available to the public for inspection. This is not required of traditional unlimited partnerships.

LLPs do not have to share capital like companies do. Consequently, they are not required to keep minimum levels of capital, but they are subject to the law of **wrongful and fraudulent trading**.

All contracts must be executed on behalf of the LLP and an LLP may be liable for torts, debt or breach of contract. Normally a contract will only be signed by members who have the authority to bind the LLP. It is usual to have two authorized members sign and they may even use an official **business seal**.

Members of an LLP would have power to bind the LLP unless there are limitations placed on their authority and a third party is aware of this limitation. Once a member leaves the LLP, they will no longer have this power to bind the partnership.

Business Names The name of the Limited Liability Partnership must end with the letters, **LLP** or with the actual words – **Limited Liability Partnership**. If not, the protection of limited liability is lost, and the members will be liable for any debts on a joint and several basis with unlimited liability.

An LLP can change its name at any time without following any formalities, although members may include special procedures in the LLP Partnership Agreement. If so, these must be followed.

Alternatively, if the LLP does not have an LLP Partnership Agreement and/or the Agreement is silent, the Limited Liability Partnership Act 2000 states that there must be **unanimous consent** of all the members to change the trading name of the business.

WHAT IF...

... you decide to trade as an LLP but do not use the letters LLP on your website to advertise your business. Are you still protected by the limitation of liability principle?

Other Requirements for Limited Liability Partnerships Like Partnerships, an LLP must also have its name displayed at its **place of business**. All stationery must state the LLP's name, place of registration, registration number and the address of the registered office. A **registered office** is an office where official documents can be served and an LLP must always have a registered one, preferably in the UK.

Remember the letters 'LLP' must always be displayed to warn the world, that the members have liability which is limited. If the letters "LLP" or the words 'Limited Liability Partnership' are omitted, the advantage of limited liability is lost



LLP Formation

LLP full form is Limited Liability Partnership.

WHAT

Establishing a partnership with limited liability for partners.

WHY

To protect partners' assets, facilitate flexible management, and provide a separate legal entity.

HOW

Choose a name, draft an agreement, submit formation documents, obtain registration, and fulfill legal requirements.

The Limited Liability Partnership Agreement and the Act (2000)

Limited Liability Partnerships are a recent business model governed by the **Limited Liability Partnerships Act (2000)**. Just like traditional partnerships, if there is an LLP Partnership Agreement covering the operation and duties of the LLP, this will operate to the extent that it excludes the Act. Where the LLP Partnership Agreement is silent, the Limited Liability Partnership Act will apply.

The Limited Liability Partnership Act covers matters including the sharing of capital and profits, indemnity for members (compensation if another member is at fault), the right to take part in management, the introduction of new members, ordinary business matters to be decided by **majority vote**, the keeping of business records and making them available for inspection, the obligation to pay any profits earned where these were earned by members competing with the LLP itself.

Unless otherwise stated, members are entitled to share profits and capital in an LLP in **equal shares**. However, there is no rule concerning losses because the losses are those of the LLP itself and not shared amongst the members. The only thing that members risk in an LLP is their **initial contribution** for entering into the LLP and any loans the member may have made to the LLP if the LLP is unable to repay those loans.

1. Duties and Responsibilities of Members in an LLP

LLP Members have a number of duties which arise under common law and the operation of the LLP Act. Such duties include the duty to **account for any money received** on the part of the LLP and not to apply LLP money improperly, fiduciary duties to act in good faith towards the LLP, the duty of full and frank disclosure when dealing with financial accounts, towards auditors and fellow members.

Ending a Partnership A Limited Liability Partnership comes to an end when it is dissolved, and the Registrar of Companies House removes it from the Register. The Register is an official record of all companies and Limited Liability Partnerships registered in the UK.

A partner may cease to be a member of an LLP by giving reasonable notice to the other members and withdrawing from the LLP. However, a Limited Liability Partnership cannot expel or force a member to resign, unless this power is stated in the LLP Partnership Agreement. The members may need to make an application to the Court to assist them in removing a member. This will usually involve some form of **misconduct**.

Unlike a traditional partnership arrangement, the bankruptcy of one of the members of an LLP does not affect the LLP *per se*, as the LLP has a separate legal personality from its members.

Other miscellaneous matters In so far as the payment for the outgoing partner's share in the LLP is concerned, questions concerning **restraint of trade** and **non-competition**, and dispute resolution, the same considerations apply in LLPs as traditional partnerships. The starting point is always to look at the LLP Agreement first, and if that is silent to look at the provisions of the LLP Act 2000.

DID YOU KNOW?

LLPs were introduced into the English Legal system in response to pressure from professional groups who demanded more protection from unlimited and joint and several liability under traditional partnerships.

CAN YOU REMEMBER?

What are the advantages of a Limited Liability Partnership?

What are the requirements to set up a Limited Liability Partnership?

	Limited company	LLP
Advantages	<ul style="list-style-type: none"> • Separate legal entity with clear ownership structure • Taxed at lower rates • Some tax incentives only available to corporates (e.g. R&D relief, intangibles amortisation) • Group relief (where more than one company) • HMRC approved share option schemes with tax incentives 	<ul style="list-style-type: none"> • Flexibility of ownership – easier to bring in or retire members • Entrepreneurs' relief for owners with <5% interest • No employers' NIC on member income • Loss relief against members' other income (subject to restrictions)
Disadvantages	<ul style="list-style-type: none"> • Double tax on company profits and gains and on individuals on extraction of profits and gains • Cost of buying into a company 	<ul style="list-style-type: none"> • High immediate rates of income tax making reinvested profits more expensive • Limited liability protection may not always be available if member guarantees are needed

<https://www.mondaq.com/uk/company-formation/173702/structure---company-or-llp>

1. Read the text and complete it with the missing words from the box.

forced • misconduct • poaching • reasonable • stipulate • struck off

Just like a company, an LLP comes to an end when it is dissolved and **1**..... the Register of Companies by the Registrar of Companies House. A partner who wishes to leave the LLP may give **2**..... notice to the other partners. A Partnership Agreement may **3**..... under what circumstances a member may be expelled or **4**..... to resign from the LLP which will usually involve some form of **5**..... Finally, it is always a good idea to include a clause in the Partnership Agreement covering areas such as restraint of trade and **6**..... clients away from the LLP.

2. Read the following statements (1-6) and decide whether they are *True* (T) or *False* (F). Correct the false ones using the space provided.

- 1 An LLP is a business that combines a traditional partnership with a company. T F
.....
- 2 A traditional partnership is a separate legal entity, like an LLP. T F
.....
- 3 Partners of a Limited Liability Partnership are called members. T F
.....
- 4 LLPs are restricted to having members within the UK. T F
.....
- 5 LLP members are taxed individually. T F
.....
- 6 LLPs are limited to the number of members they can have. T F
.....

1. Read the text and complete it with the missing words from the box.

forced • misconduct • poaching • reasonable • stipulate • struck off

Just like a company, an LLP comes to an end when it is dissolved and **1**..... *struck off*..... the Register of Companies by the Registrar of Companies House. A partner who wishes to leave the LLP may give **2**..... *reasonable*..... notice to the other partners. A Partnership Agreement may **3**..... *stipulate*..... under what circumstances a member may be expelled or **4**..... *forced*..... to resign from the LLP which will usually involve some form of **5**..... *misconduct*..... Finally, it is always a good idea to include a clause in the Partnership Agreement covering areas such as restraint of trade and **6**..... *poaching*..... clients away from the LLP.

2. Read the following statements (1-6) and decide whether they are *True* (T) or *False* (F). Correct the false ones using the space provided.

- 1 An LLP is a business that combines a traditional partnership with a company. T F
.....
- 2 A traditional partnership is a separate legal entity, like an LLP. T F
A traditional partnership is not a separate legal entity.....
- 3 Partners of a Limited Liability Partnership are called members. T F
.....
- 4 LLPs are restricted to having members within the UK. T F
Members can be spread out around the world.....
- 5 LLP members are taxed individually. T F
.....
- 6 LLPs are limited to the number of members they can have. T F
There is no limit to number of members in an LLP.....

3. Answer the following questions (1-4) in four words or less using the space provided.

- 1 Where does an LLP have to register in the UK?
.....
- 2 When is an LLP considered “live”?
.....
- 3 What document does not have to be filed with Companies House?
.....
- 4 What is a major disadvantage of the LLP structure?
.....

4. Circle the correct word(s) in each of the following sentences.

- 1 An LLP must have its name / members' names displayed at its place of business.
- 2 A business / registered office is required for an LLP so official documents can be served.
- 3 If the letters LLP are not displayed, members lose their right to unlimited / limited liability.
- 4 The Limited Liability Partnership Act will / will not apply when the LLP Agreement is silent.

5. Match the words (1-6) with their explanations in terms of LLPs (A-F).

- | | |
|--------------------------|----------------------------|
| 1 official business seal | 4 initial contribution |
| 2 unanimous consent | 5 Companies House Register |
| 3 member indemnity | 6 bankruptcy |
- A the payment required to become a member of an LLP
 - B a member being in this state does not affect the status of the LLP
 - C required under some LLP agreements for signing of contracts
 - D the right to compensation if another member is at fault
 - E the official list of all companies and LLPs in the UK
 - F what is required of members to change the name of the LLP
- 1 2 3 4 5 6

3. Answer the following questions (1-4) in four words or less using the space provided.

1 Where does an LLP have to register in the UK?

At the Companies House

2 When is an LLP considered “live”?

From the date stated on the Certificate of Incorporation

3 What document does not have to be filed with Companies House?

The LLP agreement between the parties

4 What is a major disadvantage of the LLP structure?

All financial documents are available to the public for inspection

4. Circle the correct word(s) in each of the following sentences.

1 An LLP must have its name / members' names displayed at its place of business.

2 A business / registered office is required for an LLP so official documents can be served.

3 If the letters LLP are not displayed, members lose their right to unlimited / limited liability.

4 The Limited Liability Partnership Act will / will not apply when the LLP Agreement is silent.

5. Match the words (1-6) with their explanations in terms of LLPs (A-F).

- | | |
|--------------------------|----------------------------|
| 1 official business seal | 4 initial contribution |
| 2 unanimous consent | 5 Companies House Register |
| 3 member indemnity | 6 bankruptcy |

- A the payment required to become a member of an LLP
 B a member being in this state does not affect the status of the LLP
 C required under some LLP agreements for signing of contracts
 D the right to compensation if another member is at fault
 E the official list of all companies and LLPs in the UK
 F what is required of members to change the name of the LLP

1 **C** 2 **F** 3 **D** 4 **A** 5 **E** 6 **B**

PRONUNCIATION TIP

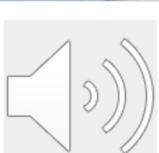
The letter *i* has various pronunciations. Note these two groups:

ai
liability /laɪə'bɪlɪtɪ/
bind /baɪnd/
silent /'saɪlənt/

i
limited /'lɪmɪtɪd/
indemnity /ɪndɛm'nɪtɪ/
dissolve /dɪ'zɒlv/



4.0.4 Listen and repeat.



UNIT 4

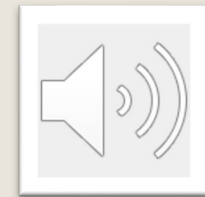
Lesson 3 Limited Liability Partnerships (LLPs)


Exercise 6 AUDIO 4.0.5

LESSON 3

Exercise 6 AUDIO 4.0.5

Limited Liability Partnerships as seen as distinct entities from the partners. They have a separate legal personality and offer limited liability to the partners. There are some formalities involved in setting up an LLP including the need to register at Companies House and filing annual financial reports. This means that the information relating to the internal workings of the LLP are available for the public to consult. Partners in an LLP are taxed individually which means that they may potentially be liable to pay high rates of taxation when the LLP is financially successful.



6.  **4.0.5** Listen to the audio and complete the text with the missing words.

Limited Liability Partnerships are seen as **1**..... entities from the partners. They have a separate legal personality and offer limited liability to the partners. There are some **2**..... involved in setting up an LLP including the need to register at Companies House and **3**..... annual financial reports. This means that the information relating to the **4**..... workings of the LLP are available for the public to consult. Partners in an LLP are **5**..... individually which means that they may potentially be liable to pay high rates of taxation when the LLP is **6**..... successful.



Answer the questions.

1. A clause in the Joint Venture Agreement that allows for parties to negotiate the price to buy out the other's share in a Joint Venture.

2. The fear a party has in a Joint Venture when it gives the other party their business secrets or access to their markets.

3. When in an LLP Joint Venture the parties cannot come to a majority decision because they own 50% each.

4. The accountants and lawyers required to assist in the setting up of a Joint Venture.br>

5. A clause in the Joint Venture Agreement in which if a party's offer to sell their share of the Joint Venture is rejected by the other party, they are obliged to purchase the other party's share at the same price.

6. What the parties share in capital intensive Joint Venture projects.

7. A type of Joint Venture where a company's ownership is joined with another.

8. When a company's debts exceeds its assets. A reason for dissolution in a termination clause of a Joint Venture.

9. The Partnership continues until it is dissolved.

Lesson 4 - Joint Ventures

A Joint Venture can be described as a partnership between two parties with a common objective or a particular project. A joint venture is characterized by these partners sharing ownership, returns, risks and governance. Governance refers to the internal rules and procedures for the management of the joint venture.

Reasons for Joint Ventures >>

Cost savings, risk sharing, access to needed technology and skills

Types of Joint Ventures >>

Short term collaborations, limited function joint ventures, full function, full-scale worldwide mergers

Problems with Joint Ventures >>

Sharing management, incompatible corporate cultures, different commercial aims, Trojan Horse problem, deadlock, approval from regulatory authorities.

Lesson 4 - Joint Ventures

Introduction

A **Joint Venture** can be described as a partnership between two parties with a **common objective** or on a particular project. An example might be a pharmaceutical company and a university research centre coming together to develop and market a vaccine. A joint venture is characterized by these partners sharing ownership, returns, risks and governance. **Governance** refers to the internal rules and procedures for the management of the joint venture. Usually a new management team will be set up inside the new joint venture entity consisting of employees from each of the partners.

- **Reasons for Joint Ventures** There are several reasons why parties choose to become partners in a Joint Venture. For example, cost savings, where the costs of investment for **research and development** are too high for one entity alone, can now be shared (typical in pharmaceuticals, oil exploration, alternative energy). **Risk sharing** is another reason for joint ventures especially for projects which are **capital intensive** such as major public works and infrastructure (new power stations, hospitals, stadiums).
Access to needed technology and skills is another advantage of having a joint venture, especially if one of the partners is a leader in an industry. Other reasons include the opportunity to expand client base, enter into new markets, and facilitate global expansion.

Lesson 4 - Joint Ventures

- **Types of Joint Ventures** There are many kinds of Joint Ventures. There are **short term collaborations** (for a specific result or project), **limited function joint ventures** (building a new facility to produce components and supply them to the partners of the Joint Venture), **full function** (new technology start-up business ventures) and **full-scale worldwide mergers** (the merger of existing companies on a global scale).
- **Problems with Joint Ventures** Joint Ventures can be problematic. Sharing management may result in one team trying to dominate the other causing tensions within the Joint Venture. If there are two incompatible corporate cultures this may also bring conflict because the parties may have different approaches to management and decision making. Parties may also have different commercial aims even though they both are part of the Joint Venture. Another problem is the **Trojan Horse problem**. This term describes the fear one party has when it allows the other party to use its market and/or technological know-how. Other problems may involve decisions if there is a **deadlock**. Finally, another critical element involving joint ventures concerns getting approval from regulatory authorities especially if the joint venture is seen as **anti-competitive**. Special approval may be needed from the **Monopolies and Mergers Commission** and/or the **EU Commission** itself.

Lesson 4 - Joint Ventures

Structures of Joint Ventures

The parties will need to decide on the structure of the Joint Venture. They may decide to have a contractual joint venture, collaborative agreements, a corporate joint venture, or opt for an LLP or have a traditional partnership. The Joint Venture may also be for a fixed term, for a specific purpose or at will. **At will** means that the partnership continues until it is dissolved.

Advantages and Disadvantages of a Partnership Structure for a Joint Venture

Imagine that a traditional partnership structure is adopted for the joint venture. The advantages and disadvantages for a Joint Venture would mirror those for a partnership. Flexibility, simplicity, and no filing requirements of official documents with public bodies are the main advantages. However, the joint and several liability of the parties, absence of having a corporate identity, and the operation of the Partnership Act 1890 (if there is no Joint Venture Agreement) are the disadvantages.

Partners have **fiduciary duties** towards each other and must act with **utmost good faith**. They cannot keep secrets from each other (in matters concerning the joint venture).

Role of the Lawyer in the Joint Venture

Parties entering a joint venture will need experts to assist them. Accountants and lawyers who specialize in corporate, regulatory, taxation, employment and intellectual property law will be needed to assist the parties. Lawyers will need to do legal due diligence, obtain consent and clearance from regulators, structure the Joint Venture to achieve the objectives of the parties, and advise the client about legal problems, taxation issues and offer solutions.

Lesson 4 - Joint Ventures

WHAT IF...

... a partner in a Joint Venture does not disclose it has a secret agreement with a competitor. Do they need to make disclosure and share the profits it has made in secret?

Lesson 4 - Joint Ventures

Exit Routes

An important element to consider when setting up a Joint Venture includes providing for its end. The partners may decide to *dissolve* the Joint Venture if a traditional partnership was used. There are two ways to dissolve the joint venture when it is a traditional partnership. Either through the **Partnership Act 1890** or through the **Partnership Agreement** itself.

Given the complexity of Joint Ventures, it would be very unusual for parties not to execute a Joint Venture Agreement. A typical Agreement will contain a **Termination Clause** for the dissolution of the Joint Venture (due to **material breach** by one of the parties, **insolvency** and even a **force majeure** event). There will also be an exit clause allowing one of the parties to exit from the Joint Venture. Depending on the nature of the agreement, these clauses can be extraordinarily complex.

DID YOU KNOW?

The European Economic Interest Grouping created by the EU has been used for cross border collaborations between professional bodies (accountants) and by researchers in existing companies in different jurisdictions. There are now several thousand EEIGs present in legal advice, research and development, osteopathy and even cat breeding!

Lesson 4 - Joint Ventures

The Partnership Act 1890 – Exit Route

Unless the parties agree otherwise, dissolution of a Joint Venture may be possible through the Partnership Act. Section 32 of the Partnership Act 1860 states that a partnership dissolves when it is for a fixed term and that term has expired, or when the partnership is for a specific or single venture and that venture has terminated. Additionally, if the Joint Venture is for an unlimited period, a party may terminate the Joint Venture by giving notice to the other partners that it intends to dissolve the partnership.

Alternatively, the parties may ask a Court to dissolve the Joint Venture. There are various statutory provisions giving the Court power to dissolve a Joint Venture. For example, section 35 of the Partnership Act 1890 gives a Court the power to dissolve a Joint Venture when it is **just and equitable** to do so.

Texas Shoot-Out Clause

The partners may insert a clause which allows party A to terminate the Joint Venture Agreement. Party A will send a notice to Party B offering to buy Party B's shares for a specific price. This is called the **buy notice**. Party B responds and sends a **counter-notice** to Party A. Party B either tells Party A that they are prepared to sell their shares to them or alternatively, Party B states that it wishes to buy the shares of Party A at a higher price than that stated in Party A's buy notice.

Lesson 4 - Joint Ventures

Russian Roulette Clause

The Russian Roulette Clause triggers when Party A wants to terminate the Joint Venture. It serves Notice on Party B, with an offer to sell its shares to Party B for the price stated in the Notice. Party B can either accept that offer or reject it. If Party B rejects the offer, it then becomes obliged to sell its shares to Party A for the price specified in the Notice.

CAN YOU REMEMBER?

What is a Joint Venture?

How can a party bring a Joint Venture to an end?

CASE STUDY: FIGHTING FOR PARTNERSHIP RIGHTS
CASE IN THE COMMON LAW**A PRECEDENT-MAKING**

Miah (Respondent) v Khan (Appellant) (House of Lords) [2000] 1WLR 2163 – The Facts: originally, four people wished to open a new Indian restaurant in Newbury, UK. The arrangement was that one would be the head waiter, two would be the chefs and the last one, an employee.

Unfortunately, they did not have the start-up capital and so approached a fifth person, Mr Khan. Khan had capital and so he joined the Respondents. (Khan in these proceedings before the House of Lords was the **Appellant** and the group of four people that he entered into the contract with were the **Respondents**. Appellant means that he filed the appeal from the Court of Appeal where he

had lost the case, to the House of Lords.)

The parties agreed that the Respondents would have the day-to-day management and running of the restaurant as they were already employed as waiters and chefs in other restaurants. They intended to leave these businesses. It was agreed that the Respondents collectively were one half of the partnership sharing 50% of the profits between them. The remaining 50% was for Khan. The new Indian Restaurant was to be in Newbury and the name "Nawab" was selected.

CASE STUDY: FIGHTING FOR PARTNERSHIP RIGHTS**A PRECEDENT-MAKING****CASE IN THE COMMON LAW**

By 1 December 1993, the parties had found suitable premises, obtained local council approval for the restaurant, entered into a lease with the landlord, opened a partnership bank account, borrowed additional money from the bank and signed a building contract to get the premises ready. They also entered into contracts to buy the necessary cooking equipment and linen. Therefore, although most of the money in the partnership bank account belonged to Khan, approximately £51,000 had been spent on getting the restaurant ready to trade.

Delays & Dispute

Initially, the parties had planned to open the restaurant on 13 December 1993, but they had a few setbacks, one of which included a dispute with the builders who stopped working altogether. It was around this time that Khan discovered that the other partners had transferred the property rights under the lease to themselves, to his exclusion. This led to a breakdown in their relationship.

Nevertheless, the Respondents opened the Indian restaurant on 14 February 1994. Obviously, Khan was not included as a partner and so he started legal action, which went on appeal all the way to the House of Lords. (The House of Lords is now the Supreme Court).

PIT STOP

Answer the following questions related to the text you've just read.

1. Apart from Mr Khan, how many other partners were there?
2. What was Mr Khan's role in the partnership?
3. What was the name of the restaurant?
4. By when had the Respondents entered into a property lease?
5. Was an equal partnership initially agreed between the partners?
6. Why did Mr Khan initiate legal action?

The Decision of the House of Lords

The Lords held in favour of Khan. Lord Millet said:

"there is no rule of law that the parties to a joint venture do not become partners until actual trading commences."

In other words, His Lordship was saying that a partnership may start even before the parties start to trade. He explained that opening a restaurant needs lots of preparation including finding premises, fitting them and so on, and it is inevitable that a partnership may start some time before the restaurant opens its doors for business.

PIT STOP

Read the following statements (1-2) and decide whether they are *True (T)* or *False (F)*.

1. Khan was able to claim an interest in the partnership because the partnership used his money to start up the restaurant business. T - F
2. The House of Lords said that a partnership starts on the first day of trading. T - F

Why does this case matter?

This case shows that partners in a partnership or joint venture need to be clear from the beginning if they intend to have a fixed date for the commencement of their business relationship. Courts can find that a partnership has come into existence before the business has started trading. The result may be that partners are able to share profits, earlier than expected. It also means, that where there is a loss – that loss will also be borne by all the partners. Flowing from this, it is also illustrative of the importance of written agreements. Whether we have a retail business or a multi-million-dollar joint venture to find a cure or vaccine, written agreements are fundamental. When the commencement date is stated in a written agreement, the Courts are more likely to accept that date as the date the partners intended to enter into the partnership and/or joint venture. It will be this date that governs the duties, obligations, profit sharing and responsibilities for losses.

Causten v Barnette 49 Wash 659, 96 P.225 (1908)

In 1908, the US Supreme Court of Washington had to decide whether **to grant an injunction** prohibiting the defendants including E.T. Barnette from transferring and disposing of shares in a company in a town in Alaska. Barnette had become enormously successful in a short time due to the gold rush, and owned the town, its bank and was its mayor.

His company dealt with lumber (forestry products) and the **plaintiff**, Causten, who had supported him many years before, claimed an interest not just in the company's lumber products but in the bank which owned the stock. He also declared that their contract gave him a one third interest in the revenue generated from the sale of general goods at a trading post Barnette had set up in the town. In addition, he claimed an interest in mining and other properties purchased by Barnette during the term of the contract.

The Supreme Court found that Causten did have an interest before and after the termination of the contract and gave him the **remedy of accounting**. Accounting involves a calculation by the court to determine the division of income, expenses, assets and liabilities between parties.

The Court said that Barnette would have been unable to engage in his enterprises if Causten had not provided him with the funds. The court also said that because Causten had taken such a large risk he was entitled to his share of the profits, and this included any "unanticipated opportunities and profits which accrued from the accidental discovery of gold in the locality of the trading post".

The Court felt it was a common sense approach to the existence of the partnership.

CASE STUDY: FIGHTING FOR PARTNERSHIP RIGHTS

A PRECEDENT-MAKING

CASE IN THE COMMON LAW

OVER TO YOU!

What do you think of the outcome of the two partnership cases?

Did the Court come to a fair and just conclusion in each case?

1. Read the text and complete it with the missing words from the box.

anti-competitive • complex • fear • full-scale • prevent • unfair

Joint Ventures may be short-term collaborations or **1**..... worldwide mergers. However, Joint Ventures are not without their problems. Incompatible corporate cultures, and the **2**..... the other party may use information obtained during the venture to get an **3**..... advantage in the market, often lead to overly **4**..... and lengthy confidentiality agreements. Regulatory authorities such as the antitrust bodies are vigilant to investigate and **5**..... the formation of joint ventures that may distort market forces through **6**..... behaviour.

4. Answer the following questions (1-4) in four words or less using the space provided.

- 1 What are the 2 ways of dissolving a Joint Venture that is a traditional partnership?
.....
- 2 Why would it be unusual for parties not to have a Joint Venture Agreement?
.....
- 3 What type of clause would be included to deal with dissolution?
.....
- 4 What type of clause would be included to allow a party to leave a Joint Venture?
.....

2. Match the two parts of the sentences (1-6) and (A-F) to make true sentences.

- 1 Joint Ventures are usually set up to accommodate
 - 2 When costs for research and development are costly,
 - 3 Parties share the risk when they enter into
 - 4 Joint Ventures are often entered into if
 - 5 Short term collaborations are
 - 6 Limited function joint ventures involve
- A for a specific project or result.
 - B particular projects or objectives between two parties.
 - C Joint Ventures such as large public building works.
 - D cooperation rather than a merge of the businesses.
 - E one of the parties has particular technological skills.
 - F it makes financial sense to have a joint venture.

1 2 3 4 5 6

3. Read the following statements and decide whether they are *True* (T) or *False* (F). Correct the false ones using the space provided.

- 1 Joint Ventures may require approval from regulatory authorities. T F
.....
- 2 Joint Ventures must be for a fixed term only. T F
.....
- 3 The advantages and disadvantages of Joint Ventures are similar to those of a partnership. T F
.....
- 4 If there is no Joint Venture Agreement, the Partnership Act 1890 operates. T F
.....
- 5 The requirement to act with utmost good faith means the parties must divulge all company information. T F
.....

5. Read the text and complete it with the missing words from the box.

business • international • regulated • share • technology

Many companies are not only entering into joint ventures within their own countries, but doing it on an **1**..... scale. A particular emphasis is on Joint Ventures in developing and emerging countries. In some countries that are strictly **2**..... (such as China) where there are state imposed requirements for foreign investors to enter into Joint Ventures with domestic companies if they wish to do **3**..... in that country. The benefits are that the foreign company gets access to distributions channels and local know-how, while the domestic company gets a **4**..... in the sale of products that would have been competing with their own, and has access to research and **5**..... from the foreign company.



Sanctions 2024

ICLG - Sanctions covers legal basis/sanctions authorities, implementation of sanctions laws and regulations, enforcement, and general topics – **in 18 jurisdictions**

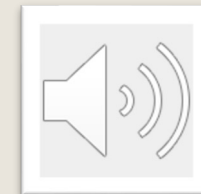
Published: 27/09/2023


<https://iclg.com/practice-areas/sanctions>

LESSON 4

Exercise 6 AUDIO 4.0.6

A joint venture is a partnership between two parties with a common aim or project. The Partners share the expenses, risks, and ownership of the venture although it may not be on an equal basis. It is often the case that the parties in the joint venture will set up a separate company and take a shareholding, contribute staff and directors on the Board of Directors. Many joint ventures are involved in research and development or in capital intensive projects such as major construction projects. This way, joint ventures are an opportunity to source the best talent in the market.



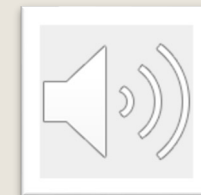
6.  **4.0.6** Listen to the audio and complete the text with the missing words.

A joint venture is a partnership between two parties with a **1**..... aim or project. The Partners share the expenses, risks, and ownership of the venture although it may not be on an **2**..... basis. It is often the case that the parties in the joint venture will set up a **3**..... company and take a shareholding, contribute **4**..... and directors on the Board of Directors. Many joint ventures are involved in research and development or in **5**..... intensive projects such as major construction projects. This way, joint ventures are an opportunity to **6**..... the best talent in the market.

UNIT 4

Lesson 4 Joint Ventures

Exercise 6 AUDIO 4.0.6





A legal advice column

1. Many newspapers employ lawyers to write columns that respond to readers' questions on legal matters. Here is an example of a letter from a reader in the *Legal Eagle* column of the *Weekly Advertiser*, a newspaper in Britain. Read the letter, then answer the related questions (a) using the spaces provided.



Legal Eagle

We answer your legal questions!



Dear Legal Eagle

I am a doctor practicing in west London and my name is Dr Stefanie Costa*. In 2018, I set up a medical centre with two other female doctors in the name of all three of us.

Yesterday, I received a letter from a lawyer saying that a former patient is bringing legal action against the Medical Centre. She is claiming £980,000 for negligence. She says that her doctor, one of the partners, Dr Cathy Medici*, did not warn her about the side effects of a skin abrasion procedure to remove tattoos from her back. She has had skin reactions and claims her modelling career has come to an end.

I did not know about the procedure and she is not my patient. Cathy Medici is not by any means an expert in skin abrasion procedures. In fact, last year, we partners agreed that none of us would perform the procedure due to the high risks. We even put up a sign in our reception area listing the procedures offered by our medical centre and skin abrasion is not mentioned at all.

I do not think I am responsible for something I didn't do. Am I?

** The original names in this letter have been changed.*

a. Read the letter and answer the questions.

1 How many partners are at the medical centre?

.....

2 What is the patient claiming compensation for?

.....

3 Who was the patient's doctor?

.....

4 What reasons does Dr Costa give for not being responsible?

.....



2. Read Legal Eagle's response, then answer the related questions (a) using the spaces provided.

Let me start by saying that you have entered into a partnership with the other two doctors. I am assuming you do not have a written Partnership Agreement and you have not set up a Limited Liability Partnership (LLP). A written Agreement and an LLP may influence the advice I am about to give you.

In a traditional partnership such as yours, the former patient may bring legal action against you alone or alternatively against all the partners of the Medical Centre. However, even though you may be held jointly and severally liable as partners, you may be entitled to get indemnified by the partner at fault. An *indemnity* means that Dr Medici pays you, the whole (or partial) amount of damages, should you be ordered to pay damages to the former patient. The court will take several factors into account when considering an *order for indemnity*.

Based on what you have told me, I think you have a good chance of getting full indemnity because the procedure was expressly forbidden by the partnership and secondly, by putting a notice in the reception area, the former patient was aware that the procedure was not offered by the Medical Centre. You may be successful in defending this action on the grounds that your partner acted without the actual authority of the partnership and therefore she did not bind the partnership.

a. Complete a summary of Legal Eagle's response using the words from the box.

lauthority • bind • grounds • indemnity • liable

Legal Eagle argues that though Dr Costa would be jointly and severally **1**..... as a partner, there would be **2**..... for a judge to grant **3**..... to Dr Costa as Dr Medici acted without **4**..... so she did not **5**..... the partnership.



3. Due to lack of space, the newspaper did not publish this part of Dr Costa's letter. Read the letter, then answer the related question (a) using the spaces provided.



[...] I work every day from 8am until 9pm and even on weekends. My partners, on the other hand, work from 9am to 5pm, never work at the weekends and are currently on holidays in the Greek islands, while I haven't had a holiday for two years. I have paid the rent, utilities and other practice expenses including VAT for the last 6 months. I estimate I have paid out around £300,000 on behalf of the partnership.

a. If you were drafting a partnership agreement, how would you deal with these issues?

.....
.....
.....

Speak with an expert



Type your message here

