

LINDLEY
ON
PARTNERSHIP

Fifteenth
Edition

by

ERNEST H. SCAMELL

and

R. C. FANSON BANKS

SWEET & MAXWELL

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PREFACE

Anyone accustomed to the unique features of a long-established and stately country garden would not expect or wish to see its structure fundamentally altered and might feel a real and justifiable sense of loss if the entire garden were redesigned with a view to creating a more contemporary, but almost inevitably less satisfying, landscape: similarly, with such a classic work as *Lindley on Partnership*. No apologies are or should be made for the retention of the *ipsissima verba* of Lord Lindley where they remain relevant; indeed, with the principal Act approaching its centenary (without any signs of diminishing vitality), much of what can so easily be labelled “old law” retains a central position in the law of partnership as applied in the 1980s. The opportunity has, of course, been taken to excise those passages which are no longer of current value, but at the same time, although there may come a time when *Lindley* can no longer continue in its present form, the editors would firmly and boldly state that such time has not yet arrived. To discard the many classic statements of the law of partnership contained in this work, which would be an unavoidable consequence of a wholesale restatement of the law, would, in the editors’ view, be a major loss not only to legal literature but also, more importantly, to partnership practitioners.

On the development side, it seems to the editors that activity is increasing, both in terms of partnership formations and their frequent successors, partnership disputes. This has, in turn, resulted in a significant increase in the output of cases in the last four years (some of which have only been inadequately reported) and a departure from the “usual average of approximately one reported case a year directly bearing upon partnership” referred to in the last edition. Given that only a small minority of disputes are settled by recourse to litigation (as opposed to compromise or arbitration), a resurgence in the popularity of the medium of partnership would seem to be heralded. Of the reported cases, particularly noteworthy have been the decisions in *Barclays Bank Trust Co. Ltd. v. Bluff* [1982] Ch. 172, concerning the effects of section 42 of the Partnership Act 1890, *Re Bell’s Indenture* [1980] 1 W.L.R. 1217, concerning a partner’s liability for the misapplication of trust funds under sections 10 and 11 of the 1890 Act, and, in the sphere of covenants restraining competition in partnership agreements, *Hensman v. Traill*, *The Times*, October 22, 1980 (in relation to medical partnerships), and the somewhat unsettling Court of Appeal decisions regarding solicitors’ partnerships in *Oswald Hickson Collier & Co. v. Carter-Ruck* (1982) 126 S.J. 120 and *Edwards v. Worboys* (1983) 127 S.J. 287.

Statutory amendment and innovation has also continued apace in the years since 1979, although the 1890 Act itself remains intact. Perhaps the most significant change has been the repeal of the Registration of Business Names Act 1916 and its “replacement” by the more informal, but apparently less satisfactory, requirements of Part II of the

Companies Act 1981. How these new provisions will apply in practice to partnerships is not always readily apparent, but an attempt has been made, particularly in Chapter 3, to identify at least some of the problem areas. Other relevant Acts of Parliament for present purposes have included the Arbitration Act 1979, the Estate Agents Act 1979, the Banking Act 1979, the Competition Act 1980 and the Supreme Court Act 1981. Account has also had to be taken of a number of purely consolidatory Acts passed since 1979.

The ever fertile field of taxation has, as might be expected, produced a substantial crop of developments since 1979, necessitating numerous amendments and revisions to the Chapters in Part 7. Whilst it has not been possible to investigate all the minutiae of partnership taxation in that Part, the editors have continued the approach adopted in the last edition, namely to provide a broad overall view of all aspects of the taxation of partnerships, whilst at the same time concentrating on areas of particular difficulty which (perhaps significantly) are not generally considered elsewhere, even in the specialist works on partnership taxation. Thus, for example, so far as the editors are aware, Chapter 38 remains the most detailed consideration of value added tax as it affects partnerships currently in existence.

In updating *Lindley*, the editors have also attempted to face, and where possible to offer constructive suggestions for the solution of, numerous intractable problems which may be encountered in practice, e.g. whether the very relationship of partnership is capable of constituting a breach of Article 85 of the EEC Treaty; whether a *Mareva* injunction can be obtained by one partner against another; and how the value of an unassignable agricultural tenancy is to be dealt with on dissolution.

Finally, and looking to the future, another edition of *Lindley* may well see the appearance of a new form of partnership, with separate personality and limited liability, as discussed in the Green Paper entitled "A New Form of Incorporation for Small Firms" issued in February 1981 (Cmnd. 8171). It is, however, doubted whether such a new form of partnership would enjoy any greater popularity than the existing form of limited partnership under the Limited Partnerships Act 1907 (and, significantly, there are only some 750 of such partnerships currently registered under that Act); moreover, this doubt is apparently shared by the proponents of the new form: see paragraph 2.18 of the Green Paper. In the editors' experience, the more pressing need is for a further relaxation of the limit on the number of persons who may enter into partnership, so that small firms can expand and large-scale business activity be carried on, without any need for recourse to incorporation.

The law is stated as at September 30, 1983, although in the case of statutes and statutory instruments coming into force shortly thereafter the necessary amendments have, where possible, been incorporated.

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