Partnership Assets

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When does the property of a partner become partnership property?

Whether the property of a partner becomes partnership property depends on the agreement of the parties. Failing any clear agreement between the parties, the acts and intention of the parties will ultimately determine whether property owned by a partner becomes partnership property.

Therefore, the question will not arise if the partners reach an express agreement about the status of all items of property introduced by them at the commencement of the partnership and thereafter. In the absence of an express agreement, the Courts are called on to look closely at the conduct of the parties as evidence of intention.

Generally, all assets brought into the partnership or which are afterwards acquired on account of the partnership will be partnership property. This proposition is stated in section 30(1) of the Partnership Act which states:

> "All property and rights and interests in property originally brought into the partnership stock, or acquired, whether by purchase or otherwise, on account of the firm or for the purposes and in the course of the partnership business, are called in this Act partnership property, and must be held and applied by the partners exclusively for the purposes of the partnership, and in accordance with the partnership agreement."

Section 31 further states that "unless the contrary intention appears, property bought with money belonging to the firm is deemed to have been bought on account of the firm".

A specific **exception** to this rule is encapsulated in section 30(3) of the Partnership Act which provides that :

> "Where the co-owners of an estate or interest in any land, not being itself partnership property, are partners as to profits made by the use of that land or estate, and purchase other land or estate out of the profits to be used in like manner, the land so purchased belongs to them, in the absence of an agreement to the contrary, not as partners, but as co-owners for the same respective estates and interests as are held by them, in the land first mentioned at the date of the purchase."

All mail to:

PO Box 460
NEDLANDS WA 6009

Nedlands (Head Office)
83-85 Stirling Hwy
NEDLANDS WA 6009

Bunbury
119 Beach Road
BUNBURY WA 6230

Associated Firm
Malaysia
Jerald Gomez & Associates
KUALA LUMPUR
MALAYSIA

Telephone calls
Answered 24 hours
Telephone:
(08) 9386 5200
Country Calls:
1800 675 200
Facsimile:
(08) 9386 4650

Email:
legal@butlers.com.au

Website:
www.butlers.com.au

Therefore, where there are co-owners of land entering into a partnership for the use of the land and it is intended that partnership funds are used to acquire additional land, it is important that an express agreement is made clearly stating that the additional property is to be treated as partnership property.

Furthermore, in determining the issue of whether a particular asset is part of the partnership property, the Courts often do not look only at the legal title. So, while a transfer of title from one original owner to all partners jointly would be evidence that the property is partnership property, no adverse inference is drawn from a failure to make such a transfer. Ultimately, the question is whether the original title holder has transferred the beneficial interest in favour of the partners collectively.

The following are examples of cases where the Courts have ruled one way or another on inferences drawn:

- In Robinson v Ashton (1875) LR 20 Eq 25, an entry crediting the partner's capital account with the value of the asset led the Court to decide that the asset was intended to be partnership property.
- In Harvey v Harvey (1970) 120 CLR 529, the Court found that the pastoral property used by the partnership did not become an asset of the partnership. As Menzies J noted, "no account of the partnership shows "Fonthill" as a partnership asset or credits H H Harvey for contributing it to the partnership and such accounts as there are relating to the capital of the partnership…….. and agreed to by all parties – treat it as outside the partnership". This was despite substantial improvements made to the property during the course of the partnership.
- Similarly, in *Kelly v Kelly* (1990) 92 ALR 74; 64 ALJR 234, the Court found that the relevant property did not become partnership property due to the fact that the property in question was not listed in the partnership accounting records. In that case, an abalone fishing permit was owned prior to the formation of the partnership by one of the partner. When the partnership was formed, the permit was not brought into the partnership books although abalone diving provided most of the partnership income. Subsequently, government regulations changed converting the permit to a transferable abalone authority which was attached to a boat bought with partnership money but held in the name of the permit holder. The authority was not recorded in the partnership account although the annual licence fees were paid by the partnership. The Court recognized that the parties had not questioned ownership of the permit when it had been converted into a marketable authority and concluded that the authority remained the personal property of the original holder.

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