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## BUSINESS LAW

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# Breaking up is hard to do

**YOUR BUSINESS PARTNER** is not pulling their weight. Unless you can lower your expectations there will come a time when you decide to go it alone. You go to the lawyer who has been acting for the partnership to whinge about the other partner. However, he tells you that he has a conflict of interest and he cannot act for you.

You choose another lawyer. He will be tempted to lecture you on the imprudence of entering into business without a partnership agreement. If this takes any more than half an hour then you may not have made the right choice. Of course you don't have a partnership agreement! Who does the lawyer think you are, BHP?

If you do not have a partnership agreement then the law generally lays down about ten ground rules:

- Partners must make financial contributions equally;
- Partners are equally responsible for the debts of the partnership;
- Partners may need to pay up the whole debt, not just half, and then seek reimbursement from the other partner;
- There is no salary for acting in the partnership business, regardless of how much more you have worked than your partner;
- All property bought by the partnership is partnership property;
- Partners must be truthful and tell each other everything about the partnership business (tough, I know);
- Partners must account for any benefit received using partnership property or concerning the partnership;
- Persons dealing with the partnership can assume it still exists until given notice that it has been terminated;
- Partners can do everything necessary to wind up the partnership. If they do not complete existing contracts they could be sued; and
- Partners are entitled to have partnership property applied in payment of the debts and then applied to what is due to each of them.

The lawyer will advise you that it is in your business interests to have an amicable split. You know this too but you feel bitter and find it hard to put the relationship down to experience and walk away. You have only been together for a year or two and, although the potential is great, in reality the partnership is not worth anything.

Here is a seven-point checklist of the predictable disputes between partners who do not have a partnership agreement:

- The business name and domain name registrations belonging to the partnership could go to the highest bidder of the two of you. Note that these registrations do not mean that you own the name as only a trademark confers ownership. Therefore, they have limited value. You could agree not to use the registrations, but this is a waste, isn't it?
- Preparing final accounts. Should this not be done by an independent accountant so it is all above board? Well yes, if you both don't mind paying more for an accountant who is unfamiliar with the business, charging more and taking longer.
- Competition. You could agree to split the client list and look after your own

clients. But what fun is that? Outright war may be inevitable, especially if you are the stronger partner.

- It may be satisfying to threaten to sue your ex-partner. You may see this as one of the benefits of not having a partnership agreement. Often partnership agreements provide that no court action can be commenced without an attempt at mediation. Alternatively it can provide for arbitration which lacks the drama of threatening to slap a writ on your ex-partner.
- Who paid for what? With GST it is usually too easy to work out who paid for what and especially if there is not much money in the kitty this argument usually runs out of steam.
- Another fruitful point of argument if you have not got any real money is IP rights. These can be in documents, logos and ways the partnership did things.
- The debts owing to the partnership need to be collected. This can be an exercise in one partner chasing debts from friends of the other partner.

Many of the predictable disputes can be anticipated by a partnership agreement at the outset as it will provide for a mechanism in the event of a breakup. To fight over the carcass of the business normally involves legal costs. Therefore only fight if it benefits you (not just to wind-up your partner). Ask yourself 'What's in it for me?'. If the answer is 'nothing much', opt to shake hands and move on. ●

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