

# LAW & DISORDER

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This month:

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- Dealing firmly with mothers-in-laws.
- When do you need to speak to your lawyer?
- Defamation - the importance of getting evidence



*Brennan*

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### Dealing with Mothers-in-Law

Dear John

My mother-in-law (MIL) is an interfering old harridan, you know the type.

She has just written a book entitled "My son married a prize bitch". Her publisher says that it will be a best seller.

Can I sue?

VL

Dear VL

Many MILs have a tense relationship with their DILs despite having once been DILs themselves. However, with the arrival of grandchildren MILs usually manage to contain their animosity to gain generous access and in return provide financial support together with baby-sitting services. To sue would risk losing these benefits.

It is better to maintain a close relationship with your in-laws while at the same time implementing a Wealth Early Transfer (WET) strategy, such as:

#### Debt Assistance

In-laws may be prepared to guarantee your outstanding debts especially from a failed business venture. This will enable you to increase your spending but it is usually accompanied by unwanted advice.

#### Joint Business Venture

It is easier to involve your in-laws in the business venture itself from the beginning. Think big and you may be able to persuade them to sell their home and move in with you, ideally in accommodation accompanying the

venture. If the business flourishes then you will find yourself able to put up with your MIL but if it falters then you can throw a tantrum and lock them out. Place the business on the market and if you have chosen wisely, the sale could take years.

Looking at school fees, foreign travel and all the other expenses of having children these days it is inadvisable to fall out with, let alone sue your in-laws.

Looking on the bright side, the royalties of her new book could be yours, one day.

(c) Paul Brennan 2010. Extract from John Fytit's International Legal Problem Page. Now written on the 101 Reasons to Kill All the Lawyers Blog at <http://101reasonstokillallthelawyers.com/>

John Fytit is the name of the central cartoon charter in Law & Disorder cartoons which started in Hong Kong in 1992. He is from the fictitious Hong Kong firm Fytit & Loos (pronounced "Fight it and Lose"). A very unsuccessful name as people read "Fytit" as "Fit it". The International Problem Page started in 2005 and was merged into Paul Brennan's blog. But, not before John Fytit started to receive real legal questions from various parts of the world.

Breaking up is hard to do - what you need to know as a business partner about breaking up

**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;
- A Partner 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.

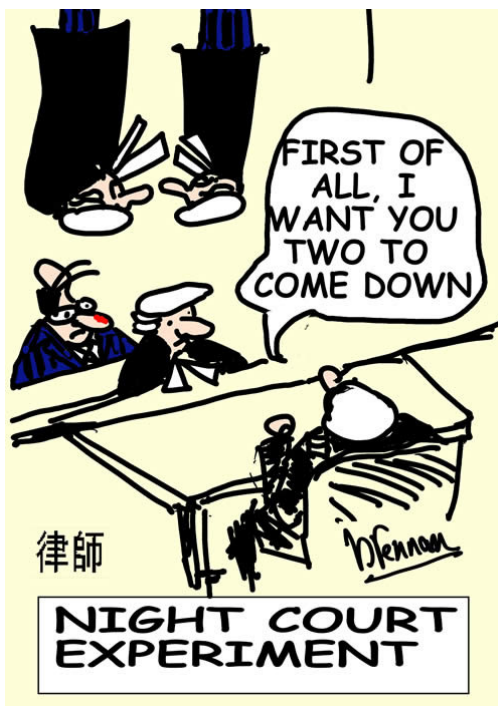
The lawyer will advise you that it is in your business interests to have an amicable split. You know this too but you feel bitter and find it hard to put the relationship down to experience and walk away. You have only been together for a year or two and, although the potential is great, in reality the 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.

© Paul.brennan@brennanlaw.com.au 2005. This is an extract from Paul Brennan's eBook ["10 Greatest Legal Mistakes in Business...and how to avoid them"](#) which first appeared in My Business magazine in August 2006.



### When you should speak to your lawyer?

A good gauge of when you are ready to speak to a lawyer about a legal issue or dispute is that you are awake at 3 in the morning thinking about it.

I know you will say it is alright for people like me who are married to lawyers. However, we have done the hard yards. Besides, anyone who has been married to a young lawyer will know they can be very grouchy if they are woken up at 3am. Although, admittedly we older lawyers are usually just flattered by the attention.

If you are concerned about the money that a lawyer may charge you, I suggest that you plan ahead. The next time you decide to change your spouse or partner, (for some of you the decision may be thrust upon you), consider a choosing a lawyer as a replacement, believe me they are not all bad. Even if it only lasts a few months he or she will be able to help with your divorce and or property settlement which can be a big saving.

[\(c\) Paul Brennan 2010](#) practices on the Sunshine Coast, Queensland. He is author of ["The Law is an Ass-Make Sure it Doesn't bite yours!"](#). His next book is [Easy IP](#).

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### Defamation - the importance of gathering evidence

Generally, defamers do not defame people who they think will punch them in the mouth. So too, if you have the option of frightening people by using threats or just your unpleasant manner you do not need to demean yourself by resorting to defamation. This is why the Mafia is not big on defamation; in fact they go out of their way to be nice to you up to the point of you being garotted from the back seat of your car.

A problem arises when you lack sufficient evidence. For instance, there is the often alcohol fuelled "I was only joking", insult which grows into a whispering campaign which has proved so popular in clubs over the years.

Your lawyer will seek to gain evidence which usually amounts to statements from other club members who are naturally reluctant to get involved and often report what they have heard from others rather than what they have directly seen or heard themselves. Therefore, it is best to consult a lawyer early as they can coach you on gaining sufficient evidence and how best to position yourself.

Ironically in order to try to stop the defamer, the victim often must broadcast the insult which in turn places their own conduct under the microscope. This deters victims from doing anything at all and provided that the perpetrator is sensible enough to stop, the matter ends and





people move on with their lives or at least the perpetrator finds another victim.

If you have the misfortune of being defamed by a stupid person you had best gather sufficient and relevant evidence or seek Mafia assistance.

[\(c\) Paul Brennan 2010](#) author of soon to be released [Easy IP](#) and [other books, eBooks and CDs.](#)

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**Disclaimer:**

The content of the Law & Disorder eZine is to give you legal basics and in some instances included unashamedly to try and make you laugh. In law it is sometimes difficult to work out what is serious and what is just for fun. Therefore, if you plan to do anything legal, rely on your own lawyer's advice or instruct me to look at the particular facts of your case. Not only will I deny responsibility for the legal content but also for some of the jokes.

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