

Worksheet 1

Issue

Is there a partnership between Wang, Singh, and Smith?

Under what circumstances are the parties bound by the contract signed between Smith and Pilot Office Supplies (POS)?

Law

Partnership Law Act 2019

Section 8, sets out 3 key elements of a partnership.

- (i) relation which subsists between persons
- ii) Between people carrying on business together
- iii) With a view to profit.

(This definition is subject to sections 9-15)

Section 17 'Partner is agent of firm'

Section 18 'An act of a partner (A) binds the firm and A's partners if the act is done for carrying on in the usual way business'.

(Other sections relevant to a partner's power to bind other partners in contracts include sections 19, 20 and 22)

Application

Each party's administrative responsibilities and mutual confidence and reliance in each other's reputation (assumed due to operating under a singular clinic name), indicates a relation of mutual trust.

Jointly setting up the clinic in 2018 and continuing operations, indicates an intention to carry on business together.

Revenue and expenses were paid from a singular account and net profits were then divided by the parties, indicates a view to profit.

In WHYWAIT PTY LTD V DAVISON [1997], where the members relied on mutual confidence and shared net profits it was found that there was a partnership.

In Khan v Miah [2001], where intention to carry on a business was determined by the joint acquisition of the premise it was found that there was a partnership.

Therefore in accordance to WHYWAIT PTY LTD V DAVISON [1997] and Khan v Miah [2001], Wang, Singh, and Smith would likely be found to be operating as a partnership by the courts in accordance to Partnership Law Act 2019 (section 8), regardless of Wang and Singh's claim of being sole traders.

In a partnership Smith is an agent of the firm (section 17).

Smith's actions binds Wang and Singh as the act is committed while carrying on in the usual way business under Smith's administrative role (section 18).

In WHYWAIT PTY LTD V DAVISON [1997], the court found partners financially responsible for a contract entered into using a forged signature on the basis of reliance on authority of the partner.

Therefore, on the basis of WHYWAIT PTY LTD V DAVISON [1997] and the Partnership Law Act 2019, Smith, Wang and Singh would be jointly liable for the contract if they were found to be in a partnership.

Conclusion

On the basis of Partnership Law Act 2019 and the precedents from similar cases, the parties likely hold a partnership.

This would then mean Wang, Singh and Smith are all liable for the \$65,000 of debt outstanding to POS.