***Sanrose Investment Ltd v Foley & Ors; FWJ Legal Ltd (t/a Francis Wilks & Jones) v Courtman & Ors* [2025] EWHC 1071 (Ch)**

This dispute concerned the position of LLP members in an LLP liquidation. Of particular interest is the court's statement of the relevant law. It held that there was a clear conceptual distinction between working capital introduced by members as equity, and working capital provided by way of a loan by a member (or by an outsider such as a bank). Whereas a loan necessarily created a debt, a capital contribution was an investment exposed to the risk of loss, and did not create a debt. As a result, in a liquidation a member could prove for a debt created by a loan, with other unsecured creditors, but could not generally prove for the return of capital. Capital was not a debt owed by the LLP to a member (*Lee v Neuchatel Asphalte Company* (1889) 41 Ch D 1).

The court explained that whether funds were introduced as capital/equity or loan/debt was a question of fact and, in the absence of an agreement that payments comprised a capital contribution, they would ordinarily be treated as having been made by way of loan, and give rise to a debt and thus the obligation to repay (*Seldon v Davidson* [1968] 1 WLR 1083). It noted that capital contributions could be reduced, returned, or converted into debt, and that debt could be converted into capital.

The court also held that a member 'may' be able to prove for an accrued but unpaid profit share. Confusingly, it stated (at para 53) that such profit would not be recoverable as a debt due under a loan, and would only be payable as part of a distribution to members if there were a surplus after the payment of external debts. The court cited Whittaker and Machell, *The Law of Limited Liability Partnerships*, paras 33.5-33.7, in support of this view. However, that text in fact states that accrued but unpaid profit would be due to a member as a debt. That text also criticises the judgment in *McTear v Eade* [2019] EWHC 1673 (Ch) to the extent that that it would lead to a contrary result. Fortunately, the case itself did not involve any accrued but unpaid profit shares, and the comments of the court on this point are therefore obiter.
(With thanks to John Machell for his comments on an earlier draft of this case update.)

***Glenn and Slater v Walker & ors* [2025] EWHC 1286 (Ch)**

The claimants alleged breach of fiduciary duties by their fellow partners, the defendants. The defendants denied that there was a partnership or, if there was, that they were in breach of any duties.

The court held that, in the absence of any express agreement as to partnership, the question was an objective one as to whether a partnership could be implied from the parties' conduct and the circumstances. It concluded that it could not.

First, there was no evidence of any significant business activity prior to the incorporation of company by three of the four parties, which suggested that it was used it as the corporate vehicle for the business. To the extent that any prior partnership had existed, the court considered that it would be likely to have been dissolved on the incorporation of the company. Second, the tax advice had opposed forming an LLP because of the income tax consequences, and similar considerations would have applied to forming a partnership. Indeed, the parties had set up further companies in consequence of that advice. Third, the parties had not assumed any personal liabilities for the business; liabilities were assumed only by the various companies which were set up. Fourth, any

profits made would have been made by those companies, which explained why no partnership accounts were ever prepared, and made it 'extremely difficult' to maintain that the parties as individuals carried on business with a view of profit, as required by s2(1)(a) of the Limited Liability Partnerships Act 2000. Fifth, the fact that the one party not formally appointed as a director of the first company felt able to sign on its behalf as though he was did not suggest that the parties had agreed that there should be some form of overarching partnership. Indeed, his increasing involvement was reflected in his becoming a director and equal shareholder of the later-established companies.

Although the parties had frequently used the terms 'partner' and 'partnership', the court noted that such terms were commonly used to refer to a member of the team running a business, or to a senior employee, regardless of the structure used (*Dutia v Geldof & Ors* [2016] EWHC 547 (Ch)). Their use did not suggest that the parties were truly in partnership, and certainly did not outweigh the other factors.

The court further held that if its conclusion that there was no partnership was incorrect, any partnership had dissolved either when one of the claimants said he no longer wanted to work with the defendants, or two days later when the parties arranged a meeting on the basis that they were going their separate ways and needed to decide the terms upon which they would do so.

As to the fiduciary duties owed, the defendants had not breached any such duties. There was no plot by the claimants to exclude the defendants, but only genuine concerns about the participation of one of the defendants and a desire to agree an orderly exit with him, and in fact that defendant had dissolved the partnership before these were resolved. The claimants had therefore not benefited themselves or a third party at the expense of the defendants, or put themselves in a position of conflict prior to the dissolution.

***Allan v Allan* [2025] EWHC 67 (Ch)**

This dispute concerned a family farming partnership. It had originally been between the two parents and their two sons but, after the death of both parents, it continued between the two sons.

The court held, first, that since the partnership agreement provided that it would continue while two or more partners lived, and that the death of a partner leaving at least two surviving partners would not terminate it, the partnership was for joint lives and was not a partnership at will (which would have been terminable by notice). The agreement effectively prevented a partner leaving, but it also made provision for withdrawal of his share of capital and land used by the partnership, which mitigated the hardship of being unable to withdraw as a partner. The court therefore refused to imply into the agreement a term that a partner was entitled to leave by notice. Accordingly, the partnership could not be dissolved by notice or by service of the claim or particulars of claim in these proceedings.

Second, although the father's will had left his 10% partnership share to the defendant, and he was therefore entitled to his right to undrawn profit, he was not entitled to a 10% share of future profits. The meaning of a partner' share depended on the context and circumstances (*Ham v Ham* [2013] EWCA Civ 1301 at [24]). It generally involved a right to share in the profits, but that usually ended on death, and what passed on death was ordinarily the partner's proportion of the partnership assets after they had been

realised and converted into money, and all debts and liabilities had been paid. This was consistent with ss38 and 44 of the Partnership Act 1890 (under which partners have the right, post-dissolution, to have the partnership property applied in payment of debts and then to share in the surplus assets). The court noted that s42, which provides that where a partnership continued after the death of a partner without any settlement of accounts, the deceased partner's estate was entitled to the share of profits attributable to his share of assets or to 5% interest on that share, was inconsistent with any other continuing right to share in profits after death. The court accepted that a partnership agreement could provide for an assignment by will which gave a continuing right to the same profit share as the deceased partner (as in *Thomson v Thomson* [1962] SLT 109 (HL)), but that very clear words would be required to achieve this, and they were not present here.

Third, the defendant had breached the duty of complete good faith owed by a partner towards his co-partners in all partnership dealings and transactions, as reflected in ss28 (which provides that partners must render 'true accounts and full information of all things affecting the partnership' to any partner) and 29 (which provides that every partner must account to the firm for any benefit derived by him without the consent of the other partners from any transaction concerning the partnership`, or any use by him of its property, name or business connection). The partnership had had a contract for straw baling with a third party, and the claimant had originally consented to the defendant giving notice to prevent this contract renewing, and to the defendant taking any new contract for his own benefit. However, the claimant had subsequently informed the defendant that he had withdrawn his consent, and had done so before the defendant's own company was bound in law to the new contract. The defendant could have stepped away from the new contract or arranged for it to be reissued for the benefit of the partnership, but had not done so. He was therefore accountable to the partnership for the termination of the contract and for taking the benefit for his own company.

Finally, the court ordered that the partnership be dissolved. It noted that several of the grounds for dissolution set out in s35 of the Partnership Act 1890 were satisfied.

Section 35(c), partner conduct which prejudicially affects the carrying on of the business, was satisfied both because the defendant had taken the baling contract for himself, contrary to the expressed wish of his co-partner, and because he had excluded his co-partner from his proper role in partnership affairs. In relation to the latter, he had failed to respond to the claimant's requests for information about the partnership affairs or allow him to be involved in decisions about the partnership.

Section 35(d), wilful or persistent breach of the partnership agreement, or conduct in matters relating to the partnership business such that it is not reasonably practicable for the other partner to carry on the business in partnership with him, was also satisfied, for the same reasons.

Section 35 (f), that dissolution would be just and equitable in the circumstances, was also satisfied. Although the claimant had, theoretically, an alternative remedy to dissolution, in the form of assignment of his share, there was no evidence that there was any market for such a share either on the open market or within the family. Indeed, the partnership agreement required the defendant's consent to such an assignment, and that would allow him to dictate the terms of any such deal. There was therefore no real alternative to dissolution, and certainly not one that meant that dissolution ought not to be ordered.

Titanium Capital Investments Limited and Manduca v Hughes and others
[2025] EWHC 682 (Ch)

Manduca and Hughes set up a partnership in 2020, to sell lateral flow tests during the Covid-19 pandemic. It was dissolved in 2021. Each partner then claimed that the other had breached his fiduciary duties, both during the partnership and after its dissolution. The complex issues were divided across two trials; this judgment is for 'Trial 1'. The court left to Trial 2 a number of issues, including a claim for knowing receipt.

Section 29 of the Partnership Act 1890 imposes a duty on a partner to account for benefits derived by them from any transaction concerning the partnership or use by them of the partnership property, name, or business connection. The court held that the partnership's 'property, name, and business connection' included its goodwill in its name and in having a viable business, confidential information that it owned, and the connection with the Chinese manufacturer of the tests. The court concluded that Hughes was obliged to account to the partnership under s29 for benefits received by him (and by companies through which he operated) which were derived from the supply of tests during the post-dissolution operation of the partnership's business.

Section 42(1) provides that where a partner leaves and the continuing partners carry on the business of the firm without any final settlement of accounts as between the firm and the outgoing partner, the outgoing partner is entitled to the proportion of post-dissolution profits attributable to their share of the assets, or to interest on their share of the assets. The court held that Hughes was obliged to account to the partnership under s42, since he carried on the partnership's business after dissolution and the sales of tests during that period were derived from a business connection of the partnership, since the tests were purchased from the Chinese manufacturer.

The court also held that Hughes, his wife, and two companies which they owned, were guilty of unlawful means conspiracy. His breach of fiduciary duty and failure to account under ss29 and 42 were 'unlawful acts', there was a combination between the Hughes' and their companies, and there was an intention to cause harm to Manduca by taking over the business and not making any account of profits to him.

However, the court rejected the claim that Hughes' wife was guilty of dishonest assistance. Although the couple were mistaken in their belief that they could use the partnership's contacts to continue the business of selling the Chinese manufacturer's tests post-dissolution without accounting to the partnership for the benefits they received, their acts were not dishonest 'by reference to ordinary standards of morality'.

The court also rejected the claim of breach of trust by one of the Hughes' companies, because although the company had permitted emails relating to the business of the partnership to be held on its servers, the nature of any property right in the emails and the basis on which the company allegedly held it on trust had not been established.

As to the claims against Manduca, the court held that he had an undisclosed interest in a company which distributed the partnership's tests, and customers had been diverted to that company from the partnership. He was therefore obliged under s29 to account for the benefit derived from the opportunity to pursue sales to those customers, since that opportunity was a business connection or property of the partnership, and the benefit was derived from that opportunity. He was also obliged to account for benefits from post-dissolution sales which he made to a company which was a client of the partnership.

Hamilton v Barrow and others **[2025] EWCA Civ 888**

This case involved a dispute about the existence of a partnership in relation to an investment business. (An update in relation to an earlier judgment (of the High Court) is available on the APP website.)

The Court of Appeal rejected the appeal. It upheld the judgment of the High Court that a partnership had existed between the Barrows and a third party to create an investment scheme, and that they were therefore jointly and severally liable for the third party's fraudulent misrepresentations which led Hamilton to invest in the scheme. The first respondent's wife was involved substantially in the partnership beyond merely providing administrative support and was therefore a partner in the business. As to the different geographical sections of the investment scheme, this split was largely administrative and the scheme was in reality a joint enterprise between the leaders of the sections, including the Barrows. The Court of Appeal noted that profit sharing was not an essential pre-requisite of partnership; the critical question was whether a business was carried on 'in common' (s1 of the Partnership Act 1890). Here, the relationship involved mutual confidence; in addition to meetings and discussions, the participants had to trust each other in joint reliance on the banking arrangements and in the movement of funds. They could not delegate their roles, they had no flexibility to depart from the rules which governed the whole scheme, and financial information was shared. There was therefore insufficient evidence to demonstrate that the businesses were separate.

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