

PARTNERSHIP, by H. J. Knowles, Butterworths, Scarborough, 1978, 304 pp., \$25.00.

The purpose and scope of Mr. Knowles' text is best described by the author's preface which states:

This casebook was prepared . . . for the purpose of providing, in a single text, the basics of the law pertaining to partnerships specifically in Ontario and generally in jurisdictions whose law is derived from the English common law.

As there exist learned treatises on the law of partnership,¹ this casebook is for those who do not have access to large library facilities. The concept of the book is to set forth the statutory provisions and with a minimum of comment to collect under the appropriate sections of the statute the relevant Court decisions starting with those rendered in England, while the law of partnerships was being formulated, and ending with some of the Canadian jurisprudence. The extensive quotations from the cases are provided for the purposes of allowing the reader to form his own basic understanding of the subject. With the advent of tax reform in Canada the partnership mode of conducting business has had a definite revitalization and assuming the continuation of our tax laws along the lines presently formulated from Ottawa² it is assumed that the partnership vehicle will enjoy increased use.

At the outset, a comment must be made respecting the contents of Mr. Knowles' text. It is admittedly a "casebook", namely a collection of relevant statutory authorities³ followed by annotations thereof in the form of excerpts from either the headnotes or from the actual judgments of relevant judicial authority. There is very little in the way of author's comment or summary. While, as Mr. Knowles states in his preface, the purpose of such a format is to allow the reader to form his own basic understanding of the subject, the result is that a reader must spend a fair amount of time digesting the contents of his text in order to determine the rules of law involved. In other words, the text is more in the nature of a reference tool or device for the use of a researcher (be he either student⁴ or counsel preparing a brief for pending litigation or appeal) than a summary of the statutory and judicial rules of law for the practitioner.⁵ It is obvious, however, that a great deal of effort has been expended in deciding which and to what extent the relevant authorities should be included and, as a result, the user or reader can be assured that its collection of authorities and references is properly exhaustive.⁶

1. Writer's footnote: See for example: *Lindley on the Law of Partnership* (13th ed., E.H. Scammell ed. 1971); *Underhill's Principles of the Law of Partnership* (10th ed., E.R.H. Ivamy ed. 1975); C.D. Drake, *Law of Partnership* (1972).

2. Writer's footnote: On matters of taxation, see, e.g.: L.A. Eddy, *The Taxation of Partnerships* (2nd ed. 1977).

3. The text is based primarily on Ontario law. However, since most of the applicable statutory provisions in Alberta are identical or very similar to those in Ontario, the text is a useful reference work for the Alberta practitioner. In Appendix A, Mr. Knowles has provided a collation between the Ontario provisions and the provisions of the relevant partnership legislation in the Provinces of British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland.

4. At the present time, little attention is given to the law of partnerships at the University level. However, with the revitalization of the use of the partnership vehicle, especially in the form of the limited partnership, the subject matter will undoubtedly take on a greater importance.

5. With respect to the matter of ease of reading, it should be mentioned that there is little if any difference in type size between the author's commentary and the excerpts from the judicial authorities and often there is little delineation between where an excerpt ends and the author's commentary begins.

6. Subject always, of course, to statutory amendments or judicial authorities arising subsequent to the date of publication.

The format that Mr. Knowles has adopted for the content of his text follows exactly the provisions of the Partnerships Act,⁷ and is similar to those of other textbooks on the law of partnerships.⁸ In Chapter 1, he deals with the nature of partnerships and, in particular, with the statutory definition of partnership as set out in Section 2 of the Ontario Act.⁹ Chapter 2 deals with the guidelines for determining the existence of a partnership and, specifically, with the statutory rules set out in Section 3 of the Ontario Act.¹⁰ In the writer's opinion, Chapters 1 and 2 of Mr. Knowles' text should be required reading for all lawyers practising in the area of commercial or business transactions. All too many practitioners are unaware of the factual elements which, when in existence, create a partnership in law with all of the legal ramifications of that status attaching to the members of the partnership. As a result, many partnerships are unknowingly created and left in existence without the members thereof being advised of that fact or, more importantly, of the legal consequences thereof.¹¹ In Chapter 1, Mr. Knowles deals with those factual circumstances which constitute exceptions to the rule that a partnership is created when certain elements exist.¹² This portion of the text is perhaps deficient in that its scope might have been expanded to include a more detailed discussion of other forms of business enterprise or association utilized today such as the business trust or the business syndicate and certain income tax oriented trust combinations or associations such as real estate investment trusts and the difference between these forms of business enterprise and the true partnership.

In Chapter 3, Mr. Knowles deals with the provisions of Section 4 of the Ontario Act¹³ under the heading of "Insolvency" which perhaps is slightly misleading in that section 4 is a restrictive section providing that in two circumstances certain creditors (as defined therein) must stand behind all other creditors of the partnership before collecting their debts. The actual discussion and examination of the provisions of the Section by the author, and the interrelationship of the relevant provisions of the Bankruptcy Act¹⁴ and the proposed Federal bankruptcy legislation, is excellent.

In Chapter 4, Mr. Knowles deals with the provisions of Section 5¹⁵ and subsection 15(2)¹⁶ of the Ontario Act dealing with the use of a partnership name. Reference is also made to the provisions of Section 12 of the Ontario Business Corporations Act.¹⁷ Mr. Knowles also devotes a subsection to a discussion of the protection afforded the user of a business or trade name under the common law "passing off" action and the statutory protection afforded by Section 7 of the Trade Marks Act.¹⁸ In the

7. R.S.O. 1970, c. 339 (hereinafter referred to as "the Ontario Act").

8. In this respect the usefulness of the text as a research tool is highlighted in that reference to the relevant statutory authorities and to the treatises referred to in n. 1 is made easier.

9. See s. 2(d) of The Partnership Act, R.S.A. 1970, c. 271 (hereinafter referred to as "the Alberta Act").

10. See s. 4 of the Alberta Act.

11. This unfortunate state of affairs is somewhat incongruous when one notes that most lawyers practice law in partnership.

12. See pp. 1-15 to 1-24 inclusive.

13. See s. 5 of the Alberta Act.

14. R.S.C. 1970, c. B-3.

15. See s. 6 of the Alberta Act.

16. See subsection 16(3) of the Alberta Act.

17. R.S.O. 1970, c. 53.

18. R.S.C. 1970, c. T-10.

writer's opinion, this discussion or at least the references or authorities referred to therein might have been expanded.¹⁹

In Chapter 5, Mr. Knowles deals with one of the two major issues in the law of partnerships, namely the relations of partners to persons dealing with them, and therein discusses Sections 6 to 19 inclusive of the Ontario Act.²⁰ This Chapter, in dealing with such issues, *inter alia*, as the power of a partner to bind the firm and the scope and limitations of the liability of the firm as a whole and of its individual partners to third parties with whom the firm or any of its partners deal, is naturally lengthy²¹ and the author's collection of judicial authority appears thorough and complete.

In Chapter 6, Mr. Knowles deals with the other of the major issues, namely the relation of partners to one another. Firstly, he discusses Section 20 of the Ontario Act²² respecting variations of rights and duties of partners and Sections 21 to 23 inclusive²³ respecting partnership property. Thereafter, he devotes the balance of the Chapter to discussing the nine statutory rules set out in Section 24 of the Ontario Act²⁴ whereby the interests of partners in partnership property and their rights and duties in relation to the partnership are, in the absence of an express or implied agreement to the contrary, determined.

Chapter 8 deals with assignment of partnership accounts, and Chapter 9 with assignment of partnership interests. In Chapters 7, 8, 10, 11 and 13, Mr. Knowles deals with the issues of the term or duration of a partnership, dissolution and winding-up and accounting following dissolution of a partnership. Each subject area is more than adequately covered.

In Appendix B, Mr. Knowles sets out and annotates the provisions of the Limited Partnerships Act.²⁵ The increased use of the limited partnership vehicle, especially in Western Canada, in various forms of drilling or exploration funds in the petroleum and natural gas industry²⁶ makes a review of this area of the law a must for lawyers practicing in Alberta.

In Appendix C, Mr. Knowles sets out and annotates the provisions of the Partnerships Registration Act.²⁷ In view of the fact that Alberta proposes to eventually pass specific separate legislation dealing with the regulation of the use and registration of business names in general, the discussion in this Appendix is informative.

In summary, Mr. Knowles has provided a valuable collection and source of authorities and references respecting the law of partnerships

19. It is important to note, however, that the treatises on the subject of partnership do not discuss this aspect of the law in much detail. For example, *Lindley on the Law of Partnership* (*supra* n. 1) devotes less than three full pages and *Underhill's Principles of the Law of Partnership* (*supra* n. 1) devotes less than two full pages to this issue.

20. See ss. 7 to 20 inclusive of the Alberta Act.

21. As it is in the treatises on the law of partnerships (*see* n. 1).

22. See s. 21 of the Alberta Act.

23. See ss. 22 to 24 inclusive of the Alberta Act.

24. See s. 27 of the Alberta Act.

25. R.S.O. 1970, c. 247. The statutory rules governing limited partnerships in Alberta are set out in ss. 48 to 79 inclusive of the Alberta Act.

26. The use of the limited partnership vehicle combines both the benefits of limited liability for the limited partners (investors) and the income tax advantages that accrue to the partnership form of business association for this type of activity.

27. R.S.O. 1970, c. 240. The provisions respecting the registration of certain partnerships and trade names are set out in ss. 81 to 92 inclusive of the Alberta Act.

and, in view of the increasing use in Alberta of the partnership vehicle as a form of business organization and the importance of having a consolidated source of reference materials readily available, his text should be an essential item in any practitioner's library.

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