PARTNERSHIP AS A FORM OF PROFESSIONAL ORGANIZATION

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I THINK the origins of modern partnership are to be found in the needs of an awakening society in Europe after the really Dark Ages. One of the signals of that awakening was an increase and expansion of trade and commerce. As we are only too well aware to-day, the great need of such an expanding and progressive economy is a substantial volume of credit. In the period of which I speak the need was equally urgent, especially for the merchant class. The peculiar difficulty which they had (as opposed to the common difficulties of their present-day descendants), stemmed from the usury laws, which prohibited the taking of interest for the loan of money as such. There was thus not only no incentive to, but a strong sanction against, the lending of money for commercial activities.

It is to the rising Italian City States that we must look for the development of the methods whereby the needs of the new commerce could be met without incurring the condemnation of the church. These cities evolved methods which included the different types of contracts, for example, sea loans, the commission (rogadia), and the commenda. Only the first of these was derived from Greek or Roman law—the others were mediaeval innovations of the utmost importance, and in the later middle ages became common to the whole Catholic West, as the revival of trade brought conditions that made them serviceable in a wide area.

These new contracts were not wrought in one piece in the reviving schools of law, but were the ultimate result of everyday practice and the unconscious invention of hundreds of obscure men, men who will forever remain obscure, because there are no biographies of the business men of the early Middle Ages and we cannot trace the formation and growth of the great commercial fortunes.

The commenda was one of the commonest of these mediaeval commercial contracts and has been the direct ancestor of the limited partnerships of Continental Law, legally sanctioned in England since 1907.

A, a merchant, stays at home, and entrusts goods or money to another that he may trade with them in foreign lands, in return for a share of the profits resulting from the trade. Or *A,* the travelling merchant, borrows money from the merchant at home that he may trade with it in return for a share of the profits. In these cases the risks run by the lender entitled him to a payment for the use of his capital, and in such cases payment was made not for the loan of the money but for the loss or risk of loss run by the lender. Holdsworth puts it:

> "The growth of trade was making it clear that traders could make a productive use of borrowed money and that therefore a payment for the use of borrowed money might be advantageous to the parties to the contract and to the State."
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> "The result was not the repeal of the general prohibition of usury, but the growth of a large number of rules that were destined to distinguish between payments for the use of money which were usurious and illegal, from those that were permissible."

The commenda thus was a partnership in which one of the members supplied the capital either in the shape of money or goods, without personally taking part in the active operations, while the other party contributed none or only a smaller portion of capital but carried out the actual trading ventures. It probably operated largely in the realm of maritime undertakings. It was usually formed for a definite venture or speculation—say, a voyage from Genoa to the East—but inevitably it came to be formed for an indefinite series of commercial ventures or for a definite period of time.

Originally the tractator was regarded as a sort of agent or factor, the commendator's manager, the commendator thus being responsible for his acts. But the principle was finally evolved that the commendator was liable up to the amount of capital he had advanced. Thus we have in the mediaeval commenda the dormant partner, and the principle of limited liability so well known to-day, and usually thought to be the product of nineteenth century minds.

There is a splendid example of the highly developed type of commenda in a book on the Medici Bank by Raymond D. Roover (1948). The Medici Bank was one of the first of the great international banking houses, with branches in several of the leading cities of Europe. The interesting point is that the Medici banking house was not one partnership but a series of partnerships. A separate agreement was made for each of the Medici enterprises and branches. Each partnership was a separate legal entity, with its own style, its own capital, and its own books. The different branches dealt with each other on the same basis as with outsiders. When it was decided to establish a new branch, a new partnership agreement was drawn up, and the same applied when one of the members died or retired. The branch managers were not mere employees but junior partners receiving a share of the profits and could only be dismissed by a premature termination of the partnership agreement, which the Medici always retained the right to do.

In studying the organization of the Medici banking house one cannot fail to notice how closely it resembles that of the modern holding company. The comparison is valid in more than one respect. The Medici controlled the subsidiary partnership by owning at least 50 per cent of the capital. The partnership's agreements carefully circumscribed the powers of the junior or managing partners, and the Medici were always careful to stipulate that they retain the ownership of their trade mark after the dissolution of a partnership, for there was goodwill attached to their name.

A law suit tried before the Municipal Court of Bruges in 1455 throws much light on the structure of the Medici business organization. In this case, a Milanese, Danielano Buffini, brought suit against Tomaso Portinari, as acting manager of the bank in Bruges, for the defective packing of nine bales of wool bought by the plaintiff from the Medici branch in London. When the defendant pointed out that the bales had never belonged to his branch, and that the plaintiff should sue the London branch, the plaintiff replied that the Medici bank in Bruges and the one in London were all one company and had the same master. Thereupon Portinari testified on oath that the two branches were separate partnerships, that the bales of wool had been sold to the plaintiff by the London partnership, and had nothing to do with his branch, which should therefore be relieved of all responsibility. The Court in its

decision dismissed the claim presented by the plaintiff but upheld his right to sue the manager of the London branch.

There is also preserved a Medici partnership agreement signed July 25th, 1455, concerning the Bruges subsidiary of the Medici Bank. There were three parties to the agreement: first, the two sons of Cosimo di'Medici and a nephew; second, the former manager; third, the new manager. Although Cosimo himself is not mentioned in the contract, it must be remembered that as *pater familias* he was the real power behind his sons and nephews. After setting out the purposes of the new company, the agreement lists the shares of the capital and then the division of profits, of which 60 per cent went to the Medici, 20 per cent to the former manager, and 20 per cent to the new manager who had, however, supplied only one-sixth of the capital. This was customary, both as a reward for his services and as an inducement to make profits. No capital or profits could be taken out of the company during the duration of the contract, with the exception of Tarni, the junior partner or manager, who was allowed to withdraw 20 groat a year for his living expenses. Losses, "may God forbid", were to be shared in the same proportion as the profits. There are a few other minor provisions; for example, Tarni (the junior partner) was allowed neither to gamble nor to entertain a woman in his quarters. Nor was he supposed to accept any gifts above the value of one pound groat. This was evidently to prevent corruption. If he violated the local laws and ordinances he had to bear the consequences. He was not even empowered to hire office boys without the written permission of his partners. It is doubtful whether such permission was ever granted. Most of these would be sent out to the branches by the head office in Florence. Tarni was also forbidden to underwrite any insurance or to make wagers. Adequate provisions are made to cover the termination of the partnership, including the provision that Tarni must stay for six months to wind up the company's business. Theoretically capital and profits were to be divided among the partners, but in practice these were not refunded in cash but written to the credit of the partners, either in capital or current account, in the books of the succeeding partnership. Transition from one partnership to another was effected without any interruption in the ordinary course of business.

This commenda form of partnership never really took root in England as it did in Italy, though I cannot agree with Lindley

who suggests that it was quite unknown. This is hardly credible, for if it had proved a satisfactory device in Italy, then with the volume and exchange of trade between the two countries and the similar problems involved, I should think it would have been equally widely used in England. Holdsworth gives as the reasons why the commenda did not take root:

(1) The conquest by the Courts of Common Law and Equity of the field of commercial jurisdiction made English commercial law very insular.
(2) It was opposed also by the later regulated companies which wished to preserve their own monopoly of trade.
(3) In addition, England's trade did not begin to develop rapidly until the latter part of the sixteenth century, and by that time the Joint Stock Company was emerging, through which ideas implicit in the later form of commenda—the opportunity for an investment of capital and the limited liability of the capitalist—could be more readily carried out.

As I have said, the essence of the commenda was the limited liability of the capitalist, and at the beginning of the eighteenth century legislative opinion was hostile to this limitation. I think one can say that although the commenda left no direct descendant in England its influence directly affected the law of the commercial society which in England and elsewhere had emerged in the seventeenth century.

Another form of partnership was the societas—a rather closer and more permanent type. So far as the societas is concerned the law gradually came to two conclusions—one, that each partner represented the others and could bind the others by contracts made on behalf of the firm; and two, that each partner was personally liable, without any limitation, to all the creditors of the firm. The societas also often traded under a collective name, for example, "Smith & Soc." The way was open for the formulation of the idea that a firm was a legal person distinct from its members. That English law never came to this conclusion is due to somewhat the same causes as prevented it from recognizing the commenda. The corporate company was more convenient than an unincorporated body of this kind. The lawyers, in spite of the fact that their own Inns of Court were unincorporated societies, found it difficult to recognize as a separate person any body which was not incorporated.

Commenda and societas developed along different lines. As we have seen, the commenda was built round the speculative enterprise, mostly confined to maritime trade. This of course tended to restrict its development and to localize the form of partnership. Societas on the other hand had roots in the more permanent association of the family; or at least among persons who knew each other well and trusted each other in order to pursue a common enterprise in the cities and towns rather than in foreign lands. Ashley, in his "Introduction to English Economic History and Theory", claims that the commenda is not the direct parent of the English business partnership, which he thinks rather grew out of several members of the same family continuing to live together and to carry on their business in the same shop. This is probably correct. On the other hand, that the commenda was known in England from very early times is evident from several of the cases in the Selden Society volume "Select Cases on the Law Merchant". As early as 1211 we find the following example:

> "In nomine Domine, amen. Manifestum sit omnibus hominibus hanc cartam audientibus quod ego Bernardus de Gardia confiteor et recognosco me habuisse et recepisse a te Stephano de Mandolio, in commenda . . ."

Even of more significance is a case of the year 1300 in the Fair Court at St. Ives:

> "John Spicer of Manchester against Peter Chapman of St. Ives, for breach of an agreement made in Huntingdon on Saturday, the 4th, Candlemas . . . that they should be partners to win or lose doing business in various parts of Scotland."

The next stage in the development of corporate organization of trading ventures is the rise of the Joint Stock Company—again, a form of organization whose origin is to be found in Italy. The States found it necessary to raise loans for colonial conquests. The loans were divided into shares and registered in the name of the owner. Such shares were transferable and devisable, but were not really shares in a commercial venture. If the conquest was achieved, the shareowners got a corresponding interest in the conquered territory. The founding of the Bank of St. George in 1407 meant the consolidation of the various State loans into a single debt—and as security for this interest, the share or stock holders were given privileges, for

example, the right to carry on in banking business or to administer (and thus exploit) the colonial conquests. The creditors of the Genoan State were thus shareholders in empire, rather than in a company.

The same development occurred in England though a little later. The merchant traders were anxious for charters (and incorporation) not because of any realization of the advantages of that form of organization as such, but rather because they wanted the right of association for their ventures and, with that, extensive powers of self-government and hence a monopoly of trade, dispensation from particular export and import laws which might hinder trade and remissions of Customs duty. All these things were matters of Prerogative—i.e., lay within the grant of the King by Royal Charter. Moreover, it suited the purpose of the Crown which through such companies achieved some measure of control of overseas subjects and territories. The value of the corporate form was thus double-edged and appreciated by both sides, not for any reasons of *elegantia juris* but because in an eminently hard-headed way it achieved two practical purposes—an authorized trade monopoly, and a control of foreign policy.

And of course it came to be realized that the Joint Stock Company offered also the very valuable advantage of perpetual succession which, apart from its obvious convenience in relation to continuity of management and administration, acted as a sort of spell at the outset, in that the prospect of a continued corporate existence consolidated membership.

The partners in the Society of the Mines Royal wanted to be incorporated, "thereby to avoid divers and sundry great inconveniences, which by the several deaths of the persons above, etc., or their assigns, should else from time to time ensue".

A proposed corporation for making pitch and tar prayed in 1692 for a Joint Stock:

> "So great that the same is not to be raised unless upon the establishment of a corporation, because if such an undertaking should be carried on only by Articles of Partnership, the stock will be liable, in particular upon the death of the several partners, and subject to be torn to pieces upon the bankruptcy of any of them".

Here, then, is a very pointed pre-eighteenth century reflection upon the advantages (commercially speaking) of incorporation.

With the rise of the Joint Stock Company the concept of the transferability of shares emerged with greater clarity, as did the distinction between the corporate liability of a company and the personal liability of members for corporate debts. At this time there was still contained in many Charters a provision that shareholders (although not individually liable for Company debts as such) were to pay to the companies sums assessed and determined by the companies' limitations. This led to the possibility of creditors who could not get at the pockets of the corporators themselves, standing in the shoes of the Company by an oblique form of subrogation, obtaining a Court order forcing the Company to levy sums sufficient to meet the corporate obligations. The idea is implicit here of the regulation of shareholder liability by internal contract. The next step is obvious. The liability of the members of the Company could be limited under an agreement between the members of the company and the company itself, but the members could not be called upon to pay more than a certain fixed amount. And so here we have now the modern development of the limited liability company where liability is limited to the amount of the share-holding. The Joint Stock Company had a flourishing time. The Charters did by no means clearly define their powers. Once having got a Charter, a society considered itself free to undertake business projects, probably outside the business for which it was incorporated. In 1691 The York Building Company was incorporated to supply water to London. But in 1719 it sold its interests in the water-works and began to deal in lands forfeited by the Jacobites in consequence of the rising of 1715. This idea, that the activities of an incorporated society were not limited by the terms of its Charter, led to a ready trade in Charters. Societies which wished to get the privilege of incorporation at small expense bought up the Charter of a company which had ceased to trade and used it to carry on their business. Thus, the banking partnership of Turner, Caswall & Sawbridge got possession of the Charter of a company formed in 1691 to manufacture hollow sword-blades. This banking partnership traded under the name of the Sword-Blade Company, acted as the bankers of the South Sea Company, issued "Sword-blade notes or bonds", and were eventually proved to have falsified their books and to have issued fictitious notes to cover the presents of South Sea stock to high officials.

It is obvious that the Joint Stock Company met needs that partnership left unresolved. It provided greater opportunities for investment and the distribution and circulation of wealth, and, perhaps its most notable achievement, it leavened mercantile hard-headedness with the diplomacy provided by the participating wealthier classes. It was a product of its own age, of the time, and its needs, and its vitality in the prime of life did not last much longer than the political and economic beliefs which gave rise to it. When the Free Trade theories developed, the idea of the monopoly of trade became repugnant, and the Joint Stock companies were the subject of powerful attacks. Because of the useful political purposes they served and the governmental functions they performed, some continued in existence for a long time beyond this. For example, the Hudson's Bay Company did not lose its monopoly until 1869.

My point is that this brief story of the development shows how legal institutions have grown up, changed, and disappeared in response to the felt necessities of the time.

> "The advantages which result from the combination of the capital and labour of several persons for the transaction of a common business depend on the nature of the business and this again depends to a large extent on the state of society."

Partnership was one of such forms of organization that answered the needs of a period. As society and commerce expanded in area and scope, a new form of organization became necessary and this led eventually to the limited liability company. The partnership form remained, of course, and its principles crystallized into the form of legislation. It remained for smaller businesses, and it has come to be utilized for professional purposes. I propose now to analyse, with respect to the medical profession, the reasons that had led to the adoption of this form of organization.

I find it difficult to believe that the motives which lead physicians to join in groups are of any far-reaching economic or personal type affecting the majority of practitioners. Surveys in America have shown that there are not more than 500 group practices in the State, accounting for less than five per cent of practitioners. And of 335 groups studied in 1941, 109 were family groups.

Nor, one might add, is there any agreement as to what those motives are, nor as to what are the relative advantages and disadvantages of group practice. One might classify these advantages as professional, personal, or financial. The principal advantages claimed for group practice are: that modern medicine is so complex that no one physician can comprehend all the niceties of diagnosis and treatment; that as a result of this situation most sick people, if they are to get the best medical care, must be seen by more than one physician; and that organization of physicians into groups is the only way in which this can be done efficiently and economically. It is claimed that physicians working together in a group are stimulated to keep up with medical progress more than physicians in individual practice, and that each physician, constantly subjected to the informed appraisal of his fellows, has more incentive to do his best work and is less likely to develop slipshod habits of medical practice. The ease and value of consultations is enhanced, because the consultant has the patient's whole medical record before him, and can more quickly and efficiently bring his own special knowledge to bear on the case. Young physicians, especially those with specialist training, are able to concentrate from the beginning on the type of work in which they have been trained, avoiding not only the struggles of establishing a practice, but also the loss of skill from disuse that is often the case with the young specialist. On the financial side, a group of men, by pooling their resources, can maintain equipment for diagnosis and treatment that no one of them could maintain individually, and can make efficient use of such expensive items as X-ray equipment. Physicians' incomes are more stable, and some claim that they are larger than incomes in individual practice, at least in the early and late years of practice. The physician in a group is freed from direct financial dealings with his patients, and is therefore able to do his best work medically without worry about whether he will be paid. He is enabled to take vacations and trips, or post-graduate study, without jeopardizing his practice and his future prospects. The patient benefits by less expensive service (the usual claim is that he gets more service for the same cost than he would get from an individual practitioner), as well as by the ready availability of a competent consultation when he needs it. A well-run group is alleged to raise the medical standards of the whole community by exemplifying modern medical care. Groups have the facilities for,

and tend to stress, preventive medicine. By providing nursing and secretarial help economically, group organizations enable the doctor to spend more of his time doing medical work, and relieve him of work that can be done as well or better by less highly-trained personnel.

A group of 84 physicians was asked to evaluate these suggested advantages, and placed them in the following order:

(1) Groups give patients better medical care by providing facilities for easy consultation, and for laboratory work.
(2) Satisfaction of working in atmosphere of professional co-operation.
(3) Freedom to do one's best work, and to obtain laboratory work and consultations without restriction.
(4) Physician has regular daily and weekly working hours, with practice covered during time off duty.
(5) Physician in group is freed from details of business administration.
(6) Professional development stimulated by close professional contact with other members.
(7) Patients benefit financially, whether by reduced fees or by getting more medical care for same expenditure.
(8) Time -for vacations, medical meetings, and post-graduate study can be taken without danger of losing patients or income. . . .
(11) Young physicians make living income from start.
(12) Group practice yields larger financial returns to physician, considering career as whole.

You will notice that financial considerations rank lowest on this list.

As against this, the same article deals with criticisms of group practice.

> "The most important criticism is that most patients can be adequately treated by an individual practitioner with the equipment that any physician would have in his office, and that it is inefficient, time-consuming, and unduly expensive to give every patient the questionable benefit of being treated by two or more physicians in offices fitted out with all the latest diagnostic and therapeutic equipment. This sort of treatment should be reserved for the approximately 15 per cent of patients who really need more than the general practitioner can give them."

This is corroborated by a survey in North Carolina which revealed that nearly 85 per cent of average cases were handled by a general practitioner without any equipment other than that contained in his bag.

The article continues:

> "In addition, the physician in a group is deprived to some extent of independence of judgment and action, and his professional growth is stunted by constant supervision. A physician may get some stimulation by his intimate associations within a group, but he thereby cuts himself off from association with the larger number of physicians in his community, so that he actually suffers a net loss in this respect."
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> "The group's claim for ease of consultation and availability of laboratory service is conceded to be of value in medically undeveloped regions, but is said to be of decreasing importance when a region develops specialists, hospitals and laboratories, which enable the practitioner who is not allied with the group to pick the best consultant or laboratory to care for the particular elements of the particular patient, whereas the group physician is limited in his referrals or laboratory work to the available specialists or equipment within the group. Mechanization of medicine, with undue dependence on a dragnet type of laboratory work, and referral of patients without adequate medical reasons, are alleged."

The claim that the patients benefit financially is contradicted by the results of a survey by the Bureau of Medical Economics in 1933.

> "It would seem to be quite clear that the individual physicians controlling groups have not generally succeeded in reducing the costs of medical care. They have increased it in some cases, reduced it in others, and given better service for the same money sometimes and unnecessary service at other times, just as individual practitioners have done. There is nothing inherent in group practice that requires any of these policies. When a similar standard is applied to the question of the relative attractiveness to the individual physician of group versus individual practice, one again obtains contradictory answers.

> "If the objective is financial success, achievement depends on the individuals and methods used. The same conclusion follows concerning those groups motivated by scientific enthusiasm, desire for more thorough service, or any of the other objectives listed.
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> "Common possession of superior equipment or facilities for consultation does not ensure better diagnosis or service, unless those facilities are in the hands of persons with the purpose and ability to use them for the benefit of the patient. Without this purpose and ability elaborate equipment and multiplicity of alleged specialists result only in unnecessary duplication of work and expense to the patient."

An English opinion (by Dr. O. Guy Ollorenshaw in *The Practitioner* of 1953) on the advantages of group practice is naturally more remarkable for what is does not say than what it mentions. He considers group practice to combine the flexibility of private practice with the more desirable features of a salaried service. Apart from setting the doctor free for "doctoring" and providing him with ready access to another colleague's opinion, the advantages are purely personal, i.e., provision for illness, added leisure, and more home-life (if the two are not incompatible) made possible by the sharing of night duty, etc. As he puts it, "freedom from the tyranny of the telephone". But there is no reference to financial considerations at all.

I am not qualified to express an opinion on the professional benefits or disadvantages of such group practice. However, in view of the diversity of opinion already remarked upon, I suspect that the members of the profession themselves are not entirely reliable.

From the brief study I have made of local conditions, I consider the following factors to have influenced the development of group practice:

(1) Accommodation problems and commencing difficulties. These may be responsible for the large increases in the number of groups after the two last wars—an experience common to the United States and Australia. (A questionnaire sent to 21,000 American Army Medical men revealed that some 53 per cent wished to engage in group practice on their return to civilian life.) The accommodation problem should even itself out over the years, though the latter may remain and even increase in force. A partnership (if obtainable) would be an added attrac-

tion to a young graduate in that he can step into a guaranteed income immediately. But in general, I do not regard these two factors as overwhelming or compelling.

(2) Pressure of work—i.e., the felt need for some relief from undoubted overwork and heavy responsibility and for more adequate leisure. This I find an undeniable factor and one that accords with prevailing social philosophy, of which the 40-hour week in the industrial sphere is merely a sharp underlining. What is even more remarkable, this is a factor generally admitted by doctors themselves. An American group survey (1950) indicated that members enjoyed a 9·4-hour working day for $5\frac{1}{2}$-6 days per week, and 18 days vacation a year.

(3) But not so generally admitted are the financial considerations involved. The Australian experience seems to be that two doctors forming a partnership will earn more than the combined sum of their previous individual earnings. I think it is true that having regard to the whole of his career, and not just a peak period, a doctor will obtain more money in a partnership. If this is denied, then I would say that factor (2) *supra* has prevailed, and that the members are enjoying even more leisure.

In addition, a member is relieved from loss of earnings during illness. And in any event I have some statistical support for my assertion. An American survey by Richardson in 1948 showed that doctors in the groups he studied were earning about 52 per cent more on the average than doctors practising as individuals.

There are, however, even more important considerations than the mere earning capacity. While I do not see any taxation advantages in partnership so far as running expenses or capital expenditures are concerned, it has influences in another direction. It is an obvious truth that with the present high taxation and expenses it is impossible for the professional man to acquire such a capital fund that he can retire on the income resulting therefrom. By taking in a partner he can achieve an immediate financial gain (a capital increase also which is not taxable) and which is available for some immediate purpose, e.g. a new house, etc. And finally he still retains a saleable asset on retirement or death. It might be said that the same advantages exist in case of a private practice. True—but that can be sold once only, and its value is likely to decrease more

rapidly in the doctor's declining years than if he is in partnership.

I should add that in my opinion there are two distinct problems involved here, and the distinction between them is blurred by the use of the vague term "group practice". One class of group is more in the nature of a clinic—an attempt to organize a number of doctors in such a way as to provide a reasonably comprehensive treatment for patients. I have seen examples of this at Footscray and at Malvern. Such a group of specialists and semi-specialists is organized with quite a definite and different aim in view from that motivating smaller partnerships of strictly general practitioners. It constitutes a half-way house between large and elaborate public health centres where a patient can get the whole works but in an impersonal fashion, and the older-fashioned type of general practice where any case out of the ordinary is sent off to a specialist. I think such a group suits the convenience of patients and can be less expensive for them, while still remaining personalized in its relations with patients.

Putting aside such groups, it seems to me that partnership therefore offers two general advantages—the opportunity afforded for better organization of work and resultant leisure (which incidentally achieves a 24-hour service for patients) and the measure of added financial security afforded.

To turn now to some of the legal features of such a form of organization, in the Act a partnership is defined as "the relation which subsists between persons carrying on a business in common with the view to profit". This might seem offensive to the professional dignity of medical practitioners. But I hasten to add that in the closing sections of the Act—as if by afterthought—the expression "business" is said to include every trade, occupation or profession.

The reason for the development of Company Law is that the law of partnership is centred on principles of personal control and unlimited liability—principles which are unsuited for the needs of modern commerce, but which may retain their validity in the case of professional activities.

As between the partners and the outside world (whatever may be their private arrangements between themselves) each partner is the unlimited agent of the firm and of the other partners for the purposes of the partnership business—and his acts bind them and it. The test is not whether such acts were

convenient, or prudent, or even necessary, but whether it was necessary for the usual conduct of the business. Thus, he may sell any goods or personal chattels of the firm. He may purchase on account of the firm any goods of a kind necessary for or usually employed in the business. He may engage servants for the business. Also, he has implied authority to borrow money for the purposes of the business on the credit of the firm. But any pledging of credit, etc., must be connected with the firm's ordinary course of business.

Every partner of a firm is liable jointly for all the debts and obligations of the firm incurred while he is a partner, and after his death his estate remains severally liable in the same way. It will be appreciated that this is a point of considerable importance. Unlike a shareholder in the case of a company, who is merely liable to the extent of his holdings, a partner may have to put up his entire private fortune to answer the debts of the partnership. Also, where by any wrongful act or omission of any partner acting in the ordinary course of business of the firm, or of the authority of his co-partners, loss or injury is caused to any person, or any penalty is incurred, the firm is liable therefor to the same extent as the partner so acting or omitting to act. This again could be a point of considerable importance, in that members of a partnership might find themselves liable for the negligent acts of another partner—and in these days judgments of considerable amount have been obtained. As a practical matter, this difficulty is often almost completely met by the practice of inserting in partnership agreements a clause to the effect that each partner will not resign from the Medical Defence Association. That Association was formed with the objects of supporting and protecting the character and interests of legally qualified medical practitioners in Victoria, and also of advising and defending or assisting in the defending of any members of the Association in any case arising out of the practice of this profession, etc.

When I first studied the Memorandum and Articles of Association, I was surprised at the discretion invested in the Council; there was no guarantee of assistance to the full extent of the claim, or at all. This has now been altered, to some extent at least. Probably because of the fact that the Association, having had a remarkably fortunate history of no major claims for many years, has been able to effect a new insurance policy providing (for annual premium of £1/1/-) a cover for each

member up to £25,000 per member, with no limit to the number of claims. The Council, however, undertakes to pay the first £1,000.

This would seem to provide adequate cover for those firms which have taken the precaution of writing such a clause into their contract. However, there are still a few possibilities to be considered. The policy covers damage for death of or injury to any person consequent upon any act of neglect, default or error arising out of the conduct of a member of his profession as a legally qualified medical practitioner. This is not in quite the same terms as the provisions of the Partnership Act, and it may be that there are possibilities of liability under the Act which would not be covered by the policy. One example, of course, is that partners may become liable for any penalty incurred by a member. The policy expressly excludes claims based on criminal acts or on services rendered while under the influence of intoxicants or drugs, though of course these things may have been done "in the ordinary course of business of the firm". Again, claims resulting from any animal, vehicle, cycle, craft, or flying machine owned or used by any members or by any member of the member's household, are expressly excluded. My point is, however, that the new policy does provide excellent cover at a negligible cost. And this can be ensured by the insertion of a clause of the type mentioned in the partnership agreement. Of course, there are other ways of ceasing to be a member of the Association than by resignation.

Still on the question of liability, if a partnership is reconstituted after the retirement of a partner, the former partner may remain liable for the debts of the partnership unless the creditor had notice of the change (this applies to persons who have had previous dealings with the old firm), but this does not apply to a person who had no knowledge of the old partnership.

Unless the agreement otherwise provides, no person may be introduced as a partner without the consent of all existing partners. Conversely, no majority of the partners can expel any partner unless the power to do so has been conferred by an express agreement between the partners.

It is therefore necessary to provide carefully for these matters in the actual partnership agreement. 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 from any use by him of the partnership property, name, or busineses connection.

Dissolution

This need not detain us at all. In the absence of agreement to the contrary, the partnership is dissolved by bankruptcy or death or by order of the Court, where a partner has been guilty of such conduct as is calculated prejudicially to affect the carrying on of the business; for example, a state of hostility between the partners which has become chronic and renders mutual confidence impossible, as where one charges another with gross misconduct in the partnership affairs. It is not considered to be the duty of a Court to enter into partnership squabbles.

> "Keeping erroneous accounts and not entering receipts, refusal to meet on matters of business, continued quarrelling, and such a state of animosity as precludes all reasonable hope of reconciliation and friendly co-operation, has been held sufficient to justify a dissolution." (Lindley, p. 675.)

On dissolution, and after payment of debts, the assets will be divided. One of the assets which may cause difficulty is "goodwill"—a commercial rather than a legal term, well understood in business (and talked of glibly) but not easy to define. It has been called the "whole advantage, whatever it may be, of the reputation and connection of the firm which may have been built up by years of honest work or gained by lavish expenditure of money".

This advantage may adhere to the premises in which the business is carried on or to the personality of the members of the firm. In the latter case it is not really transferable and so there is no room for the application of these principles in relation, for example, to a specialist practice.

I should add that in England, Section 35 of the National Health Service (Amendment) Act, 1949, prohibits the sale of a medical practice, that is, the goodwill, and provides instead an uncertain amount by way of statutory compensation. This Act applies where at least one member of the partnership is on the general list.

The Partnership Act does not make any express provision for disposing of the goodwill on the dissolution of a firm, so the question of goodwill is one of those which is always to be considered and provided for in the formation of a partnership,

and constantly has to be considered on its dissolution, whether provided for or not.

There are two different principles to be borne in mind.

(1) On the dissolution of a partnership, every partner has a right, in the absence of any agreement to the contrary, to have the goodwill of the business as one of the partnership assets, sold for the common benefit of all the partners.

(2) A doctrine which Lindley characterizes as "extraordinary): "If a person sells the goodwill of his trade or business, that does not disentitle him from recommencing a similar trade or business in the immediate vicinity of the place where the old one was carried on."

Hence the necessity for "restraint of trade" covenants, which I will consider later.

The only real limitations are that he may not solicit business from customers of the old firm, nor hold himself out as continuing the business or practice he has sold. Thus if, on the death of a partner, the goodwill is put up for sale, it may produce nothing if it is known that the surviving partner will exercise his rights. The continuing partner, by retaining the old place of business and carrying on under the old name (unless it was in the name of the former partner), may acquire the benefit arising out of the goodwill for nothing.

It will be seen, therefore, that if a person has entered a partnership with the expectation of retaining a valuable and saleable asset on his retirement or decease, he should ensure that the agreement contains a provision that the surviving partner *shall* purchase the goodwill for a fair and reasonable price to be ascertained by a valuation made or obtained by some independent body, e.g. the British Medical Agency.

Linked up with this question of goodwill, of course, is the necessity if so desired of restraining an outgoing partner from engaging in competition with the partnership. This must be done by some express agreement not to compete contained in the partnership agreement. Such agreements are commonly called in legal language "Covenants in Restraint of Trade". The general principle governing such covenants is that they are *prima facie* invalid unless it can be shown that they are reasonable in the interests of the parties concerned and not

injurious to the public. The law has also drawn a further distinction between covenants taken by an employer from an employee, and those taken by the purchaser of a business and the vendor. In the former case, the Courts take a stricter view and are less likely to enforce the covenants. In the latter case, the Court regard the parties as being at arms' length and with equal bargaining powers and are more likely to accept their evaluation of what is reasonable in their interests.

I should like to discuss now two cases illustrating the application of these principles. The first is *Routh v. Jones* (1947) 1 All E.R. 179.

Jones, a qualified physician and surgeon, became medical assistant to the plaintiffs, who carried on together the business of general medical practitioners in a small town. Jones agreed "not to practise or cause or assist any other person to practise in any department of medicine, surgery, or midwifery, nor accept nor fill any professional appointment . . . within a radius of ten miles from the partnership address for a period of five years after termination of his assistantship".

The covenant was held invalid as being wider than was reasonably necessary for the protection of the plaintiff's business.

The clause about accepting any appointment was clearly unreasonable, but even if this was severed, the remainder was also too wide. The competition which can be legitimately restricted is competition with the business or professional activity of the covenantee at the material date. Here the activity in question was that of a general medical practice which, it seemed to the Court, did not include consultant and specialist practice. But the covenant here in question excluded the defendant from both these forms of activity as well—in fact, from any branch of the medical art—and so went too far.

Evershed J. gave some examples of specialized forms of medical practice which could hardly be included in the practice of a country G.P., and so far as the covenant prohibited such activities it was invalid. The Master of the Rolls was somewhat cautious. He had no doubt that one could not thus exclude a consultant practice in the strict sense of that term, but was prepared to admit

> "that the protection of a general medical practice might require a prohibition against the carrying on of a specialized practice in cases where a patient could go to the specialist direct and not through another medical man. I can quite see

> that force of the argument—that a specialist who was prepared to accept a patient direct might, by the knowledge and intimacy he acquired of the plaintiff's patients, attract them by his specialized form of treatment as against their less specialized form of treatment. And it may well be that they could be shown to be entitled to that measure of protection."

Of course, the onus is on the person seeking to enforce the covenant to show the special circumstances which make it necessary.

The other case is *Jenkins v. Reid* (1948) 1 All. E.R. 471.

The plaintiff, a qualified woman doctor, was married to a doctor who practised as a general practitioner in the neighbourhood of three English towns. He entered into a partnership agreement with the defendant to which the plaintiff was a party (not a partner). The agreement provided that:

> "In the event of the death, withdrawal, or expulsion from the partnership of Dr. Jenkins, then Mrs. Jenkins shall not at any time thereafter practise as a physician, or surgeon, or apothecary, within the radius of five miles (of the above towns) or professionally visit or consult with any of the patients of the practice . . ."

Romer J., in following *Routh v. Jones,* held the covenant unenforceable. It is obvious that this was neither a vendor-purchaser nor an employee-employer relationship, but the judge preferred to regard it as more nearly akin to the latter (and therefore to be viewed more strictly by courts). Hence, it would not be held completely applicable to a similar clause in a partnership agreement (which has recently been held to belong to the vendor-purchaser class).

The judge looked at all the factors in considering whether the covenant was reasonable or not. One factor weighing against it was that it was unlimited in point of time (a restriction difficult to justify).

Another difficulty was that the five-mile circle included several large built-up areas (and even some on the outskirts of Bristol), none of which was covered by the partnership practice, though, as a matter of fact, it extended more than five miles in other directions.

The moral from these points is simple. If you are aiming to insist on such a clause, then limit it to some defined period,

and instead of talking in terms of five miles' radius, etc., draw up a sketch plan showing roughly the extent of the practice. (Otherwise, for example, you might be attempting, by sale of a Collingwood practice, to prevent practice in Kew.)

Another difficulty was caused by the width of the professional exclusion, that is, "physician, surgeon, or apothecary". Its scope prevented her from doing things which could not in any sense be regarded as trespassing on the preserves of the partnership.

> "It is clear from the evidence, that if the plaintiff set up in practice as a consultant or a specialist she would be doing work which is not done by 'physicians and surgeons'."

The case was therefore essentially the same as *Routh v. Jones.*

> "A restriction which extends to a consultant practice is one which is not reasonably necessary for the protection of the plaintiff's practice."

The moral from this again is simple.

You probably cannot prevent the retiring partner or vendor from practising as a consultant, and while it may be possible to prove the necessity of excluding him from certain forms of specialization (e.g. obstetrics) to protect the practice, it would be wiser to specify this.

There is the third possibility considered in *Jenkins v. Reid* —namely, the clause preventing the plaintiff from professionally visiting or consulting with any of the patients of the practice. The judge considered this unenforceable, not merely because of the same prohibition of consultant work, but because it was so vague that no one would ever know for certain whether it was being broken or not.

> "I think 'patients of the practice' there means 'patients at any time', that is, persons who at any time may, during the plaintiff's lifetime, after the termination of the partnership, be treated as patients of the practice. Counsel for the defendant says that that is not too vague, because nobody should be regarded properly as being a patient unless he is a regular patient, but even so, I do not know how the plaintiff would know whether such-and-such a person was or was not a patient of the partnership. Supposing that somebody came under her professionally and she inquired whether that person was or had been a patient of Dr. Reid, and the patient said: 'Oh well, two or three years ago I had

> influenza and Dr. Reid attended me, but I have not seen him since,' would he be a patient, and should he be treated as a patient, of the practice? For that person, substitute one in the same circumstances who five years ago was a patient. Can the plaintiff safely advise or treat that person? Then there is no limitation as to area. If the plaintiff set up in practice in London and somebody came from the prohibited area on a visit, it is clear that the plaintiff would be guilty of a breach of this agreement if she treated such a person for any form of illness in London. I do not really know what was intended by this restriction, and I do not feel inclined to guess at some narrow meaning which would save it from defeat, especially having regard to the fact that these covenants are construed *contra proferentes.* My conclusion, accordingly, is that the second part of the covenant is bad both because it is too extensive in its scope and because of the uncertainty in which the language is couched."

Bankruptcy, of course, presents some extremely complex problems in partnership law, but I feel that in a gathering such as this it would be quite fruitless even to refer to the details.

I think I have emphasized in the history of the development of the various forms of group organizations how they have developed in answer to economic and social needs—by the inexorable pressure of events. These have resulted in notable achievements in the field of commercial enterprise. Surely the time is ripe for a re-appraisal of the needs of professional enterprise.

I have indicated some of the financial advantages that have accrued to doctors from the utilization of the partnership form. But this is far from being the complete answer. There are many problems not solved by that device. And anyway, several important professions are debarred from utilizing even the limited advantages of that form of organization.

As set out in the English *Annual Practice,* for example:

> "No practice in the least degree resembling partnership is permissible between counsel; and the etiquette of the profession forbids the handing over of work by one counsel to another outside the conditions above stated. (A.S. 1902-3, p. 4.)" (*Annual Practice,* 1936, p. 2665.)

The following concession is now made:

> "In so far as the law and practice of a place outside England permit it, there is no objection to a member of the English Bar entering into partnership there." (*Annual Practice,* 1936, p. 3689.)

Then, too, as Halsbury indicates:

> "Fellows and members of the Royal College of Physicians may not, *inter alia,* be engaged in trade, dispense medicines, or practise in partnership. Fellows may not sue for their fees." (Halsbury, vol. XXII, p. 307.)

I must say that, while I fully realize the tremendous force in our way of life that a free and independent Bar has been and can be, I do not see why those advantages should be lost by another form of organization. In fact, I am led to what may sound a shocking conclusion to many of you present—namely, that the present form of the Bar must be one of the most wasteful of organizations ever developed. It is wasteful of time and talents and does not necessarily lead, even eventually, to the highest standards of work. At present, of course, there is a great deal of litigation, and a young barrister may step immediately into a reasonable income. But the tradition persists that a young barrister, in more "normal" times, must expect to spend four to five years anxious waiting in his bare cell. And then, when successful, he probably takes more briefs than he can properly handle—mainly, I suspect, because of the constant anxiety as to the future. In these days it is impossible to ease up, since (as I have said already) large savings are really impossible from personal income. And always there remains the fear of a period of illness (when income vanishes and practice dwindles) and the constant nightmare of retirement. Some at least of these fears and disadvantages are met by the medical partnerships indicated above. On the legal side there are great difficulties, of course. Barristers, even more than physicians and surgeons, are traditionally and notoriously individualistic and have established a pattern of economic relations based on individual responsibility, and there is a powerful resistance to any attempt to change that pattern. It may well be that any attempt to coordinate them in a group must fail.

On the other hand, though it is necessary to tread warily here, it is not impossible to notice just such an organization developing in the chambers of the Inns of Court in England.

It is, of course, not a partnership, but presents many similarities in an informal fashion to that institution.

But in any case, I am not convinced (leaving aside the Bar) that partnership is the eventual answer either. I find that my own thinking on this subject was forestalled as early as 1949 by a solicitor of the Supreme Court of Victoria, Mr. R. G. McArthur, who said then that he frequently

> "bemoaned the fact that solicitors are precluded by tradition (and probably by the provisions of the Legal Profession Practice Acts) from incorporating; and I can see no reason why solicitors should be so precluded. Admittedly some safeguards will be necessary, but is it not only another example of legal thinking remaining lamentably behind economic facts?"

Of course, many of the speakers at that Convention disagreed with him:

> "It would lead to a lowering of the ethical and professional standards of the profession . . .", etc.

I am not sure that incorporation has had any effect of that sort in commercial law, in a race of men notoriously more susceptible to venal influences of course than lawyers. But it seems strange that the lawyer, having developed these devices for the convenience of others and pressed for their adoption, should fail to take advantage of these devices himself. The considerations which call for incorporation of a solicitor's practice do not necessarily apply to the Bar, mainly because the amount of capital there invested is comparatively small (i.e. if one leaves aside the training involved and the library necessary). But in any case, what are the obstacles of incorporation in the case of, say, the medical profession?

The Medical Act, it seems to me, contains no direct prohibition of incorporation. Of course, the problem of fee-splitting may arise under s. 15 (2) which prohibits a medical practitioner from sharing or agreeing to share his fees with another medical practitioner. It might be argued that, in such a case, the sharing, if any, would be with the company, a separate person and not a legally qualified practitioner. The Courts might regard that, however, as a specious answer. I would rather point out that this objection applies equally to partnerships and was met by an amendment of the Act which excepts from the prohibition a partnership agreement approved and regis-

tered by the Board. Surely a similar exception could be made in the case of a company so approved and registered.

There is a different objection (though only indirectly a legal one). If the majority of practitioners (and hence the Board as representing their views) felt strongly that such a method of practising was so unethical as to amount to infamous conduct, then the participants run the risk of being struck off the Register.[1]

The problem seems to me essentially one of professional ethics and not legal principle.

It has been raised in a number of American cases, of which *The People v. United Medical Service Inc.* is a leading example.

> "The United Medical Service Inc. was incorporated as a corporation for profit, 'individual and public health'. It established a clinic in Chicago with fully equipped offices. The physicians and surgeons connected with it were licensed by the State of Illinois. Through frequent and expensive newspaper advertisements, a corporation offered many medical services to the public at low prices. Patients seeking medical treatment paid the corporation for such treatment, which in turn paid the doctors in its employ their remuneration. The corporation itself never applied for or received a licence to practise medicine. In holding that the corporation was guilty of practising medicine in violation of the State Medical Practice Act, the Supreme Court of Illinois declared 'the legislative intent manifest from the entire law (Medical Practice Act) is that only individuals may obtain a licence thereunder. No corporation can meet the requirements of the Statute essential to the issuance of a licence. It is clear that the respondent corporation, owing to its corporate character, cannot obtain a licence to engage in the practice of medicine. . . . The practice of a profession is subject to licensing and regulation, and is not subject to commercialization and exploitation. To practise a profession (like medicine) . . . requires something more than mere financial ability to hire competent persons to do the actual work. It can only be done by a qualified human being, and to qualify, more than the mere knowledge or skill is essential. . . . No corporation can qualify . . . the well-established rule is that the State may deny to

1. Of course, by S. 17 such a company would not be able to sue for the fees involved.

corporations the right to practise professions and insist upon the personal obligation of the individual practitioners."

I consider the elements which determined this decision were:

(*a*) The fact that it was conducted for profit;
(*b*) the expensive newspaper advertising; and
(*c*) the fact that the corporation sought patients from the general public.

In other words, the real reason is to protect professional practice from commercialization and exploitation.

Naturally, there is a minority view in some States which disregards the narrow basis of the decision above by pointing out that the corporation does not "practise medicine"—the qualification is personal to the doctors, and they do the actual diagnosis; it is they who have the relationship with patients, etc. Even to the general rule there are some recognized exceptions. These include industrial corporations which maintain medical departments, hospitals, etc., for employees (and in so doing may only be fulfilling statutory obligations), benevolent organizations, etc.

I think the evils of commercialization and exploitation referred to could be avoided by the framing of suitable standards and satisfactory policing thereof by the Medical Board. Precautions could exclude lay and public control quite easily.

But make no mistake, I do not think this form of organization is desirable or necessary for every profession or even every medical group. It is only when a certain stage of physical development has been reached that it may be worthwhile, I think, for the majority of small groups, and for all general practice partnerships it would not be suitable.

It may be that your aim is to preserve groups of such size and nature and oppose present trends towards centralization and aggrandisement. In which case, there is no point in the problems of incorporation. But when one gets very large and varied groups, then I think partnership is no longer the ideal form of organization.

For the strength of a partnership lies in one asset I have not yet discussed because of its intangible nature—the mutual support and respect of the members. As a group, a partnership must have this element or it cannot survive. As Holdsworth points out:

> "Right down to the seventeenth century, the relations of partners *inter se* maintained something of the old guild tradition, in the idea that there was about them a connotation of brotherhood."

Such ideas vanished from the strictly commercial groups that arose, but are, I think, still applicable to professional groups. As the Romans put it, partners were under an obligation to act in the highest good faith; they were linked by a bond of brotherhood (*uis fraternatatis*), and condemnation in the action *pro socis* involved infamy.

A salutary thought, with which I leave you.

Discussion

The President, MR. P. D. PHILLIPS, Q.C., in calling upon Mr. D. I. Menzies, Q.C., to open the discussion, said that the introduction of legislation providing for contribution between joint tort-feasors had the effect of giving the innocent partner the right to be indemnified by the guilty partner, or at least to have a substantial contribution from him, in the event of the partners being held liable for a tort. This had radically changed the rights of partners between themselves in cases where liability in tort had been incurred by the partnership. In the field of contract, all partners were bound by contracts made by any of them in the course of business, but the course of business in professional partnership was not clearly defined.

MR. D. I. MENZIES, Q.C., said that at the present time it was impossible under the rules of the Bar for members of the Bar to practise in partnership. This position was being re-examined in England, where there was a body of opinion which favoured the introduction of a system in which practice in partnership was permitted.

The present rates of income tax were one of the factors leading to the formation of partnerships. This was particularly the case in the formation of family partnerships by, for instance, graziers. In the formation of this class of partnership there was a danger of incurring gift duty, but this danger was not a substantial one in the case of a professional partnership where the capital assets were relatively small. However, it was true that the advantages from an income tax point of view of professional partnerships were also not very great, because all the partners were earning partners.

A substantial benefit which could accrue from the formation of professional partnerships was increased leisure, in day to day work, and the opportunity which partnership practice provided for obtaining a substantial period of time away from a practice for travel or study. Still another advantage, which was applicable to the practices of both doctors and solicitors, was that partnership provided some opportunity for specialization within the partnership.

Mr. Menzies doubted whether the modern rules relating to contribution between joint tort-feasors really affected the situation of partners in any significant manner.

Under present laws, it was impossible for persons engaged in almost all professions to adopt the alternative device of incorporation. Incorporation produced the result that it was the company that was practising and not the qualified persons, who became mere servants of the company. The advantage of incorporation, if it were possible, was that it created an asset and gave some kind of succession. One matter which would arise, in addition to those already mentioned, would be that members of the family of a deceased practitioner, not being themselves qualified, would come to hold shares in the company, and it was a negation of all professional standards to allow a situation to arise in which the qualified practitioner was carrying on a practice in such a manner that the profits accrued to unqualified persons.

Dr. Geoffrey Newman-Morris said that the College of Physicians had a rule comparable to the Bar rule and did not allow its members to practise in partnership. The College of Surgeons approved of this form of practice. The development of medical partnerships was along two different lines. The first was the forming of a group consisting of practitioners giving specialist or semi-specialist service. The second was the formation of a partnership by practitioners who were mainly interested in providing a 24-hour, seven-day, service by joint practice. Both lines of development tended to destroy the old idea of the family doctor, but at the present time, in Australia, it was still open to the patient to obtain the services of a man carrying on a traditional family doctor practice if the patient so desired, and it was also open to the patient to call upon the services of whatever group or partnership he chose.

The formation of partnerships was a substantial step towards relieving doctors of the fatigue which resulted from individual

practice, and consequently tended to improve the standard of services rendered.

The question of specialization and group practice had led to a minor complication in the payment of Commonwealth medical benefits. A patient seeing a specialist upon reference by another doctor may get a higher rebate than if he saw the specialist in the first instance. It would be undesirable if this were to lead to the reference of patients by doctors in group practice from one doctor in the group to another.

The Federal Council of the British Medical Association had recently reconsidered the question of incorporation, and had decided that it was against the proper traditions of the medical profession.

SIR JOHN NEWMAN-MORRIS said that, as President of the Medical Board, he approved and signed between two and eight new agreements for medical partnerships each month. The size of the partnerships varied from two to twelve medical practitioners. The Board insisted that steps should be taken, for instance in the form of account used, to make it clear to the patient what doctors were concerned in the practice so that the patient would know who was receiving the fees. Some proposed partnerships had not been approved. Two instances were a case where the proposed partners lived 3,000 miles apart; the other case was one in which there was a great disparity between the proportion of income to be taken by the senior partner and the proportion to be taken by the junior partner.

There had in the past been arrangements which probably did not quite amount to partnerships which had been clearly undesirable. One example was the buying up of practices by a practitioner who then placed a junior practitioner in charge of the practice and took a percentage of the fees. In another case a surgeon had bought practices and installed doctors in them under an arrangement by which all the patients were referred to him. This kind of abuse had led to legislation which made fee-splitting an offence.

The liability of each partner for the torts of any partner might lead to complications in the arrangements of the Medical Defence Association if that Association could be called upon to cover not only the liability of a doctor for his own torts, but also his liability for the torts of his partners.