

# ***BUSINESS ORGANISATIONS LAW GUIDEBOOK***

## ***SECOND EDITION***

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### **CHAPTER 1**

#### **PROBLEM QUESTION**

Bob and Joshua are best friends, and they decide to run a flower shop together. They agree that they are agents of each other, and that Bob will be in charge of leasing suitable premises from which to run the business, and will hire the employees. Joshua is responsible for buying the equipment that they need to run the flower store. Both parties are very excited about the project. Joshua finds pots that he likes and that he believes will be great for the business. He buys fifty of them from Priya and sends the invoice and the merchandise to Bob, who takes delivery of them. However, before any other transaction takes place, Bob and Joshua have a big fight and they are no longer on speaking terms. Any idea of running the business together is scrapped.

Priya has not yet been paid, and she would like to know if there is a partnership between Bob and Joshua. **Advise Priya on this matter.**

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#### **ANSWER**

The question relates to determining whether there is a partnership between Bob and Joshua.

The Partnership Acts in each of the state and territories provide that three elements are needed for a partnership to exist:

- 1 carrying on a business;
- 2 in common;
- 3 view for profit.

In relation to carrying on a business, 'business' is defined by the *Partnership Act* as any trade, profession or occupation. A flower shop falls within this definition.

As for what is meant by 'carrying on' a business, the definition can be found under the common law. In *Smith v Anderson* (1880) 15 Ch D 247, the court noted that a business is carried on if the activity is being repeated. But in this case there is no repetition. Bob and Joshua were involved in only one transaction: buying the pots.

However, if there is no repetition and the transaction is an isolated transaction, this does not necessarily mean that there is no partnership. This was stated in the *Re Griffin* case. If there is an intention to repeat the transaction, the parties would be carrying on a business. In this instance, at the time when Joshua bought the pots, the parties (Joshua and Bob) intended to enter into further transactions. They wanted to lease premises, hire employees and buy equipment for the business. Buying the pots was only one of many transactions to come. Here there is an intention to repeat the transaction in the future to ensure that the business opens. So we do have the element 'carrying on of business'.

In relation to activities in common, 'in common' means that the parties must be involved directly or indirectly in the business. The parties have a say in the business and they are agents of each other as a result. All parties need to be involved in the same business. In this case, Bob and Joshua were both directly involved in the business. Joshua was going to buy the pots and equipment for the business and Bob was going to lease the premises and hire the employees. Furthermore, the question notes that they agreed to be the agents of each other. Additionally, both parties were aware of what was taking place: Bob accepted the pots and the invoice. All these things show that the parties are involved in the business and they are aware of what was taking place. The element of acting 'in common' is there.

The 'view for profit' element is present if the parties are *planning* to make financial gain. In this case, the view for profit is there because the parties wanted to run the flower shop to make financial gain for themselves. The fact that no gain has been made does not matter.

So it can be stated that Bob and Joshua are running a partnership. Priya is dealing with a partnership.