

# Partnership Agreements

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# Partnerships – What is different?

In one sense, nothing.

Must however address two questions:

- Type of partnership/ partner; and
- How the doctrine applies to it?

# Type of Partnership and Partner

Ordinary Partnership



Salaried Partner

Fixed-Share Partner

Limited Partnership

Equity Partner

Limited Liability Partnership

LLP Member

# Types of Partner

## Salaried/ Fixed-Share

- Are they really an employee?  
(Stekel v Ellice)
- Is goodwill determinative (Briggs v Oates)
- What does HMRC think?
- Does HMRC apply the right test?

## Ordinary Partner/ LLP Member

- If not an Ee, what type of partnership arrangement is it?

# Application of the Doctrine

Practically 3 types of partner:

1. The Employee;
2. The Ordinary Partner;
3. The LLP Member.



# Application to Ordinary Partners

Same basic test, [but 3 notable points:](#)

1. No dissolution on repudiatory breach (*Hurst v Bryk*)
2. Duty not to compete whilst a partner (s.30 PA 1890); and
3. No implied PTR, save non-solicitation (*Trego v Hunt*).

# Application to Ordinary Partners

## Typical Interest:

- Goodwill of the firm;
- Confidential Information;
- Workforce.

## Typical Covenants:

- Area restrictions;
- Non-dealing; and
- Non-solicitation.

# Application to Ordinary Partners

So, what is reasonable? No rule of thumb!

But, ... tactical points to consider:

1. Partnership covenants easier to justify that Ee-Er;
2. Avoid arbitrary limits; and
3. Consider both mutual benefit *and* obligation.



# Application to LLP Members

In material terms, same as Equity Partners

Two points to note:

- Doctrine of repudiatory breach appears not to apply to agreements made under s.5 LLPA (*Flanagan v Liontrust Investment Partners LLP*); and
- Reg 7(9) of the LLP Regs 2001 contains an identical provision to s.30 PA 1890.

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