Episode 55: Summary

Episode name: The Perils of Partnerships
Guest(s): Geoff Sutherland

What area(s) of law does this episode consider?

Partnerships, including incorporated limited partnerships and limited liability partnerships.

Why is this topic relevant?

Partnerships are a unique type of business structure that has remained a popular choice for law firms and other professional services firms. In Australia, legal partnerships can involve as few as two partners and up to as many as four hundred.

However, there are challenges and benefits to operating under a partnership model which practitioners should be aware of.

What legislation is considered in this episode?

Partnership Act 1892 (NSW)

Corporations Act 2001 (Cth)

Corporations Regulations 2001 (Cth)

What are the main points?

- A partnership is not usually a separate legal entity from the partners, unlike the corporate legal personality that is created with the formation of a corporation.
- Partners are usually jointly and severally liable to creditors of the partnership. Third parties have a right to assume any partner has ostensible authority to act on behalf of the partnership. For this reason, many partnership agreements include provisions that limit, or require communication about, decisions that partners make.
- An incorporated limited partnership (ILP) is a subtype of partnership which permits limited liability partners, who may not engage in managing the partnership.
- It's important for partners in any size of a partnership to get along as disputes can quickly escalate and lead to nasty litigation that are costly in terms of time, effort and money.

What are the practical takeaways?

- Profits in a partnership flow directly to the partners meaning there is less risk of double taxation and divided issues. However, this feature also means liabilities do too. One way to minimise liability for partners is to establish a services firm alongside the law firm.
- The two biggest expenses in a business are premises and staff, so as a partner in a partnership you should be aware of any potential changes to either of those arrangements and conduct your own due diligence on the partnership.
- Due to the issues related to direct liability as a partner in a partnership, it's important to establish in the partnership agreement a structure that sets out what will happen if, or when, things go wrong. Key provisions to include relate

to partner dismissal, circumstances under which one can resign, paying out partner equity, valuation of partner equity, and more.