

Short notes on:

UNIVERSAL PARTNERSHIP AGREEMENT

Introduction

To some, the idea of entering a marriage is an exciting time of their lives and one of the most important decisions in life. And while most people dream of a seamless marriage, there are other couples who choose to enter into an express or tacit agreement to live together in a permanent relationship without entering into a marriage. This agreement is called a Universal Partnership Agreement.

The essence of the concept of a Universal Partnership Agreement is about joint effort and the pooling of risk and reward. Accordingly, it is the contract that is the foundation of the universal partnership, not the mere fact of the consortium and the mere contributory efforts to building wealth.

The three essential elements of a Universal Partnership:

1. that each of the parties brings something into the partnership or binds themselves to bring something into it, whether it be money or labour or skill.
2. the partnership business should be carried on for the joint benefit of both parties.
3. the object should be to make a profit.

Difference between a universal partnership and marriage in Community of property;

In terms of a Universal Partnership, a partner cannot have a direct claim to an asset owned by the other partner. In contrast to a marriage in community of property, the assets or estates are joined together into one estate on equal, undivided shares. In such an example, the marriage is the juristic foundation for joint ownership of everything the spouses jointly own. A Universal Partnership, unlike a marriage in community of property, does not cause the partners to be joint owners of assets. (*Khan v Shaik (641/2019) [2020] ZASCA 108 (21 September 2020)*)

Termination of Universal partnership

In practical terms, a controversy about the existence of a Universal Partnership arises only when it ends, whether by death or by the parting of ways by the partners. Upon termination of the Universal

Partnership, what follows is an accounting to one another; the poorer partner becomes the richer partner's creditor.

Conclusion

As mentioned, it is difficult to prove the existence of a Universal Partnership, especially when there was never a written agreement concluded. If a partner or former partner alleges the existence of such an agreement, he/she must approach a court to prove existence thereof, or he/she may walk away with nothing.

For all your Family Law related enquiries, contact SchoemanLaw Inc

