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Undocumented business: the application of oral contracts and the matter of implied partnerships under US law

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To my family, for their relentless support and unconditioned love throughout the years.

Introduction

The aim of this thesis is to analyze, with particular attention to the American jurisdiction, the matter of all business transactions, deals and agreements that are not memorialized in writing.

More often than not business owners, entrepreneurs but also people in general don't realize that a nod of the head, the shake of a hand, a simple syllable or even just unspoken mutual understanding of something could result in confirmation of a contract and thus legally bind pretty much anyone to pretty much anything.
With millions of deals happening every day, it becomes crucial to gain the knowledge on how to avoid, take advantage or purely being wary of such practice.
Contrary to perhaps popular belief, the advent and development of tools that can provide another form of written certification like emails, blockchain and instant messages services, has not put the oral part of doing business in jeopardy, as a matter of fact, it just added something else to be mindful of.

This paper will consist of three chapters.

In the first, we will see what oral contracts are and the provisions that regulate them.
Moreover, we will briefly discuss their history, what is necessary for them to be binding and look at strategies on how to make them enforceable while overcoming the burden of proof.
A case law example will lead us to the last two subchapters which will be centered around the Statute of Frauds and the Parol Evidence Rule.

Secondly, our focus will be directed towards partnerships, more specifically those in which mere meeting of the minds acts as a partnership agreement.
In this chapter we will therefore explore the main features of implied partnerships, as well as analyzing another case law instance that will highlight some provisions contained in the Uniform Partnership Act.

Last is the matter of corporate loyalty and trust. To be more accurate, it will be examining the element of fairness with regards to the aforementioned partnerships and we will study its application when it comes to fiduciary duty.

1. Overview of verbal contracts

An oral contract is a form of commercial contract in which the terms of the agreement are stated and agreed upon verbally rather than in writing. When there is a violation of an oral contract, it might be difficult to show the terms of the agreement, but this form of contract is legally enforceable.
The validity of oral contracts is typically believed to be equal to that of written contracts, but this is dependent on the jurisdiction and, in many cases, the type of contract. Some forms of contracts, such as employment agreements, must be in writing in order to be deemed legally binding in some jurisdictions. For example, in order to be legally enforceable, a contract involving the conveyance of real estate must be in writing and signed by both parties.

However, in rare situations, an oral contract might be regarded as legally binding, but only if it is supported by a written agreement. This indicates that after the parties have reached an agreement on the parameters of an oral contract, they must put the agreement in writing. We will go more in depth about this matter in the following chapters. Another piece of evidence that may be used to support the enforceability of an oral contract is the testimony of witnesses who were present at the time of the contract's formation. When one or both parties take action in accordance with the contract, this can also be interpreted as proof of the existence of a contract. To further establish the enforceability of an oral contract's terms and conditions in the legal system, letters, memoranda, bills, receipts, emails, and faxes can all be used as proof. The common misconception that oral contracts are nothing but hearsay is widely misleading.
The way we do business is inextricably connected to the spoken and unwritten part that goes with it: mergers, partnerships and deals in general are closed daily with a handshake or a “so it’s agreed!” over the phone, their importance and

relevance are not at risk, making it crucial for all to understand the significance of this practice.

1.1 History of oral agreements

The most interesting and relevant application of oral agreements in ancient history is dated back to the Roman empire.
The verbal contract, according to Roman law, was an enforceable contract of duties that resulted from the contracting parties declaring themselves verbally in a specific formal act. [1]

Stipulation, the earliest and most prevalent debt contract of the *ius civile*, recognized since the Twelve Tables Act, was the principal application of the verbal contract. In legal historical study, it is thought that spoken contracts are derived from an already old augural tradition. The participants, who had to be Roman citizens, agreed on a performance commitment in the form of a question and answer (*conventio*). Unilateral legal transactions, such as gift commitments, guarantee agreements, or loan giving, as well as novations under the law of obligations, might be included in this performance promise. [2]

Verbal contracts covered reciprocal legal interactions such as purchases and legal transactions outside of the type constraint before the later consensual contracts came into effect. Mutual responsibilities, such as the purchase contract, were rendered subordinate by two formal actions since the stipulation was a completely unilateral legal transaction. The processing phases were separated: the first step included "goods manipulation (service type)". Payment was subsequently made by undertaking an equally formal procedure known as the "price stipulation (kind of consideration)". The joint business, the purchase

[1] Borkowski, Andrew, and Paul du Plessis. "Roman law." (2005). pp. 290-297
[2] Watson, Alan. *The spirit of Roman law*. Vol. 1. University of Georgia Press, 1995. p. 26

contract, came about since both sections of the business were connected to each other. The transaction was conducted in a question-and-answer format: "Do you promise?", " I promise."

For the sake of assurance, verbal contracts were also agreed upon. Because the obligation in favor of other parties was founded on a causal transaction by the principal debtor, which was justified by agreement, the guarantee (*sponsio*) was supplementary. The obligee questioned the surety whether he promised the same thing as the debtor (*Idem quod... promisit spondesne?*), which the surety, who was the same as the obligee of the secured contract, acknowledged with "*spondeo*" (I promise). [3]

The *dictio dotis*, a whole pledge (fiduciary transfer of the woman's property and dowry administration), was another verbal contract that, like the stipulation, did not contain an answer to the creditor's prior inquiry. The receiver made no statement, but he nevertheless tied himself. "*Dotis filiae meae tibi erunt sestertium milia centum*", said the promising individual (which would translate into "you should receive 100,000 sesterces as a dowry for my daughter"). [4]

The formal act of oath duties of freedmen to satisfy their guardian (*patronus*) with services was similarly one-sided (*promissio operarum*).

In verbal contracts, the objections were perfectly lawful. Enrichment law claims may be pursued, and there was also a kind of action known as *actio ex*

[3] Ibid., pp. 22-24
[4] Watson, Alan. "The Form and Nature of 'Acceptilatio' in Classical Roman Law." (1961). 391

stipulatio. Because the jury was not granted any discretion, the parties had to write the content of their contract thoroughly and precisely in order for the action to not be dismissed. This was also the reason for a legal development in ancient law, that of stipulation. There was just enough area left to fill in the gaps that other sorts of contracts, such as contract reforms, couldn't cover. The necessity for contract protection eventually led to the abandoning of the verbal contract system, which was more than just an annex institution. The *a priori* specification of an enforceable performance formula had hampered legal transactions substantially. [5]

1.2 Requirements for a verbal contract to be binding

Verbal agreements between two parties are just as legally binding as written agreements between two parties. They are treated in the same way as written contracts in that they must fulfill the conditions of a legal contract in order to be enforced in a court of law. If the agreement satisfies certain conditions, both verbal and written agreements are legally binding in the same jurisdiction. [6]

The procedure of enforcing a verbal contract, on the other hand, is somewhat different. If the parties to the agreement do not have a written agreement in which they determine their respective rights and duties, enforcing a verbal contract might be more difficult to do. [7]
Just like any other contract, written or not, for an oral contract to be legally binding the latter has to meet the six contractual elements:

• Offer and acceptance;

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[5] Watson, Alan. *Roman law & comparative law*. University of Georgia Press, 1991. pp. 53-57
[6] Gilkis Blokhina, Krystyna. *Contracts elements and governing laws.* Cornell Law School, July 2019.
[7] Neal, Stephen, et al. "Identifying requirements for business contract language: a monitoring perspective." *Seventh IEEE International Enterprise Distributed Object Computing Conference, 2003. Proceedings.*. IEEE, 2003.

- Lawful purpose;
- Lawful consideration;
- Certainty and completeness of terms;
- Free consent of the parties;
- Capacity. [8]

The first of these elements is the concept of an "offer." When a party proposes conditions of an agreement to another party, this is referred to as making an offer. Conditions of the offer must be sufficiently obvious that a reasonably minded individual may comprehend them and be expected to abide by their conditions.

Occasionally, the individual who is receiving an offer will respond with a counter-offer that they have made. They are regarded to have made a "counter-offer" if they did not accept the conditions of the first offer, but instead proposed new or significantly modified terms instead.

The offer, as well as any counter-offer, must be accepted at this point. Acceptance happens when a party accepts to be bound by the conditions of the offer and agrees to comply with them. Acceptance of a verbal contract may be as easy as stating anything along the lines of “You have my agreement”, “I accept your offer”, “Sounds excellent, you've got yourself a deal”.

Many verbal agreements are frequently acknowledged by the shaking of hands, which serves as an indication that a bargain has been reached between the parties. Even if the handshake is not a magic formula for acceptance of an offer, it is a strong indication that the parties want to be bound by the terms of the agreement.

Then, it is important that the object of the contract is lawfully valid. If the purpose of the contract is to conduct illegal activity in any form, that makes the

[8] Eynon, Tony. "*Oral Contract Dispute*." LawTeacher. LawTeacher.net, November 2013. Web.

entire agreement void. For instance, one can verbally commit to donating a certain sum to a charity however they cannot agree to loan money that will go on to be used to carry out unlawful behaviour of any kind.

Consideration, *quid pro quo*, an important legal word of art, which signifies that both parties must give something up in return for the contract to be valid. The most often encountered consideration in contracts is money in exchange for goods or services. If just one party is making a monetary contribution, the agreement is more likely to be a gift than a legally binding commitment. A gift does not qualify as a legal contract since it does not confer rights on either party and impose responsibilities on the other party.

Certainty and completeness of the terms means that the contract's terms and conditions cannot be unclear, insufficient, vague or misleading. To put it another way, there should be agreement on the identity of the parties to the contract, the duties of each party, the amount to be paid, and the subject matter of the contract before it can be executed.

Another element is that of free consent. The parties, assuming that they are both of sound mind, should voluntarily accede to the terms of the agreement, which means that they should not be subjected to disproportionate pressure, coercion, duress, or distortion of facts. [9]

Lastly is capacity, meaning that both parties must be above the age of majority and have to be of sound mind in the moment of entering into the agreement. This also implies that they cannot be under the influence of mind-altering substances and that both are not ill, mentally incapable or unable to freely judge

[9] MacMillan, Catharine, and Richard Stone. *Elements of the law of contract*. London: University of London, The External Programme, 2004. pp. 17-57

the terms of the agreement.

If all of these conditions are sustained, the agreement is deemed legally valid, should be treated like any other contract and if controversies arise, it is ready to be tried in a court of law. Of course an oral contract can be more easily breached, so we will now first see what it generally means to breach a contract and then focus on how to prove them and make them enforceable. [10]

1.2.1 Breach of contract

Contractual breach is a legal action and a sort of civil wrong that occurs when one or more of the parties to a legally binding agreement or bargained-for exchange fail to fulfill that agreement or bargained-for exchange by non-performance or interference with the other party's performance. An agreement, written or oral, is broken when one or more of the party's obligations, whether partially or entirely, are not met as specified in the contract, or when the party expresses an intent to fail the obligation, or when the party otherwise appears unable or unwilling to perform its obligations under the agreement. The party who breaches the contract will be responsible for compensating the aggrieved party with the damages that come from the violation. [11]

If a contract is retracted, the parties are legally permitted to reverse the work, unless doing so will result in the other party being directly charged at the time of the rescinding. [12]

[10] Kloss, D. Justin. “Oral contractual elements.” *Kloss Stenger & Gormley J*. April 2020. Web.
[11] Farnsworth, E. Allan. "Legal remedies for breach of contract." *Columbia Law Review* 70.7 (1970): 1145-1216.
[12] Burton, Steven J. "Breach of contract and the common law duty to perform in good faith." *Harvard Law Review* (1980): 369-404.

A court must scrutinize the contract in order to decide whether or not it has been broken by either party. In order to do so, they must look into the following: the existence of a contract, the requirements of the contract, and whether or not any amendments have been made to the agreement. Only after that will the court be able to make a decision on the presence and categorization of a violation. Additionally, in order for a contract to be deemed breached and for the judge to rule that the contract was worthy of a breach, the plaintiff must establish that there was a breach in the first place and that the plaintiff fulfilled its obligations under the contract by completing all of the requirements. Additionally, prior to bringing a case, the plaintiff must notify the defendant of the violation in the contract. [13]

1.3 Enforcing an oral contract and overcoming the burden of proof

While both oral and written contracts are valid, verbal contracts are frequently more difficult to enforce. To enforce a contract, the court must be aware of and comprehend the agreement's fundamental provisions.
Too frequently in verbal contract circumstances, the evidence becomes a "he said, she said" situation, making it impossible to determine what exactly was agreed upon between the contracting parties. Typically, the parties cannot agree on the contract's terms or on how they should be read.
This is not to say that an oral agreement cannot be enforced. With the assistance of an expert attorney and proper knowledge, you can establish the terms of the contract and establish that the contract was broken.

Proving the terms of a verbal contract frequently involves a combination of

[13] Shavell, Steven. "Damage measures for breach of contract." *The Bell Journal of Economics* (1980): 466-490.

witness evidence from the contract's parties and facts about their conduct before and after the agreement was stipulated. [14]

While the parties' evidence usually devolves into hearsay disputes, any discrepancies in one side's account of events are frequently indicative of either lack of credibility or unreliability. This might demonstrate that the agreement was not executed in the manner they claim.

However, the parties' behaviour prior to and during the challenged contract is frequently more revealing and dependable.

For instance, if one side compensates the other, this is significant proof that there was some type of agreement. If a service or products were delivered in conjunction with this payment, the fundamental terms of the oral contract become evident.

Additional written documentation may also be beneficial. While the initial contract may not have been converted to paper, subsequent bills, emails, letters, or even text messages may serve as indirect evidence of the oral agreement. For instance, a text message simply inquiring "when are the items going to be delivered?" shows that at least one side believes there was an agreement and that the delivery date has become a point of contention.

At times, witnesses may be asked to testify as eyewitnesses. Witnesses are frequently the contracting parties, however they may occasionally be third parties present at the moment the agreement was signed. Additionally, testimony can be acquired from those who were indirectly or even unintentionally a part of the agreement, such as the workers of one of the oral contract's parties. These individuals can testify as to what they understood the agreement to be based on how their work responsibilities changed before, during, and following the oral agreement.

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[14] Stein, Steven GM, and Joel J. Rhiner. "Enforcing Letters of Intent and Handshake Agreements." *Constr. Law.* 20 (2000): 37.

As you can see, identifying the nature of an oral agreement requires some effort. Proving the contract's specifics sometimes requires a great deal of indirect or even circumstantial evidence from a variety of different sources. [15]

All this taken in consideration, the first step is to establish the existence of a contract, which is done through the verification of the presence of at least the fundamental three of the six elements of the contract we've seen above.
The offer, a promise to do something: let's say for example that Chris cleans pools and one day knocks on someones' front door offering his services for which he charges 400$. Then there's the acceptance, namely the fact that mutuality and agreement is present at the time of the contract, in our scenario the homeowner say Mrs. Cosgrave accepts to employ Chris; this can be done in a variety of ways and isn't limited to explicitly saying "I accept" or shaking his hand, and as a matter of fact it can also include a counter offer from the receiver after which it will be Chris' prerogative to accept the new offer. Consideration is next, the token of exchange for the promise of the offered good or service, in our example the entity of value that is being exchanged is money for a service: if Chris offered his talents without any form of compensation, that would have constituted a gift and therefore one of the key elements of contracts would have been missing, making the whole agreement void.
Once all the fundamental elements are in place, comes the part of gathering any useful piece of evidence that can be utilized to make the case in the event that controversies arise.
Enforcing oral contracts can be particularly challenging due to the absence of physical proof to establish their existence. As a result, understanding the background of the case will be critical when it comes time to enforce a contract informally (through talks, mediation, or arbitration) or legally (via a lawsuit).

[15] Swain, Vanessa. *Enforceability of oral agreements*. Legalvision Review. December 2018. Web.

The specifics of the case will ultimately determine the agreement's parameters. Therefore, before initiating any enforcement action, it is helpful to draft a thorough narrative outlining the agreement and its conditions. [16]

One of the most effective methods of establishing the existence of an oral agreement is through witnesses who can attest to the narrative. If anyone was there when the agreement was formed, whether they were observing, listening, or even participating in the transaction, soliciting their assistance would go a long way to making one's case. They should be informed of the fact that an agreement is being enforced and requested to create a narrative of what they saw, heard, and thought.

Chris perhaps had someone with him when he offered to clean Mrs. Cosgrave's pool or maybe a neighbor saw them shaking hands in agreement and can be asked to testify on his behalf.

Another way to prove the agreement is to find any somewhat related document and correspondence that can certify not only its existence but also its implementation.

For example Chris might have sent Mrs. Cosgrave a text asking what time was best to clean the pool or she possibly sent an email to him with the details on how she wanted the job to be done or how he preferred to be paid.

Another form of evidence is proof that the performance has been made and the service wholly or partly delivered.

For instance, if Mrs. Cosgrave has already given Chris the 400$, he can use this as evidence from the bank statements that an agreement was made. In another example, Chris may have already bought the supplies for cleaning the pool, he could use those receipts to help make his case.

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[16] *Salomon v. McRae*, 47 P. 409, 9 Colo. App. 23 (1896).

After all evidence is successfully gathered, the case is ready for confrontation with the other party or, in the event that controversies are inevitable, a lawsuit is set to be filed and eventually the case can be tried in a court of law. [17]

1.3.1 Case law: cases in which verbal agreements have been carried out

The case in question is Christie v. ESTATE OF CHRISTIE, Minn: Court of Appeals 2015. [18]
Dilman Christie's adult sons James and Charles Christie were farmers. James had money problems in 2004. His obligations included an agricultural loan. After weighing his choices, James Christie sold five farm parcels to his parents, Dilman and Dorothy. Dilman and Dorothy bought the property using a $598,565 loan from AgStar Financial Services (AgStar) to pay off James' debts. James only got a loan payment on the property. As part of the AgStar mortgage settlement, James alleges he was promised the property back by Dilman. James claims Dorothy, who was not present, consented to it.

In 2004, James leased most of his parents' farm. In 2005, he rented the tillable acres for $56,875 annually. After a few years, James began subletting the home for more than the contract stipulated. It was verbally renewed in 2011 and 2012. James' lease payments financed AgStar's mortgage.
James started paying AgStar directly on his parents' mortgage in 2007, in addition to his leasing payments. James did so by cashing checks made out to him or directly to AgStar. Paying $184,297 down the mortgage. But no written agreement exists to explain why James paid more on his parents' mortgage.

[17] Pierce, Brady. "Contract Law Govern the Recruitment Process and Enable Enforcement of Verbal Commitments." *JL Bus. & Ethics* 24 (2018): 127.
[18] *Christie v. ESTATE OF CHRISTIE*, No. A14-2196 (Mich. Ct. App. Oct. 5, 2015).

James asked his attorney to prepare quitclaim paperwork for his parents. Although Dilman was unable to contract, he and Dorothy signed the documents. The mortgage was not paid off when these deeds were signed. However, in May 2012, James' lawyer paid the whole $299,992 mortgage. James believes the property should have been returned to him at that time as per their oral agreement.

Dilman died in 2012. He left his belongings to Dorothy in his will. It was said that James should have received the property in May 2012 when the AgStar mortgage was paid off and that the quitclaim paperwork demonstrated the oral agreement existed. Dilman's estate sued to cancel the quitclaims, invalidate any oral agreements, and limit James' rights.

Dorothy died in 2014. James sued her estate. Dilman and James had no spoken agreement, Dorothy testified before her death that she had no oral agreement with James.

Respondents sought for JMOL[19] regarding the legality of the April 2012 quitclaim deeds to James. The district court declared the quitclaim deeds void.

Respondents then contended James' claims were barred by the frauds law. It declined. After respondents rested, the district court reconsidered granting JMOL on two grounds.

First, the district court decided in a written ruling that James and his parents had not reached an oral agreement or a meeting of the minds.

Likewise, the district court granted JMOL after determining that the statute of frauds barred enforcement of any possible oral agreement. [20]

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[19] United States Legal Information Institute. *Rule 50. Judgment as a Matter of Law in a Jury Trial; Related Motion for a New Trial; Conditional Ruling*. Cornell Law School. August 2007. Web.

[20] *Christie v. ESTATE OF CHRISTIE*, No. A14-2196 (Mich. Ct. App. Oct. 5, 2015).

James now disputes the JMOL based on the lack of an oral agreement and the fraud law. He believes that the evidence could allow a reasonable jury to determine that his parents had an oral agreement to re-convey the property to him.

Moving onto the decision, it came to light that a fair jury may conclude that James sold his parents' home for roughly half of its market worth and subsequently paid off the loan they took out to finalize the deal is proof of the existence of an oral agreement.

When considered in the most advantageous light for James, the record is adequate to sustain a finding of such an agreement, and we therefore infer that the court erred in granting JMOL and removing that matter from the jury's consideration.

In general, the district court decides whether a party relies on an oral agreement in a detrimental way. [21]

The trial court conceded JMOL on the detrimental-reliance element of the statute-of-frauds issue, stating that "no evidence, nor any allegation, that James would suffer unjust and irreparable injury". The evidence, however, shows that James argued he would be injured unjustly and irrevocably if the statute of frauds prevented precise performance of the purported oral contract.

In fact, detrimental reliance on an oral agreement might remove it from the statute of frauds, even against non-parties.

Concluding, the court must overturn[22] the JMOL on the issue of the statute of frauds because the district court appears to have misunderstood James's argument, as well as awarding James an initial $484,270.92 in damages and remanding the case.

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[21] *Morrisette v. Harrison Intern. Corp.*, 486 N.W.2d 424 (Minn. 1992).
[22] *Alpha Real Estate v. Delta Dental*, 664 N.W.2d 303 (Minn. 2003).

It is astonishing to see how such an apparently inaccessible case was ultimately overturned from its initial judgement. The oral agreement in question was enforced not only despite it being relevant to purchase-sale activity involving real estate, but also notwithstanding the fact that James acted as a loan officer in this situation, all behaviours that, if not documented in writing, are strictly prohibited under the Statute of Frauds, which we'll see shortly.
The far safest option, nay, granting a judgement as a matter of law (JMOL), has been discarded in favor of enforcing an agreement that had all general requirements to be, even though common evidence didn't initially support it.

1.4 The Statute of Frauds and other factors that can prevent a verbal agreement to be enforceable

The Act for Prevention of Frauds and Perjuries, approved by the English Parliament in 1677, is the foundation of the fraud legislation. The regulation, which required a written contract for transactions involving a substantial sum of money, was designed to avoid some of the misunderstandings and fraud that may arise when depending on oral negotiations.
Indeed, there was a scarcity of written evidence in the English judicial system at the time. The courts were overburdened with lawsuits, and cases were frequently resolved by paying professional witnesses to testify. Perjury and corruption were commonplace.

The 1677 Act was used by the founders to assist and determine how business transactions and disputes should be handled in the new world as they formed the US government. [23] The founders felt, like their 17th-century British forefathers,

[23] Costigan Jr., George P.. *The Date and Authorship of the Statute of Frauds*. Harvard Law Review , Feb., 1913, Vol. 26, No. 4 (Feb., 1913), pp. 329-346

that written and signed contracts reduced uncertainty by giving a clear record of the arrangement. This decreased the likelihood of future litigation and made it easier to resolve such claims when they arose.

It is known as the Statute of Frauds[24] the requirement that certain types of transactions be documented in writing, signed by the person who will be prosecuted, and with sufficient material to serve as proof of the contract.
There are various circumstances in which the Statute of Frauds comes into play and makes it mandatory that the following contract be documented: [25]

• Contracts related to marriage, including prenuptial agreements and any sort of promise or gift (e.g. engagement rings);

• A contract that, according to its terms, is not to be fulfilled within a year of the date of its execution. It is important to note, however, that contracts without a set duration and an indefinite time of performance do not fall under this provision, regardless of the amount of time that's needed to carry out the achievement;

• Conveyances for the transfer of a vested interest in real estate. This provision applies not just to a contract for the sale of property, but also to any other transaction in which land or an interest in it is disposed of, such as the issuance of a mortgage or the grant of a deed of restriction;

• Contracts by which the executor makes a promise to settle the estate's debts out of his or her own personal finances. It should be noted, nevertheless, that pledges to pay such obligation from the estate's finances are not subordinate to

[24] Lorenzen, Ernest G. "Statute of Frauds and the Conflicts of Laws." *Yale LJ* 32 (1922): 311.
[25] Chen, James. *Law & regulations: the Statute of Frauds*. Investopedia. March 2021. Web.

the Statute of Frauds.

• Agreements that involve the sale of goods totalling an amount of exceeding 500$. This provision is regulated by the Uniform Commercial Code (UCC) which is reliant and heavily depends on the (1) Admission (under oath) of the existence of a contract which then exists only in the quantities stated when admitted, the (2) Merchant confirmation rule and the (3) goods that were purposely manufactured for the sole use of the buyer upon their explicit request;

• Contracts in which one of the two parties acts as a surety, meaning that they assume responsibility to pay off another person's debts or obligations.

As happens, there are many exceptions to the Statute of Frauds and oral contracts may be enforced in some cases even if they are not compliant to the latter. [26]

A demonstration of partial performance may also influence a Statute of Frauds defense by establishing the existence of one of two distinct criteria. If the parties have acted in good faith, the court concluded that partial performance does not exclude an executory component of a contract from the statute of frauds. Each performance creates a contract that is not subject to the Statute of Frauds and is thus enforceable to the degree that it is carried out. However, the contract's unexecuted section is invalid under the Statute of Frauds. As a result, only the portion of the contract that has been performed may be recovered, and the theory of partial performance does not absolve the contract of its statutory status.

[26] Gegan, Bernard E. "Some Exceptions to the Suretyship Statute of Frauds: A Tale of Two Courts." . *John's L. Rev.* 79 (2005): 319.

When the charging party relies on an otherwise unenforceable contract in a negative way, promissory estoppel [27] can be used in many, but not all, jurisdictions. The situations in which promissory estoppel can be utilized to get around a legislation in England and Wales are restricted, and some jurisdictions outright prohibit it, but it remains a possibility regardless.

The "main purpose rule" [28] applies to guarantee or suretyship contracts: if the pledge to answer for another's obligation is made primarily for the promisor's own economic benefit, it is a major promise that is enforceable even if it is not written.

1.5 Integration of both verbal and written contract: the Parol evidence rule

The term "parol evidence," when used in the context of contracts, deeds, wills, or other writings, refers to supplementary evidence such as an oral agreement (a parol contract), or even a formal contract, that is not contained in the relevant written document. Parol evidence is a principle that protects the integrity of written documents or agreements by banning the parties from trying to change the meaning of a written document by introducing prior and contemporaneous oral or written statements that are not mentioned in the document. The rule is based on the principle of precedent.
Before the final contract is signed, it is standard practice to propose, debate, and negotiate the terms of the contract. When the parties to the talks put their agreement in writing and recognize that the statement constitutes the entire and exclusive declaration of their agreement, they have successfully incorporated the contract into their negotiations. If the parties enter into an integrated

[27] Summers, Lionel Morgan. "The Doctrine of Estoppel Applied to the Statute of Frauds." *University of Pennsylvania Law Review and American Law Register* 79.4 (1931): 440-464.
[28] Webster, Merriam. “Main purpose rule.” *Merriam-Webster.com Legal Dictionary*, September 2020. Web.

contract, the parol evidence rule applies, which states that when they put their agreement in writing, all earlier and contemporaneous oral arrangements are merged into the writing. [29] Integral contracts may not be modified, altered, amended, or changed in any manner by earlier or contemporaneous agreements that conflict with the provisions of the written agreement, as long as the contents of the written agreement remain in effect.

The rule of parol evidence applies to written contracts in order to protect the provisions of the contract from being violated. By using the parol evidence rule, the courts presume that contracts have the terms and provisions that the parties explicitly intended and that they do not contain the terms and conditions that the parties did not desire. [30]

In some cases, the parol evidence rule isn't applicable to written integrated contracts that are prepared in a formalized manner. It is possible, for example, that clerical errors in the written agreement will be corrected since the erroneous word does not accurately represent the actual agreement between the parties. In addition, courts will not use the parol evidence rule to exclude contrary evidence that demonstrates that the agreement was entered into under duress, error, fraud, or undue influence from being considered. Furthermore, the parol evidence rule will not prohibit evidence from being included that demonstrates the existence of a distinct agreement between the parties. [31]

Additionally, the law of sales encompasses various oral contracts to which the rule of parol evidence may be used in certain circumstances. The court may, however, consider contemporaneous or earlier agreements in the context of sales, not to dispute a written agreement, but rather to clarify or complement it. If the evidence is based on the parties' course of dealing, use of trade, course of behavior, or proof of consistent additional conditions, the court may consider it.

[29] Corbin, Arthur L. "The Parol Evidence Rule." *Yale IJ* 53 (1943): 603.
[30] Thayer, James B. "Parol Evidence Rule." *Harv. L. Rev.* 6 (1892): 325.
[31] Daniel, Juanda Lowder. "KISS the Parol Evidence Goodbye: Simplifying the Concept of Protecting the Parties' Written Agreement." *Syracuse L. Rev.* 57 (2006): 227.

In a case when two parties have a history of working together and entering into multiple contracts with one another, the court may turn to that history to explain or interpret their written language. The term "use of trade" refers to situations in which the parties are engaged in a certain market area that has established means of conducting business. In order to understand a written or oral agreement, the courts might look at the procedures that have been established and approved within the business. This term refers to the acts taken by each party when carrying out a certain contract, such as when one party accepts without protest the ongoing performance of the other party under certain circumstances. Also allowed is for a court to examine supplementary consistent evidence that would ordinarily not be in the written agreement so long as it does not conflict with the original agreement's provisions. [32]

2. Meeting of the minds with respect to partnerships: an overview

A partnership [33] is a legally binding agreement between two or more people to manage and run a business and share profits. [34]

Partnerships come in a variety of shapes and sizes. In a partnership firm, for example, all partners share equal liability and earnings, but in other businesses, partners may have restricted liability.

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[32] Palmer, George E. "Reformation and the Parol Evidence Rule." *Mich. L. Rev.* 65 (1966): 833.
[33] National Conference of Commissioners of Uniform State Laws. *"Uniform Partnership Act (1997)"* Art.1 (General Provisions), Sec. 102 (Definitions), § 11. American Bar Association. Last Amended 2013.
[34] Farrell, Joseph, and Suzanne Scotchmer. "Partnerships." *The Quarterly Journal of Economics* 103.2 (1988): 279-297.

In a wider sense, a partnership can be any collaborative venture between two or more parties. Governments, non-profit organizations, companies, and private people may be involved. A partnership's objectives might also differ greatly. There are three primary types of partnerships in the restricted sense of a for-profit enterprise conducted by two or more individuals: general partnership, limited partnership, and limited liability partnership. [35]
In a general partnership, all participants are equally liable in terms of legal and financial obligations. Individuals are individually liable for the debts that the partnership incurs. Profits are distributed evenly as well. Profit sharing details will almost probably be spelled out in writing in a partnership agreement. [36]
Limited liability partnerships are a popular business form for example for accountants, attorneys, and architects. This arrangement restricts the personal responsibility of partners so that, for example, if one partner is sued for malpractice, the assets of the other partners are not jeopardized. Equity partners and paid partners are two types of partners in certain legal and accountancy companies. The latter is more senior than associates, yet he or she does not own anything. They are usually compensated with incentives based on the company's profitability. [37]

Limited partnerships are a cross between general and limited liability companies. A general partner is a partner who has complete personal accountability for the partnership's obligations. Another person is a silent partner, whose liability is restricted to the amount invested. This silent partner is

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[35] Ibid.
National Conference of Commissioners of Uniform State Laws. *"Uniform Partnership Act (1997)"* Art. 2 (Nature of Partnership), Sec. 202 (Formation of Partnership). American Bar Association. Last Amended 2013.
[36] National Conference of Commissioners of Uniform State Laws. *"Uniform Partnership Act (1997)"* Art.1 (General Provisions), Sec. 102 (Definitions), § 12. American Bar Association. Last Amended 2013.
[37] National Conference of Commissioners of Uniform State Laws. *"Uniform Partnership Act (1997)"* Art. 4 (Relations of Partners to Each Other and to Partnership), Sec. 403 (Form of Contribution). American Bar Association. Last Amended 2013.

usually not involved in the partnership's management or day-to-day operations. [38]

Finally, the oddly titled limited liability limited partnership is a very new and unusual kind. This is a limited partnership that protects its general partners from responsibility to a higher extent. [39] [40]

2.1 Implied partnerships characteristics

A partnership connection can develop without the need for formal documentation. There are no meetings required, no paperwork to be signed, no certifications to be filed, and no money to be paid. People can, in fact, become partners without even recognizing they are doing so. Two parties become partners when they agree to carry on as co-owners of a business for profit as per the Uniform Partnership Act of 1914, Section 6 (1). [41]

It is possible that the agreement is only implicit. People may become partners as a result of a handshake, a nod of the head, or a sequence of conduct. Despite the fact that the connection is consensual in nature, the inability of the associates to refer to themselves as partners or to consider themselves to be members of a partnership is immaterial. In the event that they share in the profits, losses and control of a firm, they are considered partners under the law, and they are subject to the rights and obligations that arise from that status, whether they want to be or don't want to be. [42]

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[38] Klein, A. William, Coffee Jr., C. John, Partnoy, Frank. *Business Organization and Finance. Legal and Economic Principles*. 11th Edition. (2010). p. 63

[39] Nelson, Nikki. *Compare types of partnerships: LP, LLP, GP*. Wolters Kluwer J. August 2020. Web.

[40] National Conference of Commissioners of Uniform State Laws. *“Uniform Partnership Act (1997)”* Art.9 (Limited Liability Partnerships), Sec. 901 (Statement of Qualification). American Bar Association. Last Amended 2013.

[41] National Conference of Commissioners of Uniform State Laws. *“Uniform Partnership Act (1997)”* American Bar Association. 1997.

[42] Harrison, Debbie. "Is a long-term business relationship an implied contract? Two views of relationship disengagement." *Journal of Management studies* 41.1 (2004): 107-125.

Assume that two persons agree to form a company partnership and share ownership, profits, and losses. Assume they don't put anything in writing; instead, they just shake hands to show that they've reached an understanding. They will almost certainly have spent a significant amount of time debating the nature and functioning of the firm, but they will have given little thought to the many disputes and difficulties that may develop in their new partnership.

In instances like these, there is a body of legal theory found in the Uniform Partnership Act (UPA) and judicial judgments that resolves many of those disputes and issues and acts as an implicit standard-form partnership agreement. In many cases, the rules provided by the UPA are perfectly appropriate; it would not be worth the time and money to create custom regulations to meet the demands of any particular organization. The truth remains, however, that the UPA's standard-form norms can create unfavorable outcomes—outcomes that the partners would have avoided if they had given it any thought. [43]

If one partner wishes to leave, for example, in the absence of an agreement to the contrary, he or she might demand that the other partner either acquire his or her shares or liquidate the firm, either through sale of the business to a third party altogether or through termination of the business with sale of each single asset. In some cases, a firm may not be easily sold to a third party at a reasonable price and may have significant value as a going concern which would be lost if assets were sold.
Simultaneously, the partner who wants to stay may not be able to gather sufficient money to buy out the partner who wants to go. In most cases, the parties will be able to negotiate a mutually agreeable agreement, such as distributing the compensation to the withdrawing partner over a period of years,

[43] Klein, A. William, Coffee Jr., C. John, Partnoy, Frank. *Business Organization and Finance. Legal and Economic Principles*. 11th Edition. (2010). p. 63

in many installments. [44]

However, a peaceful agreement is not always feasible. Hostility, resentment and self-righteousness, as well as simple divergences of perspective, may all play a role in the situation. In retrospect, it may appear naive, or at the very least unfortunate, that the partners failed to devise and agree on a rule other than the one found in the UPA at the outset, for instance, a provision providing a method for calculating the payable sum to the seceding partner and specifically allowing the amount to be paid in installments over a reasonable period of time.

Nevertheless, as suggested earlier, the parties may - quite reasonably - think that tailoring the terms of their agreement to their own unique needs and circumstances is not worth the effort, given the large number of issues that could occur and the distance in time or unlikelihood of many or most of them taking place. Worried of disclosing a lack of faith in the venture or the people involved, a person may avoid raising potential issues. [45]

To the degree that they are discouraged by costs or other factors, partners (and persons entering into other business arrangements) should, of course, face the potential of outcomes that differ from those they would have chosen if they had been compelled to deal with all important difficulties at the beginning. Simultaneously, representatives and judges may be forced to choose between various types of standard rules, these are rules that attempt to produce the results that specific disputants would have chosen if they had faced the issue, rules that usual disputing parties would have chosen, or provisions that compel people to challenge and fix potential issues. [46]

[44] Ibid.

[45] Ibid. p. 64

[46] Hall, J. Thomas. *Implied Partnerships and the Importance of Shared Losses*. New York Law Journal. February 2018. Web.

2.2 UPA and RUPA regulations

The UPA was initially drafted in 1914, although it has been revised several times since then. It's also been tweaked and improved. The 1994 version was dubbed the Revised Uniform Partnership Act (RUPA), which has generated some confusion due to subsequent revisions in 1996 and 1997. As a result, the years of enactment are used to denote all modifications. The Act has been approved in some form in 37 states across the United States. [47]
It also establishes guidelines for the administration of partnership dissolutions in the event that one of the partners decides to depart the company. It's also known as a uniform act, and it works similarly to a legislation.

Since its introduction in 1914 by the National Conference of Commissions on Uniform State Laws, the legislation has been amended several times. Except for Louisiana, which has a history of enacting its own laws, it was accepted by all states. All states except Louisiana approved the Uniform Partnership Act of 1997, which is a more contemporary version. [48]

Furthermore, it establishes a partnership as a separate legal body, rather than just a collection of partners. The Harmonization of Business Entity Acts brought the most current revisions in 2011 and 2013. These revisions align the wording of the UPA (1997) with other provisions of other uniform acts while also providing further updates to bring the law up to date. The UPA's main goal is to foster informal and small collaborations.
On this topic, as the aforementioned section 6 (1) states:

"*(a) Except as otherwise provided in subsection (b), the association of two or more persons*

[47] Kenton, Will. *Law & Regulations: Uniform Partnerships Act (UPA)*. Investopedia. May 2020. Web.
[48] Ibid.

to carry on as co-owners a business for profit forms a partnership, whether or not the persons intend to form a partnership. (b) An association formed under a statute other than this [act], a predecessor statute, or a comparable statute of another jurisdiction is not a partnership under this [act]. (c) In determining whether a partnership is formed, the following rules apply: (1) Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not by itself establish a partnership, even if the co-owners share profits made by the use of the property. (2) The sharing of gross returns does not by itself establish a partnership, even if the persons sharing them have a joint or common right or interest in property from which the returns are derived. (3) A person who receives a share of the profits of a business is presumed to be a partner in the business, unless the profits were received in payment: (A) of a debt by installments or otherwise; 62 (B) for services as an independent contractor or of wages or other compensation to an employee; (C) of rent; (D) of an annuity or other retirement or health benefit to a deceased or retired partner or a beneficiary, representative, or designee of a deceased or retired partner; (E) of interest or other charge on a loan, even if the amount of payment varies with the profits of the business, including a direct or indirect present or future ownership of the collateral, or rights to income, proceeds, or increase in value derived from the collateral; or (F) for the sale of the goodwill of a business or other property by installments or otherwise." [49]

The inclusion of the sentence "whether or not the persons intend to form a partnership" simply codifies the universal judicial interpretation of infamous UPA (1914) 6 (1), according to which a partnership is formed by two or more persons whose purpose is to carry on a business for profit as co-owners, notwithstanding of their subjective intention to be "partners." Indeed, despite their stated subjective determination not to, people may accidentally form a relationship. Section 202's wording warns readers of this potential.

The RUPA (which stands for Revised Uniform Partnership Act, namely the 1997 updated version of the UPA) is a law that specifies how partnerships

[49] National Conference of Commissioners of Uniform State Laws. *"Uniform Partnership Act (1997)"* Sec. 6 (1). American Bar Association. 1997.

should be established and formed, as well as the rights and obligations of all partners. Almost every state has also ratified it. By making the partnership agreement the dominant authority over all the partners, the RUPA provides participants greater freedom in judging how a partnership functions than the UPA. [50]

The RUPA permits default rules for elements that are not mentioned in a partnership agreement. General partnerships and Limited Liability Partnerships (LLPs) are covered by RUPA, while limited partnerships are not (LPs). Because LPs are not considered real partnerships under the RUPA, they are not subject to the RUPA's rules. The RUPA also made a number of adjustments to the previous partnership rules.

It also developed a concept known as partner dissociation, which allows parties to leave a relationship without prompting the partnership to dissolve. A partnership agreement (as opposed to a partnership legislation) defines the obligations and rights of partners, according to RUPA.

The UPA and RUPA remain essential tools regulating the laws and provisions that are necessary to strictly live by when forming a partnership, being wary of subtle tacit agreements is crucial to not get tied to a business there is no actual material interest in. [51]

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[50] Weidner, Donald J., and John W. Larson. "The Revised Uniform Partnership Act: The Reporters' Overview." *The Business Lawyer* (1993): 1-44.
[51] Crane, Judson A. "The Uniform Partnership Act: A Criticism." *Harvard Law Review* 28.8 (1915): 762-789.

2.3 Case law example of breach of implied partnership

The case in question is Deere v. Ingram, 198 SW 3d 96 - Texas Court of Appeals, 5th Dist. 2006. [52]

Ingram and Deere had been friends for many years before 1997, they even shared some patients. In December 1997, Deere agreed to be the medical director of a new pain treatment clinic. Ingram couldn't run the pain treatment clinic without a doctor and Deere is a licensed physician.

According to the oral agreement, Deere was to get one-third of the income, Ingram one-third, and the remaining one-third to cover expenditures. Ingram, though, claims they merely promised to give Deere a third of the profits. According to Ingram, the remaining two-thirds were not agreed. Both doctors believe that in June 1998, Deere agreed to lower his revenue share to 20%.

In March 1999, Ingram produced a formal agreement. In spite of this, Deere refused to sign the Physician's Contractual Employment Agreement. Deere also objected to the agreement's claim that Ingram owned the multidisciplinary pain clinic. Ingram now claims Deere quit.

Deere filed a suit on Feb. 1, 2002 for breach of contract, specific performance, breach of fiduciary duty, declaratory judgment, fraud, and attorney's fees. The jury determined Deere and Ingram engaged into a joint venture that Ingram broke. The jury awarded $34,249.68 in damages for the breach through March 1999, $2,525,437.00 from April 1999 through trial, and $2,500,000.00 for the portion of revenue accruing after trial. He also had a fiduciary duty to Deere, which he broke. The jury then awarded the same amount of damages for both breaches. The decision also awarded Deere's legal expenses.

[52] *Deere v. Ingram*, 198 S.W.3d 96 (Tex. App. 2006).

After the jury verdict, Judge Evans granted Ingram's JNOV (judgement notwithstanding verdict, *non obstante veredicto*) request. [53] On motion, Judge Evans entered a revised judgment eliminating the $2,500,000.00 share of income award and lowering the attorney's fees award. It does not challenge the ruling and requests that Judge Evans' judgment be reinstated.

Ingram filed a second request for JNOV or, alternatively, a new trial after Judge Evans recused himself. On December 16, 2004, Judge Hartman approved the JNOV motion and ordered Deere to pay Ingram nothing. This appeal was timely.
Deere, in fact, filed an appeal contesting six potential points of error that caused Judge Hartman to mistakenly sustain Ingram's second motion for a JNOV. Although Deere's first point of error in disputing the JNOV was ultimately overruled, four of the remaining five were sustained, which are as follows:

• Ingram's claim (2) "the trial court erred in awarding $2,525,437 in damages because future damages are not recoverable for an oral partnership that is terminable at will":

Conversely, Deere claims that the evidence is legally adequate to sustain a damages award at trial in his second point of error. Deere claims he remained a partner in the joint enterprise until the trial court handed down its decision. Pursuant to the TRPA, a partnership agreement may be oral or written. TEX.REV.CIV. STAT. ANN. art. 6132b-1.01(12) (Vernon Supp.2005). To the degree a partnership agreement does not otherwise explicitly specify, the TRPA governs.
As a result, the court determines that the evidence is legally compelling to

[53] Rule 50, Federal Rules of Civil Procedure, as amended through December 1, 2015.

sustain the jury's damages decision at trial. Deere's second point of error is upheld by the court. [54]

• Ingram's claim (3) "the trial court erred in rendering judgment on breach of fiduciary duty because a partnership does not create a fiduciary relationship";

It is possible to have a formal or informal fiduciary relationship. In certain formal connections, such as attorney-client and trustee relationships, fiduciary obligations emerge as a matter of law. [55]
When one person trusts and depends on another, an informal fiduciary relationship may develop.
However, the mere fact that they had treated patients jointly proves nothing more than a simple business relationship and does not imply nor is it evidence of a fiduciary duty. The court overrules Deere's third point of error.

• Ingram's claim (4) "the trial court erred in admitting the testimony of Deere's expert as to damages because he was untimely designated and his opinion was incompetent";

Deere claims that the trial court erred in granting Ingram's JNOV because the testimony of Deere's expert witness Kimball Parks Ramey, which was deemed inadmissible, was in fact of value.
Ramey served as a damages expert witness for Deere. Ramey formed his judgment based on data he studied during several visits to Ingram's accountant, as well as papers supplied by Ingram. Ramey's opinions, according to Ingram, are untrustworthy since they are based on false assumptions.
However, the court finds that the documents and opinions brought into evidence

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[54] *Coleman v. Coleman,* 170 S.W.3d 231, 236 (Tex.App.-Dallas 2005, pet. denied);
Long v. Lopez, 115 W.3d 221, 225 (Tex.App.-Fort Worth 2003, no pet.).
[55] *Meyer v. Cathey*, 167 S.W.3d 327, 331 (Texas: Supreme Court 2005).

by Ramey to make Deere’s case for damages are relevant and his testimony is not incompetent. The court sustains Deere’s fourth point of error.

• Ingram’s claim (5) “the trial court erred in rendering judgment because Deere's pleadings do not support the judgment”;

Judge Hartman erred in issuing JNOV on the grounds that Deere's pleadings did not support the verdict, according to Deere's fifth point of error. [56]
The jury determined that Ingram and Deere formed a joint venture and awarded damages for breaching the agreement. The court concludes that Deere's arguments justified the damages assessed. As a result, the trial court made an error in issuing JNOV on this basis. Deere's fifth point of error is sustained.

• Ingram’s claim (6) “the trial court erred in awarding attorney's fees”;

Judge Hartman, according to Deere, erred in issuing JNOV on the question of attorney's fees. As per TEX. CIV. PRAC. & REM. CODE ANN. § 38.001(8) (Vernon 1997), the court sustains Deere’s sixth point of error and awards him the right to collect attorney’s fees for a total of $34,249.68.

As a final verdict, given all the points in which Judge Hartman erred, his decision is ultimately reversed and the judgement by Judge Evans dated September 17, 2004 is reinstated.
This verdict thus concludes that an implied partnership in fact existed and an agreement was breached, awarding Deere $2,525,437.00 in damages plus attorney’s fees. [57]

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[56] *Deere v. Ingram*, 198 S.W.3d 96 (Tex. App. 2006).
[57] Ibid.

This goes to show how even informal partnerships and implied agreements could severely impact a business.
Not thinking much of it and deeming it unworthy to be regulated could and will result in issues when controversies inevitably arise; understanding the status of whatever form of partnership two entities have going on is and will remain vital.

3. General outline of corporate loyalty and trust

We can distinguish two types of corporate loyalty: limited and wide business loyalty.

According to a Harvard Business School paper [58], this sort of devotion is under jeopardy: "The nature of the business relationship has changed fundamentally: being involved with the same organization for decades is no longer expected, let alone desired. They are disillusioned with organizational allegiance.
Another factor contributing to the change is that many businesses are quick to terminate when it is in the firm's best interest". On the other hand, the article claims that today's people aren't afraid to switch positions when a better, or just a different, opportunity arises: this isn't limited to jobs they're hired for, but is also extended to partners in a partnership and small business owners. Regardless of who departed first, corporate loyalty isn't what it used to be. [59]

Corporate loyalty is defined as a persons's readiness to sacrifice income, free time, personal connections, family obligations, and general life goals for the well being of the organization. Two types of ties with the organization are necessary to generate this sacrificial dynamic:

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[58] Johnson, Lauren Keller. "*Rethinking Company Loyalty*". Harvard Business School Working Knowledge, September 2005, Web.
[59] Ibid.

• Non-instrumental attachment to the organization implies the relationship isn't maintained just to fulfill immediate needs, like paying rent and groceries.

• Individuals and their devotion to the organization have placed worth in the organization or partnership that endures even if they are no longer there.

This type of profound commitment is probably rare in advertising. Agencies are continuously chasing and stealing new clients. Clients, for their part, are always seeking for better bargains and methods to improve their image, and they are typically open to new communication suggestions. Moreover, firms who use advertising agencies continually “review” their accounts, forcing current clients to compete with newcomers for business. There are exceptions, but for the most part, advertising firms are holding onto their business, seeking new possibilities, and looking for quick cash. In such a competitive atmosphere, when it's one’s job to praise Burger King one day and McDonald's the next, it's hard to feel like you should be loyal to your present company.

Other groups appear to inspire more loyalty. Religious hubs like churches and mosques are obvious examples. Most priests are extremely committed to and worried about their church; they work for their institution and not for the money. Moreover, most feel their institution's significance predates their arrival (or birth) and will continue when they leave. Those who work for Greenpeace, Doctors Without Borders, political parties, the CIA, or the UN may experience something similar. [60]

Other occupations allow for both instrumental (I keep doing my work because it makes me happy) and wide loyalty. Some doctors practice medicine for the

[60] Grosman, Brian A. “Corporate Loyalty, Does It Have a Future?” *Journal of Business Ethics*, vol. 8, no. 7, 1989, pp. 565–568.

money, while others do it for the love of helping others. Another is law. Some judges believe in the law as something greater than themselves and a basic force for society worth serving. On the street, there are cops who prefer a stable salary and others who regard their employment as improving the lives of individuals and the broader population. [61]

The matter of corporate fidelity is extremely pertinent to the general topic of this thesis. It is interesting to see what form and shape it takes when applied to a business that isn't regulated by a written agreement.
Seen as professional loyalty is a deteriorating principle in today's corporate world and given how so many people do not live by these principles even in the event that their duties are, in fact, documented, should one respect and honor the arrangement when the latter is merely verbal? What prevents them from breaking this arrangement aside from the letter of the law?

3.1 Integrity and fiduciary obligation regarding partnerships

Members of a partnership must treat each other equitably in matters related to the partnership's operations, according to a fundamental concept of partnership law. In a substantial corpus of partnership case law, this idea of fairness is referred to as the "fiduciary obligation" or "fiduciary duty" of partners. [62]
The concept of treating partners fairly may appear self-evident, trivial, or both. Besides , how could one disagree with fairness? However, observe the very different attitude to the buyer-seller relationship that is occasionally taken, as represented in the phrase "buyer beware." Members should easily be able to trust their partners, and they should not have to continuously be on alert to defend their interests, according to partnership law. This isn't to suggest that

[61] Ibid.
[62] Hart, Oliver. "An economist's view of fiduciary duty." *The University of Toronto Law Journal* 43.3 (1993): 299-313.

throughout the process of negotiating the partnership's conditions, each partner can't try to maximize his or her own interests. The heart of partnership law is a private arm's-length agreement, whether express, tacit, or assumed; the UPA may be viewed as a series of "default" terms (that is, provisions applied in default of particularized agreement by the partners). Furthermore, what is fair is greatly influenced by what the parties planned or expected, thus fairness is to some extent a consequence of agreement. [63]

Fairness, on the other hand, appears to have taken on a life of its own, establishing what is at least a strong presumption that partners should treat one another according to the golden rule, rather than the law of the jungle. Under reality, fiduciaries may be required to take deliberate efforts to benefit individuals to whom they owe their allegiance in specific instances. [64]

Fiduciary responsibility or duty can also be found in the law of agency and company law, where the term "duty of loyalty" is commonly used. Keep in mind that much of partnership and corporate law is a direct application of agency law, which is necessary since partnerships and corporations are abstractions that can only act via their agents. [65]

The idea of fiduciary duty, like the golden rule or any other general guide to ethical behavior, is hazy and ambiguous. While it may give clear answers to specific difficulties in some cases, it does not in others. It would be beneficial to go a little farther than the simple exhortation, "be fair." [66]

The United States Supreme Court, for example, found it useful to provide the following list of "shall nots" in partnership dealings:

"It is well settled that one partner cannot, directly or indirectly, use partnership assets for his own benefit; that he cannot, in conducting the business of a partnership, take any profit clandestinely for himself; that he cannot carry on the

[63] Brudney, Victor. "Contract and fiduciary duty in corporate law." *BCL Rev.* 38 (1996): 595.
[64] Ribstein, Larry E. "Fiduciary duties and limited partnership agreements." *Suffolk UL Rev.* 37 (2004): 927.
[65] Ribstein, Larry E. "Are partners fiduciaries." *U. Ill. L. Rev.* (2005): 209.
[66] Ibid.

business of the partnership without the consent of the other partners; that he cannot carry on the business of the partnership without the consent of the other partners".

However, while this statement nicely suggests several characteristics of partnership activity that might lead to issues, it appears to add little substance to the fundamental concept conveyed by words like "fairness," "honesty," "good faith," and "loyalty". [67]

The outcomes of determined cases can be referenced as examples of behavior that has been deemed to be on one side or the other of the line. However, the boundary remains ambiguous, and the ambiguity persists, possibly inevitably, because the concept is intended to encompass a wide range of scenarios, making it impossible to try to foresee and give clearer guidelines even for the most likely to occur. It's possible that the expense of greater detail isn't worth it. Not only is it difficult to define precisely the legal nature of a fiduciary responsibility, but it is also difficult to determine its economic functions and repercussions. [68]

3.2 Risks of fairness in implied partnerships

As we've seen mutual trust is a fundamental principle in all partnerships, let alone implied ones. The idea of being blindsided by the person(s) one has chosen to do business with, is amongst the many fears and risks partnerships have to deal with. [69]

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[67] Ebberson, Linda Kelley. "Partnership—Disclosure, Fairness and Substantive Administrative Regulation of a General Partner's Fiduciary Duty in a Real Estate Limited Partnership—Bassan v. Investment Exchange Corp., 83 Wn. 2d 922, 524 P. 2d 233 (1974); Wash. Ad. Code §§ 460-32A-010 et seq.(1975)." *Washington Law Review* 50.4 (1975): 977.

[68] Tyler, S. Ralph. *Business Partnership and Fiduciary Responsibilities*. The Casper Firm. June 2017. Web.

[69] Kreischer, C. Kyle. *What are Common Risks of Forming a Business Partnership?*. Colo Law J. September 2020. Web.

Furthermore, it is becoming obvious that partnership is not at all a low-cost, quick-fix, or risk-free alternative. It is true that the expenses of partnering may be significant, not least because of the amount of time required to investigate and develop the partner connections. Potential partners must take into account the opportunity costs and, if possible, create some criteria against which they may evaluate if the hoped-for benefits of partnering are truly worth the expenditure they are contemplating. [70]
This also includes the undeniable weight that is carried by having to trust and rely upon the fairness of a business partner, especially in case these relationships are not explicitly regulated with a formal agreement, which makes it that much easier for a member to neglect his or her moral and business-related duties.
All too often, partnership in its early phases can be a dilemma; partners spend their time, energy, and ideas (sometimes spanning months and even years), and then they continue to support the venture even when the transaction costs become unacceptably high. This is frequently due to the fact that they are under pressure from their peers to demonstrate some sort of return on investment. [71]

The relationship of reciprocal fairness with which partners are expected to treat one another plays a major role in a partnership and, if not managed properly, can end up developing into possibly unrelated risks. [72]
One of them is loss of autonomy, namely the difficulty of shared decision-making procedures, the requirement for partners to reach consensus before taking action and the consequences of increased accountability.
Another issue that can arise is the one of conflict of interest where a decision that is potentially correct for the partnership may be disadvantageous for a

[70] Nisar, Tahir M. "Risk management in public–private partnership contracts." *Public Organization Review* 7.1 (2007): 1-19.
[71] Ibid.
[72] Kiger, David. *The Risks and Benefits of Getting into Business with a Partner*. Business 2 Community Journal. June 2014. Web.

single member. Third could be the drain of resources which happens when in addition to any extra financial or other resource contributions, key personnel commit time and energy - sometimes much more than anticipated - to partnership formation and project development.
The matter of implementation of challenges might present a risk as well, the daily needs of executing a partnership program as a joint enterprise, with all of the associated administration, monitoring, reporting, and evaluation requirements.
Last but not least is the event in which the partial or total failure of the whole partnership winds up damaging and having a negative impact on each member's personal reputation. [73]

3.3 Good faith in oral agreements

The implicit covenant of good faith and fair dealing is a common assumption in contract law that the parties to a contract would treat each other transparently, fairly, and in good faith so as not to jeopardize the other party's or parties' ability to obtain the contract's benefits. [74]
It is implied in a variety of contract forms to strengthen the contract's stated covenants or promises. [75]
A cause of action or a lawsuit regarding a potential breach [76] of this covenant might happen when one party to the contract seeks to use a technical justification to break the contract, or when one party utilizes particular contractual provisions, often broad and out of context, to refuse to execute his or

[73] Nisar, Tahir M. "Risk management in public–private partnership contracts." *Public Organization Review* 7.1 (2007): 1-19.
[74] MacMahon, Paul. "Good faith and fair dealing as an underenforced legal norm." *Minn. L. Rev.* 99 (2014): 2051.
[75] *Kirke La Shelle Company v. The Paul Armstrong Company et al.* 263 N.Y. 79; 188 N.E. 163; 1933 N.Y.
[76] Cohen, Michael H. "Reconstructing breach of the implied covenant of good faith and fair dealing as a tort." *Calif. L. Rev.* 73 (1985): 1291.

her contractual duties, notwithstanding the general conditions and understandings among the parties. Every contract, written or oral, has an "implied promise of good faith and fair dealing" that a court or trier of fact must interpret. [77]

The term "good faith" refers to a person's honesty during the course of the agreement. Even in contracts that specifically enable any party to cancel the relationship for any reason, the responsibility to perform in good faith persists. “Fair dealing” generally involves more than simply honesty. It typically states that a party cannot act in violation of the contract's spirit, even if the opposing party is given notice of the intention to do so. [78]

It may seem startling to have an implied clause in an implied contract.
This, however, does exist and its application in oral agreements becomes perhaps even more trivial than it is in written ones.
For instance, by proving that there was a loyalty relationship between two parties of a contract and further demonstrating that such relationship had been overlooked or infringed, one can prove the existence of the contract itself.
The scenario works the other way around as well: by denying that any sort of fiduciary relationship was in place, one could argue that no person of sound mind would enter into a contract with someone they do not trust.

Concluding, an implied responsibility of good faith and fair dealing is always included. This obligation emphasizes the fact that neither party does anything that may endanger or impair the other party's right to retrieve the contract's benefits. Despite the fact that there is no precise definition of this duty, and it is up to the courts to evaluate its scope, it remains crucial to be aware of implicit

[77] Collins, Hugh. "Implied terms: the foundation in good faith and fair dealing." *Current Legal Problems* 67.1 (2014): 297-315.
[78] Ibid. 321-331.

provision of verbal and non-verbal agreements, as they can determine the entire resolution of the contract. [79]

Conclusion

"A verbal contract isn't worth the paper it's written on",
someone said. [80]

The pungent irony behind this - arguably groundless - statement provides us with quite a bit of food for thought.
The strikingly uncommon nature of this practice is easy to be superficially misunderstood as obsolete or perhaps even irrelevant and, frankly, I wouldn't blame anyone who does.
However, the meticulous eye will certainly have perceived by now that the real sense of this work is not to shed light on a rare contractual behavior, but rather, to warn those who are not aware about the legal existence of it and its applications.
Jurisprudence is an endeavor that is progressively becoming more and more written: memos, subpoenas, affidavits and sometimes even trials are made without any sort of spoken confrontation, hence it is fascinating to see how it operates and regulates business that stands at a polar opposite, being completely oral or even implicit.
If we were to analyze this work from a scientific approach there would be an hypothesis, an argument pleading and then counteracting the hypothesis and, ultimately, the thesis itself.
Assuming that the hypothesis is that undocumented business - whether it is a handshake deal or an implied partnership - is untroublesome to be enforced and

[79] MacMahon, Paul. "Good faith and fair dealing as an underenforced legal norm." *Minn. L. Rev.* 99 (2014).
[80] Goldwyn, Samuel. (Warsaw, Poland 1882 - Los Angeles, CA, USA 1974).

just as valid as written, I would have no credibility if I were to confirm it.
Of course, one could belittle the issue to simply say “just get it all in writing” and be done with it.
But that would be oblivious as well as unrelated to the general topic of this thesis.
And besides, this goes beyond that; it is a scrutiny that devotes its attention to a vastly unexplored and underestimated manner in which everyday business is made.

In the first chapter, I tried to highlight the procedures pertinent to oral contracts, complete with the factors that can act as interference preventing their enforcement.
Then, the focus was shifted to the matter of implied partnerships, where the center of discussion was the analysis of how an unspoken meeting of the minds between people can result in a proper, legally binding, partnership of fact.
Lastly, in the third chapter, we studied the first two matters following a different path. Fairness in partnerships and good faith in oral agreements are essential, particularly in the event that business proceedings are not governed by explicit, documented arrangements.

Drawing conclusions, it has been humbling to discover the relevance of such an alluring practice. The key takeaway, which I hope to have transmitted upon the reader, is that business relationships take place in a variety of forms, not the least important of which is that of oral communication and implicit agreement: a person’s word still means something, and the law will hold them to it.

So finally, to Mr. Goldwyn I say, “let’s write that verbal contract!”.

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