

# Bringing home the bacon

Why partnership agreements matter: **Julie Butler** relates the sad case of the Ham family

**F**arm land prices have rocketed upwards in the past decade, and with development potential returning through changes to planning regulations, there is greater need to protect land values. It seems that despite this big worry, very few farming partnerships have undertaken the work and expense of getting an up-to-date, well thought-through partnership agreement. The case of the Ham family shows why this is essential (*John Ronald Ham v Ronald William Ham and Lorna Jean Ham* [2013] EWCA Civ 1301).



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## FACTS OF THE HAM CASE

Mr Ron and Mrs Jean Ham, a husband and wife, started their farming business in 1966 with a modest five hectare plot and continued to grow the business. Their son, John Ham, joined the farming partnership on 1 October 1997, when the family farm in Frome, Somerset, covered 178 hectares.

Ron Ham hoped that one day John would take over the running of the farm. But in 2009 the three-way partnership began to unravel. John wanted to drive the farm in one direction, and his parents disagreed and refused to relinquish control. John then left the partnership on 27 February 2009, citing irreconcilable differences with his parents.

## THE INITIAL HEARING

Under the terms of the Ham partnership agreement, the other partners would buy out the leaving partner after three months' notice of the intention to quit.

John felt he was entitled to a share of a full market value of the farm, whereas Mr and Mrs Ham argued that their son's share should be assessed on the book value of the assets - a far more meagre payout, as it ignores the soaring land values.

The initial court hearing was in March 2013. Judge McCahill QC, presiding, decided that, as a matter of interpretation of the partnership deed, John's share was to be determined on the same basis as annual

accounts were drawn up during the continuation of the partnership, rather than on the basis of an up-to-date market valuation of the partnership assets.

## HISTORIC COST OR MARKET VALUE?

John appealed this decision and the case went before the Court of Appeal in October 2013. The three judges ruled that John was legally in the right and must be paid at current market value and not historic cost as his parents had understood.

The partnership agreement was poorly worded; what value John was entitled to was a matter of interpretation. One of the judges expressed sadness that a lack of clarity in the agreement's drafting had caused so much "anxiety, expense and delay" to the family.

How many farming partnerships are there across the UK where there are differences that cannot be resolved? How often is there a partnership agreement that does not provide help, or indeed no partnership agreement? With so much at stake why are quality partnership agreements avoided? Is it the cost? Or the problems of facing very difficult decisions?

## TAX IMPORTANCE OF THE PARTNERSHIP AGREEMENT

Another reason for a well-drafted agreement is to identify what is 'personal' property and what is 'partnership' property for the availability of 100% (as opposed to 50%) business property relief (BPR) for inheritance tax. The tax facts are straightforward: farmland made available to a partnership only achieves 50% BPR whereas 'partnership' property achieves 100%.

## ACTION PLAN FOR ADVISERS

- Ensure there is a robust up-to-date partnership agreement in place from the commencement of every farming partnership.
- Review all partnership agreements and ensure they are clear, in particular about the value of the buyout when a partner leaves the farm, as well as providing for an exit strategy.
- Ensure all parties are aware of the risks that cases like *Ham* demonstrate.
- Take steps to ensure all potential business disagreements are covered by the partnership document. 

